



Roq Professional Services Agreement

Quality Engineering like no other

Schedule 1: Conditions

1. INTERPRETATION

1.1 In these Conditions (as herein defined) the following expressions shall unless the context otherwise requires have the following meanings:

- (a) “Client” shall mean the client whose details are set out in the Services Agreement;
- (b) “Charges” shall mean the charges as set out in the Services Agreement;
- (c) “Commencement Date” shall mean the commencement date for the Services as set out in the Services Agreement;
- (d) “Conditions” shall mean these terms and conditions as amended from time to time in accordance with clause 12;
- (e) “Consultant” shall mean any consultant of Roq who performs the Services on behalf of Roq (being an employee of Roq or an independent contractor);
- (f) “Contract” shall mean the agreement between Roq and the Client for the supply of services by Roq to the Client incorporating these Conditions and the Services Agreement;
- (g) “Expenses Records” shall mean the current standard Roq expenses records to be used to record any expenses incurred by a Consultant in carrying out the Services;
- (h) “Fees” shall mean the amounts payable to Roq in consideration for the provision of the Services and calculated by reference to the Charges outlined in the Services Agreement (including but not limited to the Licence Fee) and the Time Records and Expenses Records (when applicable);
- (i) “Group Company” shall mean any Subsidiary or Holding Company of a Party (or another Subsidiary of any such Holding Company) where Holding Company and Subsidiary Company shall have the meanings ascribed to them by Section 736 Companies Act 1985 (as amended);
- (j) “Intellectual Property Rights” shall mean patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- (k) “Loss” shall mean any and all obligations costs expenses actions demands and suits (including legal fees and other professional fees court costs and other disbursements);

- (l) “Party” shall mean Roq or the Client (as the case may be);
 - (m) “Premises” shall mean the premises at which the Services are to be provided as identified in the Services Agreement or otherwise agreed between the Parties in writing;
 - (n) “Roq” shall mean Roq Limited incorporated and registered in England and Wales with company number 06923066 whose registered office is Assurance House, Euxton Lane, Euxton, Chorley PR7 6TE;
 - (o) “Services” shall mean those services described in the Services Agreement;
 - (p) “Services Agreement” shall mean the agreement entitled "Professional Services Agreement" signed on behalf of Roq and the Client setting out amongst other things details of the Client, Services, Consultant and Charges;
 - (q) “Termination Date” shall mean the date of cessation of the Services as set out in the Services Agreement;
 - (r) “Third-Party Licence” shall mean any licence of Third-Party Software;
 - (s) “Third-Party Software” shall mean any Open Source Software and any software programs proprietary to third parties, which are provided to the Client;
 - (t) “Time Records” shall mean the current standard Roq time records to be used to record any time spent by a Consultant in carrying out the Services.
- 1.2 Any reference in these Conditions to a person shall include natural persons, firms and other incorporated and unincorporated bodies, companies and all other legal persons of whatever kind constituted.
- 1.3 These Conditions apply to all contracts for the supply by Roq of the Services to the Client to the exclusion of any other terms and conditions stipulated or referred to by the Client including the Client’s standard conditions of trading.
- 1.4 The provisions of the Services Agreement together with these Conditions constitute the entire agreement and understanding between Roq and the Client with regard to the provision of the Services, and the Parties agree and acknowledge that in entering into the Contract they have not relied on and shall have no remedy in relation to any statement not recorded in the Conditions subject to clause 4.6. The Conditions may only be varied by the written agreement of the duly authorised representatives of each Party whose name shall have been notified in writing to the other Party.
- 1.5 The Contract shall be formed upon the signature by Roq and the Client of the Services Agreement and shall continue until the Termination Date or as otherwise prescribed in clause 3.
- 1.6 The Client acknowledges that it is aware that the Conditions provide for the exclusion of certain liabilities of Roq and limitations upon the liability of Roq and that the Charges have been calculated accordingly.**
- 1.7 In the event of any conflict between the Conditions set out herein and those set out in the Services Agreement the Conditions of the Services Agreement shall prevail (save where expressly stated to the contrary).

- 1.8 Headings contained in these Conditions are for reference purposes only and should not be incorporated into the Contract and shall not be deemed to be any indication of the meaning of the conditions to which they relate.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10 A reference to **writing** or **written** includes email.

2. SUPPLY OF SERVICES

- 2.1 Roq shall use all reasonable commercial endeavours to meet any performance dates specified in the Services Agreement or otherwise agreed by the Parties in writing, but any such dates for performance of the Services shall be estimates only.
- 2.2 Roq shall not be liable for any delays in performance of the Services or provision of the Deliverables caused by the Client or any other party not instructed by Roq.
- 2.3 Roq reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Roq shall notify the Client in any such event.

3. TERM

- 3.1 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 0, until the later of;
- (a) the Termination Date or such date as otherwise agreed in writing between the Parties; or
 - (b) when Roq has provided the Deliverables to the Client.

4. WARRANTY AND LIABILITY

- 4.1 Roq warrants that it shall perform the Services using reasonable skill and care.
- 4.2 The warranty set out in clause 4.1 represents the only warranty given by Roq to the Client in respect of the Contract and the provision of the Services by Roq.

THE CLIENT'S ATTENTION IS SPECIFICALLY DRAWN TO THE FOLLOWING PROVISIONS WHICH RELATE TO EXCLUSIONS AND LIMITATIONS UPON THE LIABILITY OF Roq.

- 4.3 Any claim based upon a failure by Roq to provide the Services with all reasonable skill and care must be notified to Roq in writing by the Client within 60 days of the completion or termination of the Services. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 4.4 Roq shall have no liability to the Client for loss of profit, sales or business, contracts, revenue, anticipated savings, loss or damage to goodwill; loss of or corruption of data, software or information or for any special, indirect or consequential damage or loss of any nature whatsoever which arises out of or in connection with the supply of the Services save as may otherwise be expressly provided for in these Conditions.

- 4.5 Subject to clause 4.6 and the aforementioned provisions of clause 4.3 and 4.4 the aggregate liability of Roq in connection with the Contract (whether in contract, tort including negligence, statute or otherwise) shall be limited to:
- (a) £1 million in relation to direct damage to tangible property of the Client caused by the negligence of Roq;
 - (b) in all other respects to the aggregate amount of Fees paid by the Client pursuant to the Contract in the period of 12 months prior to the time that the event giving rise to the liability occurred.
- 4.6 For the avoidance of doubt, nothing contained in the Contract shall be deemed to exclude or restrict the liability of Roq for;
- (a) death or personal injury arising due to the negligence of Roq; or
 - (b) fraud or fraudulent misrepresentation.
- 4.7 Nothing in this clause 4 shall limit the Client's payment obligations under the Contract.

5. CLIENT'S OBLIGATIONS

- 5.1 The Client shall allow Roq, its employees, agents, subcontractors and Consultants, access to its personnel and premises and shall make available to such Consultants all such office space, telephone and other facilities reasonably required by Roq or the Consultants to perform the Services. The Client shall also allow the Consultant access to any computer equipment (without limitation on time) as may be reasonably necessary to enable the Services to be provided in a timely manner.
- 5.2 The Client shall ensure that its employees and other independent consultants co-operate fully with Roq and the Consultants in relation to the provision of the Services and shall provide the Consultants with all necessary information, support and co-operation that may be reasonably required to enable Roq and the Consultants to perform its obligations under the Contract.
- 5.3 The Client shall furnish Roq and the Consultants promptly with such complete and accurate information and documents as reasonably requested for the proper performance of the Services.
- 5.4 The Client shall promptly verify, approve and sign the Time Records and Expenses Records submitted by a Consultant and return the same to Roq. The Client acknowledges that its signature on a Time Record is absolute confirmation of both the quality and quantity of Services provided by Roq. For the avoidance of doubt any failure by the Client to sign a Time Record or Expenses Record shall not absolve it from its obligation to pay the Fees in such circumstances.
- 5.5 The Client shall notify Roq sufficiently in advance of its attendance at the Premises of all security and other office procedures implemented at its premises at which Services are to be provided. Roq shall use reasonable endeavours to procure that Consultants adhere to all such procedures notified at all times whilst on the Premises.
- 5.6 The Client shall indemnify Roq in respect of any claims, demands, liabilities, costs or expenses made against Roq in respect of physical injury or death of a Consultant sustained as a result of the Consultant carrying out the Services unless such physical injury or death has resulted from the negligence of Roq.

- 5.7 The Client shall take all reasonable steps to ensure the health and safety of the Consultants whilst they are at the Client's sites.
- 5.8 The Client shall obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 5.9 The Client shall keep all materials, equipment, documents and other property of Roq ("**Roq Materials**") at the Client's premises in safe custody, maintain Roq Materials in good condition until returned to Roq (if required), and not dispose of or use Roq Materials other than in accordance with Roq's written instructions or authorisation.

6. PAYMENTS

- 6.1 The Client shall pay to Roq the Fees in consideration of the Services.
- 6.2 Save where the parties have agreed fixed fees in respect of the provision of the Services, in which case payment shall be made in accordance with the payment terms detailed in the Services Agreement, invoices in respect of Fees shall be issued by Roq on a monthly basis. All invoices are payable by the Client within 28 days of the invoice date.
- 6.3 If the parties have agreed that fixed fees will be payable for the Services on the delivery of the Deliverables then:
- (a) the Deliverables provided shall comply with the Contract in all material respects and Roq shall be entitled to determine (acting reasonably) whether the Deliverables meet the requirements of the Contract in all material respects;
 - (b) the Client shall not be entitled to withhold payment of such fixed fees (or any part thereof) if Roq has been unable to provide the Deliverables or if the Deliverables do not comply with the requirements of the Contract in all material respects as a result of or connected with a failure by the Client (or any person instructed by it) to comply with its obligations under the Contract (including but not limited to under clause 5); and
 - (c) clauses 11.3 and 11.4 shall apply where applicable.
- 6.4 Without prejudice to any of its other rights Roq shall be entitled to charge interest to accrue on a daily basis at the rate of 3% per annum above the base lending rate for the time being of HSBC UK Bank plc on any sums not paid within the period specified in clause 6.2 from the invoice date until the actual date of payment.
- 6.5 If any item or part of an item of an invoice rendered by Roq is disputed or subject to question by the Client, the payment by the Client of that part of the invoice which is not disputed or subject to question shall not be withheld. The provisions of clauses 6.2 and 6.4 shall apply to such part of the invoice as is not disputed or subject to question and also the disputed or questioned item, to the extent that it shall subsequently be agreed or determined to have been due to Roq.
- 6.6 The Fees are exclusive of VAT and other duties or taxes which shall be payable where applicable in addition to the sums quoted.
- 6.7 Roq may suspend the Services in the event that the Fees are not paid by the due date and shall also be entitled to recover all costs, fees, losses and expenses suffered or incurred by it in recovering the overdue amount (including but not limited to any debt recovery costs, legal fees and court costs).
- 6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.9 Roq reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Average Weekly Earnings Index provided by the Office for National Statistics ("ONS") or any successor of the ONS, in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Average Weekly Earnings Index.

7. OWNERSHIP OF DESIGNS

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Roq.
- 7.2 Subject to clause 7.3, Roq grants to the Client a non-exclusive, non-transferable, royalty-free licence to use the Deliverables (excluding materials provided by the Client) for the Client's internal business purposes.
- 7.3 Where the Deliverables include any Third Party Software then the Client agrees to comply with the Third-Party Licences and shall indemnify and hold Roq harmless against any loss or damage which it may suffer or incur as a result of the Client's breach of such terms howsoever arising.
- 7.4 Roq reserves the right to charge the Client a Licence Fee for the licence granted in clause 7.2 in accordance with the Services Agreement.
- 7.5 If the Client fails to pay the Licence fee in accordance with the Services Agreement, Roq can immediately revoke the licence granted under clause 7.2.
- 7.6 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.
- 7.7 The Client grants Roq a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Roq for the term of the Contract for the purpose of providing the Services to the Client.
- 7.8 Subject to clause 7.1, and clause 7.3 all documents and information supplied by or on behalf of Roq to the Client shall remain the property of Roq and Roq shall retain all rights in and to any copyright, design right or other intellectual property rights in respect of the same.
- 7.9 Nothing in this clause 7 shall have effect to transfer any intellectual property rights of Roq existing prior to the commencement of the Services.

8. DATA PROTECTION AND DATA PROCESSING

- 8.1 This clause 8 shall apply when it is agreed in the Services Agreement that there will be Personal Data being processed under the Contract.
- 8.2 In this Condition, the following terms shall have the following meanings:
- (a) "controller", "processor", "data subject", "personal data" and "processing" (and "process") shall have the meanings given in the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); and
 - (b) "Applicable Data Protection Law" shall mean: (a) GDPR as implemented into UK law from time to time; (b) any UK laws, regulations and secondary legislation implementing or amending GDPR including without limitation the UK General Data Protection Regulation ("UK GDPR") and the Data Protection Act 2018; and (c) any other applicable law relating to personal data to which Controller or Processor is subject.

- 8.3 The Client (the “**Controller**”) appoints Roq as a processor (the “**Processor**”) to process the personal data that is the subject of this Contract (the “Data”). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law. Without prejudice to the generality of this clause 0, the Controller will ensure that it has all necessary consents and notices in place to enable lawful transfer of the personal data to the Processor for the duration and purposes of this Contract so that the Processor may lawfully use, process and transfer the personal data in accordance with this Contract on the Controller's behalf.
- 8.4 The Processor shall process the Data as a processor as may be required to perform its obligations under this Contract and in accordance with the documented instructions of the Controller (the “Permitted Purpose”), except where required by any United Kingdom law to do otherwise.
- 8.5 The Processor shall not transfer the Data outside of the European Economic Area (which for the avoidance of doubt is deemed to include the United Kingdom) unless (i) it has the Controller's documented instructions to do so; (ii) it takes such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law; or (iii) it is required to do so by any applicable United Kingdom law.
- 8.6 The Processor shall ensure that any person that it authorises to process the Data (including the Processor's staff, agents and subcontractors) (an “Authorised Person”) shall be subject to a duty of confidentiality (whether a contractual duty or a statutory duty or otherwise).
- 8.7 Taking into account (at its reasonable discretion) the risks, costs and other factors required by Article 32 GDPR the Processor shall implement such reasonable technical and organisational measures as it reasonably believes are required to protect the Data from (i) accidental or unlawful destruction, (ii) accidental loss, alteration, unauthorised disclosure or access, and (iii) any other breach of security (each of (i), (ii) and (iii), a “**Security Incident**”). Such measures may include as it reasonably determines:
- (a) the pseudonymisation and encryption of personal data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 8.8 The Controller consents to the Processor engaging third party sub-contractors to process the Data provided that: (i) the Processor provides at least 7 days' prior notice of the addition or removal of any sub-contractor; (ii) the Processor imposes data protection terms on any sub-contractor it appoints that protect the Data to the same standard provided for by this Condition; and (iii) the Processor remains liable for any breach of this clause that is caused by an error or omission of its sub-contractor. If the Controller refuses to consent to the Processor's appointment of a third party sub-contractor on reasonable grounds relating to the protection of the Data, then either the Processor will not appoint the sub-contractor or the Processor may elect to suspend or terminate this Contract without penalty.

- 8.9 The Processor will provide the Controller with such reasonable assistance at the Controller's written request and at the Controller's expense as the Controller may reasonably require to allow it to comply with Article 32 GDPR.
- 8.10 The Processor shall provide reasonable assistance (including by appropriate technical and organisational measures) to the Controller (at the Controller's expense) to enable the Controller to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data.
- 8.11 If the Processor believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Controller and provide the Controller with reasonable assistance (at the Controller's expense) to allow the Controller to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.
- 8.12 Upon becoming aware of a Security Incident, the Processor shall inform the Controller without undue delay and shall provide such cooperation as the Controller may reasonably require (and at the Controller's expense) including to allow the Controller to fulfil its data breach reporting or communication obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. The Processor shall further take such measures and actions as are (in its reasonable discretion) necessary to remedy or mitigate the effects of a Security Incident and shall keep the Controller up to date about material developments in connection with the Security Incident.
- 8.13 Upon termination or expiry of this Contract, the Processor shall (on the Controller's written instructions) destroy or return to the Controller all Data (including all copies of the Data) in its actual possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that the Processor is required by any UK law to retain some or all of the Data.
- 8.14 The Processor shall permit the Controller (or its nominated auditor) to audit the Processor's compliance with this Condition. The Controller must give the Processor not less than 35 days' prior written notice of its intention to conduct such an audit, must conduct the audit during normal business hours, and must take all reasonable measures to prevent disruption or harm to the Processor's operations. The Controller will not exercise its audit rights more than once in any twelve (12) calendar month period and will be responsible for all reasonable costs incurred by the Processor in connection with the audit.
- 8.15 The Processor will inform the Controller if it believes any instruction from the Controller relating to the Data breaches Applicable Data Protection Law.

8.16 The further information required under Article 28 (3) GDPR is set out in the Table below:-

Duration of Processing	For the term of the Contract (subject to the terms of the Contract)
Nature and Purpose of the Processing	To allow Roq to carry out and provide the Services under the Contract
Categories/types of Personal Data being processed	Details (including names and contact details) relating to the staff, officers, customers, suppliers, agents and business partners of the Client and of other persons as required in connection with the performance of the Services
Categories of Data Subjects	Staff, officers, customers, suppliers, agents and business partners of the Client and such other persons as are required in connection with the performance of the Services

9. CONFIDENTIALITY

9.1 Each Party acknowledges that all information supplied to it by or on behalf of the other Party relating to the business of that other Party and that other Party's products and services is confidential ("**Confidential Information**"). Each Party agrees to maintain as confidential the other Party's Confidential Information and not to disclose said Confidential Information to any other person nor to use it for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract or as permitted by clause 9.2 and 9.3.

9.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9;
- (b) is required to be disclosed by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 The obligations of confidentiality and the restrictions as to use of Confidential Information shall cease to apply to Confidential Information which is in the public domain through no fault of the Party to whom Confidential Information is disclosed.

- 9.4 Roq shall use all reasonable endeavours to ensure that any Consultant to whom it discloses Confidential Information of the Client or to whom the Client discloses information about its business or products or services shall maintain such information as confidential.
- 9.5 The terms and other details of the Contract shall be held confidential by both Parties, as shall the Parties' respective performance under this Contract except if any disclosure of terms or performance is required to comply with legal or regulatory obligations, the disclosing party shall notify the other party, as soon as practical of such required disclosure and shall use reasonable efforts to minimize such disclosure.
- 9.6 It is agreed that each Party may publicize the existence of this Contract and the relationship between the Parties or use non-confidential details of the Contract for publicity subject to clause 9.7 and clause 9.8.
- 9.7 Subject to clause 9.8, before any publicity is made, each Party will provide the publicity to the other and obtain written consent from the other Party prior to publishing such publicity, such consent shall not be unreasonably withheld.
- 9.8 Roq may publish a case study or reference of the Services and/or Deliverables provided to the Client or any information in connection with the provision or delivery of the Services and/or Deliverables provided that it does not name the Client. Roq will obtain consent as per clause 9.7 should Roq want to publish any case study or reference containing the Client's name.

10. RESTRICTION

- 10.1 The Client shall not (and shall procure that each Group Company of the Client shall not) during the Contract or during the period of 12 months after the termination of the Contract employ or contract with a Consultant for the provision of services by the Consultant or otherwise engage the services of the Consultant through any source other than Roq.
- 10.2 Should the Client be in breach of clause 10.1, the Client shall be liable to pay to Roq, by way of liquidated damages, any such amount as is equal to;
- (a) in the case of employees of Roq 50% of the annual salary and guaranteed bonuses (if any) of the said Consultant(s) effective as at the date of the said breach; Or
 - (b) in the case of independent contractors the greater of 50% of the sums paid by Roq to the Consultant or his/her employer during the twelve-month period prior to the date of the said breach or 50% of the sums paid by the Client or any Group Company of the Client to the Consultant or his/her employer during the period of twelve months after the date of the said breach.

Such sum shall be payable by the Client within 28 days of the date of Roq's invoice in respect thereof and the Client and Roq agree that such sum represents a fair estimation of the Loss likely to be suffered by Roq as a result of the breach by the Client of clause 10.1.

11. TERMINATION

- 11.1 A Party ("the Terminating Party") shall be entitled (without prejudice to any other rights or remedies in respect thereof) to treat the Contract as wrongfully repudiated by the other Party and to terminate the Contract forthwith by giving to the other notice in writing to that effect should:
- (a) the other Party commit any material breach of any of its obligations pursuant to the Contract and fails to remedy such breach within 30 days of a notice from the Terminating Party requesting remedy and threatening termination;
 - (b) the other Party becomes insolvent, convenes a meeting of creditors, enters into liquidation (save for a solvent liquidation for the purposes only of reconstruction or amalgamation), has a receiver or administrator appointed or a resolution is passed for the winding up of that Party (or any similar or equivalent event in any jurisdiction);
 - (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other Party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Where Roq terminates the Contract under clause 11.1 or the Client terminates the Contract in breach of its terms, including but not limited to any time prior to the Termination Date (save where such termination is by the Client in accordance with clause 11.1) the Client shall indemnify Roq against any claims, demands, costs and liabilities which it may continue to have to or otherwise made by any Consultant (not being any employee of Roq) in respect of the Contract which has been terminated.
- 11.3 Without affecting any other right or remedy available to it, Roq may terminate the Contract forthwith by giving to the Client notice in writing if:
- (a) the Client fails to pay any amount due under the Contract on the due date for payment and remains in default for not less than 30 days after being reminded in writing to make payment;
 - (b) despite having used all reasonable commercial efforts, Roq believes (acting reasonably) that it will be unable to provide the Services and/ or Deliverables to the Client in accordance with the requirements and terms of the Contract.
- 11.4 On termination or expiry the Client shall immediately pay to Roq all of Roq's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Roq shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 11.5 Termination of this Contract shall not affect any accrued rights or liabilities of either Party.

12. VARIATION TO CONTRACT

- 12.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. CONSULTANTS

- 13.1 Roq cannot guarantee a particular Consultant or that the same Consultant will perform the Services throughout the term of the Contract and Consultants may be subject to change.
- 13.2 Roq reserves the right to immediately remove and/or substitute any Consultant at any time and for any reason, including but not limited to, Consultant illness or injury, or incapacity and provide a Replacement Consultant in accordance with this clause 0.
- 13.3 Roq will use its reasonable commercial endeavours to provide a replacement consultant as soon as reasonably possible. The time taken will be dependent on the availability of a replacement. The replacement consultant shall be sufficiently skilled to provide the Services in accordance with the Contract ("Replacement Consultant").
- 13.4 In the event the Client reasonably believes that a Consultant is underperforming or is not performing the Services as per the Contract, then the Client can request a Replacement Consultant by providing evidence of the Consultant's underperformance or not performing the Services in writing to Roq as soon as the Client becomes aware of underperformance. If in Roq's reasonable opinion Roq agrees with the Client, then it will provide a Replacement Consultant as per clause 13.3.

14. DISPUTE RESOLUTION

- 14.1 The Parties shall attempt in good faith to resolve any claim or dispute arising out of or relating to the Contract promptly in accordance with this clause 14 without recourse to legal proceedings, without prejudice to the rights of either Party to terminate the Contract in accordance with clause 0.
- 14.2 In the event of any dispute arising out of or in connection with the Contract, the matter shall be referred to a senior representative of the Client and a senior representative of Roq following notice ("Dispute Notice") by either Party that in its view a dispute has arisen. The representatives shall meet within 7 days of the Dispute Notice or otherwise as soon as practicable after such Dispute Notice to attempt to resolve the dispute. Each Party shall use its reasonable endeavours to resolve the dispute.
- 14.3 If the claim or dispute is not resolved within 7 days of such meeting or in any event within 14 days of the Dispute Notice the dispute resolution procedure set out in this clause 14 shall be deemed to be exhausted.
- 14.4 All negotiations carried out under this clause 14 shall be conducted in confidence.
- 14.5 These provisions shall not prejudice the rights of either Party to seek the assistance of any Court by way of injunction or other similar pre-emptive remedy to protect any of its rights or property.
- 14.6 Performance of the Contract shall continue during negotiations under this clause 14 unless both Parties agree to suspend the Services, without prejudice to the rights of the Parties under the Contract.

15. SEVERANCE

- 15.1 If any provision of the Contract is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable (or indications to that effect are received by either of the Parties from any competent authority) the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or by agreement of the Parties it may be severed from the Contract and the remaining provisions of the Contract shall remain in full force and effect unless Roq in Roq's sole discretion decides that the effect of such declaration is to defeat the original intention of the Parties in which event Roq shall be entitled to terminate the Contract by giving to the Client 30 days' notice of the intention to terminate.

16. NOTICES

- 16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the registered address of the other Party asset out in the Services Agreement or sent by email to the address specified in the Services Agreement.
- 16.2 Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt, provided that a notification of non-delivery is not received by the sender nor the message recalled by the sender. If notification of delayed delivery is received by the sender (an "out of office") then delivery shall be deemed to have occurred on the date and at the time stated in the notification.
- 16.3 This clause 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution

17. RIGHTS CUMULATIVE

- 17.1 All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it.

18. WAIVER

- 18.1 The failure, forbearance or delay by either Party to enforce at any time or for any period any one or more of the Conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all the Conditions of the Contract.

19. FORCE MAJEURE

- 19.1 If and to the extent that either Party is hindered or prevented by circumstances not now reasonably foreseeable, and not within its reasonable ability to control, from performing any of its obligations under the Contract, and promptly so notifies the other Party giving full particulars of the circumstances in question, then the Party so affected shall be relieved of liability to the other for failure to perform such obligations (save for any obligation to pay monies) but shall nevertheless use its reasonable endeavours to resume full performance thereof without avoidable delay, and pending such resumption shall facilitate any efforts the other Party may make to procure alternative services. If performance of the Contract is substantially prevented for a continuous period of 90 days or more or for any aggregate period of 90 days in any 12-month period by virtue of any of the aforesaid circumstances then either Party may terminate the Contract by written notice to the other.

20. ENTIRE AGREEMENT

- 20.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

21. ASSIGNMENT

- 21.1 The Client shall not be entitled to assign all or any of its rights and obligations hereunder without the prior written consent of Roq such consent not to be unreasonably withheld.

22. LAW AND JURISDICTION

- 22.1 The Contract shall be governed by and construed in accordance with the Laws of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction for the hearing of any dispute between the Parties (other than with regard to enforcement where the jurisdiction shall be non-exclusive).

23. GENERAL

- 23.1 The relationship between Roq and the Client is that of independent contractor. Neither Party is agent for the other, and neither Party has any authority to make any contract, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of this Contract.
- 23.2 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.