

Consulting Services Agreement

Seriös Group Limited and **CLIENT NAME**

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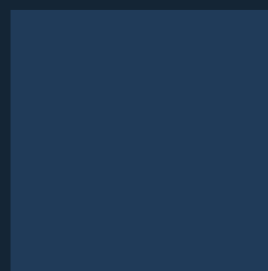
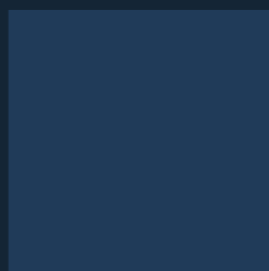
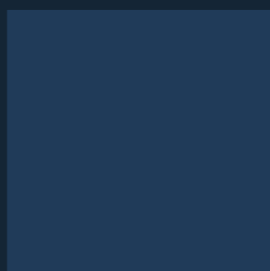
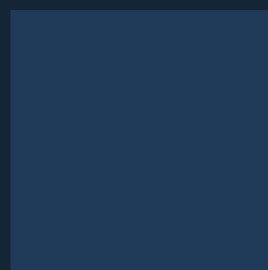
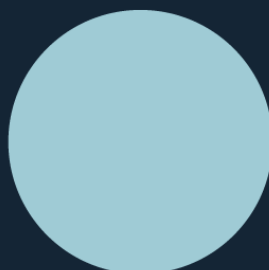
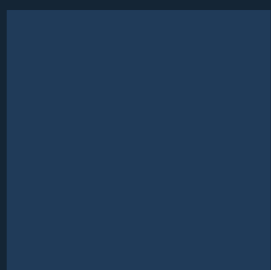
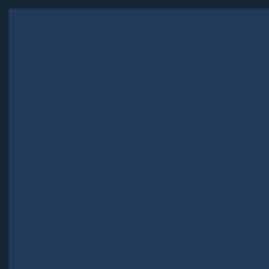
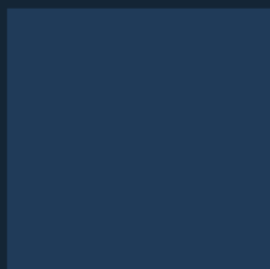


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THIS AGREEMENT is dated

INSERT DATE

PARTIES

- (1) Serios Group Limited incorporated and registered in England and Wales with company number 12456390 whose registered office is at Studios 2 & 6 The Old Forge, Hoult's Yard, Walker Road, Newcastle Upon Tyne, NE6 2HL (the **Supplier**); and
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Customer**).

BACKGROUND

- (A) The Supplier is in the business of providing Data and Test Solutions.
- (B) The Customer agrees to obtain and the Supplier agrees to provide the Services on the terms set out in this Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions.

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Applicable Laws: all applicable laws, statutes, regulations from time to time in force.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Change Order: has the meaning given in clause 6.1.

Charges: the sums payable for the Services, as set out in Schedule 2.

controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in Schedule 1.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 4.1(d).

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force

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from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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.

Services: the services as set out in Schedule 1, including services which are incidental or ancillary to such services.

Supplier Testing Tools: the software, documentation, templates and other tools owned and used by the Supplier to deliver the Services.

Supplier's Equipment: any equipment, including the Supplier Testing Tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in Schedule 1 but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax chargeable in the UK.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.11 A reference to **writing** or **written** includes email but not fax.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document, in each case as varied from time to time.
- 1.14 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.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement:
 - (a) shall commence on the later of:
 - (i) the start date set out in Schedule 1; and
 - (ii) the date when it has been signed by all the parties; and
 - (b) shall continue, unless terminated earlier in accordance with clause 13 (Termination), until the earlier of:
 - (i) the end date set out in Schedule 1; and
 - (ii) the date on which the Services are completed
- when it shall terminate automatically without notice.



- 2.2 The Supplier shall provide the Services to the Customer in accordance with this Agreement during the term set out in clause 2.1.

3. SUPPLIER'S RESPONSIBILITIES

- 3.1 The Supplier shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this Agreement in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in Schedule 1 but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 3.3 The Supplier shall appoint as manager for the Services, such person as is identified in Schedule 1. That person shall have authority to contractually bind the Supplier on all matters relating to the Services (including by signing Change Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of this Agreement, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 3.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4.1(f), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) provide the Supplier with all co-operation reasonably requested by the Supplier in relation to this Agreement in order to provide the Services;
 - (b) appoint as manager for the Services, such person as is identified in Schedule 1. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
 - (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;
 - (e) use all reasonable endeavours to carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
 - (f) inform the Supplier of all health and safety and security requirements that apply from time to time at any of the Customer's premises;

- (g) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements; and
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start.

4.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer and may charge for any additional days worked at the rates set out in Schedule 2.

5. NON-SOLICITATION

5.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of twelve (12) months after the termination or expiry of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

5.2 Any consent given by the Supplier in accordance with clause 5.1 shall be subject to the Customer paying to the Supplier a sum equivalent to twenty percent (20%) of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, twenty percent (20%) of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

5.3 The parties confirm that the sums referred to in clause 5.2 are reasonable and proportionate to protect the Supplier's interest in retaining suitably qualified employees, consultants and subcontractors to enable it to provide services similar to the Services to its customers.

6. CHANGE CONTROL

6.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A **Change Order** shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Supplier's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this Agreement.



- 6.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 6.3 If the Customer wishes to make a change to the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 6.3(a), provide a draft Change Order to the Customer.
- 6.4 If the parties:
- (a) agree to a Change Order, they shall both sign it and that Change Order shall amend this Agreement; or
 - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 27 (Multi-tiered dispute resolution procedure).
- 6.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 6.3 on a time and materials basis at the Supplier's daily rates specified in Schedule 2.

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.
- 7.2 Where the Charges are calculated on a time and materials basis:
- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis of an eight-hour day or part thereof, worked during Business Hours;
 - (b) the Supplier shall be entitled to charge an overtime rate of fifty percent (50%) of the daily fee rate set out in Schedule 2 on a *pro rata* basis for any time worked by individuals whom it engages on the Services outside Business Hours; and
 - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 7.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and



- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.

7.4 The Supplier shall invoice the Customer for the Charges at the intervals specified in Schedule 2. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.

7.5 The Customer shall pay each invoice submitted to it by the Supplier within thirty (30) days of receipt in cleared funds to a bank account nominated in writing by the Supplier from time to time.

7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- (b) the Supplier may suspend all or part of the Services until payment has been made in full.

7.7 All sums payable to the Supplier under this Agreement:

- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) 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).

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Supplier Testing Tools.

8.2 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer may sub-license the rights granted in clause 8.2(b):
 - (i) to its Affiliates and customers; and
 - (ii) subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services similar to the Services.

8.3 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.

8.4 The Supplier:

- (a) warrants that the receipt, use of the Services and the Deliverables by the Customer and its permitted sub-licensee shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall not be in breach of the warranty at clause 8.4(a) to the extent the infringement arises from:
 - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
 - (ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions.

8.5 The Customer warrants that the receipt and use of the Customer Materials in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.

9. COMPLIANCE WITH LAWS AND POLICIES

9.1 In performing its obligations under this Agreement, the Supplier shall:

- (a) comply with the Applicable Laws;
- (b) use reasonable endeavours to comply with any internal policies provided to it in writing from time to time by the Customer (the **Policies**).

9.2 The Customer shall give the Supplier as much notice as is practicable and, in any event, not less than four (4) weeks' notice of any change to the Policies.

9.3 Changes to the Services required as a result of changes to the Applicable Laws or the Policies shall be agreed via the change control procedure set out in clause 6 (Change control).

10. DATA PROTECTION

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 (Data protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation:

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- (a) the Customer is the controller and the Supplier is the processor;
- (b) the subject-matter of the processing is the Customer Personal Data;
- (c) the duration of the processing is the duration of the Agreement;
- (d) the nature and purpose of the processing is the use of the Customer Personal Data in the performance of the Services as envisaged by this Agreement;
- (e) the types of personal data which shall be processed are data required for the use and/or performance of the Services including but not limited to:
 - (i) demographic information such as name, age, marital status, income, occupation, address, email address, etc; and
 - (ii) customer details such as account numbers, credit information, transaction information, products held, channel usage, communication preferences, behavioural characteristics, etc; and
- (f) the categories of data subjects are:
 - (i) officers, agents, subcontractors, consultants and employees of the Customer;
 - (ii) prospects, customers and business partners of the Customer (who are natural persons); and
 - (iii) employees or contact persons of the Customer's prospects, customers and business partners.

10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary and/or appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Agreement.

10.4 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Law to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of



implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach; and
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data.

10.5 Without prejudice to clause 16 (Assignment and other dealings), the Customer consents to the Supplier appointing a third party processor of personal data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.

- 10.6 At any time the UK is, for the purposes of the General Data Protection Regulation ((EU) 2016/679), a third country that does not ensure an adequate level of data protection the Standard Contractual Clauses (Processors), adopted by Commission Decision of 05 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (2010/87/EU) (the **SCCs**) shall apply as regards the transfer of personal data to the UK for processing by the Supplier under this Agreement and, for the purpose of this clause 10.6, the Customer shall be the **data exporter** and the Supplier shall be the **data importer** and the SCCs shall be incorporated into this Agreement un-amended save as agreed by the parties.

11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two (2) years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, consultants, 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 Agreement. Each party shall ensure that its employees, officers, representatives, consultants, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. LIMITATION OF LIABILITY

- 12.1 **Scope of this clause.** References to liability in this clause 12 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 **No limitation of the Customer's payment obligations.** Nothing in this clause 12 shall limit the Customer's payment obligations under this Agreement.
- 12.3 **Liabilities which cannot legally be limited.** Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 **Specific heads of excluded loss.** Subject to clause 12.2 (No limitation on the customer's payment obligations) and clause 12.3 (Liabilities which cannot legally be limited), this clause 12.4 specifies the types of losses that are excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.

12.5 **Cap on the Supplier's liability.** Subject to clause 12.3 (liabilities which cannot legally be limited), the Supplier's total liability to the Customer shall not exceed in aggregate for any and all claims a sum equal to the amount paid by the Customer to the Supplier under this Agreement in the twelve (12) months preceding the date on which the relevant claim(s) arose.

12.6 **Exclusion of statutory implied term.** The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

12.7 **No liability for claims not notified within six (6) months.** Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after being notified to make such payment.

13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of ten (10) Business Days after being notified in writing to do so;



- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(h) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 For the purposes of clause 13.2(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.



14. OBLIGATIONS ON TERMINATION AND SURVIVAL

14.1 Obligations on termination or expiry

On termination or expiry of this Agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, promptly, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the Supplier shall, promptly, return any of the Customer Materials not used up in the provision of the Services.

14.2 Survival

- (a) On termination or expiry of this Agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Non-solicitation), clause 8 (Intellectual property rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 18 (Waiver), clause 20 (Severance), clause 22 (Conflict), clause 27 (Multi-tiered dispute resolution procedure), clause 28 (Governing law and jurisdiction).
- (b) Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. FORCE MAJEURE

15.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident; and



(g) interruption or failure of utility service.

15.2 Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the **Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than three (3) Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving one weeks' written notice to the Affected Party.

16. ASSIGNMENT AND OTHER DEALINGS

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

17. VARIATION

Subject to clause 6 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

18.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.



19. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

21.1 This Agreement 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.

21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22. CONFLICT

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. THIRD PARTY RIGHTS

24.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

25. NOTICES

25.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:



- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in Schedule 1.

25.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) 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
- (c) 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 25.2(c), **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.

25.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. COUNTERPARTS

26.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page by email (in PDF or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet-ink" hard copy original of their counterpart.

26.3 No counterpart shall be effective until each party has executed at least one counterpart.

27. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

27.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a **Dispute**) then except as expressly provided otherwise in this Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a **Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the manager of the Customer appointed under clause 4.1(b) and the manager of the Supplier appointed under clause 3.3 shall attempt in good faith to resolve the Dispute; and
- (b) if the manager of the Customer appointed under clause 4.1(b) and manager of the Supplier appointed under clause 3.3 are for any reason unable to resolve the Dispute within twenty (20) Business Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless



otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (an **ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than twenty (20) Business Days after the date of the ADR notice.

- 27.2 No party may commence any court proceedings under clause 28 (Governing law and jurisdiction) (in relation to the whole or part of the Dispute until forty (40) Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 27.3 If the Dispute is not resolved within forty (40) Business Days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of forty (40) Business Days, or the mediation terminates before the expiration of the said period of forty (40) Business Days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28 (Governing law and jurisdiction).

28. GOVERNING LAW AND JURISDICTION

- 28.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 28.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF IT.

Schedule 1
Contract Details

Contract number:		
Supplier's manager:		Email:
		Phone:
Customer's manager:		Email:
		Phone:
Start date:		
End date:		
Services:	[ATTACH AND CROSS-REFER SPECIFICATION/SCOPE OF WORK AS NECESSARY]	
Deliverables:	[ATTACH AND CROSS-REFER SPECIFICATION/SCOPE OF WORK AS NECESSARY]	
Estimated delivery dates:	[ATTACH AND CROSS-REFER SPECIFICATION/SCOPE OF WORK AS NECESSARY]	
Customer's Equipment:	[INSERT ANY SPECIFIC REQUIREMENTS OR ATTACH AND CROSS-REFER SPECIFICATION/SCOPE OF WORK AS NECESSARY]	
Supplier's Equipment:	[INSERT ANY SPECIFIC REQUIREMENTS OR ATTACH AND CROSS-REFER SPECIFICATION/SCOPE OF WORK AS NECESSARY]	
Other:		

Schedule 2

Charges, costs and payment

Charges

[INSERT DETAILS OF CHARGES].

Fixed price:

The total charges for the Services are: £[AMOUNT].

Time and materials:

The daily rate for the Supplier: [DAILY RATES FOR THE SUPPLIER]. The weekend/overtime rate for the Supplier: [WEEKEND/OVERTIME RATE].

Payment dates

[INSERT PAYMENT DATES].

Execution

Signed by

Serios Group Limited

acting by _____, a director

Signed by

[CUSTOMER NAME]

acting by _____, a director

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Cert No. 20656