

# Master Services Agreement



This **MASTER SERVICES AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), sets forth the terms and conditions upon which **Cintra Corporation UK Ltd**, with its principal place of business located at Columbia Centre, Station Rd, Bracknell RG12 1LP (“**Cintra**”) shall provide, with its principal place of business located at XXXXXXXXXXXXXXXXXXXXXXX (“**Client**”) with certain professional services.

**WHEREAS**, Cintra designs, builds and supports business-critical information management solutions; and

**WHEREAS**, Client desires to retain Cintra for the performance of, and Cintra desires to provide, the services described hereunder and in one or more Statement(s) of Work to be signed by the parties (each, a “**Statement of Work**”).

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements, representations and warranties set forth herein and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

## 1. Services.

(a) **General.** Cintra shall provide those services described in the Statement(s) of Work (the “**Services**”). Each Statement of Work executed by the parties is hereby incorporated herein by reference. To the extent that any terms in this Agreement conflict with the relevant terms contained in any Statement of Work, the terms of this Agreement shall control in all respects.

(b) **Staffing.** As more fully described in the Statement of Work, Cintra shall be responsible for, and control the day-to-day operation of, personnel assignments and management of Cintra’s staff consistent with Cintra’s standard operating procedures (“**SOPs**”) for the Services.

(c) **Changes to Statement of Work.** Changes to any Statement of Work or in any of the specifications or fees under any Statement of Work shall become effective only when a written change order is executed and duly authorized by both parties (a “**Change Order**”).

(d) **Client Liaison.** Client agrees to attend to and cooperate with Cintra as reasonably required for the performance of the Services hereunder. Client

Representative and Cintra Representative shall act as liaison for the provision of the Services; each such Client Representative or Cintra Representative shall be named in the relevant Statement(s) of Work.

(e) **Acceptance of Deliverables.** All work product and other materials that are delivered to Client under each Statement of Work (collectively, the “**Deliverables**”) will substantially conform to the specifications, descriptions and other requirements for such Deliverables set forth in such Statement of Work and this Agreement. Client shall inspect the Services within five (5) days of receipt (“**Inspection Period**”) of any Deliverables and either accept or reject such Deliverables. Client may reject such Deliverables if they do not conform to the specifications, descriptions and other requirements set forth in the applicable Statement of Work (“**Nonconforming Deliverables**”). Where the context requires, Nonconforming Deliverables are deemed Deliverables for purposes of this Agreement. Client will be deemed to have accepted the Deliverables unless it notifies Cintra in writing of any Nonconforming Deliverables during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Cintra. If Client timely notifies Cintra of any Nonconforming Deliverables, Cintra shall replace such Nonconforming Deliverables with conforming Deliverables.

## 2. Cintra Compensation and Costs.

(a) **Fees.** In consideration of the Services rendered under this Agreement, Client agrees to pay Cintra the fees provided in the Statement(s) of Work.

(b) **Expenses.** Client shall bear any and all expenses, including but not limited to travel, food, and lodging costs that are incurred by Cintra in carrying out the Services; *provided, however*, that such expenses must be pre-approved in writing (email acceptable) in advance, by Client, before any such expenses are incurred. Such expenses shall be specified in invoices and reimbursed by Client.

(c) **Payment.** Client shall pay Cintra in accordance with the fee and payment schedule set forth in the Statement(s) of Work. Unless otherwise specified in a particular Statement of Work, Cintra shall submit monthly invoices for Services provided hereunder. Any sum due Cintra hereunder for which a time for payment is not

otherwise specified will be due and payable within thirty (30) days after the date of an invoice therefor from Cintra. If Client fails to pay any amount due within thirty (30) days from the date of the invoice, late charges of the lesser of one and one-half percent (1.5%) per month or the maximum allowable under applicable law shall also become payable by Client to Cintra. In addition, failure of Client to fully pay any invoiced amount within sixty (60) days after the date of the invoice shall be deemed a material breach of this Agreement, justifying suspension of the performance of the Services, and shall be sufficient cause for immediate termination of this Agreement by Cintra. If Client fails to pay, when due, any amount payable hereunder or fails to fully perform its obligations hereunder, Client agrees to pay, in addition to any amount past due, plus interest accrued thereon, all reasonable expenses incurred by Cintra in enforcing this Agreement, including, but not limited to, all expenses of any legal proceeding related thereto and all reasonable legal fees incurred in connection therewith. No failure by Cintra to request any such payment or to demand any such performance shall be deemed a waiver by Cintra of Client's obligations hereunder or a waiver of Cintra's right to terminate this Agreement.

(d) **Taxes.** Client will be responsible, and shall reimburse Cintra, if necessary, for all sales, VAT, value added use, transfer, privilege, excise or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby; excluding, however, income taxes on profits which may be levied against Cintra. Cintra shall include each such amount on the applicable invoice. Upon request by Client, Cintra shall provide sufficient documentation for such tax.

### **3. Confidentiality; Non-disclosure.**

(a) **"Confidential Information"** means any and all technical or non-technical information disclosed by one party (a **"Disclosing Party"**) to the other (a **"Receiving Party"**), in any medium (including visually or orally), that the Disclosing Party designates as confidential, whether by marking, orally or by other means, at the time of or promptly after disclosure, or, if not so designated, that the Receiving Party would reasonably be expected to assume is confidential due to its nature. Confidential Information includes, without limitation, the existence of this Agreement and its terms and conditions; computer software and programs (including object code and source code), database technologies and systems (and related information technology); and, all information concerning the operations, affairs, methods, transactions and businesses of the Disclosing Party (including without

limitation, financial and pricing information, marketing plans, business plans or strategies, and other information that is competitively sensitive). (b) Confidential Information does not include any information that the Receiving Party is able to prove by documents or other competent evidence: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party through no action or inaction of the Receiving Party; (iii) was in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to Confidential Information.

(b) The Receiving Party shall protect the Disclosing Party's Confidential Information against unauthorized use or disclosure using at least those measures that it takes to protect its own Confidential Information of a similar nature, but no less than reasonable care. Except as expressly permitted by the terms of this Agreement, the Receiving Party shall not, without the Disclosing Party's prior written consent: (i) use or disclose any of the Disclosing Party's Confidential Information for any purpose except in connection with this Agreement; or (ii) reverse engineer, disassemble or decompile any materials or software that embody the Disclosing Party's Confidential Information.

(c) Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information to its directors, officers and employees who have a bona fide need to know such information in connection with this Agreement; *provided, however:* (i) in each case the person to whom such Confidential Information is disclosed is subject to confidentiality obligations no less restrictive than the obligations set forth herein; (ii) the Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information; and (iii) the Receiving Party shall be liable to the Disclosing Party for any breach of confidentiality by any such person. A Receiving Party's right to disclose the Disclosing Party's Confidential Information, as stated herein, includes the right to make copies in connection therewith, provided the Receiving Party must reproduce the Disclosing Party's confidentiality and/or proprietary notices on any such copies in the same manner in which they appear on the original.

(d) The Receiving Party acknowledges that, as between the parties, all Confidential Information it receives from the Disclosing Party, including all copies thereof in the Receiving Party's possession or control, in any media, is proprietary to and exclusively owned by the Disclosing Party or its licensors. Nothing in this Agreement grants the Receiving Party any right, title or interest in or to any of the Disclosing Party's Confidential Information. The Receiving Party's incorporation of the Disclosing Party's Confidential Information into any of its own materials shall not render Confidential Information non-confidential. The Receiving Party shall not use (except as expressly provided herein), commercialize or license any third party any of the Disclosing Party's Confidential Information or any product or system relating to the Disclosing Party's Confidential Information, nor file a patent application or seek other protection or proprietary right incorporating the Disclosing Party's Confidential Information.

(e) The Disclosing Party shall indemnify, hold harmless, and defend the Receiving Party from and against any and all liabilities, damages, costs, losses and expenses, including settlement awards and reasonable legal fees, incurred by the Receiving Party that arise out of any allegation by a third party that the Disclosing Party's disclosure of any information to the Receiving Party hereunder constitutes a misappropriation or improper disclosure of such third party's trade secrets or confidential information.

(f) Upon the Disclosing Party's written request, the Receiving Party promptly shall use commercially reasonable efforts to: (i) return to the Disclosing Party, or destroy, all tangible Confidential Information of the Disclosing Party in its possession or control, and (ii) delete all electronic copies of the Disclosing Party's Confidential Information residing on the Receiving Party's computers and other electronic storage devices; provided, however, the Receiving Party shall have the right, subject to its continuing confidentiality obligations, to retain copies of the Disclosing Party's Confidential Information to the extent required by applicable law or regulatory requirement, and to the extent such Confidential Information is contained in backup or disaster recovery systems.

(g) Should the Receiving Party be compelled by court decree, subpoena, writ or other legal or regulatory requirement to disclose any of the Disclosing Party's Confidential Information, it shall promptly notify the Disclosing Party in writing of that requirement, unless prohibited from doing so, and use reasonable good faith efforts to (i) disclose only the specific Confidential

Information legally required to be disclosed; and (ii) assist the Disclosing Party (to the extent requested by the Disclosing Party) in obtaining a protective order or other appropriate assurances that the confidential nature of the Confidential Information shall be protected and preserved.

(h) The confidentiality obligations of this Agreement shall be continuing and binding on both parties for a period of five (5) years from the date of disclosure of the relevant Confidential Information; except that protection of trade secrets shall extend for as long as the relevant information qualifies as a trade secret under applicable law.

(i) In the event of actual or threatened breach of the provisions this **Section 3**, the non-breaching party will have no adequate remedy at law and will be entitled, without bond and without the necessity of showing actual money damages, to immediate injunctive and other equitable relief. The foregoing remedy of equitable relief shall not be the sole or exclusive remedy available to the non-breaching party, and the non-breaching party shall be entitled to damages occasioned by the unauthorized disclosure or use to the extent determined by law.

#### **4. Ownership Rights.**

(a) Except as set forth in **Section 4(c)**, Client is and shall be, the sole and exclusive owner of all right, title and interest in and to all Deliverables other than any portion of the Deliverables that include Cintra IP (as defined below) (collectively, the "**Work Product**"), including all patents, copyrights, trademarks, trade secrets, know-how, moral rights, and other intellectual property rights (collectively "**Intellectual Property Rights**") incorporated therein. Cintra hereby irrevocably assigns to Client, in each case without additional consideration, all right, title and interest in and to the Work Product, including all Intellectual Property Rights therein.

(b) Upon the request of Client, Cintra shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Client to prosecute, register, perfect, record or enforce its rights in any Work Product. In the event Client is unable, after reasonable effort, to obtain Cintra's signature on any such documents, Cintra hereby irrevocably designates and appoints Client as Cintra's agent, to act for and on Cintra's behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other intellectual property protected related to the Work Product with the same legal force and effect as if Cintra had executed them.

Cintra agrees that this power of attorney is coupled with an interest.

(c) Cintra and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to all documents, data, know-how, methodologies, software and other materials, including without limitation computer programs, reports and specifications provided by Service Provider in connection with performing the Services ("**Cintra IP**"), including all Intellectual Property Rights therein. Cintra hereby grants Client a limited, non-transferable, non-sublicenseable and worldwide license to use Cintra IP to the extent incorporated in, combined with or otherwise necessary for the use of the Work Product solely to the extent reasonably required in connection with Customer's use of the Services and Work Product. All other rights in and to Cintra IP are expressly reserved by Cintra and its licensors.

## 5. Term And Termination.

(a) **Term.** This Agreement will take effect on the Effective Date and will remain in full force and effect for five (5) years unless otherwise specified in a Statement of Work, and will thereafter automatically renew for additional twelve (12) month periods. With respect to specific Services to be rendered, the term of the Services shall be as set forth in the applicable Statement(s) of Work describing such Services. If this Agreement expires or is not renewed during the term of a then currently effective Statement of Work, the term of this Agreement shall be extended to the expiration or termination of such Statement of Work.

(b) **Termination.** This Agreement may be terminated ("**Termination**") as follows:

(i) by either party, provided that such party provides the other party a written notice of termination at least ninety (90) days prior to the end of the then current term, with termination effective at the end of the then current term;

(ii) by Client, upon written notice to Cintra, if Cintra is in material breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Client gives Cintra written notice of such breach; or

(iii) by Cintra, upon written notice to Client, if any of the following events occur:

A. Client fails to pay any amount due to Cintra, pursuant to **Section 2(c)** or a Statement of Work;

B. Client is in material breach of any non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty

(30) days after Cintra gives Client written notice of such breach; or

C. Client (I) terminates its business activities, (II) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (III) becomes subject to any bankruptcy or insolvency proceedings.

(c) **Rights Upon Termination.** Unless otherwise agreed by the Parties, on Termination, Cintra shall cease providing the Services. Client shall remain obligated to pay all outstanding amounts incurred prior to the date of termination or otherwise due for use of the Services prior to the time of Termination.

## 6. Warranties.

(a) **Cintra Warranties.** Cintra warrants as follows: (i) it holds the necessary rights to provide the Services set forth in this Agreement; (ii) Cintra is free of any obligation that would prevent it from entering into this Agreement; and (iii) the Services provided hereunder will substantially conform to the specifications, descriptions and other requirements of any applicable Statement of Work.

(b) **Client Warranties.** Client warrants that it is free of any obligation that would prevent it from entering into this Agreement.

(c) **Disclaimer of Warranty.** EXCEPT AS SET FORTH IN THIS **SECTION 6**, CINTRA EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO (A) ANY WARRANTY THAT THE SERVICES, ARE OR WILL BE ERROR-FREE, UNINTERRUPTED OR COMPATIBLE WITH ALL EQUIPMENT AND (B) IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES. ALL OF THE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

## 7. Limitation Of Liability.

(a) **Limitation of Liability.** IN NO EVENT WILL CINTRA OR ITS AFFILIATES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, EVEN IF CINTRA OR ITS AFFILIATES, AGENTS OR SUBCONTRACTORS HAD BEEN ADVISED OF



THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF CINTRA ITS AFFILIATES, AGENTS AND SUBCONTRACTORS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CINTRA IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION OR CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, MISREPRESENTATION, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PERFORMANCE OF THE SERVICES, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES, EXCLUSIONS AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

## 8. General Provisions.

(a) **Force Majeure.** In the event either party is unable to carry out its material obligations under this Agreement by reason of Force Majeure (as defined below) those obligations will be suspended during the continuance of the Force Majeure, provided the cause of the Force Majeure is remedied as quickly as practicable. The term “**Force Majeure**” means any event caused by occurrences beyond a party’s reasonable control, including, but not limited to, acts of God, fire or flood, war, terrorism, governmental regulations, policies or actions enacted or taken subsequent to execution of the Agreement, or any labor, telecommunications or other utility shortage, outage or curtailment, provided, however, that the inability to meet financial obligations is expressly excluded.

(b) **Assignments.** Neither party may assign this Agreement, or any rights or duties hereunder, to anyone without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed, except that, this Agreement shall be assignable by either party if such party is merged, consolidated, reincorporated, reorganized or if all or substantially all of its assets are sold to a third party.

(c) **Entire Agreement.** This Agreement together with the schedules and exhibits hereto (which schedules and

exhibits are deemed a part of this Agreement), (i) contain the entire agreement and understanding of the parties with respect to the subject matter hereof and (ii) supersede all prior negotiations, discussions, correspondence, communications, understandings, drafts and agreements between the parties relating to the subject matter hereof, all of which are merged into this Agreement.

(d) **Standard terms of Client.** No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Client may use in connection with the Services will have any effect on the rights, duties or obligations of the parties under, or otherwise modify this Agreement regardless of any failure of Cintra to object to such terms, provisions or conditions.

(e) **Applicable Law.** This Agreement including its formation, performance, termination or enforcement, and the parties’ relationship in connection therewith, together with any related claims whether sounding in contract, tort or otherwise, shall be governed by and construed and enforced in accordance with English Law, without regard to any conflicts of law rules that might apply the laws of any other jurisdiction.

(f) **Consent to Jurisdiction.**

(i) The parties each hereby irrevocably consents and agrees that any legal action, suit or proceeding against it with respect to its obligations or liabilities or any other matter under or arising out of or in connection with this Agreement shall be English Law and, by execution and delivery of this Agreement, the parties each, to the fullest extent permitted by applicable law, hereby (x) irrevocably accepts and submits to the exclusive jurisdiction of each of the aforesaid courts in person, generally and unconditionally with respect to any such action, suit or proceeding, and (y) agrees not to commence any such action, suit or proceeding in any jurisdiction other than those of the aforesaid courts, waives any objection to the laying of venue of any such action, suit or proceeding therein and agrees not to plead or claim that such action, suit or proceeding has been brought in an inconvenient forum.

(ii) Each party agrees that service of process on such party as provided in **Section 8(j)** shall be deemed effective service of process on such party. Notwithstanding the foregoing, each of the parties hereto agrees that (x) a judgment in any such suit, action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law, (y) an injunction may be filed by either party.

(g) **No Agency.** Cintra will, in all matters relating to this Agreement, act as an independent contractor. Except to the extent expressly authorized by this Agreement, neither party hereto is an agent, legal representative, partner, joint venturer, franchisee, employee, or servant of the other party hereto for any purpose. Neither party hereto will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party hereto, or to represent the other party hereto in any capacity. Unless otherwise noted, both parties shall be responsible for all expenses incurred by them in the course of exercising any rights or responsibilities accepted by them under this Agreement.

(h) **No Waiver.** No failure or delay of either party hereto in exercising any right, power, or privilege hereunder (and no course of dealing between the Parties) shall operate as a waiver or any such right, power of privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent default. No single or partial exercise of any such right, power, or privilege shall preclude the further or full exercise thereof.

(i) **Surviving Provisions.** Sections 3, 4, 5, 6(c), 7 and 8 shall survive termination of this Agreement.

(j) **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be (i) delivered by messenger, (ii) delivered by a recognized overnight courier service, (iii) sent by registered or certified mail (postage prepaid, return receipt requested) or (iv) sent by telecopy or other written form of electronic communication (with a copy thereof delivered in accordance with clause (i), (ii) or (iii) of this Section 8(j)). All notifications shall be sent to the address specified on the first page of this Agreement, unless modified by notice hereunder directed to the other party.

(k) **Exclusivity.** Nothing in this Agreement shall be read to prevent Cintra from entering into similar arrangements with other entities.

(l) **Client Identification.** Client agrees that Cintra may use the name of and identify Client as a customer and the Services provided to Client, in advertising, publicity, or similar materials distributed to prospective customers.

(m) **Severability.** Any provision hereof which is held by any court of competent jurisdiction in any jurisdiction to be illegal, void or unenforceable shall, as to such jurisdiction, be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions hereof, and any such illegality or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other

jurisdiction. To the fullest extent permitted by applicable Law, the parties hereby waive any provision of Law which may render any provision hereof prohibited or unenforceable in any respect

(n) **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same agreement, and all signatures need not appear on any one counterpart. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in Portable Document Format or any similar format, shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

(o) **Section Headings.** Section headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**Cintra Corporation UK Ltd**

By \_\_\_\_\_

Name:

Title:

**CLIENT NAME**

By \_\_\_\_\_

Name:

Title: