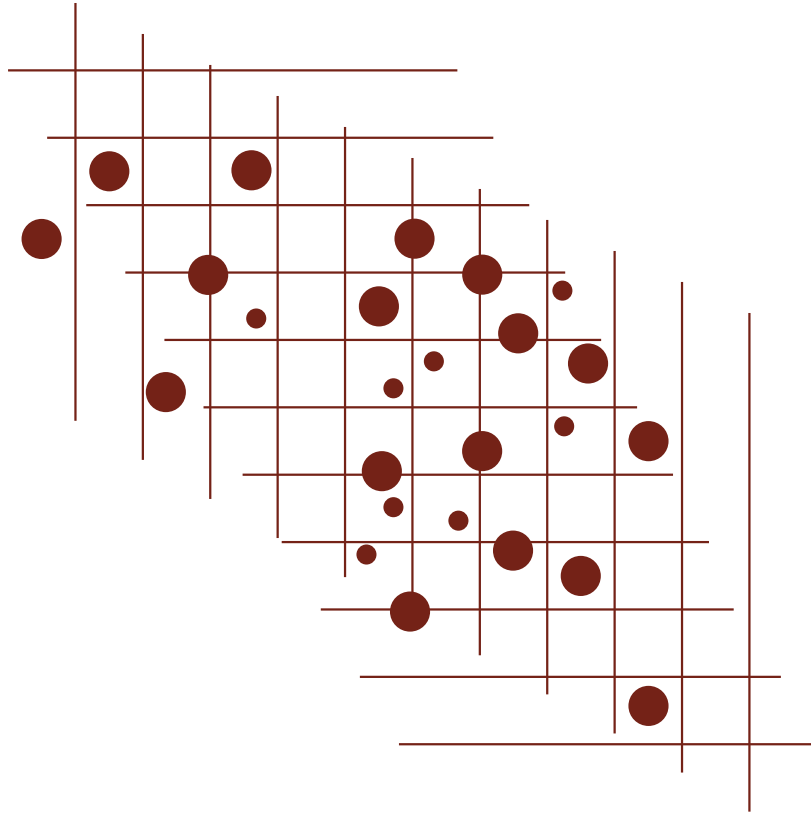
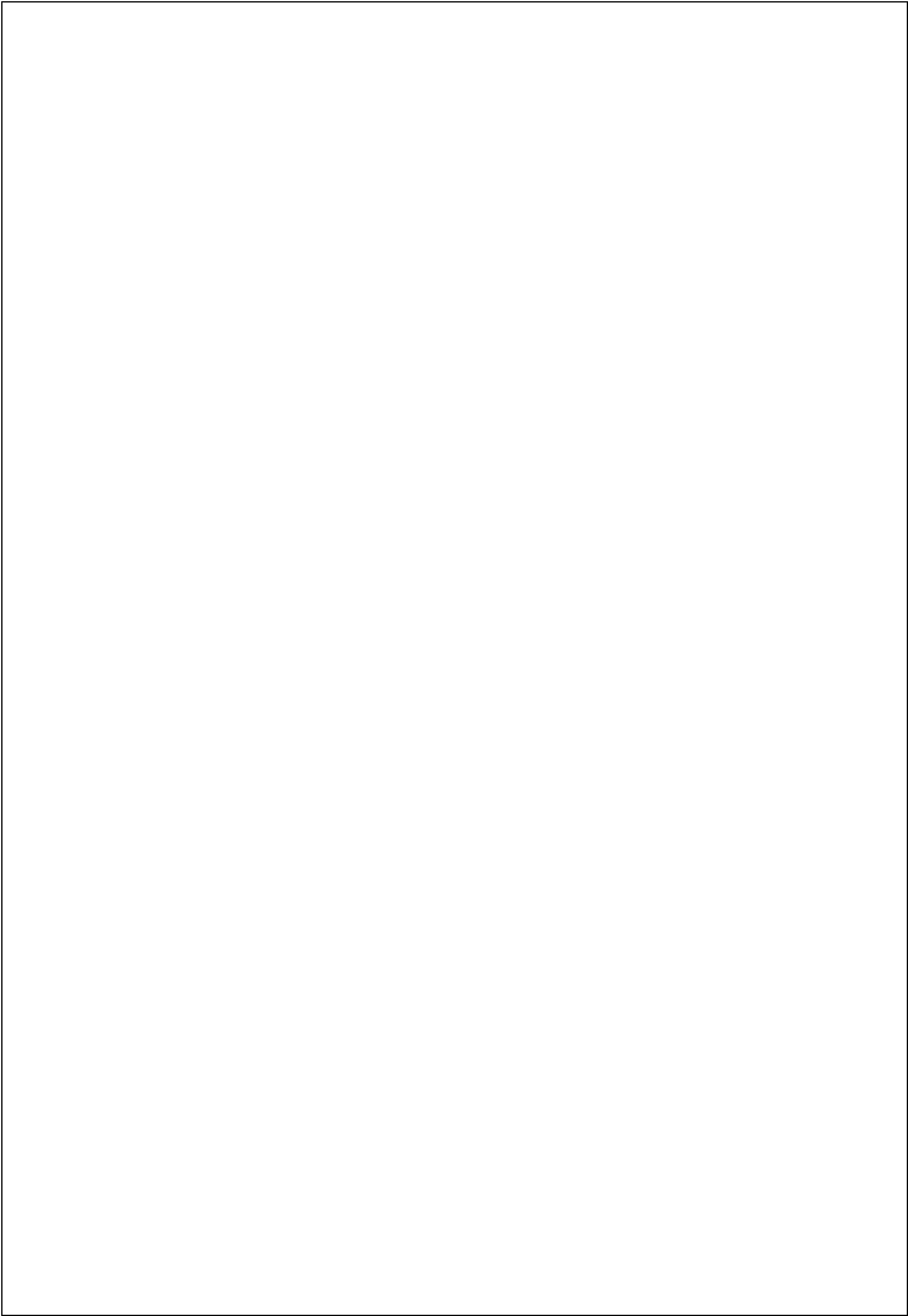


VAAMG Consulting

G-Cloud 15 – Terms and Conditions





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THIS AGREEMENT is made on _____ 20__

BETWEEN

- (1) **[Insert Client Name]** a company incorporated and registered in England and Wales (company number []) which has its registered office at [] ("**Client**"); and
- (2) **VAAMG Consulting Limited** a company incorporated and registered in England and Wales (company number 10087677) which has its registered office at [The White House, Castlethorpe Road, Hanslope, Milton Keynes, England, MK19 7HQ](#)

IT IS HEREBY AGREED as follows:

DEFINITIONS AND INTERPRETATION

In this Agreement and each SOW:

- 1.1. "**Acceptance**" means the acceptance or deemed acceptance of a Deliverable by the Client, as provided in clause 3.4 and "Accepted" shall be interpreted accordingly.
- 1.2. "**Acceptance Criteria**" means the criteria for acceptance of a Deliverable set out in the relevant SOW.
- 1.3. "**Acceptance Date**" means the date set out in a SOW by which the Client must notify VAAMG of its acceptance or rejection of a Deliverable, or if no date is specified in the SOW, then the date determined in accordance with clause 3.4.
- 1.4. "**Acceptance Testing**" means the conduct of agreed tests set out in the relevant SOW (or, if no such tests are set out, such tests as are agreed by the parties) to determine if a Deliverable has been Accepted.
- 1.5. "**Affiliate**" means, with respect to a legal entity, any other legal entity which is from time to time a subsidiary or holding entity of that entity or a subsidiary of any such holding entity.
- 1.6. "**Agreement**" means these terms and conditions, the attached schedules and any document referred to and incorporated herein by reference, as may be amended by the parties from time to time.
- 1.7. "**Change**" has the meaning given to it in clause 3.5.

1.8. **“Change Order”** means a written statement signed by the parties, in the format set out in the Appendix to schedule 1, recording the parties' agreement to make changes pursuant to the Change Control Procedure.

1.9. **“Change Control Procedure”** means the procedure described in clause 3.5 and schedule 1 to make changes to the Services.

1.10. **“Change Control Proposal”** has the meaning given to it in paragraph 4 of schedule 1.

1.11. **“Change Request”** has the meaning given to it in paragraph 3 of schedule 1.

1.12. **“Client Entity”** means the Client, any of its Affiliates or a Replacement Supplier.

1.13. **“Client Materials”** means any software, systems, hardware, documentation, information, data or other materials owned by or licensed by a third party to the Client that are provided to a VAAMG Entity by or on behalf of the Client and which may be used by a VAAMG Entity in connection with the provision of the Services.

1.14. **“VAAMG Entity”** means VAAMG, any of its Affiliates or any of its or their sub-contractors.

1.15. **“VAAMG Intellectual Property”** means any Intellectual Property Rights in general ideas, working methodologies, general knowledge and experience, processes, techniques, tools or internal processes or systems, source code, systems, platforms, solutions, know-how, data, documents, reports, records, works of authorship or creative works, specifications, system concepts, designs, samples, models, plans, sketches or drawings or other materials which have been or are acquired or developed by or on behalf of a VAAMG Entity or its licensors before, on or after the Effective Date and any modifications, enhancements or derivatives of such Intellectual Property Rights but excluding Newly Created IPR.

1.16. **“Commencement”** means the start of the provision of the Services (or part of them) by a VAAMG Entity.

1.17. **“Confidential Information”** means all information or proprietary materials which is disclosed before or after the Effective Date by one party (**“disclosing party”**) to the other (**“receiving party”**), however conveyed (including by way of oral descriptions, demonstrations or observations), and which relates to the business affairs of the disclosing party or its Affiliates, customers, employees, suppliers or subcontractors, including existing or contemplated products, services, operations, technology, processes, plans or intentions, developments, trade secrets, know-how, design rights, technical data, engineering, techniques, methodologies and concepts, market opportunities, business plans, sales, pricing and other financial information, unpublished patent specifications, photographs, databases, computer software in disk, cassette, tape or electronic form and data storage or memory in, any items of, computer hardware or any other materials or media of whatever nature and all information derived from the above, together with the existence and provisions of this Agreement and all SOWs and the negotiations relating to them.

1.18. **“Data Protection Legislation”** means the EU Data Protection Directive 95/46/EC as implemented in the UK by the Data Protection Act 1998, together with the equivalent legislation of any other applicable jurisdiction and all other applicable laws and regulations in any relevant jurisdiction relating to the processing of personal data and privacy.

1.19. **“Deliverables”** means the items specifically identified in the relevant SOW which VAAMG is obliged to produce and/or develop specifically for, and to provide to, the Client.

1.20. **“Dispute”** means any contractual or other dispute, difference, or question of interpretation arising out of, or in connection with, this Agreement or a SOW.

1.21. **“EEA”** means the European Economic Area.

1.22. **“Effective Date”** means the date first written above.

1.23. **“Employment Liabilities”** means losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with, relating to or arising out of the employment of any employee and/or its termination (and whether brought by the employee or an employee representative on behalf of an employee) including, without prejudice to the foregoing generality, any liability or obligation to reinstate any individual in employment, negligence claims by any employee or any third party and any liability or compensation for unfair or unlawful dismissal, unlawful discrimination, breach of contract, claims in relation to pension entitlement or a failure to inform and consult pursuant to any statutory or other obligations to inform and consult (including any such obligations owed to a works council or contained in any collective bargaining agreement), and any liability to make a redundancy payment (whether statutory, contractual or through custom and practice).

1.24. **“Fees”** means all monies payable by the Client to VAAMG in connection with performance of the Services and/or supply of the Deliverables, including all charges and compensation, in accordance with the provisions of this Agreement and as set out in the relevant SOW.

1.25. **“Force Majeure Event”** means an event which is beyond the reasonable control of the party affected by it (or its Affiliates or sub-contractors), including act of God, natural disasters, fire, flood, storm, war, military action, riot, civil

commotion, acts of state, terrorism, epidemic, explosion, malicious damage, non-availability of public networks, accident or breakdown of machinery, strike, lock-out or labour disputes.

1.26. **“Intellectual Property Rights” or “IPRs”** means: patents, utility models, supplementary protection certificates, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how), registered designs, rights in copyright (including authors' and neighbouring or related rights), database rights, design rights, trademarks and service marks 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.

1.27. **“Good Industry Practice”** means the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from a person engaged in providing services which are the same as the relevant services in similar circumstances.

1.28. **“Latent Data”** means data that is stored by a party on routine back-up media for the purpose of disaster recovery including, but not limited to deleted files and other non-logical data types, memory dumps, swap files, temporary files, printer spool files and metadata that can customarily be retrieved only by computer forensics experts and is generally considered inaccessible without the use of specialised tools and techniques.

1.29. **“Newly Created IPR”** means those Intellectual Property Rights created specifically for the Client pursuant to this Agreement or any SOW but excluding modifications, enhancements or derivatives of VAAMG Intellectual Property

which is in existence prior to the Effective Date; or (ii) the creation of which falls outside the scope of the Services.

1.30. **“Replacement Supplier”** means a supplier who supplies services immediately after termination or expiration of the Services, and in the place of VAAMG, that are similar to or the same as the Services.

1.31. **“Services”** means the services to be provided by VAAMG to the Client under the Statements of Work, including the development of any Deliverables.

1.32. **“Specifications”** means the specifications for the Deliverables set out in the relevant SOW.

1.33. **“Statement”** means any warranty, statement, representation, misrepresentation (as to facts or otherwise) understanding, undertaking, proposal or other communication.

1.34. **“Statement of Work” or “SOW”** means a specific document agreed in writing by the parties thereto pursuant to the terms of this Agreement setting out

specific Services and Deliverables to be provided by VAAMG to the Client (or its Affiliate) and all relevant requirements and information relating thereto, including project scope, project activities and tasks to be performed by each party, their roles and responsibilities, assumptions, any delivery timescales, relevant Acceptance Criteria, Acceptance Date, Acceptance Testing, the charging mechanism and the applicable Fees, and including any document referred to and incorporated therein by reference.

1.35. **“Tax”** means all taxes, imposts, duties, levies, or fees of any kind payable to any governmental, fiscal or taxing authority in the United Kingdom or elsewhere. The definition of “Tax” includes any penalties, additions, fines or associated interest. The words **“Taxes”** and **“Taxation”** and similar expressions will be interpreted in accordance with this definition.

1.36. **“Termination”** means the termination or expiry of the provision of the Services (or part of them) by a VAAMG Entity.

1.37. **“Warranty Period”** means a period of thirty (30) days following Acceptance of the relevant Deliverable or such other period set out in the applicable SOW.

1.38. **“Working Day”** means a day (other than a Saturday or Sunday) on which the retail banks are ordinarily open for business in the relevant location.

1.39. **Interpretation.** In this Agreement and any SOW: (a) the clause headings are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement or any SOW; (b) reference to any agreement, contract, document or deed shall include that document as varied, supplemented or novated from time to time; (c) reference to a party shall, upon any assignment or other transfer that is permitted by this Agreement, be construed to include those successors and permitted assigns or transferees; (d) the words “including”, “include”, “for example”, “in particular” and words of similar effect shall not limit the general effect of the words which precede them; (e) references to a clause are references to a clause of this Agreement or of a SOW, as the context requires; (f) references to any notice given under this Agreement or any SOW shall mean a notice given in accordance with clause 13.4; (g) reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same; (h) a reference to a person will include any individual, firm, partnership, organisation, institution, trust or agency, corporate body and unincorporated association; and (i) words used in the singular tense should be interpreted to include the plural tense and vice versa, and words which refer to one gender should be interpreted to include other genders.

1.40. **Order of Precedence and Relationship between Agreement and SOWs.**

If there is any conflict, ambiguity or inconsistency between the clauses of this Agreement and any SOW, the clauses of this Agreement shall prevail.

This Agreement governs the relationship between the Client/its Affiliates and VAAMG in respect of the provision of the Services by VAAMG to the Client or to the Client's Affiliates pursuant to SOWs entered hereunder.

The parties acknowledge and agree that, notwithstanding the terms of any purchase order or other documents (even where such purchase order or other documents are expressed to apply to the provision of the Services), only the terms of this Agreement and applicable SOWs will apply to the provision of the Services to the exclusion of any such terms (including the exclusion of such purchase order or other documents).

TERM

This Agreement shall come into force on the Effective Date and shall continue unless and until terminated in accordance with its terms. The term of each SOW shall be set out in that SOW.

PROVISION OF SERVICES

- 3.1. **Services and Deliverables.** VAAMG shall provide the Services in accordance with this Agreement and the relevant terms set out in each SOW.
- 3.2. **Statements of Work.** VAAMG and the Client may, but are not obligated to, develop and enter into one or more SOWs. Each SOW shall be a separate and independent contract between the parties to it, shall specifically identify this Agreement and shall be subject to and incorporate the terms and conditions of this Agreement. A SOW shall not be effective unless executed by a representative of each party to it.
- 3.3. **Acceptance of Deliverables.** If VAAMG provides any Deliverable which needs to be tested by the Client, this clause 3.3 shall apply.
 - (a) The Client shall review, evaluate and/or carry out Acceptance Testing in respect of each Deliverable by the applicable Acceptance Date to determine if such Deliverable satisfies the applicable Acceptance Criteria in all material respects. If the SOW does not set out an Acceptance Date for a Deliverable then the Acceptance Date shall be five (5) Working Days from delivery of the relevant Deliverable to the Client.
 - (b) VAAMG shall provide reasonable assistance to assist the Client in carrying out the Acceptance Testing.
 - (c) The Client shall promptly notify VAAMG in writing of its acceptance of the Deliverable. The Client shall be deemed to have accepted a Deliverable at the earlier of: (a) the Client not providing a written notice to VAAMG specifying that such Deliverable has failed to meet its Acceptance Criteria in all material respects by the Acceptance Date, or (b) the Client placing the Deliverable into operation in a production environment.

(d) The Client shall promptly notify VAAMG if a Deliverable fails the Acceptance Testing, and VAAMG shall use reasonable endeavours to remedy such failure at its cost within a reasonable amount of time. If VAAMG fails to remedy the affected Deliverable then the Client may, by written notice to VAAMG, at its sole option:

(i) *accept the Deliverable as is; or*

(ii) *reject the Deliverables and terminate the relevant SOW pursuant to clause 10.1(a).*

3.4. **Project Schedule and Changes.** Each SOW shall set out the projected allocated activities/responsibilities of each party and time scales applicable to the Services. All statements and agreements concerning time are good faith estimates based upon information available and circumstances existing at that time, including any assumptions set out in the SOW. Each SOW is subject to amendment in the event of any change in such information, circumstances or assumptions, the occurrence of a failure or delay by the Client or third party to comply with its obligations, or upon modification of the scope, timing or level of work or resources to be performed or provided by VAAMG (“**Change**”). The parties acknowledge that any such Change may have an impact on the Fees, the project schedule and other services. Either party shall be entitled to propose Changes in accordance with the Change Control Procedure or otherwise agreed in writing pursuant to clause 13.5. Neither party shall have any obligation in respect of any Change until agreed in writing pursuant to clause 13.5 or under an agreed Change Order.

3.5. **Affiliates.** VAAMG may engage any of its Affiliates to provide Services and Deliverables to the Client and any Affiliate of the Client for VAAMG under this Agreement including within a jurisdiction where the Client or the Client Affiliate is located. Notwithstanding anything to the contrary in this Agreement, VAAMG will remain fully liable for Services and Deliverables provided under this Agreement by its Affiliates. Any Affiliate of the Client may enter into SOW(s) with VAAMG and, only for the purposes of any such SOW(s), shall be considered “Client” as that term is used in this Agreement.

CLIENT OBLIGATIONS

4.1. **Working Environment.** The Client shall provide for VAAMG, its agents, subcontractors, consultants and employees, in a timely manner and at no charge: (a) access to the Client’s and its relevant Affiliates’, contractors’ or customers’ premises, suitable office accommodation, equipment, data, information and other facilities (including Client Materials) as required by VAAMG and be responsible for preparing and maintaining the relevant premises or equipment and Client Materials for the supply of the Services; (b) the same appropriate training as it provides to its own staff on health and safety and information security policies relevant to each such premises and inform VAAMG in writing of all health and safety rules and regulations and any

other reasonable security requirements that apply at any of the Client's or relevant Client Affiliates' premises from where the Services are provided; (c) obtain in advance and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services including obtaining all relevant third party licences and consents to allow VAAMG to access and use Client Materials; and (d) any other items set out in each SOW.

- 4.2. **Client's Personnel Commitment.** The Client shall, and shall ensure that all its personnel and those of its relevant Affiliates and contractors who may be necessary or appropriate for the successful implementation of the Services, co-operate with VAAMG in all matters relating to the Services and, on reasonable notice: (a) are available to assist VAAMG's personnel by answering business, technical and operational questions and providing requested information, documents, guidelines and procedures in a timely manner; (b) participate in the Services as set out in the SOW; (c) participate in Service-related meetings as requested by VAAMG; (d) contribute to any software and system testing, including testing of the Deliverables; (e) provide such information and documentation as VAAMG may require, and ensure the accuracy of the same; and (f) are available to assist VAAMG with any other activities or tasks required to complete the Services in accordance with the SOW. The Client acknowledges that, except where VAAMG is notified otherwise in writing, VAAMG Entities will be entitled to rely on the apparent authority of any Client's personnel providing instructions to them whom it is reasonable to assume is authorised to do so, and VAAMG shall not be liable for any consequences of VAAMG following the instructions of actual or apparently authorised Client's personnel or of its contractors as applicable.
- 4.3. The Client shall, and shall ensure that all its personnel and those of its Affiliates and contractors: (i) do not access any of VAAMG's or its other clients' premises without the prior written consent of VAAMG; and (ii) comply at all times with VAAMG's security policy and instructions when at VAAMG's premises.
- 4.4. **Visa/Work Permits.** In the event that it is necessary for VAAMG to obtain visas or work permits for VAAMG's personnel involved in the provision of the Services, the Client shall cooperate with VAAMG by taking all reasonably necessary actions as requested by VAAMG to facilitate VAAMG's efforts in that respect.
- 4.5. **Corruption and Bribery.** Each party shall comply with all applicable laws and regulations regarding anti-corruption and anti-bribery. To the extent that the Services or Deliverables cannot be performed or provided without violation of any law, regulation, or other control, then VAAMG shall not be obligated to provide the same and the applicable SOW shall be amended accordingly.

FEES AND PAYMENT

- 5.1. **Fees.** The Client shall pay VAAMG the Fees set out in each SOW or otherwise agreed upon in writing by the parties. The Client shall reimburse VAAMG for all reasonable out-of-pocket travel, living, ancillary expenses and other reimbursable items paid or incurred by VAAMG in connection with the provision of the Services. VAAMG shall have no obligation to perform any Services when any amount required to be paid by the Client remains due and unpaid beyond the date such amount is due. Any suspension of Services by VAAMG as a result of the Client's failure to make payment as required shall extend the due dates of Deliverables and other Services to the extent impacted by such suspension or delay, and VAAMG shall not be liable to the Client for any liabilities, losses, costs or damages arising therefrom.
- 5.2. **Invoicing.** Unless otherwise set out in a SOW, VAAMG shall invoice the Client for all Fees and reimbursable items payable to VAAMG monthly in arrears. The Client shall pay each invoice within thirty (30) days of the date of such invoice, provided that the Client may withhold payment of invoiced amounts which are promptly disputed in good faith pending resolution of such good faith dispute.
- 5.3. **Taxes.**
- (a) The Client shall pay amounts equal to VAT and other Taxes, however designated or levied, which relate to any amounts payable by the Client to VAAMG under this Agreement or any SOW for the Services and/or Deliverables and any Taxes paid or payable by VAAMG in connection with the Services and/or Deliverables, other than Taxes payable on VAAMG's net profits and those specified in clause 12.1. VAAMG shall invoice the Client for any Taxes payable by the Client that are required to be collected by VAAMG pursuant to any applicable law, rule or regulation.
 - (b) The Client shall pay each invoice in full and in cleared funds without any deduction, set off or withholding for or on account of Tax (for the purpose of this clause a "**Tax Deduction**") or otherwise. The Client shall promptly, upon becoming aware that it must make a Tax Deduction as required by law or that there is any change in the rate or the basis of a Tax Deduction, notify VAAMG accordingly. If Client is required to make any Tax Deduction, Client agrees to gross up the payment it actually makes in respect of the relevant invoice such that VAAMG receives sums due hereunder in full and free of any such Tax Deduction.
 - (c) The parties shall reasonably work together with respect to any audits, disputes or requests for information with respect to Taxes in connection with, or as a result of, this Agreement or any SOW. This commitment shall include the provision of all relevant information, documents and reasonable support and it shall survive the termination of this Agreement or the relevant SOW.

INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

- 6.1. **Deliverables.** Subject to clause 6.3, upon payment in full, the Deliverable shall become the property of the Client and the Newly Created IPR shall vest in the Client.
- 6.2. **Residual Rights.** Nothing in this Agreement or any SOW shall prohibit or restrict (a) VAAMG or its Affiliates or their respective employees, agents, or subcontractors from using or disclosing in the course of its business any technical knowledge, know-how, ideas, skill or expertise acquired by such persons in the performance of the Services, provided that in so doing it does not breach any obligation of confidentiality arising pursuant to this Agreement or any SOW; or (b) the use or exploitation by VAAMG and its Affiliates of any VAAMG Intellectual Property.
- 6.3. **VAAMG Intellectual Property.** The Client acknowledges that as part of performing the Services, VAAMG's personnel may utilize VAAMG Intellectual Property. The Client acknowledges that VAAMG Intellectual Property is the sole property of VAAMG (or its licensor) and that VAAMG (or its licensor) shall at all times retain sole and exclusive title to and ownership thereof. Where VAAMG Intellectual Property owned by VAAMG is embedded into a Deliverable, the Client is hereby granted a royalty-free, non-exclusive and non-transferable right to use such VAAMG Intellectual Property solely in conjunction with the relevant Deliverable and for the purpose of its intended use, subject to (a) the restriction that it may not be extracted from that Deliverable or used as a standalone product and (b) any further limitations set out in the relevant SOW. Save as set out in this clause 6.3, nothing in this Agreement or any SOW shall be construed to grant to the Client any right, title, licence or other interest in, to or under any VAAMG Intellectual Property.
- 6.4. **Client Materials.** All Client Materials will be owned or fully licensed to the Client. VAAMG acknowledges that Client Materials are the sole property of the Client (or its licensor) and the Client (or its licensor) shall at all times retain sole and exclusive title to and ownership thereof. VAAMG Entities are permitted to use and modify the Client Materials as necessary to perform the Services. The Client will reasonably cooperate with VAAMG in respect of any audit related to VAAMG's use and possession of Client Materials or Client's use and possession of VAAMG Intellectual Property.
- 6.5. **Indemnity.** VAAMG and the Client (in such case, the "indemnifying party") each agree to indemnify the other (in such case, the "indemnified party") from and against any costs and damages awarded against the indemnified party by a court pursuant to a final judgment or a settlement by the indemnifying party, as a result of, and defend the indemnified party against, any claim of infringement of any patent or copyright related to the possession of a Deliverable (in the case of indemnification by VAAMG) or any claim relating to VAAMG's possession, use or modification of any Client Materials or breach by Client of any third party licence terms in respect of any third party software or material

provided to the Client by VAAMG (in the case of indemnification by the Client) ("**IPR Claim**"). The conduct of any IPR Claim shall be in accordance with clause 13.1.

- 6.6. **Exclusions.** VAAMG shall have no obligation under clause 6.5 or other liability for any IPR Claim to the extent resulting or alleged to result from: (a) use of the Deliverables or any part thereof in combination with any equipment, software or data not approved for use by VAAMG, or use in any manner for which the Deliverable was not designed, or any modification or alteration of the Deliverable by a person or entity other than VAAMG or its agents or subcontractors; (b) any instruction, information or other materials provided by or on behalf of the Client to VAAMG under this Agreement or any SOW; or (c) the Client's continuing the allegedly infringing activity after being notified or after being provided with modifications that would have avoided or mitigated the alleged infringement.
- 6.7. **Infringement Remedies.** In the event of an IPR Claim, or if VAAMG reasonably believes that an IPR Claim is likely to be made, VAAMG may, at its option and in lieu of indemnification: (a) modify the applicable Deliverables so that they become non-infringing but functionally equivalent; (b) replace the applicable Deliverables with items that are non-infringing but functionally equivalent; or (c) obtain for the Client the right to use such Deliverables upon commercially reasonable terms. This clause 6 sets out the sole and exclusive remedy and entire liability and obligation of each party with respect to IPR Claim.

CONFIDENTIALITY

- 7.1. **Confidentiality Obligations.** The receiving party shall:
- (a) keep Confidential Information of the disclosing party secret and confidential, and use security measures and a degree of care to protect the Confidential Information which are no less than the receiving party applies to its own confidential or proprietary information of a similar nature, but in no event less than reasonable care;
 - (b) not disclose the disclosing party's Confidential Information to any third party except with the prior written consent of the disclosing party or in accordance with this clause 7; and
 - (c) only use the disclosing party's Confidential Information to perform its obligations under this Agreement and SOWs.
- 7.2. **Exceptions.**
- (a) Notwithstanding clause 7.1, the receiving party may disclose the disclosing party's Confidential Information to its directors and employees (and VAAMG may disclose it to its Affiliates, sub-contractors or other third parties in order to enable VAAMG to provide the Services), who have a need to know such Confidential Information in connection with this Agreement or a SOW (together, "**Representatives**"), provided that such Representatives have

executed an agreement with the receiving party with confidentiality provisions that are at least as stringent as the confidentiality requirements under this Agreement. The receiving party shall take reasonable steps to enforce the terms of any such agreement to protect the disclosing party's Confidential Information.

(b) The obligations set out in clause 7.1 shall not apply in respect of Confidential Information that:

- (i) *was in the receiving party's possession at the time of disclosure and without restriction as to confidentiality;*
- (ii) *is or becomes generally available to the public through no breach of this agreement or other wrongful act by the receiving party;*
- (iii) *has been received from a third party without restriction; or*
- (iv) *is independently developed by the receiving party without regard to the Confidential Information of the disclosing party.*

7.3. **Compelled Disclosure.** The receiving party may disclose Confidential Information as required to comply with binding orders of courts and governmental entities that have jurisdiction over it, provided that (insofar as legally permissible) the receiving party: (a) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy; (b) discloses only such Confidential Information as is required by the court or governmental entity; and (c) uses commercially reasonable endeavours to obtain confidential treatment for any Confidential Information so disclosed.

7.4. **Return of Confidential Information.** Subject to clauses 7.5 and 7.6, promptly following the earlier of: (a) the termination of this Agreement (unless the return or destruction of such Confidential Information would prohibit or restrict VAAMG's ability to perform its obligations under a SOW); (b) an applicable SOW, and (c) the written request of disclosing party, the receiving party shall destroy or return all documents or other materials provided by disclosing party to the receiving party constituting Confidential Information, together with all copies, including computer disks in the possession of receiving party. Upon request, the receiving party shall certify such destruction in writing to the disclosing party. Where the request for the return or destruction of Client Confidential Information prevents, hinders or delays VAAMG in the performance of the Services, VAAMG shall have no liability for any non or partial performance of its obligations or any delay in respect of the same.

7.5. **Latent Data.** Latent Data which is Confidential Information shall be subject to destruction in due course but shall remain subject to clauses 7.1 to 7.3 until it is so destroyed.

7.6. **Legal Counsel.** Notwithstanding anything to the contrary in this clause 7, legal counsel for the receiving party may retain one copy of Confidential Information as well as documents, memoranda, notes and other writings

prepared based on the Confidential Information. In addition the receiving party may retain such material or copies of such material containing Confidential Information furnished by the disclosing party to the extent required by law and may use it solely for the purpose provided by such law. During such retention, all such Confidential Information contemplated herein shall remain subject to clauses 7.1 to 7.3.

WARRANTY

8.1. **Mutual Warranties.** Each party warrants to the other that:

- (a) it has the requisite power and has taken all actions necessary to execute this Agreement and any SOW; and
- (b) this Agreement and each SOW when signed by each party, constitutes legal, valid and binding obligations of that party in accordance with its terms.

8.2. **Performance Warranties.** VAAMG warrants to the Client that:

- (a) the Services shall be performed by qualified personnel with reasonable diligence and care and in accordance with Good Industry Practice;
- (b) the Services shall conform substantially to the applicable requirements set out in the relevant SOW; and
- (c) each Deliverable shall conform in all material respects with its Specifications during the applicable Warranty Period.

8.3. **Remedies.** VAAMG does not warrant that any Deliverable shall operate uninterrupted or error-free, without prejudice to clause 8.2. In the event that any Deliverable fails to conform to the warranty in clause 8.2(c) in any material respect, VAAMG shall (at its expense) use commercially reasonable endeavours to cure or correct such failure promptly.

8.4. **Requirements for Warranty Claims.** The warranty in clause 8.2(c) is subject to:

- (a) the Client's providing VAAMG with prompt written notice of any warranty claim specifying the non-conformity and such notice must be given within the Warranty Period;
- (b) the Client fully cooperating with VAAMG relating to the warranty claim, including assisting VAAMG to locate and reproduce the non-conformity; and
- (c) the absence of any tampering, misuse, failure to comply with VAAMG recommendations or instructions as to use and operation, or any alteration or other modification of such Deliverable by any person or entity other than VAAMG.

8.5. **Client's Responsibility.** If the Client asserts any claim in respect of defective Services or Deliverables hereunder (including under the warranties in clause 8.2) and such claim relates to any matter that is determined not to be VAAMG's responsibility under this Agreement or any SOW (including any problem with

Client Materials that was not caused by any Services performed by VAAMG), the Client shall be responsible to pay VAAMG for all evaluation, correction or other services performed by VAAMG relating to such claim on a time and materials basis at VAAMG's then-standard billing rates.

LIMITATION OF LIABILITY

- 9.1. This clause 9 sets out the entire liability of the parties (including any liability for the acts and omissions of its employees, agents, subcontractors and Affiliates) in respect of all claims arising under or in connection with this Agreement and any SOW, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, on indemnity basis or otherwise.
- 9.2. Nothing in this Agreement or any SOW shall exclude or limit either party's liability to the other party for: (a) death or personal injury as a result of negligence; (b) fraud or fraudulent misrepresentation; (c) any other liability which cannot be limited or excluded by law; or (d) as regards the Client, any claim by VAAMG for Fees due for payment.
- 9.3. Subject to clause 9.2, in no event shall either party (including its Affiliate) be liable to the other in contract, tort (including negligence), breach of statutory duty, misrepresentation, on indemnity basis or otherwise, for any of the following losses or damages howsoever caused and even if such losses and/or damages were foreseen, foreseeable or known, or that party was advised of the possibility of them in advance: (a) any loss of business or business opportunity, loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of anticipated savings, loss of, damage to, or corruption of, data, economic loss, loss of goodwill, whether such losses are direct, indirect or consequential; or (b) any indirect, special, exemplary, punitive or consequential loss or damage.
- 9.4. Subject to clauses 9.2 and 9.3, the maximum aggregate liability of each party (including its Affiliates) to the other party (including its Affiliates), for all causes of action, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, on indemnity basis or otherwise, for any losses whatsoever and howsoever caused: (a) arising under or in connection with a SOW shall be limited to the Fees paid under that SOW; (b) provided always that the maximum aggregate liability arising under or in connection with this Agreement (including all SOWs) shall be limited to the total Fees paid under this Agreement (including all SOWs) in the twelve (12) months prior to the first claim (where the first claim is made after the termination of this Agreement, this limitation shall be calculated as being an amount equivalent to the amount in the final twelve (12) months of this Agreement or the last SOW as applicable); save that either party's liability in respect of clause 13 (ARD) shall not be capped.
- 9.5. If VAAMG's performance of its obligations under this Agreement or any SOW is prevented, hindered or delayed by any act or omission of the Client, its Affiliates, agents, subcontractors, consultants or employees, or if any

assumption contained in a SOW is untrue or incorrect or in respect of any consequences arising as a result of VAAMG or VAAMG's personnel following the instructions of any Client's personnel ("**Relief Event**"), VAAMG shall not be liable for any costs, charges, liabilities or losses sustained or incurred by the Client that arise directly or indirectly from such Relief Event and VAAMG shall be relieved of its obligations to provide the Services and Deliverables to the extent performance of such obligations is impeded by such events. The Client acknowledges that such prevention or delay may result in additional Fees for the Services.

- 9.6. Each party shall mitigate its loss, including in relation to indemnities, and nothing in this Agreement or any SOW shall act to reduce or affect such duty to mitigate.

TERMINATION

- 10.1. Either party to this Agreement may terminate this Agreement or either party to a SOW may terminate that SOW (as applicable) with immediate effect by written notice to the other if the other party:
- (a) commits a material breach of this Agreement or the relevant SOW (as applicable) which has not been remedied within thirty (30) days of receipt of a written notice specifying both the material breach and the intention to terminate this Agreement or the relevant SOW (as applicable) if the material breach is not remedied;
 - (b) has appointed to it an administrator or administrative receiver; or being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners.
- 10.2. Either party to this Agreement may terminate this Agreement and either party to a SOW may terminate that SOW (as applicable) in accordance with clause 13.3.
- 10.3. Termination, expiry, or the occurrence of any event or circumstance which could give rise to termination of a SOW shall not of itself give rise to termination or the right to terminate any other SOW unless specifically stated in such other SOW. Unless otherwise specifically stated in a SOW, termination, expiry, or the occurrence of any event or circumstance which could give rise to termination of this Agreement shall not of itself give rise to termination or the right to terminate any SOW and, irrespective of termination or expiry of this Agreement, the terms and conditions of this Agreement shall continue to apply to and govern any such surviving SOW.
- 10.4. The rights of termination specified in this clause and elsewhere in this Agreement are intended to be exhaustive and in lieu of any other rights of termination howsoever arising, whether at common law or otherwise. Accordingly, the parties agree that no rights of termination of this Agreement or any SOW exist, save as expressly stated in this Agreement.

- 10.5. Upon termination of this Agreement and/or the respective SOW, VAAMG shall be entitled to recover payment for all Services rendered through the date of termination (including for work in progress), and in the event of termination of this Agreement or any SOW by VAAMG (whether in whole or in part), pursuant to clause 10.1, VAAMG shall also be entitled to recover reasonable stranded costs to the extent they cannot reasonably be mitigated.

DATA PROTECTION

- 11.1. During the term of this Agreement or any SOW, either party may be processing the other party's personal data in relation to performance or receipt of the Services. VAAMG's processing may also include transfer of personal data overseas. The parties acknowledge that, for the purposes of this Agreement and any SOW, in respect of VAAMG's personal data processed by the Client, VAAMG is the data controller and the Client is the data processor; and in respect of the Client's personal data or any personal data provided by or on behalf of the Client processed by VAAMG, the Client is the data controller and VAAMG is the data processor. For the purposes of this clause, the terms "personal data", "data processing", "data controller", "data processor" and "data subject" shall have the meaning given to them in the Data Protection Legislation.
- 11.2. The data controller warrants to data processor that: (a) all such personal data has been collected and processed in accordance with notice, consent and other requirements of the Data Protection Legislation (and, where applicable, has been notified to the relevant authorities); (b) it has the right to transfer, or provide access to, personal data to the data processor and its third party service providers, for processing it for the purposes contemplated in this Agreement and the relevant SOW (and, where applicable, the necessary consents have been obtained); and (c) the data processor is entitled to process the personal data for the purposes contemplated in this Agreement and the relevant SOW and such use will be in accordance with the Data Protection Legislation.
- 11.3. The data processor warrants to the data controller that it has in place technical and organisational measures which are designed to protect against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and security programs and procedures designed to ensure that unauthorised persons shall not have access to the personal data, and that any persons it authorises to have access to the personal data shall maintain the confidentiality and security of the personal data.
technical and organisational measures taken by VAAMG are set out in the data security policy in schedule 2.
- 11.4. The data processor shall: (a) use the personal data solely for performing its obligations under this Agreement or the relevant SOW and not disclose the personal data to a third party (other than for the purpose of performing the Services pursuant to this Agreement) without the prior consent of the data controller; and (b) appoint, and identify to the data controller an individual within its organisation authorised to respond to enquiries from the data

controller concerning the data processor's processing of the data controller's personal data.

- 11.5. The data processor may transfer the personal data to (a) a third country outside the EEA where such country is deemed by the European Commission to provide adequate levels of privacy protection or, where requested by the data controller, the data processor enters into a data transfer agreement either in accordance with the principles set out in the European Commission standard contractual clauses 2010/87/EC or in compliance with applicable laws. The data controller hereby authorises any transfers of personal data to, or access to personal data from, such destinations outside the UK contemplated in this Agreement or any SOW.
- 11.6. The data processor shall only process personal data in accordance with the data controller's written instructions. The data controller shall set out such instructions in the respective SOW and only give such instructions in compliance with applicable Data Protection Legislation. The data controller shall indemnify and hold harmless the data processor in respect of all losses, damages, costs and expenses and other liabilities (including reasonable legal fees, fines, disbursements and expenses) incurred by or awarded against the data processor as a result of the data processor complying with the data controller's instructions, directions or its exercise of any right in relation to the personal data.

EMPLOYEES

- 12.1. **No Employee Relationship.** VAAMG's and its agents' and subcontractors' employees are not and shall not be deemed to be employees of the Client. The performance of the Services by VAAMG and this Agreement will not constitute a transfer of employer authority over employees of VAAMG from VAAMG to the Client. The Client agrees that VAAMG retains all management responsibilities in respect of the employees of VAAMG and agrees to promptly refer all grievances, disciplinary, performance management or other personnel issues to VAAMG. VAAMG shall be solely responsible for the payment of all compensation to its employees including any employment-related taxes.
- 12.2. **Non-Solicitation Obligations.** During the term of this Agreement and any SOW and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly for themselves or on behalf of anybody else, solicit for employment or engagement or employ, or accept services provided by, any current or former employee or independent contractor of the other party (including those of VAAMG Affiliates engaged in the provision of Services hereunder), who performed any work in connection with or related to the Services. This restriction does not apply to employment or engagement of an individual who responds of their own volition to general recruitment activities not specifically targeted at that individual.

MISCELLANEOUS

- 13.1. **Conduct of claims in respect of indemnity clauses.** No indemnity clause in this Agreement shall apply unless the indemnified party: (a) promptly notifies the indemnifying party of any claim or event (which may reasonably be considered as likely to give rise to a liability under an indemnity clause) made or occurring, or of which the indemnified party has knowledge; (b) gives the indemnifying party full opportunity to control the response to, defence and settlement of such claim, and provided further that the indemnified party shall not at any time admit liability or settle any such claim or action without the prior written consent of the indemnifying party; and (c) cooperates with the indemnifying party, at the indemnifying party's cost and expense in the defence or settlement of that claim. The indemnified party shall have the right to participate in the proceedings at its costs.
- 13.2. **Adequacy of Damages.** Each party acknowledges that money damages may be both incalculable and an insufficient remedy for any breach of clauses 7 (Intellectual Property Rights) and 8 (Confidentiality) of this Agreement and that any such breach by a party may cause the other party irreparable harm. Accordingly, each party also agrees that, in the event of any such breach or anticipated breach, the other party, in addition to any other remedies at law or in equity it may have, shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including injunctive relief and specific performance from any court of competent jurisdiction.
- 13.3. **Force Majeure.** If either party is delayed or prevented from complying with its obligations under this Agreement or any SOW by a Force Majeure Event, then such party shall not be in breach of this Agreement or the affected SOW (as applicable) nor liable for any failure or delay in performance of any of its obligations. If the Force Majeure Event continues for more than two months, either party may terminate this Agreement or any SOW affected by the Force Majeure Event by giving 30 days' written notice to the other party.
- 13.4. **Notices.**
- (a) Notices required to be given pursuant to clauses 5.3, 7.3, 8.4, 10, 13.1 or 13.6, or which invoke or relate to any actual or potential dispute or any allegation of a breach of contract or commission of a tort ("Formal Notices") shall be given in writing to the other party and delivered by registered mail, international air courier or facsimile. Notices will be effective when received as indicated on the facsimile, registered mail, or other delivery receipt. All Formal Notices shall be given by one party to the other at its address stated on the first page of this Agreement unless a change thereof previously has been given to the party giving the notice, and any Formal Notices to VAAMG shall be addressed for the attention of VAAMG's General Counsel.
 - (b) All notices which are required to be given by this Agreement or a SOW which are not Formal Notices shall be sent to the person and address designated by the receiving party and the provisions of clause 13.4(a) shall otherwise apply,

except that they may instead be given by email if an email address has been designated for such purposes. If so, they shall be deemed effective when sent unless the sender receives an automated response notifying him of problems in the delivery of the message or that the recipient is not in regular receipt of emails.

- 13.5. **Amendments.** No variation of this Agreement, any SOW or any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties: (a) to this Agreement (in respect of changes to this Agreement); and (b) to the relevant SOW (in respect of changes to that SOW).
- 13.6. **Waivers.** No reasonable delay by either party to exercise any right or remedy arising under, or in connection with, this Agreement or any SOW (collectively, any “action”) shall act as a waiver, or otherwise prejudice or restrict the rights of that party, in relation to that action or any other contemporaneous or future action.
- 13.7. **Severability.** If any provision (or part thereof) of this Agreement or a SOW is determined to be partially void, illegal, invalid or unenforceable in any respect by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject, or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only, and the legality, validity and enforceability of any of the other provisions or the remainder of any such provision shall not be affected or impaired. If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.
- 13.8. **Counterparts.** This Agreement and each SOW may be executed in several counterparts and by remote signature, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall be deemed an original of this Agreement or a SOW (as the case may be), and all of which taken together shall constitute one and the same agreement.
- 13.9. **Entire Agreement.** Subject to clause 9.2(b):
- (a) this Agreement and each SOW does and will constitute the entire agreement and understanding between the parties in respect of its subject matter and supersede, cancel and nullify any previous agreements, Statements and all other prior or contemporaneous communications between the parties or given by or on behalf of the parties and relating to its subject matter;
 - (b) except as expressly set out in this Agreement or a SOW, neither party makes or gives (and each party hereby excludes to the maximum extent permitted by law) any Statement or condition of any kind, whether statutory, express or implied, including any implied warranty of merchantability, satisfactory quality, fitness for a particular purpose or any representation, warranty or condition from course of dealing or usage of trade;

- (c) each party acknowledges that it has not, and will not have, relied on or been induced to enter into this Agreement or any SOW by, and shall have no remedy (whether in equity, contract, tort under the Misrepresentation Act 1967 or otherwise) in respect of, any Statement (whether made negligently or innocently by either of them or any other third party, save for fraud or fraudulent misrepresentation) unless that Statement is expressly set out in this Agreement or a SOW;
 - (d) neither party shall be entitled to (and waives any right to) claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any Statement whether made by either of them or any other third party and whether or not it is set out in this Agreement or a SOW.
- 13.10. **Publicity.** VAAMG may in its general promotional material (a) identify the Client as a client of VAAMG, save that it does not disclose any Confidential Information regarding the relationship between the parties, including the terms of this Agreement or any SOW, without the prior consent of the Client; and (b) use the Client's logo in such materials provided its use conforms with any guidelines issued by the Client to VAAMG from time to time. The Client agrees to provide a reference for VAAMG from time to time.
- 13.11. **Consents and Approvals.** Except where expressly provided as being in the discretion of a party, where approval, acceptance, consent or similar action by either party is required under this Agreement or the applicable SOW, it shall not be unreasonably withheld or delayed, and each party shall make only reasonable requests under this Agreement or any SOW.
- 13.12. **Contracts (Rights of Third Parties) Act 1999.** A person who is not a party to this Agreement or a SOW shall have no right to enforce any terms of this Agreement or that SOW, including under the Contracts (Rights of Third Parties) Act 1999.
- 13.13. **Relationship of the parties.** Nothing in this Agreement or any SOW is intended to create or shall be deemed to constitute a partnership, a joint venture or legal relationship of any kind between the parties that would impose liability upon one party for an act (or failure to act) of the other party, or to authorise either party to act as agent for the other. Except where otherwise expressly provided in this Agreement, neither party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other. Each party shall act reasonably in the performance of this Agreement and each SOW.
- 13.14. **Further assurance.** Each party shall, at the reasonable request and the cost of the other, do, execute, perform or procure to be done, executed or performed, all such further acts, deeds, documents and things as may from time to time be necessary to give full effect to this Agreement or a SOW.
- 13.15. **Survival.** Termination or expiry of this Agreement or any SOW, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of this Agreement which is expressly or by implication

intended to come into effect on, or to continue in effect after, such termination or expiry (including clauses 5, 6, 7, 8, 9, 11, 12.2 and 13).

- 13.16. **Dispute Resolution.** If a Dispute arises between the parties then they shall, first, use their reasonable endeavours to resolve that Dispute amicably, within a reasonable period and without recourse to legal proceedings. Either party may by notice at any time propose to attempt to settle a Dispute by non-binding mediation, conducted in accordance with the rules of a recognised dispute resolution institution. The costs of any such mediation shall be borne equally by the parties. Should a Dispute remain unresolved after a reasonable period of time then it may be referred for determination by legal proceedings. This clause 13.16 is subject to clause 13.2.
- 13.17. **Governing Law.** This Agreement, each SOW and any dispute or non-contractual obligation arising out of or in connection with them shall be governed by and construed in accordance with the laws of England and, subject to clauses 13.2 and 13.16, the parties submit to the exclusive jurisdiction of the courts of England.

SIGNED

[Insert Client Name]

VAAMG CONSULTING LIMITED

Signature:

Print Name: _____

Title: _____

Date: _____

Signature:

Print Name: _____

Title: _____

Date: _____

SCHEDULE 1

CHANGE CONTROL PROCEDURE

1. Where the Client or VAAMG sees a need for a Change the Services it may propose a Change only in accordance with the Change Control Procedure as set out in this schedule 1 or in the applicable SOW.
2. Any discussions which may take place between the Client and VAAMG in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
3. Where either party wishes to propose any Change to this Agreement or any SOW, it will notify the other party of that fact by sending a written change request ("**Change Request**") to the other party's appropriately appointed representative, specifying in as much detail as is reasonably practicable the nature of the Change.
4. As soon as reasonably practical, VAAMG will provide the Client with a written proposal in relation to the relevant Change (a "**Change Control Proposal**") containing the following information:
 - 4.1 impact of the Change on the Services including any changes to specifications or other variations to the Agreement or the SOW;
 - 4.2 applicable charges for the implementation and on-going operation of the relevant Change, including any alteration of the Fees or additional Fees relating to the proposed Change;
 - 4.3 an estimated timetable for the implementation of the Change Request.
5. When information has been provided under paragraph 4, the Client shall evaluate the notice and respond to VAAMG as soon as reasonably practicable and in any event no later than five (5) Working Days (or a longer period agreed by the parties) after its receipt by the Client.
6. If the Client agrees to the Change, the parties shall endeavour to agree the terms of the Change Order which shall be set out in the format set out in the Appendix to this schedule 1.
7. A Change Order signed by both parties shall constitute an amendment to the Services pursuant to clause 3.5.

Appendix

Change Order Form

<u>Change Order</u>
<u>Title of Change:</u>
<u>Originator:</u>
<u>Date:</u>
<u>Reason for Change:</u>
<u>Description (giving details, including any specifications):</u>
<u>Deliverables:</u>
<u>Acceptance Testing and Criteria:</u>
<u>The Fees (if any):</u>
<u>Estimated Timetable:</u>
<u>Likely Impact on the Agreement or the SOW:</u>
<u>Signed for and on behalf of the Client:</u>
<u>Signed for and on behalf of VAAMG:</u>

SCHEDULE 2

DATA SECURITY POLICY

- VAAMG has appropriate operational and technological processes and procedures in place to safeguard against any unauthorized access, loss, destruction, theft, use or disclosure of

Client's data.

- Client's specific data would be separated from other project data.
- Access to the Client's data is provided to the project members alone. All the access permissions are provided based on approval from the concern project manager.
- VAAMG will act only on the basis of written instructions of Client in respect of their data that it processes on behalf of Client.
- VAAMG will not disclose Client's data to a third party in any circumstances other than at the specific request of the Client.