

ROCK STANDARD TERMS AND CONDITIONS OF SUPPLY

These Standard Conditions apply to any Supply by ROCK. There are then Additional Conditions which may apply depending on the Supply the Customer has purchased from ROCK and such Additional Conditions, if applicable, are referenced in the Accepted Order. It is important that the Customer reads any applicable Additional Conditions as their terms will have precedence over these Standard Conditions. You can also access the Additional Conditions here:

- [INSERT URLS TO ADDITIONAL CONDITIONS]

These Standard Conditions and any Additional Conditions do not apply to consumers and apply to business-to-business transactions only.

Clauses 1 to 12 of these Standard Conditions apply to direct customers of ROCK who have procured any Supply from ROCK directly. Clauses 2, 5, 7 and 8 apply to indirect customers of ROCK who have procured any Supply from ROCK from a reseller authorised by ROCK.

1. CONTRACT

- 1.1 **Proposal Documents:** Any Proposal Document given by ROCK shall not constitute an offer and is only valid for such period stated in the Proposal Document, or where the Proposal Document is silent, for a period of thirty (30) days' from the date of issue, of the Proposal Document.
- 1.2 **Formation of a Contract:** Acceptance of a Proposal Document by the Customer or the provision of a written order by the Customer constitutes an offer by the Customer to purchase the relevant Supply from ROCK in accordance with these Standard Conditions and all relevant the Additional Conditions ("**Order**"). An Order shall only be deemed to be accepted when ROCK issues a written acceptance of the Order or signs the Order ("**Accepted Order**"). The Customer is responsible for ensuring that the terms of the Proposal Document, the Order, the Accepted Order and any applicable specification are complete and accurate.
- 1.3 **Applicable terms and conditions:** The terms and conditions of these Standard Conditions and, where applicable, the Additional Conditions, shall apply to the Supply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. Any samples, drawings, descriptive matter or advertising issued by ROCK, and any descriptions or illustrations contained in ROCK's catalogues, brochures and website, are issued or published for the sole purpose of giving an approximate idea of the Supply described in them and they shall not form part of the Contract or have any contractual force.
- 1.4 **Duration of a Contract:** A Contract shall commence on the start date specified in the Accepted Order, or if silent, the date that ROCK issues the relevant Accepted Order to the Customer. The Contract shall continue in force, unless terminated earlier in accordance with the terms of the Contract, until such expiry date specified in the Accepted Order, or if silent, on the date that ROCK confirms in writing that the Supply is complete.
- 1.5 **Changes to a Contract:** Either party may propose changes to the scope or execution of any Supply (or part thereof) and/or an Accepted Order but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A "**Change Order**" shall be a document setting out the proposed changes and the effect those changes will have on: the Supply, the Charges, any agreed timetable for the Supply and any of the other terms of the Accepted Order. If ROCK wishes to make a change it shall provide a draft Change Order to the Customer. If the Customer wishes to make a change it shall notify ROCK and provide

such detail as ROCK reasonably requires of the proposed changes, including the timing of the proposed change, and ROCK will, as soon as reasonably practicable after receiving the information from the Customer provide a draft Change Order to the Customer. [ROCK may charge a reasonable fee for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer in accordance with ROCK's Standard Rates, and ROCK will provide an estimated quote for this work in advance upon request by the Customer.]If the parties agree to a Change Order, they shall sign it and that Change Order shall amend the Contract. The parties agree that ROCK may amend the Service Levels, Specification and/or the Supply if necessary to comply with any applicable law or regulatory requirement and ROCK will notify the Customer in writing in any such event.

- 1.6 **Conflict:** If there is any conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list has priority over one contained in a document lower in the list:

1.6.1 Accepted Order (including any Special Terms);

1.6.2 Additional Conditions;

1.6.3 Standard Conditions.

2. THE SUPPLY

- 2.1 **Duration of the Supply:** If applicable, the start date and end date of the Supply will be specified in the Accepted Order. ROCK will use reasonable endeavours to meet any performance dates agreed to by ROCK in the Accepted Order and time shall not be of the essence.

- 2.2 **ROCK Conditions:** ROCK agrees that:

- 2.2.1 the Supply will be carried out in accordance with any relevant Service Levels in all material respects and will materially conform to any relevant Specifications;
- 2.2.2 all personnel used by ROCK in the performance of a Contract are adequately skilled and experienced in the activities they are required to perform and the Supply will be carried out in accordance with Industry Practice;
- 2.2.3 it will reasonably co-operate with the Customer in all matters relating to the Supply, and comply with the Customer's reasonable instructions;
- 2.2.4 before the date on which the Supply is to start, obtain and at all times, maintain during the term of the Contract, all necessary licences and consents;
- 2.2.5 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and that have been communicated to ROCK in writing;
- 2.2.6 hold all Customer Materials and Customer Equipment in safe custody, and not dispose of the Customer Materials and/or and Customer Equipment other than in accordance with the Customer's written instructions or authorisations; and
- 2.2.7 not do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

- 2.3 **Rock Default:** If the Customer is of the reasonable view that ROCK has committed a ROCK Default, the Customer shall provide ROCK with written notice specifying the ROCK Default within the notice period. The notice period shall start on the day on which the Customer become, or ought reasonably to have become, aware of the ROCK Default and shall expire within one (1) week from that date. If ROCK reasonable agrees with the written notice from the Customer, it shall within fourteen (14) calendar days of receipt of such notice from the Customer, propose actions and a reasonable timescale to remedy or mitigate the ROCK Default. Unless the Customer notifies ROCK of a ROCK Default within the notice period, ROCK shall have no liability for that ROCK Default.
- 2.4 **Customer's obligations:** The Customer acknowledges and agrees that ROCK's ability to provide the Supply is dependent upon the timely co-operation of the Customer, as well as the accuracy and completeness of any specifications and information to be provided to ROCK by the Customer and accordingly the Customer will:
- 2.4.1 co-operate with ROCK in all matters relating to the Supply (including where applicable any TMO Audit), and comply with ROCK's reasonable instructions;
 - 2.4.2 provide ROCK in a timely manner with such documents, information, materials and items in any form as ROCK may reasonably require for the Supply (including but not limited to any documents, information, items and materials required under the Accepted Order) and ensure that such information (including without limitation the Customer Materials) is complete and accurate;
 - 2.4.3 provide access to the Customer IT Infrastructure and/or Customer's premises and data (where relevant) and other facilities as may reasonably be requested by ROCK and agreed with the Customer in writing in advance, for the purposes of the Supply;
 - 2.4.4 before the date on which the Supply is to start, obtain and maintain during the term of the Contract, all necessary licences, permissions and consents and comply with all relevant legislation in relation to the Supply and comply with all applicable laws, including health and safety laws;
 - 2.4.5 inform ROCK in writing of all health and safety and security requirements that apply at the Customer's premises which ROCK will require access to;
 - 2.4.6 keep and maintain all ROCK Materials at the Customer's premises in safe custody at its own risk, maintain ROCK Materials in good condition until returned to ROCK, and not dispose of or use ROCK Materials other than in accordance with ROCK's written instructions or authorisation;
 - 2.4.7 not do or omit to do anything which may cause ROCK to lose (or otherwise have conditioned or restricted) any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 2.4.8 notify ROCK in writing immediately upon the occurrence of a change of Control of the Customer;
 - 2.4.9 not do, omit to do, or say anything which harms or could foreseeably harm the reputation of ROCK (in the opinion of ROCK); and

2.4.10 ensure that all the Customer Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements.

2.5 **Right to suspend:** If ROCK's performance of any of its obligations under the Contract is prevented or delayed by any Customer Default, including without limitation, late payment of an undisputed invoice by the Customer (for any Contract between the parties), ROCK shall, without limiting its other rights or remedies, to the extent the Customer Default prevents or delays ROCK's performance of any of its obligations it shall have the right to suspend performance of the Supply until the Customer remedies the Customer Default and ROCK shall not be liable for any related costs or losses sustained or incurred by the Customer arising from such non-performance.

3. CHARGES AND PAYMENT TERMS

3.1 **Calculation of Charges:** In consideration of the provision of the Supply, the Customer shall pay the Charges to ROCK. The Charges shall be calculated as set out in the Accepted Order, or if silent, on a time and materials basis.

3.2 **Out of Scope Services:** Unless otherwise agreed between the parties in writing in advance of the provision of any Out of Scope Services by ROCK, Out of Scope Services will be charged for on a time and materials basis in accordance with the Standard Rates.

3.3 Changes:

3.3.1 ROCK shall be entitled to increase the Charges by an amount not exceeding the annual percentage increase specified in the Retail Price Index upon 30 days' written notice to the Customer.

3.3.2 If any third party products or services are sourced outside the UK for the Supply, that purchase may be in a currency other than pounds Sterling (GBP), in which case the relevant Charges are subject to currency fluctuation.

3.3.3 The Customer acknowledges that the Charges may be calculated with reference to the Customer's actual usage, which is controlled by the Customer, rather than anticipated usage, and the Customer shall pay for all actual usage, unless otherwise agreed between the parties in writing.

3.4 **Time basis:** ROCK will use reasonable endeavours when requested by the Customer to (a) ensure that individuals whom it engages to provide services to be charged at its Standard Rate or Surcharge Rate completes time sheets to record time spent and (b) where requested by the Customer, provide an estimated number of hours or days required to complete the relevant task, and prior to implementing the relevant task.

3.5 **VAT:** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by ROCK to the Customer, the Customer shall, on receipt of a valid VAT invoice from ROCK, pay to ROCK such additional amounts in respect of VAT as chargeable on the supply of the Supply at the same time as payment is due for the Supply.

3.6 **Expenses:** Unless otherwise stated in the Accepted Order, the Charges exclude the following which shall be payable by the Customer in addition to the Charges: the cost of hotel, subsistence, travelling, administrative charges, and any other ancillary expenses reasonably incurred by the individuals whom ROCK engages in connection with the Supply; the cost to

ROCK of any materials or services procured by ROCK from third parties for the provision of the Supply

- 3.7 **General Invoicing and Payment Terms:** Subject to Clauses 3.6 and 3.7, ROCK will invoice the Customer in accordance with the payment terms detailed in the Accepted Order, or if not specified, at ROCK's discretion, on or at any time before or after completion of delivery or performance. The Customer shall pay each invoice submitted by ROCK in accordance with the payment terms detailed in the Accepted Order or any instructions contained on the relevant invoice or, if not specified within thirty (30) days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by ROCK. Any delay in payment of a deposit and/or Charges by the Customer may lead to a change in the timetable for the Supply and could lead to a related increase to the Charges.
- 3.8 **Late payment:** The Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Customer will also be liable to pay all costs, expenses and outlays incurred by ROCK in collecting any such overdue payments and interest thereon. ROCK reserves the right to refuse to perform and/or to deliver the Supply until the relevant amounts outstanding are paid. If in the reasonable opinion of ROCK, the credit rating of the Customer materially deteriorates and/or the Customer is persistently late in paying fees, then without prejudice to any other right or remedy available to ROCK, ROCK shall have the right to reasonably amend the payment terms upon written notice to the Customer.
- 3.9 **Dispute of an invoice:** If the Customer, acting in good faith, disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount no later than fourteen (14) calendar days after delivery of the relevant invoice, and shall at all times remain liable for the payment of all undisputed amounts. The Customer waives the right to dispute any Charges not disputed within fourteen (14) calendar days of receipt of the relevant invoice (other than in relation to any Charges invoiced in advance). When a dispute regarding amounts payable under a Contract is resolved, the amounts payable, as resolved, will become due immediately on the date of resolution.
- 3.10 **Set-off:** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). ROCK may at any time, without limiting its other rights or remedies, set-off any amount owed to it by the Customer against any amount payable by ROCK to the Customer.
- 3.11 **Finance Agreement:**

4. CONFIDENTIALITY

- 4.1 Each party undertakes that it shall not at any time during the term of the Contract and for a period of five years after termination or expiry of the Contract disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers or the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 4.2.
- 4.2 Each party may disclose the other party's confidential information:
- 4.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors,

subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 4; and

4.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

4.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 **Determining which terms apply.** The terms and conditions as related to the ownership and use of Intellectual Property Rights shall be set-out in the Accepted Order and/or Additional Conditions (to the extent applicable), or if silent, the terms of this Clause 5 shall apply.

5.2 **Customer Materials.** All Customer Materials are the exclusive property of the Customer. The Customer grants ROCK a fully paid-up, non-exclusive, royalty-free, non-transferable licence (and sublicensable licence for the purposes of ROCK's subcontractors) to copy, use, develop and modify the Customer Materials for the purpose of the Supply. The Customer warrants that the receipt, use, development and modification of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party.

5.3 **Other IP:** All ROCK Materials are the exclusive property of ROCK. All Intellectual Property Rights in or arising out of or in connection with the Supply shall be owned by ROCK or its relevant licensors (other than any Intellectual Property Rights in the Customer Materials) and ROCK hereby grants the Customer a non-exclusive, personal and revocable licence to use such Intellectual Property Rights (and where applicable the relevant Intellectual Property Rights in the ROCK Materials) for the purpose of receiving the Supply, until the Contract expires or is terminated.

5.4 **Open-Source Software:** The Customer acknowledges that the Supply may contain or be derived from Open-Source Software. If the Supply contain or are derived from, either in whole or in part, Open-Source Software, then the Customer shall comply with the terms and conditions of the applicable licence for the Open-Source Software.

5.5 **Third Party IP:** The Customer acknowledges that, in respect of any Third Party IP:

5.5.1 the Customer's use of any such Third Party IP is conditional on ROCK obtaining a written licence from the relevant licensor which may incur a fee, which fee shall be payable by the Customer;

5.5.2 ROCK does not guarantee, represent nor warrant that it shall be able obtain a licence which permits the Customer to use such Third Party IP and/or that such licence will be in accordance with any licence terms requested by the Customer;

5.5.3 unless otherwise agreed by ROCK in writing, ROCK shall have no responsibility for renewing the licence of any Third Party IP upon the relevant renewal date, but where such renewal is required by the third party licensor of the Third Party IP (on an automatic renewal basis or otherwise), the Customer shall be responsible for any renewal fee;

5.5.4 the Customer agrees to hold harmless, waive and release ROCK and its officers, agents, representatives, and successors from any responsibility, liabilities, demands, or claims of any kind arising out of any actions or omissions of the third party licensor of the Third Party IP; and

5.5.5 it shall comply with all terms of any licence granted by a third party in relation to Third Party IP (and any other conditions or instructions related to such Third Party IP).

6. DISPUTE RESOLUTION

6.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

6.1.1 If a dispute arises in the opinion of either party, the party in question may give written notice to the other party that the dispute has arisen ("**Dispute Notice**");

6.1.2 The dispute shall be referred, by the referring party, first to the **Primary Technical Contact** or **Client Relationship Manager** of each of the parties for resolution;

6.1.3 If the dispute cannot be resolved by the Primary Technical Contact or Client Relationship Manager of the parties within 14 days after the dispute has been referred to them, either party may refer the dispute to the **Client Representative** and our representative for resolution.

6.2 If the Client Representative and our representative are unable, or fail, to resolve the dispute within 14 days following referral of the dispute to them, the parties may attempt to resolve the dispute by mediation in accordance with Clause 6.3.

6.3 If, within 30 days of the Dispute Notice, the parties have failed to agree on a resolution, either party may refer any dispute for mediation. The following provisions shall apply to any such reference to mediation:

6.3.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;

6.3.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

6.3.3 to the extent not provided for by such agreement of the MMP: (i) the mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other party to agree the appointment of a mediator; and (ii) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

6.4 If and to the extent that the parties do not resolve any dispute or any issue in the course of any mediation, either party may then commence or continue court proceedings in respect of such unresolved dispute or issue.

6.5 Nothing in this Clause 6 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

7. INSURANCE AND LIABILITY

7.1 ROCK maintains, with a reputable insurance company, professional indemnity insurance and other appropriate insurances to cover ROCK's liabilities that may arise under or in connection with the Supply.

- 7.2 Nothing in the Contract shall operate to exclude or limit either party's liability for (a) death or personal injury caused by its negligence or (b) fraud or (c) any other liability which cannot be excluded or limited under applicable law.
- 7.3 Subject to Clause 7.2, neither party shall not be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for any indirect or consequential loss. Subject to Clause 7.2, ROCK shall not be liability to the Customer whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for any loss of profits, loss of anticipated profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of, or damage to, software, data or information, loss or damage to goodwill.
- 7.4 [Subject to Clause 7.2, ROCK's total aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Charges paid under the Contract [in the preceding 12 months].]
- 7.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 11(c) to 11(e) of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 Unless the Customer notifies ROCK that it intends to make a claim in respect of an event within the notice period, ROCK shall have no liability for that event. The notice period of any event shall start on the day on which the Customer become, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.7 The parties agree that the limitations on liability in the Contract are reasonable, given the parties' respective commercial positions and each party's ability to purchase appropriate insurance in respect of arising risks. This Clause 7 shall survive termination of the Contract.

8. EARLY TERMINATION RIGHTS

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 8.1.1 subject to Clause 2.3, the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; and/or
 - 8.1.2 the other party shall have a receiver or administrator appointed over any or all of its assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or if it enters into any voluntary arrangement with its creditors or if it ceases or threatens to cease to carry on business.
- 8.2 Without affecting any other right or remedy available to it, ROCK may terminate the Contract, or part thereof, (at ROCK's discretion), without liability, with immediate effect by giving written notice to the Customer if:
- 8.2.1 the Customer fails to pay any undisputed amount due under the Contract within 7 days of the due date for payment;
 - 8.2.2 there is a change of Control of the Customer; and/or

8.2.3 if any contract for Managed Services between the Customer and ROCK expires or is terminated and, in ROCK's reasonable opinion, delivery of the Supply under the Contract is unfeasible without the Managed Services.

8.3 [ROCK may terminate the Contract and/or one or more of the Supply, without liability, at any time by giving ninety (90) day's written notice to that effect.]

9. CONSEQUENCES OF TERMINATION

9.1 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

9.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.3 On termination or expiry of the Contract:

9.3.1 ROCK will return to the Customer all Customer Materials and Customer Equipment;

9.3.2 Customer will return to ROCK all ROCK Materials;

9.3.3 Customer will immediately pay to ROCK all of ROCK's outstanding unpaid invoices, any due interest and any unpaid and non-refundable third-party charges or costs related to the Supply;

9.3.4 in respect of any Supply provided or procured by ROCK, but for which no invoice has been submitted, ROCK will submit an invoice, which shall be payable by the Customer on receipt; and

9.3.5 the parties may agree, subject to payment to ROCK, the provision of assistance by ROCK reasonably required by the Customer to facilitate the smooth transition of the Supply to the Customer or any replacement supplier appointed by it.

10. OTHER

10.1 **Personal data.** The parties will enter into a separate data processing and/or data sharing agreement, as applicable to the Supply.

10.2 **Non-Solicitation:** Neither party shall, without the prior written consent of the other party, at any time from the date of the Contract to the expiry of twelve (12) months after the termination or expiry of the Contract, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the other party in the provision of the Supply.

10.3 **Title and risk:** Unless otherwise expressly stated in the Accepted Order and/or Additional Conditions the title to any goods or Hardware shall not pass to the Customer until ROCK receives payment in full (in cash or cleared funds) for the relevant Supply, and the risk in any goods or Hardware shall pass to the Customer on delivery. Until title has passed to the Customer, the Customer shall maintain the relevant goods or Hardware in satisfactory condition and keep them insured on ROCK's behalf for their full price against all risks with a reputable insurer.

- 10.4 **Notices:** Any notice given to a party under or in connection with the Contract shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email to the following addresses (or such other addresses as notified from time to time): ROCK: [INSERT EMAIL ADDRESS TO BE USED FOR NOTICES]; Customer: as detailed in the Accepted Order. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. **Business Day** means a day other than a Saturday, Sunday or public holiday in England and Wales when banks in London are open for business. **Business Hours** means the period from 9.00 am to 5.00 pm on any Business Day.
- 10.5 **Publicity:** Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of the Contract or the relationship between the parties, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.
- 10.6 **Assignment and other dealings:** The Customer shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of ROCK. ROCK may assign or subcontract any or all of its rights and obligations under the Contract. [If ROCK is unable to provide the Supply (in whole or part), in its reasonable opinion, due to any act, omission or default of any relevant sub-contractor and/or any unavailability of any relevant sub-contractor from time to time it shall be entitled to suspend the relevant Supply and/or terminate the Contract.]
- 10.7 **Entire Agreement:** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 10.8 **Third Party Rights:** Unless it expressly states otherwise, this Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 10.9 **Variation:** No variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 10.10 **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.11 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this Clause 11.11, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 10.12 **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Nothing in the Contract shall render any personnel of ROCK an employee, worker, agent or partner of the Customer.
- 10.13 **Force Majeure:** Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving not less than 30 days written notice to the affected party.
- 10.14 **Governing Law and Jurisdiction:** The Contract 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 are governed by and construed in accordance with the law of England Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

11. DEFINITIONS

- 11.1 In the Contract, the following definitions will apply:

Accepted Order has the meaning given to it at Clause 2.1 of these Standard Conditions.

Activation Date means the start date for the Managed Services following completion of Onboarding.

Additional Conditions means any additional terms and conditions referenced in an Accepted Order.

Change Order has the meaning given to it at Clause 1.5 of these Standard Conditions.

Charges means the charges payable in respect of the Supply.

Contract means the contract between ROCK and the Customer for the sale and purchase of the Supply in accordance with the Accepted Order, these Standard Conditions and any Additional Conditions.

Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Customer means the organisation or person (in the case of sole traders) who purchases the Supply from ROCK, and as designated in the Accepted Order.

Customer Default means any act or omission by the Customer or failure by the Customer to perform any relevant obligation under the Contract.

Customer Equipment means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the Supply including any such items specified in the Accepted Order.

Customer IT Infrastructure means all hardware, software, networks, communications, data, facilities and related equipment used by the Customer and not procured for the Customer by ROCK.

Customer Materials means all documents, information, items and materials in any form which are provided by the Customer in connection with the Supply, including any such items specified in the Accepted Order.

Dispute Notice has the meaning given to it in Clause 7.1.1 of these Standard Conditions.

Extension Period means the extended duration for the Managed Services as specified in the Accepted Order.

Hardware means the physical hardware as specified in the Accepted Order, which may include any of the following: physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories).

Hardware Supplier means the third party from whom ROCK procures the Hardware on the Customer's behalf.

Hardware Supplier Terms means any terms and conditions of supply applied by the Hardware Supplier to, or related to, the Hardware from time to time including without limitation, those available here: <https://eu.tdsynnex.com/vendor-pass-through-terms>

Industry Practice means the degree of skill and care which it is reasonable to expect of a typical provider of services similar the services to be provided for the Supply.

Initial Period means the initial duration for the Managed Services as specified in the Accepted Order.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software (excluding Open Source Software), database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Open-Source Software means any software licensed under any form of open-source licence including but not limited to those meeting the Open Source Initiative's Open Source Definition which can be found at <https://opensource.org/docs/definition.php>.

Managed Services means the IT support services to be provided by ROCK and as described in the Specification and Service Levels.

Managed System means the specified assets, users, sites and systems which will receive the benefit of the Managed Services as detailed in an Accepted Order.

MAUD Events means movement, additions, upgrades and disasters as defined in the Service Levels.

Onboarding means the initial setup services required prior to the provision of Managed Services to the Customer as described in the Service Levels and/or Specification, and which may include a TMO Audit.

Order means the Customer's order for the Supply in accordance with Clause 2.1 of these Standard Conditions.

Out of Scope Services means any services which ROCK performs for the Customer from time to time upon request and which services are not specified in an Accepted Order.

Payment Terms means the payment terms detailed in Accepted Order.

Products means Hardware, Third Party Software and any other goods or products specified in an Accepted Order.

Project means a Supply which is identified in an Accepted Order as a Project, and as specified in the Project Scope.

Project Scope means the Specification for a specific Project, detailing any Products to be procured for the Project, the scope of services/labour to be provided by ROCK as related to Products, estimated timescales for the Project and intended deliverables from the Project.

Proposal Document means a written proposal, quotation, scope of services or other document provided by ROCK to the Customer for the Supply

ROCK means Rock I.T. Specialists Limited Trading as ROCK, with company number 06583990 and having its registered office at 27-28 Old Field Road, Pencoed, Bridgend, Mid Glamorgan, CF35-5LJ, and any subsidiary or holding company from time to time of ROCK and any subsidiary from time to time of a holding company of ROCK.

ROCK Default any default of ROCK in complying with its obligations under Clause 2.

ROCK Materials means all documents, information, items and materials in any form which are provided by ROCK (or its representatives) in connection with the Supply, including any such items specified in the Accepted Order.

Service Levels means those standards of performance for a Supply, as specified in the Accepted Order.

Specification means the written specification for a Supply, as specified in the Accepted Order.

Special Terms means any special terms detailed in the Accepted Order.

Standard Conditions means the terms and conditions set out in this document.

Standard Rates means ROCK's standard rates as detailed in the Accepted Order or otherwise applied by ROCK from time to time.

Surcharge Rates means ROCK's rates as detailed in the Accepted Order or otherwise applied by ROCK from time to time for services completed outwith normal business hours or outwith the UK.

Supply means the provision of the services, goods and any related agreed deliverables specified in the Accepted Order.

Technology Consultancy the consultancy services to be provided by ROCK and as further specified in the Technology Consultancy Scope.

Technology Consultancy Scope means the Specification for consultancy services to be provided but ROCK, as related to the Customer IT Infrastructure or other technology, which scope defines the estimates timescale for provision of the services.

Third Party IP means any Intellectual Property Rights owned by a third party, including any Third Party IP.

Third Party Software means any software which is owned and/or licensed by a third party, and as further specified in the Accepted Order.

Third Party Software Licence means the licence granted to the Customer related to the Third Party Software as prescribed by the TPL Provider and/or TPL Licensor.

TPL Terms means any terms and conditions applied by the TPL Provider and/or TPL Licensor to, or related to, the Third Party Software, from time to time including without limitation, those available here: <https://eu.tdsynnex.com/vendor-pass-through-terms>

TPL Provider means the third party from whom ROCK procures the Third Party Software on the Customer's behalf.

TPL Licensor means the third party owner or licensor of the Third Party Software.

TMO Audit an audit to be carried out on the Customer's IT Infrastructure and/or Managed System.