



Supply of Goods and Services Agreement

Definitions

- 1.1 'Agreement' means this Supply of Goods and Services Agreement.
- 1.2 'Morshead' means Morshead Consulting Limited, 3 Gorse Avenue, Bognor Regis, West Sussex, PO22 6AY.
- 1.3 'Proposal' means Morshead's proposal for the Goods and/or Services (if any).
- 1.4 'Customer' means the company purchasing the Goods and/or Services as named in the Proposal.
- 1.5 'Goods' shall mean any or all of the goods described in the Proposal.
- 1.6 'Services' means the services and any resulting documentation supplied by Morshead as detailed in the Proposal.
- 1.7 'Purchase Order' means the Customers' purchase order provided to Morshead for the Goods and/or Services.
- 1.8 'Effective Date' means the date of acceptance of the Purchase Order by Morshead and receipt of any advance payments requested as stated in the Proposal, whichever is the later.
- 1.9 'Contract Period' means the duration of this Agreement which shall be in accordance with the Proposal.
- 1.10 'Parties(s)' means the Customer and Morshead.

Agreement

- 2.1 This Agreement shall come into existence upon the Effective Date.
- 2.2 This Agreement and the Proposal represents the entire agreement between the Parties and supersedes all previous conditions, understandings, commitments, agreements or representations (other than fraudulent misrepresentations) whatsoever whether oral or written relating to the subject matter hereof and constitutes the entire agreement between the Parties relating to the subject matter hereof.
- 2.3 Each party warrants to the other that it has not relied upon any representation not recorded here which has induced it to enter into this Agreement.
- 2.4 No amendment to this Agreement will be valid unless confirmed in writing and signed by an authorized signatory of both parties on or after the date of this Agreement.
- 2.5 In the event that any of the terms and conditions of this Agreement is judged to be in whole or in part illegal or unenforceable for any reason the remainder of these terms and conditions shall remain in force.
- 2.6 No delay or failure by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights, or of any breach of any contractual terms, will be deemed to be a waiver of any other right or of any later breach.
- 2.7 Neither party will assign or transfer this Agreement without the prior written consent of the other party except that Morshead is entitled to use sub-contracted personnel in the performance of the Services.

Services

- 3.1 Morshead shall supply the Services as specified in the Proposal in accordance with the terms and conditions of this Agreement.
- 3.2 Morshead shall exercise all reasonable skill and care in the performance of the Services. Except for the express warranties stated in this Agreement Morshead disclaims and excludes all other warranties whether express or implied in law to the fullest extent permitted by law.

Documents and Reports

4.1 As part of the Services Morshead may be required to produce written documentation as further detailed in the Proposal.

4.2 The Copyright in such documentation shall remain vested in Morshead.

Payment

6.1 The Customer agrees to pay the price in accordance with the payment arrangements stated in the Proposal.

6.2 Payment is to be submitted in pounds sterling to the following account. HSBC Bank PLC - 45 High Street, Bognor Regis, West Sussex, PO21 1RU; Sort Code: 40-12-23; Account Number: 11735926. With the exception of any payments which are due immediately upon receipt of the Purchase Order or prior to commencement of specific activities (as detailed in the Proposal), all payments are to be made within 30 days of the date of invoice.

6.4 All payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment at the rate of two per cent (2%) above HSBC Bank base rate from the date payable until the date payment is received. Such interest is due for payment immediately on invoice.

6.5 Notwithstanding the above provisions for late payment, in such event Morshead may, at its option and without prejudice to any other remedy at any time after payment has become overdue: (a) on the expiration of seven days' notice in writing to the Customer Morshead shall be entitled to sell or otherwise dispose of any of the Customer's goods or property over which it has a lien, in accordance with clause 10, and to apply any proceeds received towards payment of such sums due; or (b) terminate this Agreement.

6.6 If Morshead becomes entitled to terminate this Agreement for any reason, any sums then due to Morshead will immediately be payable in full.

6.7 In no case shall any dispute concerning any item or separate part of the Goods or work or any further Contractual obligation of Morshead to the Customer affect the Customer's obligation in respect of payments for other parts if any part or instalment of the Price is not paid when due, or work on the Goods is held up for any reason attributable to the Customer, or the Customer incurs bankruptcy, insolvency, liquidation or the appointment of a Receiver, the full Price of the Goods less any sums already paid in respect of the Goods and/or works done by Morshead shall immediately become due and payable by the Customer and Morshead may at its option cancel the Contract or cancel or suspend dispatch of the Goods.

Warranty

8.1 With respect to the Goods Morshead will at its sole option repair, replace, grant a credit or refund in respect of any of the Goods which are found to be defective in materials or workmanship within a period of twelve (12) months for hardware and three (3) months for software from delivery of the Goods to the Customer, provided that the Customer gives written notice to Morshead, within the warranty period, setting out the nature of any such defect, the serial number of the goods supplied, the invoice number (if any) and the date.

8.2 The foregoing warranty shall not cover repairs or damage necessitated or caused otherwise than by defects in materials or workmanship and without prejudice to the generality of the foregoing shall not cover repairs or damage necessitated or caused by fair wear and tear or by improper use installation or repair or by neglect, alteration, tampering, disassembly, accidental or deliberate damage.

8.3 The foregoing warranty shall not apply to any replacement parts supplied by Morshead under this warranty for the Goods instead the warranty period applicable to the original Goods shall apply.

8.4 The foregoing warranty shall not be available for the benefit of any person other than the Customer.

8.5 Where only part of the Goods is found to be defective Morshead shall only be under an obligation to repair or grant a credit in accordance with the foregoing warranty in respect of that part found to be defective.

8.6 The Customer shall give access and full co-operation to Morshead to carry out its obligations under this warranty and in particularly without limited the generality of the foregoing shall if so requested by Morshead return the Goods the subject of this warranty to Morshead at the Customer's expense.

8.7 The cost of returning to the Customer any Goods found to be defective and replaced or repaired by Morshead under the foregoing warranty shall be borne by Morshead.

8.8 Any Goods returned to Morshead and replaced shall become Morshead's property.

8.9 The Customer shall not return the Goods to Morshead without the prior written consent of Morshead.

Authorization to return Goods must be requested in writing whereupon a Returns Authorization number may be issued to the Customer.

8.10 It is entirely at Morshead's discretion to authorise the return of the Goods and Morshead reserves the right to reject the return of Goods if upon receipt by Morshead they are in the opinion of Morshead defective or damaged through no fault of Morshead. In such event the Customer shall be responsible for any costs incurred by Morshead in investigating and re-delivering the returned Goods.

8.11 In the event the Customer requests a repair to be undertaken on Goods which are outside their warranty period or have been damaged or are defective as a result of no fault of Morshead, Morshead will provide an estimate to the Customer for the cost of the repair or replacement which will be subject to separate Contractual arrangement.

Title, Property Risk and Insurance

9.1 The legal title to the goods shall not pass to the Customer until all sums due or payable by the Customer to Morshead whether in respect of the Goods or otherwise howsoever shall have been received by Morshead. Until such time the Customer shall as bailee of and in a fiduciary capacity for Morshead and shall further in respect of Goods in its possession, (i) store the Goods separately from any other goods and so as to be identifiable as the property of Morshead; (ii) be responsible for any loss or damage to the Goods howsoever caused; (iii) not to sell, pledge, assign, charge or otherwise dispose of the goods or any interest therein. (iv) deliver up the goods to Morshead at any time on demand and/or permit Morshead, its servants or agents at any time without notice to enter the Customer's premises and retake possession of the Goods.

9.2 The Customer (if so requested by Morshead) and any liquidator or receiver of the assets of the Customer shall pay into a separate bank account for the sole benefit of Morshead all sums received in respect of any sale by the Customer or the liquidator or receiver of any of the goods in which title has not passed to the Customer.

9.3 So long as the Goods remains the property of Morshead and the Customer is in default in any obligation under this Agreement Morshead shall have the right with or without prior notice to the Customer to re-take possession of the Goods and for that purpose to go upon any premises occupied by the Customer and on such re-taking of possession this Agreement shall be terminated but without prejudice to the rights of Morshead to enforce any other or additional remedy existing at the time of termination in respect of such default.

9.4 The risk in the Goods shall pass to the Customer on delivery, thereafter the Customer shall be responsible for the satisfactory care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risks cover on the Goods (with a note of Morshead's interest endorsed thereon) until Morshead has received payment of the Price in full.

Specification and Performance Data

10.1 Any performance figures quoted or referred to in any specification or other document provided by the Customer are estimates only.

10.2 Morshead reserves the right on the sale of any Goods to make before delivery any alteration to or departure from the specification or design of the Goods provided that it shall not to a material extent adversely affect the performance of the Goods or the quality of the workmanship or the materials used. All specifications, drawings and technical documents issued by Morshead either before or after conclusion of the Contract are issued solely for the Customer's use in connection with the Goods and shall not be copied, reproduced or communicated to any third party without Morshead's express consent in writing.

10.3 In no event shall Morshead be liable in respect of any claim arising out of any of the Goods proving not to be fit and suitable for any purpose other than that notified to Morshead by the Customer and confirmed by Morshead in the Acknowledgement to the Customer.

Timescales

11.1 Morshead shall use its reasonable endeavours to meet any milestone or delivery dates detailed in the Proposal. However, it is acknowledged and agreed by the parties that Morshead shall not be liable for any loss or damage arising from any failure to meet such dates.

11.2 Morshead will promptly notify the Customer of any delays and the Customer and Morshead shall immediately meet to discuss and agree revised dates and timescales.

11.3 Time of delivery shall not be of the essence of the Contract.

Customer items and personnel

12.1 The Customer shall ensure the availability of suitably qualified Customer personnel at all reasonable times and locations as necessary to enable Morshead to perform the Services.

12.2 All items, documentation and information to be supplied by the Customer as set out in the Proposal shall be provided free of charge by the date specified.

Notices

13.1 Except as otherwise expressly provided within the Proposal, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

13.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

13.3 Either Party may change its address for service by notice in accordance with this Condition.

Conflicts of interest

14.1 Morshead shall take appropriate steps to ensure that neither Morshead nor any employee, servant, agent, supplier or subcontractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of Morshead or such persons and the duties owed to the Customer under the provisions of this Agreement or the Proposal. Morshead will disclose to the Customer full particulars of any such conflict of interest which may arise.

14.2 The provisions of this Condition shall apply during the continuance of this Agreement.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

15.1 No person who is not a Party to this Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Customer or Morshead) shall have any right to enforce any term of this Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 15. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Health and Safety

16.1 The parties shall comply with all relevant health and safety regulations when on the other party's premises.

Intellectual Property Rights

17.1 In respect of the materials referred to in 13.2 above, the Customer hereby grants and warrants that it is able to grant Morshead a non-exclusive, world-wide, royalty-free licence to use the Customer's or third parties preexisting intellectual property rights necessary to enable Morshead to perform the Services. The Customer hereby indemnifies Morshead against any liabilities that may be incurred by Morshead due to a breach of this clause.

17.2 Nothing in these terms and conditions shall affect the pre-existing proprietary rights or intellectual property rights of either party in the services or goods supplied.

17.3 Morshead will defend or settle any claim against the Customer that the normal use or possession of the Goods or Services delivered under the Proposal infringes a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country of supply provided that the Customer: (a) makes no

statement prejudicial to Morshead; (b) promptly notifies Morshead in writing; and (c) allows Morshead full control of the defence or settlement of any such claim.

17.4 Morshead will pay infringement claim defence costs, settlement amounts and court-awarded damages. If such a claim appears likely, Morshead may modify the Goods or Services, procure any necessary licence or replace it. If Morshead determines that none of these alternatives is reasonably available, Morshead will terminate any licence granted and refund Customer's purchase price upon return of the Goods or Services if within one year of its delivery to the Customer, or its net book value thereafter.

17.5 Morshead has no obligation for any claim of infringement arising from: (a) Morshead's compliance with Customer's designs, specifications or instructions; (b) Morshead's use of technical information or technology provided by Customer; (c) Modifications to the Goods or Services undertaken by Customer or a third party; or (d) The Customers commercial exploitation of the Goods or Services.

17.6 These terms state the Parties entire liability for claims of intellectual property infringement.

Non-Solicitation

18.1 Both parties agree during the period of this Agreement and for 6 (six) months after its conclusion, not directly or indirectly to solicit for employment any of the staff of the other party at any time engaged directly in the pursuance of this Agreement without the prior written consent from that other party. Furthermore, should the soliciting party breach this condition, then the soliciting party expressly agrees to pay the other party as a recruitment fee a sum equal to 18 (eighteen) months' gross salary offered by the new employer to the relevant member of staff.

Confidential Information

19.1 All written information and data made available by one party to the other hereunder is confidential and each party undertakes to treat such confidential information with the same care as it would reasonably treat its own confidential information.

19.2 Each party will use all reasonable endeavours to ensure that the other party's confidential information is not copied or disclosed to any third party whatsoever.

19.3 Upon expiration or termination of this Agreement each party will return to the other party all confidential information not previously returned.

19.4 These obligations of confidentiality will survive termination of this Agreement by five (5) years.

19.5 Information shall not be considered as confidential where it is: (a) already in the public domain other than through default of the receiving party; (b) already in the receiving party's possession with no obligation of confidentiality; (c) independently developed by the receiving party without reference to the confidential information.

Indemnities and Limitations of Liability

20.1 Each party indemnifies the other for direct physical injury or death to the extent that it is shown to have been caused by the negligence of that party or its employees in connection with the performance of this Agreement.

20.2 Morshead will indemnify the Customer for direct damage to property to the extent that it is shown to have been caused by the negligence of Morshead or its employees in connection with the performance of this Agreement. Morshead's total liability under this sub-clause will be limited to the contract value for any one event or series of connected events.

20.3 Any contractual liabilities of Morshead to the Customer under this Agreement including all related costs, fees and expenses will not under any circumstances cumulatively exceed the total prices paid and payable by the Customer under this Agreement.

20.4 Except as stated in this Agreement, Morshead disclaims all liability to the Customer in connection with Morshead's performance under this Agreement and in no event will Morshead be liable to the Customer for any special, indirect or consequential damages including but not limited to loss of profits or arising from loss of data, loss of use or loss of opportunity.

20.5 The Customer will indemnify and defend Morshead and its employees in respect of any claims by third parties which are occasioned by or arise from any Morshead performance pursuant to the instruction of the Customer or its authorised representatives.

Termination

21.1 Either party will immediately become entitled to terminate this Agreement forthwith by notice to the other party if the other party; (a) commits any material breach of its obligations under this Agreement and, upon receiving notification from the other of such breach, fails to remedy the breach within thirty (30) days (if capable of remedy); or (b) is involved in any legal proceedings concerning its solvency, or commences liquidation (except for purposes of reconstruction) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency.

Force Majeure

22.1 Neither party shall be liable for total or partial failure to perform its obligations in this Agreement during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control. Such circumstances would include the rejection of any export licence application or the subsequent withdrawal of an export licence.

Export Licences and Authorisations

23.1 In the event an export licence or approval is required prior to delivery of the Goods, the Acknowledgement of the Customer order is subject to Morshead being granted and maintaining such licences or approvals. In the event that such licences or approvals are not granted the Contract shall be cancelled without liability of either party to the other for the payment of any costs or expenses with the exception of any Goods which have been provided to the Customer, which are not subject to any export restrictions, in which case that part of the order related to the 'unrestricted Goods' shall remain in force and the Price for such shall be payable by the Customer.

23.2 The Customer shall provide assistance to Morshead where necessary to assist the granting of such licences or approvals.

Jurisdiction

24.1 This Agreement will be governed and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.