

MASTER SERVICES AGREEMENT

Between

INSPIRED TESTING LTD

Company Number	10141744
Registered Address	C/- Sable International, 5 th Floor, 18 St. Swithin's Lane, London, EC4N 8AD

(hereinafter referred to as **"Inspired Testing"**)

And

CLIENT COMPANY NAME

Company Number	
Registered Address	

(hereinafter referred to as **"Client"**)

Inspired Testing and the Client hereby accept and agree to the terms of this Agreement.

	For Inspired Testing	For [insert client company name]
Name		
Designation		
Signature		
Place		
Date		

The signatories warranting their authority to sign on behalf of Inspired Testing and the Client, respectively.

1. INTRODUCTION

1.1 Recitals

- 1.1.1 Inspired Testing is a specialized provider of Software Quality Assurance services that encompass functional and non-functional testing across most platforms, devices, and environments.
- 1.1.2 This Master Services Agreement ("**MSA**") is an enabling agreement under which the Parties may, from time to time, arrange for Services to be supplied in accordance with the Client's needs.
- 1.1.3 Inspired Testing agrees to offer the Services to the Client in a proper and timely manner in accordance with the terms of this Agreement. The Client acknowledges that for Inspired Testing to do so, the Client must fulfil its duties as outlined in this Agreement.
- 1.1.4 The Parties will enter into individual SoWs from time to time during the Term of this MSA to govern the specific Services to be performed by Inspired Testing under this Agreement. The Parties acknowledge and agree, however, that this MSA permits and enables but does not oblige either party to enter into specified types or amounts of SoWs or to procure or provide specific types or amounts of Services.
- 1.1.5 The Client hereby appoints Inspired Testing, and Inspired Testing agrees to supply to the Client, the Services, as more fully described in the Statements of Work ("**SoWs**") entered into between the Parties, on the terms and conditions set forth in this MSA.

1.2 Definitions

The following words and phrases have the following definitions in this MSA, which apply to all the documents which comprise this Agreement, and their cognates shall have corresponding meanings, unless otherwise required by the context in which they are used in this Agreement:

- 1.2.1 "**this Agreement**" means this MSA together with its Schedules and Annexures; all Statements of Work and Change Control Documents entered into under it; and any other documents as agreed in writing between the parties;
- 1.2.2 "**Business Day**" means a day which is not a Saturday, Sunday or official bank holiday in the United Kingdom;
- 1.2.3 "**Charges**" means those charges payable by the Client to Inspired Testing in consideration for rendering the Services as set out in this Agreement or as otherwise agreed in writing between Inspired Testing and the Client;
- 1.2.4 "**Client**" means the Party who, in terms of this Agreement, is authorised to obtain the Services;
- 1.2.5 "**Client Default**" means when Inspired Testing's performance of any Services is prevented or delayed as a result of an act or omission by the Client, or as a result of any information provided to Inspired Testing by the Client being incorrect, or both;
- 1.2.6 "**Commencement Date**" means the date on which Inspired Testing begins providing the Services to the Client, or the date on which this MSA is signed by all Parties, whichever occurs first;
- 1.2.7 "**Confidential Information**" means any information or data of whatever nature or kind that one Party may disclose to the other, relevant to the business and performance of a Party's functions and obligations under this Agreement, pertaining in any way to such Party's affairs, whether written, graphic, or oral, or marked as confidential, restricted, secret, proprietary, or any similar designation, including but not limited to:

- 1.2.7.1 information about the design characteristics of software, pricing and marketing information, and software (whether source code or object code);
- 1.2.7.2 the terms of this Agreement and all related agreements;
- 1.2.7.3 valuable technical knowledge and experience, data and other information of a secret and confidential nature relating to a Party's business; and
- 1.2.7.4 technical knowledge and experience, business know-how, source codes, data diagrams, database designs, processes, improvements, research and development, marketing plans, data, test results, inventions, trade secrets, techniques, business and product strategies (actual or planned and/or created by Inspired Testing for the Client or any of its affiliates); except to the extent that such information: (a) is already in the public domain at the time of disclosure or enters the public domain otherwise than by a breach of this Agreement; (b) was lawfully in the receiving Party's possession prior to disclosure by the other Party; (c) has been subsequently received by a Party from a third party without obligations of confidentiality; or (d) was independently developed by the receiving Party, which in doing so did not violate this Agreement or any non-disclosure agreement between the Parties, or otherwise infringe the disclosing Party's Intellectual Property Rights;
- 1.2.7.5 cost and sourcing of Services, pricing, commercial information, and client information;
- 1.2.7.6 "Personal Data" as defined in the Retained Regulation (EU) 2016/679 ("UK GDPR") as amended, relating to an identifiable individual, over which data either of the Parties may have temporary supervision.
- 1.2.8 **"Deliverables"** means all models, schedules, programmes, test results, reports, plans, analyses, recommendations, processes, documentation, work product, information, software, outputs, and the like for which Inspired Testing is responsible to deliver in tangible format to the Client as part of the Services, depending on the nature of the Services;
- 1.2.9 **"Good Industry Standards"** means those standard practices, methods and procedures conforming to legal requirements (including in respect of health, safety and the environment) which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a service provider carrying out the same or similar type of activity under the same or similar circumstances and conditions as those pertaining to Inspired Testing under this Agreement;
- 1.2.10 **"Initial Term"** means the period of three (3) years from the Commencement Date;
- 1.2.11 **"Inspired Testing Consultants" or "Consultant/s"** means the Test Subject Matter Experts involved in providing the Services to the Client;
- 1.2.12 For the purposes of this Agreement, **Intellectual Property Rights ("IPR")** shall include all of the following legal rights of both Parties:
 - 1.2.12.1 patents, patent applications and patent rights;
 - 1.2.12.2 rights associated with works of authorship including copyrights, copyright applications and copyright registrations;
 - 1.2.12.3 rights relating to the protection of trade secrets and confidential information including rights in unpatented know-how;
 - 1.2.12.4 design rights;

- 1.2.12.5 trademarks, trade names, trademark applications and registrations, service marks and rights in trade dress;
- 1.2.12.6 any rights analogous to the aforementioned rights and any other proprietary rights relating to intellectual property; and
- 1.2.12.7 any divisions, continuations, renewals, reissues and extensions of the aforementioned rights (as applicable) now existing or filed, issued or acquired hereafter;
- 1.2.13 **"Parties"** means collectively the Client and Inspired Testing, and "Party" refers to either one as the context requires;
- 1.2.14 **"Residuals"** means ideas, know-how, techniques, information and understandings retained in the unaided memory of Inspired Testing's employees and contractors as a result of their access to and use of the Confidential Information of the Client.
- 1.2.15 **"Services"** includes the services, tasks and obligations to be fulfilled by Inspired Testing as more fully described in an SOW or otherwise provided by Inspired Testing to the Client pursuant to this Agreement;
- 1.2.16 **"Statement of Work" or "SoW"** means a document executed pursuant to this MSA which contains the detail relevant to the specific Services to be rendered;
- 1.2.17 **"Term"** means the entire period from commencement to termination of this MSA, which includes the Initial Term and any periods of renewal;

1.3 Interpretation

- 1.3.1 The clause headings in this Agreement are included solely for reference purposes and have no bearing on the interpretation or construction of this Agreement;
- 1.3.2 Any gender expression encompasses the other genders, a natural person includes an artificial person and vice versa, and the singular includes the plural and vice versa;
- 1.3.3 When a number of days is prescribed, that number excludes the first and includes the last day, unless the last day falls on a Saturday, Sunday or bank holiday in the United Kingdom ("UK"), in which case the last day is the next consecutive day that is not a Saturday, Sunday, or public holiday;
- 1.3.4 If any provision contained in a definition is a substantive provision conferring rights or imposing obligations on any Party, such provision will have the same effect as a substantive provision in the body of this Agreement;
- 1.3.5 If figures are referred to in both numerals and words, the words take precedence if there is any conflict between the two;
- 1.3.6 A reference to a Party includes the Party's successors and permitted assigns;
- 1.3.7 A reference to a document includes any amendment, supplement, replacement, or novation to that document.
- 1.3.8 Any reference to an enactment, regulation, rule, or by-law refers to such enactment, regulation, rule, or by-law as it existed on the Signature Date, as amended or replaced from time to time;
- 1.3.9 The use of the phrase "including" followed by a specific example/s shall not be interpreted as restricting the meaning of the general wording preceding it;
- 1.3.10 Except when otherwise specified, all amounts contemplated in this Agreement will be in GBP (British Pound Sterling);

- 1.3.11 Except where expressly stated otherwise, all amounts contemplated in this Agreement shall be exclusive of VAT;
- 1.3.12 Expressions defined in this MSA shall have the same meanings in annexures hereto as well as in SoWs and other documents incorporated into this Agreement, provided that these other documents do not contain their own conflicting definitions;
- 1.3.13 The expiration or termination of this Agreement shall not affect any of the provisions of this Agreement which of necessity must continue to have effect despite the fact that the clauses themselves do not expressly provide for this;
- 1.3.14 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply to this Agreement;
- 1.3.15 Any communication required to be "in writing" shall include a communication written or produced by any substitute for writing, or which is partly written and partly so produced, and shall include printing, facsimile or electronic mail, or any other form of electronic communication or other process;
- 1.3.16 Terms that are not defined in any clause of this Agreement should be defined in accordance with their ordinary meaning, taking into account the context in which they arise.
- 1.3.17 This Agreement incorporates this MSA, any schedules or annexures to this MSA, any SoWs and Change Control Documents entered into pursuant to this MSA, and any other documents as agreed in writing between the parties, and references in this MSA to "this Agreement" include all of these documents.

1.4 Order of Precedence

Unless the Parties specifically agree otherwise:

- 1.4.1 Except as otherwise stipulated in any Statement of Work, the terms and conditions of this MSA shall apply to all Statements of Work. The terms of any one Statement of Work are inapplicable to any other Statement of Work.
- 1.4.2 For provisions specifying the Services, where there is conflict or ambiguity between the provisions of this MSA and the provisions of a Statement of Work, the provisions of the Statement of Work shall prevail.
- 1.4.3 For all other provisions, where there is conflict or ambiguity between the provisions of this MSA and the provisions of a Statement of Work, the provisions of this MSA shall prevail.
- 1.4.4 Where a Statement of Work is varied by a Change Control Document, and there is conflict or ambiguity between the provisions of the Statement of Work and the provisions of the Change Control Document, the provisions of the Change Control Document shall prevail.

2. PRICING, CHARGES & PAYMENTS

2.1 Pricing

- 2.1.1 All prices are in GBP (£) and exclusive of Value Added Tax (VAT) and any in-country taxes such as withholding tax.
- 2.1.2 The pricing is based on the requirements stated by the Client and collected documents to date. Should the requirements change, the pricing and duration may be affected.
- 2.1.3 Prices may be increased from time to time to reflect increases in the Consumer Price Index, UK as indicated by the percentage increase since the Commencement Date and published on the website

of the Office of National Statistics. Any other price increases will be dealt with on a case-by-case basis and agreed to by the Parties, as detailed more specifically in any relevant SOW.

- 2.1.4 Unless otherwise agreed between the Parties, overtime will be charged at 1.5X (one and a half) the standard rate on bank holidays and Saturdays, and 2X (twice) the standard rate on Sundays.

2.2 Payment Terms

- 2.2.1 The Client shall be liable for and shall pay the Charges set out in this Agreement (as amended by any Change Control Document or other relevant agreement between the parties), as well as any authorised travel, subsistence and materials expenses and any other Charges as agreed between the parties, as invoiced to the Client by Inspired Testing on a monthly basis.
- 2.2.2 Invoices are due and payable within thirty (30) days of the date of the invoice unless bona fide disputed. All invoices are to be paid via wire transfer. Inspired Testing does not accept payment via cheque. In the event of late payment, the amount outstanding shall bear interest, compounded monthly from the due date to date of payment, at a rate per annum equal to 4% above the Bank of England base rate from time to time.
- 2.2.3 Should the Client wish to query an invoice, it shall do so within two (2) business days of receipt thereof. Any query submitted pursuant to this clause shall be discussed between the Parties' representatives. If the issue has not been resolved after five (5) business days, the dispute will be dealt with in accordance with the dispute resolution provisions contained in this MSA.
- 2.2.4 Change requests will be billed for separately against approved change request signoffs and will be delivered against revised or independent delivery dates.
- 2.2.5 Unless agreed otherwise, payments for fixed-price work are due as per above invoice payment terms and payments for time and materials work are invoiced monthly in arrears. The Client expressly agrees that payments are to be based on time and materials supplied and not on value or perceived value supplied to the Client by Inspired Testing.
- 2.2.6 Should payment not be received within a period of thirty (30) days from the date the invoice is due and payable, Inspired Testing may discontinue the Services to the Client after having given the Client seven (7) days written notice. In the event of discontinuation of the Services in these circumstances, Inspired Testing will recommence rendering the Services as soon as possible following payment in full of all outstanding amounts plus interest thereon.

2.3 Payment Details

2.3.1 Client Billing Information

Company name	insert	
Company number	insert	
VAT number	insert	
Physical address	insert	
Postal address	insert	
Finance contact person and email	insert	insert
Telephone number	insert	

Project Name or PO Number	insert
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2.3.2 Inspired Testing Payment Information

Company and account name	Inspired Testing Limited	
Registration and VAT number	10141744	257222414
Registered address	C/- Sable International, 5 th Floor, 18 St. Swithin's Lane, London, EC4N 8AD	
Bank name and branch	Royal Bank of Scotland	Drummond House (AT)
Account number and sort code	10862617	162448
BIC and IBAN	RBOSGB2L	GB49RBOS16244810862617
Finance contact email	ukfinance@inspiredtesting.com	
Reference	Invoice number / Project name or PO Number	

2.4 Excluded costs

The following costs shall be for the Client's account and reimbursable to Inspired Testing where applicable:

- 2.4.1 Test data management and database administration unless included in the proposal or scope of work.
- 2.4.2 Test environment management unless included in the proposal or scope of work.
- 2.4.3 Integration work with legacy systems not detailed in the proposal.
- 2.4.4 Commercial testing tools including performance licenses and automation tools.
- 2.4.5 Travel, accommodation, and subsistence costs. All travel for Inspired Testing Consultants is to be authorised by the Client before booking of flights, accommodation etc
- 2.4.6 Extraordinary training. Although Inspired Testing will ensure its Consultants remain appropriately skilled and execute a relevant training plan for each Inspired Testing Consultant, training specific to the Client or requested by the Client outside of the agreed training plan for Inspired Testing Consultants, will be for the Client's account.

3. INSPIRED TESTING'S OBLIGATIONS

3.1 Performance Standards

Inspired Testing undertakes to use all reasonable care, skill, and diligence to:

- 3.1.1 supply the Services promptly, efficiently, professionally and ethically at all times during the term of this Agreement, and diligently perform its obligations under this Agreement;
- 3.1.2 provide the Services in accordance with:
 - 3.1.2.1 Good Industry Standards;
 - 3.1.2.2 the Client's reasonable instructions;
 - 3.1.2.3 all applicable Client Policies disclosed in writing to Inspired Testing; and
 - 3.1.2.4 the terms of this Agreement.

- 3.1.3 carry out its obligations under this Agreement in cooperation with the Client and any third parties that the Client may request;
- 3.1.4 be responsible for supplying the assets, personnel, and other resources required to provide the Services in compliance with this Agreement, as specified in the applicable SOW; and
- 3.1.5 obtain all necessary rights, licenses, permits, and consents that Inspired Testing would need to obtain in the ordinary course of its business in order to perform the Services.

3.2 Inspired Testing Consultants

Inspired Testing undertakes to use all reasonable care, skill, and diligence to:

- 3.2.1 assign appropriately qualified and skilled Consultants to perform the Services in accordance with Good Industry Standards, and retain the same or similarly qualified Consultants for the duration of this Agreement;
- 3.2.2 ensure that an adequate number of Consultants are available to provide the Services in accordance with this Agreement;
- 3.2.3 ensure that its Consultants, who shall be appointed or reallocated to a project at the sole discretion of Inspired Testing, are appropriately qualified, adequately trained, and capable of performing the applicable Services for which they are engaged; and
- 3.2.4 ensure that its Consultants, when engaged in activities on the Client's premises or with or in connection with the Client's infrastructure, comply with such reasonable regulations and restrictions in respect of security, access, restricted areas, dress, conduct, safety, and working conditions (as appropriate) as apply to the Client's personnel.

4. CLIENT'S OBLIGATIONS

4.1 General

The Client acknowledges that Inspired Testing's ability to fulfil its obligations under this Agreement and any related SoWs is contingent on the Client's timely cooperation with Inspired Testing, as well as the accuracy and completeness of any information and data that the Client provides to Inspired Testing. Considering this, the Client shall:

- 4.1.1 co-operate with Inspired Testing in all matters relating to the provision of the Services;
- 4.1.2 adhere to the acceptance, approval and signoff timeframes agreed to in any SoW;
- 4.1.3 promptly inform Inspired Testing of any circumstances within its knowledge that could impact the performance of the Services;
- 4.1.4 be responsible for the accuracy of any information that it gives in support of the Services. This includes ensuring that:
 - 4.1.4.1 any information and documentation provided to Inspired Testing is accurate, complete (in all material respects), and up-to-date;
 - 4.1.4.2 any Assumptions (as set out in the relevant SoW) are accurate; and
 - 4.1.4.3 there is no reason known or which should reasonably be known to the Client why the agreed approach (as set out in the relevant SoW) is not feasible.
- 4.1.5 provide Inspired Testing and Inspired Testing's Consultants with written information about the health and safety requirements for its facilities, as well as any other policies and procedures that may be applicable in relation to the performance of the Services; and

- 4.1.6 ensure that any Client equipment required for use by Inspired Testing's Consultants in the performance of the Services is in good working order and fit for purpose.

4.2 Access

To enable Inspired Testing to carry out the Services timeously and efficiently, the Client shall:

- 4.2.1 provide Inspired Testing's Consultants with timely access to such Client premises (which premises shall comply with all health and safety requirements required by law), office facilities, computer time, office services, systems, networks, software, archives, plans, programs, and any other information and/or documentation as Inspired Testing may reasonably require to enable Inspired Testing to perform its obligations under this Agreement;
- 4.2.2 obtain and maintain all necessary licenses and consents as well as ensure that it has secured all necessary authorities, consents and approvals which may be required to provide Inspired Testing and Inspired Testing's Consultants with the access, data, and information necessary to provide the Services; and
- 4.2.3 ensure that Inspired Testing and its Consultants have appropriate access to key Client personnel, which includes Client technical personnel for technical input, training, UAT, roll-out of the system and ongoing support of the system (if relevant).

4.3 Payment

The Client shall be liable for and shall pay the Charges set out in this Agreement and any related SoW (as amended by any Change Control Document or other relevant agreement between the parties), as well as any authorised travel, subsistence and materials expenses and any other Charges as agreed between the parties, as invoiced to the Client monthly by Inspired Testing.

4.4 Specialist Hardware & Software

- 4.4.1 Inspired Testing may require items of hardware and software in order to provide the Services properly.
- 4.4.2 If such hardware or software falls into the category of what Inspired Testing could reasonably be required to obtain in the ordinary course of its business, Inspired Testing is responsible for acquiring, maintaining, and operating such hardware and software at its own risk and cost.
- 4.4.3 If Inspired Testing and the Client agree that a specialist item of hardware or software is required for the provision of Services, being hardware or software which Inspired Testing would not be required to obtain in the ordinary course of its business, either the Client will provide the specialist hardware or software to Inspired Testing or Inspired Testing will procure the specialist hardware or software from a reputable third party supplier, in either event at the Client's cost.
- 4.4.4 All licences and title to any specialist hardware and software shall vest in the Client.
- 4.4.5 Inspired Testing will deliver up the specialist hardware or software in its possession upon the request of the Client.
- 4.4.6 Under no circumstances will Inspired Testing allow any encumbrance to affect the specialist hardware or software.

5. MUTUAL OBLIGATIONS

- 5.1 For the duration of this Agreement the Parties shall:

- 5.1.1 act in the utmost good faith towards each other, and use their best endeavours to ensure that they cause no harm to each other's interests; and
- 5.1.2 not undertake any activities which might conflict with the performance of the Services or give rise to a conflict of interests likely to impede either party in fulfilling its obligations under this Agreement.

5.2 Each Party warrants that:

- 5.2.1 it has the power and capacity to enter into this Agreement; and
- 5.2.2 it will not violate any court order or other similar arrangement by entering into and performing under this Agreement.

6. DELIVERY MANAGEMENT

6.1 Resourcing

- 6.1.1 The exact working hours shall be agreed between the Inspired Testing Consultant and the relevant Client, but a minimum of eight (8) productive hours per day shall be worked by the Inspired Testing Consultant unless agreed otherwise by both parties.
- 6.1.2 Inspired Testing Consultants may be required to attend internal training and staff meetings. Inspired Testing will notify the Client of such meetings in advance.
- 6.1.3 Any leave requests need to be approved by the Client prior to Inspired Testing's approval.
- 6.1.4 Inspired Testing reserves the right to appoint the Consultants to a project and will ensure its Consultants are adequately qualified and trained to meet the solution criteria and Client expectations.
- 6.1.5 Inspired Testing reserves the right to make resource allocation adjustments independently without reporting or Client consent in order to meet specified milestones. Project deliverables and timelines should not be impacted.
- 6.1.6 The Client will approve any timesheets captured on its systems by Inspired Testing Consultants and submit those timesheets to Inspired Testing by the 2nd working day of the month following the month that the timesheets refer to.
- 6.1.7 Inspired Testing closes annually between Christmas and New Year (both days included).

6.2 Client Default

- 6.2.1 The Client may fail to fulfil its obligations within agreed timeframes in terms of this Agreement. In this event, Inspired Testing will attempt to reschedule the project in such a way as to negate the impact of the failure of the Client to meet its obligations, and all changes to the schedule, completion dates and/or Charges resulting from arrangements made in terms of this clause shall be processed in accordance with the change control provisions in this Agreement.
- 6.2.2 If Inspired Testing is unable to reschedule the project resources in such a way to enable it to fulfil its obligations and responsibilities, a Client Default will be deemed to have occurred, and:
 - 6.2.2.1 Inspired Testing will, without limiting its other rights or remedies, have the right to suspend performance of the Services or reallocate resources otherwise reserved for the performance of the relevant SOW until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the Client to the extent that the Client Default prevents or delays Inspired Testing's performance of any of the Services;

6.2.2.2 Inspired Testing shall not be liable for any costs or losses sustained or incurred by the Client (or any other Third Party) arising directly or indirectly from Inspired Testing's failure or delay, resulting from the Client Default, in performing any Services; and

6.2.2.3 The Client shall reimburse Inspired Testing on written demand for any costs or losses sustained or incurred by Inspired Testing arising from the Client Default.

6.3 Review of Deliverables

6.3.1 The Client will review (and if applicable reject with reasons) Inspired Testing Deliverables whether interim or final, as required, within five (5) working days of their completion as notified by Inspired Testing to the Client.

6.3.2 Should the Client fail to review a Deliverable and communicate acceptance or rejection within the time period prescribed above, the Deliverable concerned will be regarded as complete and as having been accepted by the Client.

6.3.3 Should the Client reject a Deliverable and not make a genuine attempt to resolve their issues with the Deliverable within five (5) working days of the rejection, the Deliverable will be regarded as complete and as having been accepted by the Client.

6.4 Change Control

6.4.1 Where Inspired Testing or the Client reasonably see a need to change the provisions of any SOW, either Party may at any time request such change in accordance with this clause (Change).

6.4.2 Inspired Testing and the Client shall discuss the Change proposed as soon as reasonably practicable (including the impact on the Services, timetable, and Deliverables). If agreement is reached, Inspired Testing shall provide a draft Change Control Document to the Client detailing the proposed Change.

6.4.3 If the Parties agree to the Change as detailed in the Change Control Document, they shall sign or electronically authenticate the Change Control Document and the SOW shall be deemed to have been varied in accordance with the details set out therein.

6.4.4 Pending approval of any Change Control Document, the Parties shall continue to perform their obligations without taking into account the proposed Change, unless otherwise agreed.

6.4.5 Should agreement not be reached within 30 days regarding the Change to be implemented, a dispute will be deemed to have occurred and will be dealt with in accordance with the provisions in this MSA relating to dispute resolution.

7. IPR, CONFIDENTIALITY & PUBLICITY

7.1 Intellectual Property Rights (IPR)

7.1.1 All material (software, code, and documentation) produced specifically for the Client as part of the project will be wholly owned by the Client only once all payments due to Inspired Testing have been received in full.

7.1.2 Each Party warrants to the other that it is entitled to use, disclose and grant the limited licenses herein in its Intellectual Property Rights and Confidential Information. Each Party will indemnify and hold the other harmless against any claim by a third party that its Intellectual Property Rights infringe any third party rights, provided that the indemnifying party will have sole control of any such action or settlement negotiations, and provided further that the indemnified party notifies

the indemnifying party promptly in writing of such claim and gives the indemnifying party adequate information and uses its best efforts to assist in the settlement and/or defense of any such claim. Neither Party will be liable for any costs or expenses incurred by the other party without its prior written authorisation.

- 7.1.3 Should the project require the use of a third-party software component the third-party licensing and support cost will be for the Client's account. Such third-party software is first to be approved by the Client. Where the Client requests that such third-party components not be used, Inspired Testing shall be entitled to inform the Client that additional costs and project delivery time may be required.

7.2 Confidentiality

- 7.2.1 Each Party acknowledges that the unauthorised disclosure of another Party's Confidential Information may give rise to substantial damage to the other Party.
- 7.2.2 Unless required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction, a Party shall not disclose such Confidential Information in any form or manner whatsoever, to any third party without the prior written consent of the other Party and shall only use such Information for the purpose that it was disclosed and in accordance with the provisions of this Agreement.
- 7.2.3 The Client and Inspired Testing have entered into a separate Non-Disclosure Agreement ("NDA") for the purposes of this engagement.
- 7.2.4 Notwithstanding the confidentiality obligations of Inspired Testing under this Agreement, Inspired Testing has the right to use and exploit Residuals for any purpose, provided that nothing in this Agreement is intended to grant any license to Inspired Testing under any trademark, copyright or patent of the Client.
- 7.2.5 This clause remains in full force and effect even after termination of this Agreement in any manner whatsoever.

7.3 Publicity

The Client consents to Inspired Testing publicising its involvement with the Client in, amongst others, the following ways:

- 7.3.1 publishing the Client's logo on the Inspired Testing website and in Inspired Testing's brochure;
- 7.3.2 using the Client's name and information about the work Inspired Testing has done or is doing for the Client in media releases and case studies; and
- 7.3.3 using quotes from the Client's staff commenting on the work done by Inspired Testing.

8. RISK ALLOCATION

8.1 Limitation of Liability

- 8.1.1 Nothing in this Agreement shall limit or exclude the Parties' liability for:
 - 8.1.1.1 death or personal injury caused by the other Party;
 - 8.1.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.1.3 Gross negligence, willful misconduct, or any liability which may not be limited under the governing law.
- 8.1.2 The aggregate liability (whether in contract, tort (including negligence), breach of statutory duty or any other right of action) of a Party in respect of:

- 8.1.2.1 any loss or damage suffered by the other (whether in contract, tort (including negligence), breach of statutory duty or any other right of action) in connection with the provision of the Services, shall not exceed an amount equal to 100% of the total Charges paid to Inspired Testing by the Client under the SOW under which the claim arose; and
- 8.1.2.2 the indemnity set out in clause 8.2 shall not in any contract year of the term of this Agreement exceed an amount equal to the lesser of (i) 200% of the total Charges paid to Inspired Testing under the SOW under which the claim arose and (ii) £500,000 (five hundred thousand pounds).
- 8.1.3 As part of the Services from time to time, the Parties may recommend various third-party software tools or other products. The Parties are not liable for damage caused by any such third-party tools or services and exclude such liability to the fullest extent permitted at law. Furthermore, unless otherwise agreed, neither Party will be liable to the other for any loss or damage arising from the performance of any services by any third party.
- 8.1.4 The Parties shall not be liable in contract, tort, or in relation to breach of statutory duty or any other right of action for any punitive, special, incidental, indirect or consequential losses, regardless of whether any such losses were foreseeable.
- 8.1.5 Neither Party shall be responsible for any failure or delay in performing its obligations to the extent that such failures or delays are caused by any:
 - 8.1.5.1 inaccuracies or omissions in specifications or information supplied or not supplied by the other Party;
 - 8.1.5.2 acts or omissions of the other Party; or
 - 8.1.5.3 following the reasonable instructions of the other Party.
- 8.1.6 The Parties acknowledge that their respective IPR and Confidential Information constitute vital business assets and agree that damages may be insufficient to compensate a breach of the obligations contained in this Agreement related to IPR and Confidential Information. The Parties recognise that any such breach may result in the injured Party seeking alternative remedies, including but not limited to injunctive relief.
- 8.1.7 Each provision of this clause shall be construed separately and shall continue and survive even if for any reason one or other of these provisions is held invalid or unenforceable in any circumstances.

8.2 Indemnities

- 8.2.1 Subject to clauses 8.1.1 and 8.1.2.2, each Party will indemnify, defend, and hold the other Party and its affiliates harmless from and against any and all liabilities relating to any third-party claims arising from or in connection with the indemnifying Party's breach of its obligations or representations or warranties under this Agreement, and shall do all things reasonably commercially necessary to protect and keep the other Party and its affiliates harmless against such liabilities, provided always that:
 - 8.2.1.1 the indemnifying Party will have sole control of any such third-party claims or settlement negotiations, and provided further that the indemnified Party makes no admission of liability and notifies the indemnifying Party promptly in writing of such claim and gives the indemnifying Party adequate information and uses its best efforts to assist in the settlement and/or defence of any such claim; and

8.2.1.2 the indemnifying Party shall in no circumstances have any liability to the extent of any wilful misconduct or negligence of the indemnified Party.

8.3 Warranties

- 8.3.1 No other rights or obligations other than those expressly recited herein are to be implied by this Agreement, and all warranties, terms or conditions implied by law or otherwise (including, without limitation, in relation to quality or fitness for purpose) are hereby expressly excluded to the extent permitted by law.
- 8.3.2 No Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.

9. TERM & TERMINATION

9.1 Term

This MSA shall continue for the Initial Term, whereupon it will automatically renew for additional 1-year periods unless terminated by the Parties in accordance with the provisions of this MSA.

9.2 SOWs

- 9.2.1 Unless expressly individually and separately terminated, each SOW shall continue until its scheduled expiry or completion date, notwithstanding termination of this MSA, but no new SOWs may be entered into following termination or expiry of this MSA.
- 9.2.2 Any SOW entered into pursuant to this MSA may be terminated by either Party, in whole or in part, at any time by giving thirty (30) days' prior written notice to the other Party.
- 9.2.3 The termination of any one SOW shall not serve to terminate this MSA nor any other SOWs that may have been concluded between the Parties.
- 9.2.4 Regardless of the date of termination of this MSA, the provisions of this MSA will continue to apply to any active SoW entered into pursuant to this MSA until such SoW has expired or is terminated by the Parties.

9.3 Convenience

Either Party may terminate this MSA at any time and for any reason, on thirty (30) days' written notice to the other Party.

9.4 Insolvency

Should either Party:

- 9.4.1 be liquidated, whether provisionally or finally and whether compulsorily or voluntarily;
 - 9.4.2 commit any act which if committed by a natural person would constitute an act of insolvency as contemplated in the Insolvency Act;
 - 9.4.3 have a judgement taken against it which judgement is not satisfied or rescinded within thirty (30) days of the granting of such judgement;
 - 9.4.4 attempt to enter or enters into any form of compromise with any of its creditors;
 - 9.4.5 take steps to deregister itself or is deregistered; or
 - 9.4.6 cease to carry on business in the normal and regular manner;
- the other Party shall be entitled, without prejudice to its other rights in law, to terminate this Agreement with immediate effect.

9.5 Breach

If either Party breaches this Agreement, the other Party may give the former written notice of the breach and afford the breaching Party fourteen (14) days (or such longer period as it reasonably considers appropriate) to remedy the breach. Where the breach is not remedied within the notified remedy period, the Party who issued the remedy notice may, without prejudice to its other rights in law (including but not limited to its right to claim damages), terminate this Agreement with immediate effect.

9.6 Amounts payable

On termination of this Agreement for any reason whatsoever, all amounts due to Inspired Testing for any agreed Services rendered prior to termination shall become payable and payment may not be withheld for any reason. Inspired Testing will immediately issue invoices for any such amounts not previously invoiced.

9.7 Return of property

- 9.7.1 On termination of this Agreement for any reason whatsoever, each Party must, if requested to do so, promptly and in any event no later than five days after termination of this Agreement, return to the other Party all property and Confidential Information belonging to the other and relating to this Agreement, in all forms, in all types of media and computer memory and whether or not merged with other materials, or to the extent such return is not reasonably practical, will, at the written request of the other, destroy or delete completely the foregoing and certify in writing that it has been destroyed.
- 9.7.2 Inspired Testing shall not be required to return to the Client Confidential Information, Intellectual Property and other property belonging to the Client if it is needed to carry out the Services in any active SOW. However, upon expiry or termination of an active SOW, clause 9.7.1 above shall apply.

10. CONFLICT RESOLUTION

10.1 Alternative Dispute Resolution

- 10.1.1 Any dispute arising from or in connection with this Agreement or the termination thereof shall in the first instance be referred to the respective Chief Executive Officers (CEOs) of the Parties to the dispute, failing whom, their respective equivalents or nominees. Should the CEOs be unable to resolve the dispute within ten (10) days after the referral of the dispute to them, the dispute shall, at the request of either Party, be referred to mediation.
- 10.1.2 Where the Parties are unable to resolve any dispute in accordance with clause 10.1.1, the Parties agree to enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties within 5 business days of notice of the dispute, the mediator will be nominated by CEDR. Should the dispute fail to be resolved by mediation it may, at the request of either Party, be referred to arbitration.
- 10.1.3 The arbitration shall be held in the UK in London in accordance with the formalities and procedures determined by an arbitrator appointed by agreement between the Parties within three (3) days of the request for arbitration or, failing such agreement, appointed by the Law Society president.
- 10.1.4 The parties shall make all reasonable efforts to ensure that the arbitration is held and completed within thirty (30) business days after it has been requested.

10.2 Governing Law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and implemented construed in accordance with the laws of England and Wales.

10.3 Legal Proceedings

- 10.3.1 The provisions of this Agreement shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of the procedures outlined in the above clauses dealing with Dispute Resolution.
- 10.3.2 In the event that legal proceedings are instituted pursuant to a dispute under this Agreement arising which cannot be resolved using the mechanisms provided for in other clauses in this MSA dealing with Dispute Resolution, or if the Parties wish to have an arbitration award made an order of court, the Parties consent to the jurisdiction of the courts of England and Wales.

10.4 Prescription

The Parties agree that the written demand by a Party in terms of clause 10.1.1 for the dispute or difference to be submitted to negotiation, is to be deemed to be a legal process for the purpose of interrupting the applicable limitation period in terms of the Limitation Act 1980.

10.5 Dispute-related costs

All costs, charges, and expenses of any nature whatever which may be incurred by a Party in enforcing its rights in terms of this Agreement, including legal costs assessed on an indemnity basis, shall be recoverable from the Party against which such rights are successfully enforced, irrespective of whether any action has been instituted.

10.6 Survival & Severability

The provisions of this section on Conflict Resolution are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

11. GENERAL & MISCELLANEOUS

11.1 Nature of Relationship

- 11.1.1 The Parties hereby agree and confirm that the relationship envisaged by them and created by this Agreement is one of service and not one of employment, representation, agency, or partnership of any sort. The Parties shall, at all times, be independent contracting Parties and neither Party nor the personnel of that Party shall be construed as a partner, agent, employer or employee of the other or represent itself as such.
- 11.1.2 No consultant, employee, agent or other representative of either Party will at any time be deemed to be under the control or authority of the other Party, or under the joint control of both Parties.
- 11.1.3 As this Agreement does not create an employment relationship between the Parties or between one Party and the employees of the other Parties, neither Party shall provide to any employee of the other Party, nor be liable for, any employee tax, workers compensation insurance, unemployment insurance, pension plans, health insurance, life insurance, medical aid, leave, or any other benefits made available by that Party to its own employees.
- 11.1.4 Nothing in this Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other, or to pledge the

credit of the other Party, or make any warranty or representation on behalf of the other Party except if the other Party has authorised it to do so in writing.

11.2 Domicilium & Notices

11.2.1 The Parties choose as their addresses for the purpose of the giving of any notice, the serving of any process or for any other purpose arising from this Agreement, their registered addresses as indicated on the cover page of this Agreement, as well as the email addresses below:

Inspired Testing: legal@inspiredtesting.com

Client: insert

11.2.2 Each Party shall be entitled, by written notice to the other, to vary its address to any other physical address and/or email address within the same country.

11.2.3 Any notice to be given under this Agreement shall be in writing and delivered by hand to the address of the relevant Party or sent by pre-paid first-class post or other next working day delivery service, with a copy sent via email to the email address of the relevant party, as set out above.

11.2.4 Notices sent as above shall be deemed to have been received:

11.2.4.1 If delivered by hand, at the time the notice is left at the proper address;

11.2.4.2 If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the third business day after posting; or

11.2.4.3 If sent by email, the next working day after sending.

11.2.5 In proving the giving of a notice, it shall be sufficient to prove either that the envelope containing the notice was properly addressed and delivered to the relevant Party, or that the email was addressed to the above chosen email address of the relevant Party and dispatched and dispatch of the transmission was confirmed and/or acknowledged.

11.2.6 A written notice or other communication actually received by a Party shall be adequate notice to it notwithstanding that the notice was not delivered to its appointed address or chosen email address.

11.3 Non-solicitation

11.3.1 During the Term of this Agreement and for one (1) year thereafter, neither Party will, directly or indirectly:

11.3.1.1 induce or attempt to induce any employee, contractor or agent of the other Party to terminate his/her relationship with the other Party;

11.3.1.2 in any way materially interfere with the relationship between the other Party and any employee, contractor or agent of the other Party; or

11.3.1.3 hire or attempt to hire, directly or through any entity, any person who is an employee, contractor, or agent of the other Party.

11.3.2 It shall not be a violation of this provision for either Party to advertise and recruit suitably skilled persons to fill its vacant positions in generally available public media and to employ the other Party's employees who seek such employment due to such advertisements and recruiting.

11.3.3 Should either Party employ an employee of the other without written consent a fee of 40% of the annual total cost-to-company offered to the employee will be immediately payable.

11.3.4 Should it be arranged and agreed between the Parties that an Inspired Testing Consultant become a permanent employee of the Client, where the resource has been delivering for less than twelve

(12) months, a placement fee of 25% of the annual total cost-to-company, offered to the employee will be immediately payable by the Client to Inspired Testing. Where the resource has been delivering for more than twelve (12) months, the placement fee will be reduced to 20%.

11.4 Force majeure

- 11.4.1 Neither Party shall have any liability under or be deemed to be in breach of its obligations in terms of this Agreement for any delays or failures in performance of such obligations which result from circumstances beyond the reasonable control of that Party.
- 11.4.2 The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so and shall act at all times to mitigate any loss or damage caused by the circumstances. If such circumstances continue for a continuous period of more than two (2) months, either Party may terminate this Agreement by written notice to the other Party.

11.5 Assignment

No Party may assign, cede, delegate, or transfer its rights or obligations under this Agreement without the prior written consent of the other Party.

11.6 Amendments

- 11.6.1 Should the need arise, the terms of this Agreement may be amended by agreement between the Parties.
- 11.6.2 No amendment to the terms of this Agreement shall be of any force or effect unless agreed to in writing and signed by duly authorised representatives of both Parties. The expression "amendment" includes any variation, amendment, supplement, deletion, or replacement of any of the terms of this Agreement, however effected.
- 11.6.3 Upon amendment, save for the amendments agreed to by the Parties, the remainder of this Agreement will remain in force.

11.7 Costs

Each Party shall be responsible for its own costs in relation to the drafting, finalisation, and implementation of this Agreement and attendances incidental thereto.

11.8 Entire Agreement

Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, this Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit, or implied term, representation, warranty, promise nor the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings, or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

11.9 Successors & assigns

The provisions of this Agreement shall be binding upon successors-in-title and the permitted assigns of the Parties.

11.10 Severability

All provisions in this Agreement, notwithstanding the manner in which they have been put together or linked grammatically, are severable from each other. Any provision of this Agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness

or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall be of full force and effect.

11.11 No Waiver

No relaxation, extension of time, latitude or indulgence which any Party ("the Grantor") may show, grant or allow to the other ("the Grantee") shall in any way constitute a waiver by the Grantor of any of the Grantor's rights in terms of this Agreement and the Grantor shall not be prejudiced thereby or stopped from exercising any of its rights against the Grantee which may have then already arisen or which may arise thereafter, unless agreed to in writing between the Parties.

11.12 Counterparts

This Agreement may be executed in a number of counterparts and by the same Parties on different counterparts but shall only be deemed to have been concluded when each Party has executed at least one counterpart.

11.13 Third-party Benefit

No part of this Agreement shall constitute a benefit in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute such a benefit.