

MASTER SERVICES AGREEMENT

by and between

[CUSTOMER]

and

[HCL.....]

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MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (“Agreement”) is made on DD MM, 20XX (“Effective Date”) by and between:

- (1) **Customer Entity**, a company incorporated under the laws of , with company registration number , with its registered office address at (“Customer”);
- (2) **HCL**, a company incorporated under the laws of with company registration number , with its registered office address at (“HCL”);

Wherein the Customer and HCL are individually referred to as a “Party” and jointly referred to as “Parties”.

INTRODUCTION:

- (A) Customer has selected HCL as a provider of certain services to Customer and its Affiliates.
- (B) The Parties now wish to establish a contractual framework under which HCL and/or its Affiliates will provide Services to the Customer and/or its Affiliates under individual Statement(s) of Work.

THE PARTIES AGREE as follows:

1. DEFINITIONS

In this Agreement:

- 1.1 “**Acceptance Testing**” means testing to be carried out by the Customer so as to determine whether a Deliverable conforms to applicable functional and/or technical requirements, in accordance with the applicable procedure and acceptance criteria, to the extent set out in the relevant Statement of Work;
- 1.2 “**Affected Personnel**” shall mean any employee of a Party, its Affiliates and subcontractors who claim to, have become an employee of, or have employment or similar rights under the relevant Employment Regulations against the other Party (including its Affiliates and subcontractors) by virtue of this Agreement. [Applicable for contracts entered in to with customer(s) based in Europe or other jurisdictions (such as Australia/South Africa) where similar regulations may apply]
- 1.3 “**Affiliate**” shall mean legal entities directly or indirectly controlling, controlled by, or under common control with, any of the parties to this Agreement, where ‘control’ means ownership of over fifty percent (50%) of the capital or voting power in such entity to the extent such entity is involved in the receipt or provision of Services under this Agreement ;
- 1.4 “**Applicable Law**” means all applicable laws, ordinances, rules, regulations and any form of secondary legislation, or court or governmental orders having the force of law and relevant to the Services;
- 1.5 “**Business Day**” means a day other than a Saturday, a Sunday or a public holiday in the location from where the Services are provided or received;
- 1.6 “**Charges**” means all fees and/or charges for Services provided or to be provided under the relevant Statement of Work(s) as set out therein.
- 1.7 “**Customer IPRs**” means the software, Materials and any other resources or items, in which Intellectual Property Rights subsist and which are: (i) owned by or licensed to the Customer by a third party and/or (ii) provided to HCL by or on behalf of the Customer to perform the Services under a Statement of Work, and includes any modifications to the same;

- 1.8 **“Data Protection Laws”** or **“Privacy Laws”** means collectively the applicable data protection, data privacy or similar laws applicable to the processing of personal data in the jurisdiction where Services are performed.
- 1.9 **“Deliverable(s)”** means any software and Materials that HCL is specifically required to develop or deliver as a tangible output to the Customer stated under a Statement of Work except any HCL IPRs and Third Party IPRs;
- 1.10 **“Dispute(s)”** means any dispute, controversy or claim arising out of or in connection with this Agreement or any Statement of Work;
- 1.11 **“Earnback”** means the methodology used to offset or earnback any Service Credit paid by HCL earlier, as set forth in the relevant Statement of Work;
- 1.12 **“Employment Regulations”** means the European Union Acquired Rights Directive (ARD), Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Transfer of Employment (Pension Protection) Regulations 2005 (TUPE), or any relevant national legislation or legally binding provision implementing this directive, or any other legislation or binding legal obligation providing for the transfer of employment in service provision arrangements of the type contemplated by this Agreement.
- 1.13 **“Force Majeure”** means an event that is beyond the reasonable control of either Party and includes fires, flood, earthquakes, element of nature or acts of God, war, explosion, acts of terrorism, governmental action, riots, insurrection, strikes or labour disputes;
- 1.14 **“Insolvency Event”** means filing of bankruptcy petition against either Party or appointment of receiver, trustee or liquidator for any of the assets of such Party or filing of a petition for re-organization under any bankruptcy or other similar laws by either Party, or making of an assignment for the benefit of its creditors, or being adjudged bankrupt or insolvent by any court of competent jurisdiction;
- 1.15 **“Intellectual Property Rights”** or **“IPRs”** means patents, copyright, registered designs, trademarks and service marks (whether registered or not, including applications for registrations, extensions or renewals of the foregoing), database rights, design rights, moral rights and other property rights in jurisdictions in which the relevant Services are provided and that grant similar rights as the foregoing, including those subsisting in inventions, drawings, performances, software, semiconductor topographies, business names, and in applications for the protection of any of the foregoing;
- 1.16 **“Loss”** or **“Losses”** means all costs, liabilities, damages, awards, actions, claims, losses and expenses (including reasonable legal fees and disbursements) net of any insurance recovered;
- 1.17 **“Material(s)”** means any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, in whatever form (including documentary, magnetic, electronic, graphic or digitised);
- 1.18 **“Measurement Period”** means the distinct period of time for which the Service Levels are measured and reported for determining Service Credits, under each Statement of Work, which will unless otherwise provided in a Statement of Work, be a monthly period;
- 1.19 **“Pre-Existing IPRs”** means Intellectual Property Rights which were conceived, reduced to practice, created, derived, developed or made by HCL, either prior to Effective Date or outside the scope of this Agreement or any Statement of Work including any modifications or derivatives thereof;
- 1.20 **“Personal Data”** means any data relating to an identified or identifiable natural person who can be specifically identified as to whom Data Protection Laws apply and which is held by or is under the

control of any member of the Customer or its Affiliate which is provided or disclosed by or on behalf of the Customer and/or relevant Customer Affiliate to HCL and/or its Affiliate in connection with this Agreement;

- 1.21 **“Rate Card”** means the rate card as set out in Schedule 1 (Rate Card) of this Agreement, which, unless otherwise provided in a Statement of Work, shall be the rate card used for computation of Charges payable on time and material basis;
- 1.22 **“Redeployment Charges”** means unless otherwise specified in the Statement of Work, a sum equal to three months resource charges under such Statement of Work.
- 1.23 **“Service Credit”** means monetary amounts payable by HCL to Customer in respect of a proven failure by HCL to meet one or more Service Levels, calculated in accordance with Clause 10;
- 1.24 **“Service Level”** means, specific standards of performance of a Service, agreed to be attained by HCL in relation to the relevant Services, as set out in the relevant Statement of Work;
- 1.25 **“Service Level Observance Period”** or **“SLO Period”** means, unless otherwise agreed in the relevant Statement of Work, a period of three (3) months effective from the end of transition services.
- 1.26 **“Services”** means the services to be performed by HCL under a Statement of Work, more specifically set forth in the Services Specification under the relevant Statement of Work;
- 1.27 **“Services Specification”** means in respect of each Statement of Work, the specification of the Services to be provided as set out therein;
- 1.28 **“Statement(s) of Work”** or **“SOW”** means a written contract between Customer and HCL (and/or their Affiliates), made in accordance with the provisions of this Agreement, under which HCL and its Affiliates will provide certain Services to the Customer and its Affiliates;
- 1.29 **“HCL IPRs”** means all Pre-Existing IPRs, Materials, software and any other resources or items in which Intellectual Property Rights subsist and which are owned by HCL and/or its Affiliates and includes any modifications to any of the same;
- 1.30 **“Subcontractor”** means a subcontractor appointed by HCL to perform any of the Services or any part of them. For avoidance of doubt, a third party provider of hardware, software, cloud services, hosting services or a consultant on staff augmentation basis shall not be deemed to be a Subcontractor for the purposes of this Agreement;
- 1.31 **“Tax”** or **“Taxes”** mean any form of tax or taxation, levy, duty, charge, social security charge, contribution, or impost of whatever nature (including any related fine, penalty, surcharge or interest);
- 1.32 **“Term”** means, in relation to this Agreement, the period set forth in Clause 3.1 during which this Agreement is in full force and effect in accordance with its terms and conditions;
- 1.33 **“SOW Term”** means, in relation to a Statement of Work, the period during which such Statement of Work is in full force and effect in accordance with the terms and conditions of this Agreement and the relevant Statement of Work.
- 1.34 **“Termination Date”** means the effective date of termination in relation to this Agreement and/or any Statement(s) of Work, which shall be the last day of the notice period pursuant to Clause 15..
- 1.35 **“Termination Fees”** means the costs incurred by HCL in termination of third party contracts, unamortized investments and discounts and Redeployment Charges payable by the Customer on termination of Statement(s) of Work in addition to any other sums as specified therein;

- 1.36 **“Third Party IPRs”** means IPRs owned by or licensed to a third party, excluding Customer IPRs and HCL IPRs, and includes any modifications to IPRs owned by such third party, that are used in the performance of the Services under any Statement of Work;
- 1.37 **“Use”**, in relation to software, means the right to load, execute, display and perform;
- 1.38 **“Value Added Taxes”** means value added taxes (VAT), sales tax, goods & services tax (GST) consumption taxes, turnover tax and other similar taxes and future taxes that are payable in relation to the provision of the Services;
- 1.39 **“Variation”** means a variation, modification or other change to the terms or conditions of this Agreement and/or an Statement of Work including the Services, Service Specifications, Service Levels, the Charges, Applicable Law and regulations;
- 1.40 **“Warranty Period”** means, unless otherwise agreed in the relevant Statement of Work, a period of thirty (30) days in respect of a Deliverable for which a warranty has been agreed in a Statement of Work, starting from the date of acceptance of such Deliverable, during which HCL shall remedy such Deliverable for non-compliance with Services Specifications.

2. AGREEMENT STRUCTURE AND STATEMENT OF WORK

- 2.1 This Agreement provides for the rights and obligations of the Parties and terms and conditions under which HCL and/or its Affiliates shall provide the Services and the Customer and/or its Affiliates shall receive the Services.
- 2.2 Each Statement of Work, when executed, shall constitute a distinct contract between the Parties and shall be deemed to expressly incorporate the terms and conditions of this Agreement.
- 2.3 Except as provided in Clause 2.4, in the event of any conflict or inconsistency between the provisions of this Agreement and any Statement of Work, the provisions of this Agreement shall prevail.
- 2.4 Where any provision in this Agreement specifically provides that an alternate provision in a Statement of Work takes precedence over such provision, the alternate provision of that Statement of Work shall apply, provided that such alternate provision:
- 2.4.1 makes an express reference to the relevant provision of the Agreement;
 - 2.4.2 shall only apply to that Statement of Work and shall not be deemed to apply to any other Statement of Work; and
 - 2.4.3 shall not constitute a Variation of any provisions of this Agreement

3. TERM OF THE AGREEMENT

- 3.1 The Term of this Agreement shall commence on the Effective Date and shall be valid for a period of **five (5) years**, unless terminated in accordance with the terms of this Agreement. Either Party may request for an extension of the Term, by giving a renewal notice to the other Party, at least two (2) months prior to the expiry date of the Agreement, specifying the revised date on which Term of this Agreement shall expire.
- 3.2 If the Party receiving the renewal notice wishes to enter into a discussion for renewal of this Agreement then it shall acknowledge the same to the other Party. The Parties shall promptly enter into discussion and agree in writing upon the terms that shall apply during the extended Term.
- 3.3 Where Parties fail to reach an agreement on the revised terms then the Agreement shall expire at the end of the initial or subsequent Term, as applicable.

4. WARRANTIES

- 4.1 Each Party warrants to the other Party that:

- 4.1.1 it has all the requisite power and authority to enter into this Agreement and each subsequent Statement of Work;
 - 4.1.2 the persons entering into this Agreement and each subsequent Statement of Work on behalf of it have been duly authorised to do so;
 - 4.1.3 execution of this Agreement does not and will not violate any Applicable Law and does not constitute a default or breach of any of the Party's other obligations;
 - 4.1.4 there are no proceedings, pending or threatened, which to the best of Party's knowledge and belief, is or is likely to have a material adverse impact on this Agreement or the ability of such Party to perform its obligations pursuant to this Agreement; and
 - 4.1.5 it has not withheld any information which is required for effective performance of the contractual obligations under this Agreement and that information provided to the other Party is complete, true and accurate to the best of its knowledge and belief.
- 4.2 Each Party acknowledges that the other Party has entered into this Agreement in reliance on the representations and warranties set out in this Clause 4.
- 4.3 Except as provided in this Agreement, HCL disclaims all other warranties, express or implied, statutory or otherwise, as to the condition, quality, performance, durability, including any warranties of merchantability or fitness for a particular purpose and all such warranties, conditions, undertakings and terms are hereby excluded, to the fullest extent permitted by law.

5. CONFIDENTIALITY

- 5.1 Either Party, including its Affiliates, may disclose Confidential Information under this Agreement and shall, in doing so, be referred to as the **"Discloser"** hereunder. The other Party, including its Affiliates, when receiving Confidential Information shall be referred to as the **"Recipient"**.
- 5.2 The information disclosed by the Discloser to the Recipient hereunder in writing, relating to the Discloser's business, including, without limitation, computer programs (including source codes), technical drawings, algorithms, know-how, processes, designs, reports, specifications, ideas, trade secrets, inventions, schematics, pricing information, and other technical, business, financial, customer and product development plans, strategies, information pertaining to subcontractors or any other information which is reasonably understood to be confidential or proprietary based on the circumstances of disclosure or the nature of the information itself, is hereinafter referred to as **"Confidential Information"** of the Discloser.
- 5.3 The Recipient shall, and shall procure that its employees, agents and subcontractors shall:
- 5.3.1 keep the Confidential Information as confidential;
 - 5.3.2 not disclose the Confidential Information to any person, except as provided in Clauses 5.4 to 5.6, unless it first obtains the written consent of the Discloser; and
 - 5.3.3 not use the Confidential Information for any purpose not permitted under this Agreement or any Statement of Work.
- 5.4 The Recipient shall permit access to Confidential Information by its employees, consultants, professional advisers, subcontractors on a need to know basis only, and shall ensure that such persons maintain the confidentiality of such Confidential Information at-least to the same extent as provided under this Agreement.
- 5.5 The obligations contained in Clauses 5.3 to 5.4 do not apply to any Confidential Information which is:
- 5.5.1 lawfully known by the Recipient at the time of disclosure without any obligation to keep the same confidential; or
 - 5.5.2 becomes, through no fault of the Recipient, known or available to the public; or

- 5.5.3 independently developed by the Recipient without use or reference to such Confidential Information; or
- 5.5.4 rightfully disclosed to the Recipient by a third party without restriction.
- 5.6 Recipient may disclose Confidential Information where it is required to be disclosed by law or order of any court or regulatory body of competent jurisdiction provided that Recipient shall notify to Discloser prior to making any such disclosure, in order to provide Discloser with an opportunity to seek an appropriate protective order or other relief to prevent such disclosure unless prohibited from doing so by Applicable Laws. The Recipient shall cooperate with Discloser (at Discloser's expense) to prevent or minimize the disclosure of Discloser's Confidential Information to the extent permitted under law.
- 5.7 Confidentiality obligations under this Agreement shall survive the Term of this Agreement and for a period of five (5) years thereafter, provided that the obligations shall be perpetual with regard to any source code or trade secret that may be disclosed hereunder.
- 5.8 Upon request by Discloser, Recipient will return and/or destroy all documents or media containing any such Confidential Information provided that Recipient may retain copies of Confidential Information to the extent necessary to meet any statutory requirements and for any legal proceedings and copies stored due to automatic computer archiving.

6. COMPLIANCE WITH LAWS

6.1 Compliance with Law

- 6.1.1 HCL shall perform the Services and its other obligations in accordance with Applicable Law governing the provision of Services in the jurisdictions in which the Services are provided. Customer shall also comply with any Applicable Law relevant to receiving the Services hereunder.
- 6.1.2 The Customer shall have the responsibility for notifying HCL of all of the features or functions required in the Deliverables in order to comply with Applicable Law in any jurisdiction or of any Applicable Law which is specific to its business or market area. Such a requirement may only be imposed on HCL by specifying the requirements under Services Specifications for that Statement of Work.

6.2 Compliance with Employment Regulations

- 6.2.1 The Parties do not intend that due to application of any Employment Regulations, the provision of Services is or is likely to result in the transfer of the employment of any personnel to the other Party, its Affiliates or subcontractors.
- 6.2.2 Where by application of Employment Regulations, the employment of any Affected Personnel is or is alleged to transfer to HCL, its Affiliates or Subcontractors, Customer agrees to fully indemnify and hold HCL, its Affiliates and Subcontractors harmless against any and all Losses arising out of any claim, action or proceedings (including without limitation redundancy costs and any claim which pertains to the period prior to the date of transfer).
- 6.2.3 Where by application of Employment Regulations, the employment of any Affected Personnel is or is alleged to transfer to the Customer and its Affiliates upon termination/expiry of this Agreement and any Statement of Work, HCL agrees to fully indemnify and hold the Customer, its Affiliates and subcontractors harmless against any and all Losses arising out of any claim, action or proceedings (including without limitation redundancy costs and any claim which pertains to the period prior to the date of transfer). However, HCL shall not be liable under this Clause 6.2.3 for and towards any redundancy costs incurred by Customer or its Affiliates where the Agreement and/or relevant Statement of Work is terminated for any reasons other than a breach of HCL.

6.3 Data Protection and Privacy

- 6.3.1 Each Party shall make or obtain and maintain throughout the Term all necessary registration or filings and notifications or consents which such Party is obliged to obtain and maintain pursuant to all applicable Data Protection Laws.
- 6.3.2 HCL shall process the Personal Data for the sole purpose of performing the Services under this Agreement. Any other processing of any Personal Data by HCL is prohibited. Further, HCL shall make commercial reasonable endeavours to comply with any reasonable requirement of Customer or any legal requirements regarding the processing of such personal data.
- 6.3.3 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that to the extent the Supplier processes Personal Data on behalf of the Customer and/or Service Recipients in the provision of the Services, the Customer and/or the relevant Service Recipient (as appropriate) is the Data Controller and that the Supplier and/or the relevant Supplier Party are the Data Processors.
- 6.3.4 The Supplier represents, undertakes and warrants that it shall:
- a) comply with the requirements of Data Protection Legislation to the extent it applies to Supplier in its capacity as a Data Processor;
 - b) only process the Personal Data to the extent necessary for the provision of the Services), and as otherwise instructed by the Customer in writing;
 - c) implement and maintain appropriate technical and organisational measures to: (i) ensure the security, integrity and confidentiality of the Personal Data; and (ii) prevent the unauthorised or unlawful processing of the Personal Data; and
 - d) not disclose or transfer any part of the Personal Data to any person or allow access to it by any person other than as expressly permitted by and in accordance with this clause 6.3.
- 6.3.5 The Customer represents, undertakes and warrants that, on the date of this Agreement and during the Term of this Agreement, it shall:
- a) comply with the requirements of Data Protection Legislation to the extent it applies to Customer in its capacity as a Data Controller;
 - b) have all necessary authorisations in place to provide Personal data to Supplier for the purposes of this Agreement; and
 - c) disclose all such Personal Data only on a 'need to know' basis limited to what is necessary in relation to the purposes for which such Personal Data is processed by the Supplier.
 - d) not (unless absolutely necessary for facilitating receipt of services) disclose real production or Personal Data with Supplier and any such data, if required to be shared in connection with the Services shall be suitable encrypted.
 - e) unless expressly stated as being part of Suppliers obligations, keep full back ups of all of the Customer's data including Personal Data in accordance with best industry practice and in any event not less frequently than daily.
- 6.3.6 In no event, the Supplier shall be liable for any security breaches or other cyber issues which arise by reason of any defects or deficiencies in any Customer systems or processes, or any Customer materials, equipment or software which are transferred or provided to the Supplier by Customer in connection with the provision of the Services. Further, the Supplier shall not be responsible for any loss of data caused due to reasons beyond its

control, including without limitation, due to third party hacking, trojan attack and other similar instances.

7. PROVISION OF THE SERVICES

7.1 HCL, under each Statement of Work, shall:

7.1.1 provide the Services in accordance with the Services Specifications; and

7.1.2 remedy the defects in Deliverables, if any, notified in writing by the Customer by repairing or, where necessary, replacing the defective part of the Deliverable in a commercially reasonable time or in case of Services by re-performance thereof, during the Warranty Period. For avoidance of doubt, no Warranty Period shall be applicable to the extent a Statement of Work is delivered on time and material basis.

7.2 Unless otherwise agreed, any third party hardware or software or third party cloud services provided by HCL pursuant to this Agreement is made available to the Customer on an "as is" basis and, without prejudice to the generality of the foregoing, the Customer acknowledges that HCL gives no warranty as to the condition, satisfactory quality, performance, merchantability, technical configuration or fitness for any particular purpose. However, HCL shall extend to Customer any original equipment manufacturer warranty as may be received from such third party. For avoidance of doubt, the provision of cloud services shall be governed by the specific terms and conditions prescribed by the provider of cloud services ("Cloud Special Terms and Conditions"). Notwithstanding anything to the contrary contained in this Agreement, HCL's obligations in relation to provision of cloud services shall in no event be greater than those limitations and exclusions as set out in Cloud Special Terms and Conditions.

7.3 HCL shall be entitled to:

7.3.1 provide Services either directly or through its Affiliates or a combination thereof, without requiring prior approval of the Customer;

7.3.2 subcontract or delegate the performance of the Services or any of its obligations under any Statement of Work by giving prior written notice to the Customer.

HCL shall remain liable for all acts or omissions of its Affiliates and Subcontractors in the course of the provision of the Services.

7.4 Unless otherwise agreed in the relevant Statement of Work, HCL shall be entitled to provide Services from any of its facilities including facility, if any, explicitly set forth in the respective Statement of Work

8. CUSTOMER OBLIGATIONS

8.1 The Customer shall, and shall procure that its Affiliates and subcontractors shall, at all times:

8.1.1 promptly provide HCL with all information, advice and documentation that HCL reasonably requests to enable it to perform its obligations properly;

8.1.2 provide and make available such appropriately skilled and authorized personnel as are reasonably required to liaise with HCL in relation to performance of its obligations;

8.1.3 permit the access to or use of its facilities to Supplier personnel, as reasonably requested by HCL, to perform their obligations in providing the Services;

8.1.4 provide the necessary resources and means to perform the Services at its facilities; and

8.1.5 keep HCL informed and provide the copies of its procedures, rules and regulations (including any changes thereto) relating to the conduct, health and safety of the personnel at the Customer facilities.

8.2 Notwithstanding any other provision of this Agreement, if HCL requires assistance and co-operation from Customer, its Affiliates, subcontractors or a third party supplier of Customer and its

Affiliates in respect of the Services, Customer shall ensure to obtain that assistance and co-operation of that third party supplier or subcontractors (including any required consents or licences from such parties and compliance by such parties with HCL's internal practices, procedures and policies and also entering into necessary confidentiality agreements with HCL on substantially the same terms as contained herein). Customer acknowledges that it remains at all times responsible for all acts or omissions of its third party suppliers or subcontractors and HCL is not responsible (and does not assume responsibility) for their such acts or omissions.

9. ACCEPTANCE TESTING

- 9.1 Where agreed in a Statement of Work, Acceptance Testing shall be performed in accordance with the test plan and acceptance criteria defined in the Statement of Work.
- 9.2 If the Customer has either failed to conduct Acceptance Testing or failed to notify HCL that the Deliverable has failed Acceptance Testing within ten (10) Business Days from the date of submission of Deliverable to the Customer, or the Deliverable has been put in commercial use, whichever is earlier, the Acceptance Testing shall be deemed to have been successfully passed ("**Deemed Acceptance**").

10. SERVICE LEVELS, SERVICE CREDITS AND EARNBACK

- 10.1 Where agreed in a Statement of Work, the Services shall be provided in accordance with such Service Levels. Service Levels shall be measured and reported for each Measurement Period in accordance with the provisions of this Agreement and the relevant Statement of Work.
- 10.2 Where Service Credits are expressed as being payable, the amount of Service Credits or any other penalties, together shall in no event exceed eight percent (8%) of the Charges (excluding any reimbursements and pass through expenses) payable for the Services during the Measurement Period, under relevant Statement of Work. For avoidance of doubt, the Service Credits shall be applicable after the end of SLO Period.
- 10.3 Notwithstanding anything to the contrary stated in this Agreement or any Statement of Work, the payment of Service Credits shall be the sole and exclusive remedy available to the Customer under this Agreement or at law, in respect of the relevant failures to achieve the linked Service Levels under the relevant Statement of Work except where the Customer is entitled to terminate the Statement of Work under Clause 15.2.
- 10.4 HCL shall be entitled to avail Earnback opportunities with respect to Service Credits in accordance with the provisions of the relevant Statement of Work.

11. CHARGES, INVOICES AND TAXATION

11.1 General

- 11.1.1 In consideration of HCL performing the Services, the Customer shall pay HCL the Charges as provided in each Statement of Work.
- 11.1.2 The Rate Card as set out in Schedule 1 (*Rate Card*) shall form the basis of computation of Charges except where the Parties agree to a different rate card or charging methodology under any Statement of Work.
- 11.1.3 The time and material rates shall be subject to increase, upon the first anniversary of the Agreement and every year thereafter, by the applicable cost of living adjustment (COLA) percentage, as Parties may agree, to account for inflation in the geographies from where the Services are being provided. However, where no such index is agreed to between the parties, it shall be deemed to be seven percent (7%) per annum for offshore location (i.e. India) and five (5%) per annum for onsite location (i.e. a location other than India).
- 11.1.4 HCL will have the right to raise the invoices for the Services provided under each Statement of Work, either directly or through any of its Affiliates.

11.2 Invoices

- 11.2.1 Except as otherwise agreed in a Statement of Work, HCL will invoice Customer for Charges on a monthly basis.
- 11.2.2 The Charges shall be calculated, invoiced and paid in the currency specified in the Statement of Work. In the absence of any such specification of currency in the Statement of Work, Charges shall be calculated, invoiced and paid in GBP.
- 11.2.3 Unless otherwise specified in a Statement of Work, HCL shall be entitled to submit an electronic invoice, at the end of each month for Services performed or in case of Deliverables supplied upon actual delivery or acceptance, as the case may be. HCL's right to raise an invoice shall not be contingent upon any other internal processes, policies, guidelines of Customer or any pre-condition that HCL must have received from Customer a system generated purchase order in order to be able to submit an invoice.
- 11.2.4 The Customer shall pay the Charges as set out in each invoice for each Statement of Work, within thirty (30) calendar days of receipt of that invoice.
- 11.2.5 If any sum payable under this Agreement is not paid within the specified period, HCL shall have the right to charge interest on the unpaid amount, at the rate of higher of one and half percent (1.5%) per month or maximum rate permitted under applicable law, from the date on which payment was due until the date of actual payment.
- 11.2.6 Customer may dispute or withhold payment, acting reasonably and in good faith and in any event within fifteen (15) days of the receipt of invoice by Customer failing which the invoice shall be deemed to be accepted. All Disputes relating to invoices shall be resolved in accordance with the Clause 21 (*Dispute Resolution*).
- 11.2.7 The payment of the Charges and all other payments to HCL pursuant to this Agreement and/or any Statement of Works hereunder, shall be made by the Customer through electronic transfer of funds to the designated bank accounts as nominated by HCL in writing.
- 11.3 Where the relevant Statement of Work provides for the Charges computed and payable based on device or resource counts, Parties agree that following additional invoicing terms shall apply:
 - 11.3.1 For the first month of steady state (i.e. period commencing on completion of transition), an invoice shall be raised by twenty fifth (25th) day of that month, based on the base charges payable as per the relevant Statement of Work.
 - 11.3.2 From second month (of steady state) onwards, the invoice shall be raised by twenty fifth (25th) day of the month, based on the Charges computed and payable for the actual device/resource unit counts of the immediately preceding month.
 - 11.3.3 At the end of each quarter, Parties shall reconcile: (a) the Charges payable based on actual device/resource unit counts vs. (b) Charges already invoiced to Customer for the relevant quarter in accordance with the provisions of Clause 11.3.1 and 11.3.2 above. If Customer has been overcharged for a quarter, HCL shall raise a credit note; whereas if the Customer is undercharged, HCL shall raise an additional invoice.
- 11.4 Where the relevant Statement of Work provides for the Charges computed and payable based on time and material rates, Parties agree that following additional invoicing terms shall apply:
 - 11.4.1 For the first month of Services, an invoice shall be raised on or after twenty fifth (25th) day of the month, based on the Charges computed and payable for the efforts spent till such day of that month.
 - 11.4.2 From second month onwards, the invoice shall be raised by on or after twenty fifth (25th) day of the month, based on the Charges computed and payable for the efforts spent during period commencing on twenty fifth (25th) day of immediate preceding month till such day of relevant month.

- 11.4.3 Parties agree that an invoice pursuant to this Clause **Error! Reference source not found.** will be raised on receipt of confirmation from Customer of time spent, which confirmation shall be provided by the Customer on or before twenty seventh (24th) day of relevant month. In the event, Customer does not provide such confirmation or any objections within aforesaid period, the details of spent efforts submitted by HCL shall be considered as accepted for the purpose of invoicing. The objection shall be discussed and agreed between Parties and the same shall be subsequently adjusted in the immediately succeeding month invoicing procedure.

11.5 Taxation

- 11.5.1 The Parties agree that the Charges shall be inclusive of all Taxes, except withholding taxes and Value Added Taxes that are the responsibility of the Customer in accordance with the Clause 11.5.2.
- 11.5.2 The Customer shall be responsible for Value Added Taxes that are assessed against HCL in its capacity as vendor, or the Customer in its capacity as purchaser, where such Tax is directly charged on the Customer's acquisition or use of goods and services provided by HCL and/or the amount of Tax charged is measured by the Customer's cost of acquiring the goods and services.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Rights in HCL IPRs

- 12.1.1 There shall be no assignment or transfer of any HCL IPRs (including any amendments, modifications or enhancements thereto) pursuant to this Agreement and any Statement of Work. HCL shall continue to remain the exclusive owner thereof.
- 12.1.2 Subject to full payment of Charges, HCL agrees to grant a limited right to the Customer and its Affiliates only for the term of the relevant Statement of Work to Use HCL IPRs (except where any HCL IPRs are embedded into the Deliverables in which case, such license rights shall be extended on a perpetual basis) , on a non-exclusive, royalty free, non-sub-licensable and non-transferable basis, to the extent reasonably necessary to enable the Customer to enjoy the envisaged benefit of the Services and/or Deliverables and limited to the Customer's own internal business purposes only. Customer shall in no event use such HCL IPR on a standalone basis or attempt to reverse engineer(except where expressly permitted by law), decompile, disassemble such HCL IPR.

12.2 Rights in Third Party IPRs

Except as explicitly permitted under the terms of the relevant end user licenses agreement ("EULA") governing third party IPRs, there shall be no assignment or transfer of any rights in any Third Party IPRs (including any amendments, modifications or enhancements thereto) pursuant to this Agreement and/or any Statement of Work. The third parties owning such IPRs shall continue to remain the exclusive owner thereof and the grant of licence rights to Customer (if any) shall be set out in the relevant EULA.

12.3 Rights in Customer IPRs

The Customer shall retain all right, title and interest in and to the Customer IPRs. The Customer IPRs shall be made available and licensed to HCL and its Affiliates to the extent reasonably required by HCL and such Affiliates to enable the provision of the Services.

12.4 Rights in Deliverables

- 12.4.1 Subject to Clause 12.1 and Clause 12.2 and upon receipt of Charges, HCL shall assign and Customer shall own all right, title and interest (including ownership of all Intellectual Property Rights) in and to all Deliverables that are provided under the relevant Statement of Work;

12.4.2 This Clause 12.4.1 shall not be construed as restricting HCL's continued right to reutilise methods, processes, ideas, know-how, trade-secrets and techniques of general application, whether or not developed during the course of the provision of the Services or in connection with the development of any particular Deliverable, provided that in so doing HCL does not disclose any Confidential Information of the Customer or infringe any of the Customer's IPRs.

13. LIABILITY

- 13.1 Notwithstanding anything agreed to the contrary under this Agreement, neither Party shall be liable in connection with this Agreement and/or a Statement of Work, whether under contract, tort or otherwise, for (a) any indirect, consequential, incidental, punitive, exemplary or special Losses or (b) business interruption, loss of data/programs, loss of profits or revenue, loss of contracts, loss of anticipated savings and loss of goodwill, revenue, business opportunity, shareholders' loss, irrespective of whether any of such losses is direct or indirect; and even if the loss or damages was reasonably foreseeable or a Party has been advised of the possibility of such damages.
- 13.2 Subject to Clause 13.3, each Party's and its Affiliates' aggregate, cumulative and collective liability arising out of or in connection with this Agreement (including all Statement(s) of Work), whether in contract, tort, negligence, under an indemnity or by statute or otherwise, entered into subject to its terms, will, to the extent permissible by law, be limited to the amount of Loss directly resulting from the relevant cause of action and will, in any case whatsoever, not exceed the Annual Charges (excluding reimbursement of expenses, pass-through expenses, taxes and amount attributable to purchase of hardware and/or software on behalf of Customer) paid or payable by the Customer to HCL under the relevant Statement of Work to which the cause of action relates ("**General Liability Cap**"). For the purpose of this Clause 13.2, "Annual Charges" mean the annual average Charges paid or payable to HCL in respect of Services delivered under the relevant Statement of Work. For the avoidance of doubt any claim made under an Statement of Work, where the SOW Term is less than twelve (12) months in aggregate, Annual Charges shall mean the total value of such Statement of Work.
- 13.3 The limitations of liability set out in Clause 13.2, shall not apply to:
- 13.4.1 fraud (including fraudulent misrepresentation);
 - 13.4.2 death or bodily injury resulting from the negligence of a Party;
 - 13.4.3 breach of Clause 12 (*Indemnities*);
 - 13.4.4 a Party's indemnification obligations as provided in Clause 6.2 (*Compliance with Employment Regulations*); and
 - 13.4.5 Customer's payment obligations under this Agreement.
- 13.5 Any third party hardware and/or software are provided on an 'as is' basis and Parties acknowledge that HCL shall have no liability in respect to any such hardware and/or software provided pursuant to this Agreement.
- 13.6 Both Parties shall in any event use all reasonable endeavours to avoid or mitigate any Losses which may arise under or in connection with this Agreement, regardless of its form.

14. INDEMNITIES

- 14.1 Each Party hereby undertake to defend, indemnify and keep indemnified (and where a Party is so indemnifying it shall be the "**Indemnifying Party**") the other Party (a Party being indemnified shall be the "**Indemnified Party**") against any unaffiliated third party claim and any resultant damages finally awarded by court of competent jurisdiction alleging that the Software and Materials or any part thereof provided by the Indemnifying Party constitutes an infringement or alleged infringement of any copyright of a third party, provided that the Indemnified Party shall:

- 14.1.1 give written notice of any such claims to the Indemnifying Party within five (5) Business Days of knowledge of such claim;
 - 14.1.2 provide the Indemnifying Party with reasonable assistance in defending the claim;
 - 14.1.3 make no admission without Indemnifying Party's prior written consent; and
 - 14.1.4 give the Indemnifying Party sole control of the litigation.
- 14.2 Provided that if an allegation of infringement of third party IPRs is made as provided for in this Clause 14, the Indemnifying Party shall, as the Indemnified Party's sole and exclusive remedy:
- 14.2.1 procure the right to continue using the affected Software or Materials;
 - 14.2.2 replace, remove or modify any part of any affected Software or Materials with a non-infringing Software or Materials so as to avoid the alleged infringement; or
 - 14.2.3 if none of the above are reasonably possible, accept the return of the infringing Software or Materials and refund the amounts paid for such Software or Deliverables after deduction of pro rata amounts for use until such date
- 14.3 The indemnity in Clause 14 shall not apply to the extent that the claim arises as a result of:
- 14.3.1 a Party acting on the express instruction of the Indemnified Party to do or cause to be done the specific acts that resulted in the infringement or alleged infringement;
 - 14.3.2 the Services Specification that were provided by the Party seeking indemnity;
 - 14.3.3 modification of the allegedly infringing materials by a party other than an Indemnifying Party.

15. TERMINATION

15.1 Termination for Convenience

The Customer may terminate this Agreement and/or any Statement of Work for convenience, at any time, by giving four (4) months' prior written notice to HCL, upon payment of applicable Termination Fees.

15.2 Termination for Cause

- 15.2.1 Either Party may terminate this Agreement and/or the affected Statement(s) of Work by notice, where the other Party commits a material breach of the Agreement and/or affected Statement of Work, as the case may be, which remains un-remedied after a period of thirty (30) days from the date of receipt of notice from the aggrieved Party requiring that the breach be remedied.
- 15.2.2 HCL may either suspend or terminate a Statement of Work at any time if Charges under any Statement of Work are overdue for payment, and such overdue sum is equal to or greater than the equivalent of the average monthly fees immediately preceding the date of the most recent invoice under that Statement of Work. HCL shall serve a notice of thirty (30) days on the Customer requiring the Customer to make the payment without any further delay.

15.3 Other Termination Rights

- 15.3.1 Customer may terminate this Agreement and/or all Statements of Work by providing thirty (30) days' notice, upon occurrence of a **change of control** of HCL (other than a change amongst HCL Affiliates) that is reasonably likely to have a material adverse impact on the Services.

HCL may terminate this Agreement and all Statements of Work by providing thirty (30) days notice, upon occurrence of a change of control of the Customer where the purchaser of the Customer:

- a) is not of similar financial standings as the Customer; or
- b) is a competitor of HCL.

Termination rights under this sub-clause, if opted for, must be exercised within a period of ninety (90) days from the date when the other Party becomes aware of or is otherwise notified of the change of control or such termination right shall extinguish.

- 15.3.2 Either Party may terminate this Agreement and all Statements of Work, by providing thirty (30) days' notice, upon occurrence of an **Insolvency Event** of the other Party.
- 15.3.3 Either Party may terminate any affected Statement(s) of Work by providing notice to the other Party, upon occurrence of a **Force Majeure event** that materially prevents the other Party from performing its obligations for a period exceeding thirty (30) consecutive days.

16. CONSEQUENCES OF TERMINATION OR EXPIRY

- 16.1 Upon the termination or expiry of this Agreement, unless terminated specifically, all the ongoing Statement of Work shall continue to remain in effect.
- 16.2 All provisions which are, expressly or impliedly intended to survive termination or expiry of this Agreement and/or Statement of Work, or that contain an obligation to be performed or a right to be enjoyed thereafter, shall survive the termination or expiry thereof.
- 16.3 Upon receipt of notice of termination, this Agreement and/or the relevant Statement(s) of Work shall continue under the same terms and conditions till the Termination Date and the Customer shall be required to pay the applicable Charges during the notice period. For the avoidance of doubt, irrespective of whether the Customer requires HCL to perform the Services during the notice period, the customer shall pay the Charges .Upon the termination or expiry of this Agreement or a Statement of Work, each Party shall promptly return any property of the other which it has in its possession or control pursuant to this Agreement or relevant Statement of Work.
- 16.4 The Customer shall be liable to make payment to HCL for:
 - 16.4.1 all Charges for the Services provided, Deliverables completed and any pro-rata Charges for the part completed Deliverables and Services, until the date of termination or expiry of the relevant Statement of Work; and
 - 16.4.2 Termination Fees where a Statement of Work is terminated by Customer pursuant to Clause 15.1 or by HCL pursuant to Clause 15.2, or a Statement of Work is terminated pursuant to Clause 15.3 for the reasons attributable to the Customer; provided that, notwithstanding above, in any event of termination (irrespective of the reason of termination) or expiry of a Statement of Work, Customer shall be liable to pay HCL for any unamortized investments.
- 16.5 Subject to Clause 16.4.2, neither Party shall be liable for any Losses suffered by the other Party as a result of termination of the Agreement or any Statement of Work pursuant to Clause 15.3.

17. EXCUSING CAUSES

- 17.1 HCL shall not be liable for any failure to perform (or any delay in performing) any of its obligations under either this Agreement or any Statement of Work if the failure or delay results from any of the following (each, an "**Excusing Cause**"):
 - 17.1.1 a failure or delay by the Customer, its Affiliates and/or its other contractors in performing any of their obligations having an impact on the provision of Services; or
 - 17.1.2 a failure or delay by the Customer, its Affiliates and/or its other contractors in providing HCL with the agreed assistance, inputs or facilities set out in or reasonably required in connection with a Statement of Work; or
 - 17.1.3 HCL acting in accordance with an express instruction provided by the Customer.

- 17.2 HCL shall make all reasonable endeavours to continue to provide the Services to mitigate the impact of Excusing Cause and Customer shall compensate HCL for any additional costs and expenses incurred by HCL as a result thereof and the parties also agree to extend the HCL delivery timelines accordingly..

18. FORCE MAJEURE

- 18.1 Neither Party shall be liable to the other for any breach or delay in the performance of its obligations hereunder to the extent that such breach or delay is caused due to a Force Majeure event.
- 18.2 Upon occurrence of a Force Majeure event, the non-performing Party shall be excused from further performance of its obligations until such Force Majeure event ceases to prevent or hinder the performance of those obligations.

19. ANNOUNCEMENT AND PUBLICITY

- 19.1 Neither Party may make any public announcement or disclosure regarding the existence or subject matter of this Agreement (other than the public announcement agreed pursuant to Clause 19.2 and earnings release under Clause 19.3) unless it first obtains the other Party's written consent, which shall not be unreasonably withheld or delayed.
- 19.2 The Parties shall, promptly and in good faith, agree the text of a public announcement in connection with this Agreement that may be issued by either Party after the Effective Date of this Agreement.
- 19.3 HCL shall be entitled to make appropriate disclosures pertaining to this Agreement as part of the earnings release to regulators and stock exchanges. Further, HCL shall be entitled to include Customer's name in customer reference list.

20. NON-SOLICITATION

- 20.1 Except as otherwise provided under the applicable law, neither Party shall, during the Term of any Statement of Work and for a period of twelve (12) months after the expiry or termination of the relevant Statement of Work, directly or indirectly, employ or offer to employ any person who is an employee of the other Party involved with the provision or receipt of the Services under such Statement of Work. Nothing in this Clause 20.1 shall prevent either Party from employing or offering to employ a person who has independently responded to a public advertisement that is not specifically targeted at employees of the other Party.
- 20.2 The Parties agree and understand that each Party has incurred considerable expense in recruitment, training and retaining its employees. Upon breach of this Clause 20.2, the breaching Party shall pay the other Party, liquidated damages of £50,000 GBP or its equivalent for every such person so hired.

21. DISPUTE RESOLUTION

- 21.1 The Parties agree that in the event any Dispute is not resolved in the ordinary course of business, the Parties shall in good faith attempt to resolve the Dispute through negotiation by their representatives.
- 21.2 If a Dispute cannot be resolved by negotiation within 1 (one) month of commencement of negotiations, the Dispute may be referred to and finally resolved by. All the proceedings shall be conducted in English.
- 21.3 Nothing in this Clause 21 (*Dispute Resolution*) shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

21.4

22. MISCELLANEOUS PROVISIONS

22.1 ASSIGNMENT

- 22.1.1 Subject to Clause 22.1.2, neither Party will assign or transfer or purport to assign or transfer any right or obligation under this Agreement except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 22.1.2 Notwithstanding any provision to the contrary contained in this Agreement, it is agreed that HCL shall be entitled to assign the benefit of its entitlement to payment of the Charges payable to it hereunder to a third party provider of receivables financing or similar financial arrangement (provided that HCL remains liable for its obligations hereunder, and payment of such element of the Charges at HCL's direction shall still constitute satisfaction of the Customer's related payment obligations).

22.2 NOTICES

A notice under or in connection with this Agreement shall be in writing, in English language and delivered personally or sent by email or registered first class post (or registered air mail if overseas) to the Party due to receive the notice to the registered address of such Party. For avoidance of doubt, in case of any notice to be served up on HCL under or in connection with this Agreement and/or a Statement of Work, Customer shall promptly send a copy thereof at mail ids: geo.legal@hcl.com and ccg@hcl.com and the following address - HCL Technologies Limited, Contract Closure Group, ODC II, 14th Floor, Tower 6, Plot No: 3A, SEZ Noida Technology Hub, Sector 126, NOIDA – 201303, Uttar Pradesh, INDIA.

22.3 ENTIRE AGREEMENT

- 22.3.1 This Agreement, and any other documents incorporated into this Agreement, constitute the entire agreement, and supersede any previous agreements or understandings between the Parties relating to the subject matter of this Agreement.
- 22.3.2 A Party is not liable to other Party for a representation that is not expressly set out in this Agreement or any Statement of Work.

22.4 CHANGE CONTROL PROCEDURE

- 22.4.1 This Agreement or any Statement of Work may not be varied except by an agreement that is in writing, expressed to vary this Agreement or any Statement of Work and signed by duly authorised representatives of both Party. If a Party determines that the terms and conditions of this Agreement and/or the relevant Statement of Work require Variation, that Party may submit a change request to the other Party. The Parties acknowledge that a Variation to this Agreement and/or Statement of Work may necessitate a change to the Charges payable under this Agreement.
- 22.4.2 If the Parties cannot agree on the required Variation, HCL will proceed under the Statement of Work without implementing the Variation. If Customer and HCL agree on the Variation, HCL will implement the Variation in the manner agreed. To the extent the Parties fail to agree to a Variation required to ensure continuing compliance of either Parties with its obligation under this Agreement, the relevant Party shall be deemed to be absolved of any liability arising out of such non-compliance.

22.5 NO WAIVER

- 22.5.1 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver by either party shall be effective only if notified in writing.
- 22.5.2 No single or partial exercise of a right or remedy provided by this Agreement or by law prevents a further exercise of the right or remedy or the exercise of another right or remedy.

22.6 SEVERABILITY

The Parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

22.7 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

22.8 GOVERNING LAW

22.8.1 This Agreement and any Statement of Work shall be governed by, and interpreted in accordance with the laws of England.

22.8.2 Each Party irrevocably submits to the jurisdiction of the courts of London in relation to all matters arising out of or in connection with this Agreement and any Statement of Work.

IN WITNESS of which this Agreement has been duly executed by the Parties or their duly authorised representatives.

Executed on behalf of

[HCL]

Executed on behalf of

[Customer Entity]

Name:

Name:

Designation:

Designation:

Date: dd/mm/20xx

Date: dd/mm/20xx