

Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is made as of [1st of] (the “**Effective Date**”) and is by and between the parties listed below.

1. PARTIES.

5Y Technology Limited, incorporated and registered in England and Wales with company number 13106834, whose principal office is at Swift House, Ground Floor, 18 Hoffmans Way, Chelmsford, Essex, United Kingdom, CM1 1GU (“**5Y**”); and

., incorporated and registered in X with company number X, whose registered office is at (“**Customer**”).

5Y and Customer may each be referred to as a “**Party**” and collectively as the “**Parties**”.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement and any Statement of Work unless the context otherwise requires words and phrases below shall have the following meanings:

“**Affiliate**” means any legal entity that is owned by a Party hereto, that owns such Party, or that is under common ownership with such Party. Ownership means control of more than a 50% interest.

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday in England, 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.

“**Confidential Information**” means all information in whatever form (including without limitation, in written, oral, visual or electronic form, or on tape or disk) relating to either Party and/or its business (including, without limitation, in relation to the Customer all details of its customers, and in the case of 5Y details of information on released or unreleased software or hardware packages (in so far as not inconsistent with the licence granted hereby), together in either case with all details of business policies and practices) that are directly or indirectly disclosed to the other Party in the course of the performance of this Agreement or any SOW or being of such a nature that would reasonably be deemed confidential or proprietary and in either case including any such disclosure to any representative, agent or employee of the other Party or which comes to such Party’s attention in connection with the performance of its obligations under this Agreement or any SOW. Confidential Information includes, without limitation, research, development, data, trade secrets, designs, concepts, ideas, specifications, know-how, farm data, genetic or progeny indices, products, product registration, product logistics, manufacturing methods, marketing plans, business plans, business opportunities, personnel, customers, facilities, finances, costs, budgets, prices, purchase volumes and any other non-public scientific, technical or business information, including that of others which the Disclosing Party is obligated to maintain in confidence, or which the Receiving Party has reason to know is confidential. The term Confidential Information also shall include all notes, analyses, compilations, studies, interpretations or other documents prepared by the Receiving Party or any of its representatives, agents or employees which contain in whole or in part, the Confidential Information furnished under this Agreement or any SOW.

“**Customer Materials**” means all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to 5Y under or in connection with this Agreement or any SOW.

“Data Protection Law” means all applicable data protection law, including the General Data Protection Regulation (Regulation (EU) 2016/679) and any legislation which amends, extends, consolidates, re-enacts or replaces same, including any statutory instruments and regulations that may be made pursuant thereto from time to time.

“Deliverables” mean any outputs of the Specified Services to be provided by 5Y to the Customer as specified in a SOW and any other documents, products and materials provided by 5Y to the Customer in relation to the Specified Services.

“Intellectual Property Rights” mean patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer 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.

“Key Personnel” means any personnel of 5Y, as identified in a SOW, who are key to the performance of the Specified Services to be provided under that SOW.

“Solution” has the meaning given to it in the Software Terms and Conditions.

“Software Terms and Conditions” means the software subscription order and software terms and conditions entered into between 5Y and the Customer on or around the Effective Date governing the use and licensing of the Solution.

“Specified Services” means services to be performed by 5Y, as set out in any SOW.

“Statement of Work” or **“SOW”** means a document created by 5Y and signed by an authorized representative of the Customer in accordance with clause 3 of this Agreement, that identifies the scope of individual work packages to be completed by 5Y and which includes: i) identifying individual sets of discrete tasks and deliverables, defined below; ii) a timeline for the performance and delivery of the tasks and Deliverables; iii) relative responsibilities of 5Y and the Customer; and iv) details regarding the charges which may be invoiced by 5Y to the Customer, which shall be based on the rates attached as Schedule A.

- 2.2. Words importing any gender in this Agreement and any SOW include every gender.
- 2.3. Words importing the singular in this Agreement and any SOW include the plural and vice versa.
- 2.4. References to numbered clauses and schedules are references to the relevant clauses or schedules of this Agreement.
- 2.5. The headings to the clauses, schedules and paragraphs of this Agreement and any SOW will not affect its interpretation.
- 2.6. Any obligation on any Party not to do or omit to do anything includes an obligation not to allow that thing to be done or omitted to be done.
- 2.7. In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any schedule to this Agreement, the provision in the body of this Agreement shall take precedence.
- 2.8. This Agreement and any SOW may not be released, discharged, amended varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each Party.

2.9. The words 'include' or 'including' shall be construed to mean including without limitation.

3 OVERVIEW

- 3.1 Under this Agreement the Customer may engage 5Y to provide the Customer with Specified Services and associated Deliverables based on the roles and day rates identified in Schedule A, by entering into one or more Statements of Work.
- 3.2 Each Customer request for services will be incorporated into a draft Statement of Work created by 5Y to document all tasks and deliverables to be delivered by 5Y as part of the Specified Services within the scope of that Statement of Work and submitted to the Customer for consideration. The Customer may, in respect of any such draft Statement of Work submitted to it and acting reasonably (a) reject the draft Statement of Work; (b) require changes to be made by 5Y to the draft Statement of Work; or (c) accept and sign the draft Statement of Work. Neither Party shall have any rights or obligations under any draft Statement of Work unless and until it has been signed by a duly authorized representative of the Customer.
- 3.3 Each draft Statement of Work submitted by 5Y to the Customer shall include, as a minimum, the following details:
- 3.3.1 Commencement Date;
 - 3.3.2 Scope;
 - 3.3.3 Specified Services;
 - 3.3.4 Deliverables;
 - 3.3.5 Project Team;
 - 3.3.6 Roles and Responsibilities;
 - 3.3.7 Key Assumptions;
 - 3.3.8 Out of Scope;
 - 3.3.9 Budget and Payment Terms;
 - 3.3.10 Where relevant, service levels in respect of the Specified Services to be provided.
- 3.4 Once a Statement of Work submitted by 5Y to the Customer has been signed by a duly authorized representative of the Customer, it will constitute a contract between 5Y and the Customer governing the provision of the Specified Services and Deliverables to which it relates and which incorporates provisions of this Agreement to the extent that they are relevant to the subject matter of the Statement of Work.
- 3.5 5Y may invoice the Customer for work within the scope of a Statement of Work undertaken using the previously agreed consulting rates specified in Schedule A. If 5Y desires to modify Schedule A for any SOW, it must notify Customer prior to the start of the SOW and the Customer must expressly agree to such modification in the SOW.
- 3.6 In consideration for the performance of Specified Services in accordance with the terms of the applicable SOW, 5Y may invoice the Customer the amounts payable in respect of such Specified Services in accordance with the agreed payment schedule or milestones, each as set forth in the relevant SOW.
- 3.7 5Y will not (in respect of each element or discreet task forming part of the Specified Services) carry out services under this Agreement without first obtaining Customer's agreement in writing to the anticipated time required; such agreement to be in the form of a Statement of Work agreed by both Parties.
- 3.8 5Y may charge for vouched expenses reasonably incurred by 5Y in connection with completing Specified Services as an additional cost, provided that such expenses were incurred in accordance with Customer's expense policies or were explicitly approved by Customer in advance of being incurred.

3.9 Except where stated otherwise in this Agreement or any SOW, 5Y will be responsible for all costs and expenses incurred by it in connection with the performance of this Agreement and any SOW.

3.10 5Y shall provide the Deliverables on the timeline specified in each applicable SOW.

3.11 Customer shall have the right to inspect and test all Deliverables after their initial delivery by 5Y. If any Deliverable does not materially comply with the terms of the applicable SOW, 5Y shall promptly correct any deficiencies at its own cost and reliver the relevant Deliverable to the Customer.

4 5Y RESPONSIBILITIES

4.1 **Statement of Work;** 5Y will create a draft Statement of Work and submit the draft Statement of Work to the Customer promptly in accordance with the procedure set out in clause 3.

4.2 **Delivery;** 5Y will provide the Specified Services in a professional manner, with reasonable skill and care, and in accordance with any agreed standards and methodologies.

4.3 **Use of Customer Property;** 5Y will use Customer's hardware and software only as authorised, for the purposes of the obligations on the part of 5Y under this Agreement and any SOW, and for no other purpose.

4.4 **Health and Safety;** 5Y will comply with all relevant Health and Safety legislation and requirements relating to the Customer's premises, take all reasonable steps to safeguard 5Y personnels' own safety (and that of any others who may be affected by 5Y personnels' acts or omissions), and cooperate in discharging Customer's own health and safety obligations.

4.5 **Security;** 5Y will cooperate with the Customer in ensuring adherence with any security policies relating to the Customer's sites or systems (which includes third party systems which the Customer operates) of which 5Y have been made aware. For clarity, 5Y shall, and shall ensure that all personnel, comply with all rules, regulations, policies and protocols of Customer that are communicated to 5Y, including security procedures concerning systems and data and remote access thereto and building security, as applicable.

4.6 **Service Outcome;** given that the Specified Services to be delivered are dependent upon the performance of Customer employees and other potential partners, which are outside of 5Y control, 5Y provide no warranty on the successful outcome of the Specified Services provided other than that 5Y will fulfil its responsibilities as identified in this Agreement and any SOW and as otherwise outlined herein.

4.7 **Service Deviations;** 5Y will not deviate from the Specified Services and associated SOWs without formal written agreement by Customer in the form of an agreed written change request or revised SOW.

4.8 **5Y Personnel;** 5Y is solely responsible for, and the Authority has no responsibility for or to, 5Y's employees, servants, officers and agents.

5 CUSTOMER RESPONSIBILITIES

5.1 **Statement of Work;** Customer will review and respond to any draft Statement of Work submitted to it by 5Y in accordance with the procedure set out in clause 3.

5.2 **Delivery;** Customer will, at reasonable times and on reasonable request, provide all reasonable assistance to 5Y consultants to help them in their successful delivery of the Specified Services.

- 5.3 **Access;** Customer will ensure that where services are undertaken by 5Y personnel at Customer sites, reasonable access is provided to all necessary equipment, office services, information and Customer personnel, in order to ensure 5Y can deliver successfully the Specified Services, provided that 5Y personnel shall comply with all rules, regulations, policies and protocols of Customer that are communicated to 5Y, including security procedures concerning systems and data and remote access thereto and building security, as applicable. 5Y acknowledges that Customer may refuse or suspend such access for non-compliance with any such rules, regulations, policies and protocols.
- 5.4 **Licensing;** Customer will ensure that all necessary software application, operating system and database licenses are held to allow 5Y to carry out the Specified Services.
- 5.5 **Health, Safety and Security;** Customer will ensure that an explanation of Health and Safety and all relevant security procedures at Customer premises is given to 5Y consultants and that the locations at which consultants will be expected to work are to the standard expected by applicable Health and Safety legislation.
- 5.6 **Service Deviations;** Customer will not agree to any deviations to the Specified Services and associated SOWs without formal written agreement by 5Y in the form of an agreed written change request or revised SOW.

6 TESTING AND ACCEPTANCE

- 6.1 5Y shall carry out acceptance tests in respect of Deliverables where required to do so in the relevant SOW, in accordance with the requirements and timelines set out in the relevant SOW.
- 6.2 5Y acknowledges that a SOW may specify that 5Y's entitlement to invoice certain charges shall be dependent on the Customer providing written confirmation of its acceptance of a Deliverable or Deliverables and, where this is the case, 5Y may not issue an invoice for such charges unless and until Customer has provided such written confirmation.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 In relation to the Customer Materials:

- 7.1.1 the Customer or its licensors shall retain ownership of all Intellectual Property Rights in and to the Customer Materials; and
- 7.1.2 the Customer grants to 5Y a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence for the duration of the term of the applicable SOW to copy and modify the Customer Materials to the extent necessary for the sole purpose of providing the Specified Services within the scope of the applicable SOW to the Customer.

7.2 In relation to the Deliverables, except where expressly provided otherwise in the applicable SOW:

- 7.2.1 5Y or its licensors shall retain ownership of all Intellectual Property Rights in and to the Deliverables, excluding the Customer Materials; and
- 7.2.2 5Y grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, sub-licensable, perpetual and irrevocable licence to use, copy and modify the Deliverables for the purpose of receiving and using the Specified Services and the Deliverables in the Customer's and the Customer's Affiliates' business.

8 CONFIDENTIALITY AND SECRECY.

- 8.1 Both parties shall at all times during the continuance of this Agreement and each SOW and at all times after their termination keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person for any purpose other than the performance of its obligations under this Agreement or any SOW.
- 8.2 The parties shall own their respective Confidential Information and the Party receiving such Confidential Information (the “**Receiving Party**”) acknowledges that nothing in this Agreement or any SOW is intended to amount to or implies any transfer, license or other grant of rights in relation to the Confidential Information or any patents, design right, trademark, copyright or other intellectual property rights owned or disclosed by the Party disclosing such Confidential Information (the “**Disclosing Party**”).
- 8.3 Where information has been disclosed by the Receiving Party to any properly appointed sub-contractors or subsidiaries, the Receiving Party undertakes that it will ensure that they comply with the confidentiality obligations set out in this clause, as if they were parties to this Agreement.
- 8.4 The provisions of this clause shall not apply to information in the possession of the Receiving Party before disclosure thereof by or on behalf of the Disclosing Party, or information obtained without restriction from a third party; or information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.
- 8.5 In the event 5Y determines that a breach of data security has resulted in unauthorised access to or unauthorised disclosure of Confidential Information that is in 5Y’s possession or control, 5Y will promptly notify Customer of the data security breach and relevant details of the same. 5Y agrees to reasonably cooperate with Customer in its investigation and remediation of the data security breach and to take reasonable steps to prevent the reoccurrence thereof.
- 8.6 The Receiving Party shall upon written request from the Disclosing Party, promptly return to the Disclosing Party or certify to the Disclosing Party the destruction of all documents, records, and copies of the Confidential Information in any form, whether supplied by Disclosing Party or generated by Receiving Party from Confidential Information, provided, however, and subject to the confidentiality and non-use obligations contained in this Agreement, the Legal function of the Receiving Party may retain one copy of all such documents and records, solely for the purpose of monitoring the Receiving Party’s compliance with the terms of this Agreement and any SOW. Neither Party shall be required to delete electronic Confidential Information created solely by a Party’s automatic archiving and back-up procedures, to the extent created and retained in a manner consistent with such Party’s standard archiving and back-up procedures and not for any other use or purpose, provided that any such retained Confidential Information will continue to be subject to the terms of this Agreement until it is destroyed by the Receiving Party.

9 KEY PERSONNEL

Unless the Key Personnel cease to be employed by or contracted to 5Y, die, are on sick leave, are injured or are on maternity or paternity or other statutory leave, 5Y shall use all reasonable endeavours to ensure that the Key Personnel shall continue to provide the Specified Services to the Customer until successful completion of the relevant Specified Services under the relevant SOW. With the exception of a member of the Key Personnel who ceases to be employed by or contracted to 5Y, who dies, is on sick leave, is injured or is on maternity or paternity or other statutory leave, the Key Personnel may only be removed by 5Y in advance of the completion of the Specified Services with the prior written consent of the Customer, such consent not to be unreasonably withheld. In all cases the Key Personnel (whether removed with consent or otherwise pursuant to the terms of this clause 9) must be replaced with a member of 5Y’s personnel of equal or higher ability. Prior to the removal of any Key Personnel in accordance with this clause 9, 5Y shall (where possible in advance of any such removal) furnish the Customer with a copy of the proposed replacement’s curriculum vitae and all details reasonably required to enable the Customer to satisfy itself that the relevant replacement is appropriately qualified for the provision of the Specified Services.

10 PROPERTY

All property supplied by 5Y for use during the performance of this Agreement and any SOW, unless expressly included as part of the Specified Services, will remain the property of 5Y during and following completion of the agreement.

11 LOSS OR DAMAGE TO PROPERTY

All property belonging to the Customer, which is used during performance of the Agreement and any SOW, will remain at Customer risk at all times and, other than damage caused by 5Y's negligence or wilful misconduct, 5Y accepts no liability for any loss or damage to it however such loss or damage may be caused. While onsite at Customer's location, 5Y and its employees and sub-contractors will, at all times, comply with Customer's standard policies and procedures in place at the time of the work being performed.

12 VIRUS PROTECTION

Both parties undertake to ensure as far as is reasonably possible all computer equipment, software and electronic documentation supplied during the performance of the Agreement and each SOW is virus free.

13 DATA PROTECTION

13.1 In this Agreement and any SOW, the terms 'personal data', 'controller', 'processor', 'process', 'data subject' and 'personal data breach' shall have the meanings given to them under applicable Data Protection Law.

13.2 5Y acknowledges that in providing Specified Services under a SOW, 5Y may process personal data made available by the Customer on behalf of the Customer. In such circumstances, 5Y acknowledges that the Customer is the controller and 5Y is a processor and 5Y agrees that:

13.2.1 details of:

- (a) the subject-matter and duration of the data processing;
 - (b) the nature and purpose of the data processing; and
 - (c) the type(s) of personal data and categories of data subjects,
- shall be set out in the SOW;

13.2.2 5Y will only process such personal data in accordance with the documented instructions of the Customer including meeting its obligations under this Agreement, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under the SOW, unless required to do so by UK, EU or EU Member State law to which 5Y is subject, in which case 5Y shall inform the Customer of that legal requirement before processing (unless that law prohibits such information on important grounds of public interest);

13.2.3 5Y shall ensure that the persons authorised by 5Y to process such personal data are bound by appropriate confidentiality obligations;

13.2.4 5Y shall have and maintain in place such technical and organisational security measures as are required to comply with the data security obligations under applicable Data Protection Law;

13.2.5 5Y shall not engage any sub-processor with access to personal data of which Customer is the controller without the prior written consent of the Customer and where the Customer has consented to the appointment of a sub-processor, 5Y shall not replace or engage other sub-processors without the prior written consent of the Customer;

- 13.2.6 where any sub-contractor of 5Y will be processing such personal data on behalf of the Customer, 5Y shall ensure that a written contract exists between 5Y and the sub-contractor containing clauses equivalent to those imposed on 5Y in this clause 13. In the event that any sub-processor fails to meet its data protection obligations, 5Y shall remain fully liable to the Customer for the performance of the sub-processor's obligations;
- 13.2.7 5Y shall inform the Customer promptly (and in any event, within 5 Business Days of receiving such request) in the event of receiving a request from a data subject to exercise their rights under applicable Data Protection Law and provide such reasonable co-operation and assistance as may be required to enable the Customer to deal with such request in accordance with the provisions of applicable Data Protection Law;
- 5Y shall assist the Customer by implementing appropriate technical and organisational measures to allow the Customer to comply with requests from data subjects to exercise their rights under Data Protection Law;
- 13.2.8 5Y shall assist the Customer at Customer's cost in ensuring compliance with its obligations in respect of security of personal data, data protection impact assessments and prior consultation requirements under applicable Data Protection Law;
- 13.2.9 when 5Y ceases to provide services relating to data processing 5Y shall: (i) at the choice of the Customer, delete or return all such personal data to the Customer; and (ii) delete all existing copies of such personal data unless UK, EU or EU Member State law requires storage of the personal data;
- 13.2.10 5Y shall : (i) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this clause 13; and (ii) allow for and assist with audits, including inspections, conducted by the Customer or another auditor mandated by the Customer, in order to ensure compliance with the obligations laid down in this clause 13, including its data security obligations under applicable Data Protection Law. 5Y acknowledges that Customer or its third party auditors may enter its premises for the purposes of conducting this audit, provided that Customer gives it reasonable prior notice of its intention to audit, its auditors enter into confidentiality obligations directly with 5Y, its auditors shall not access or seek to access any information relating to other customers of 5Y, the Customer conducts its audit during normal Business Hours, and takes all reasonable measures to prevent unnecessary disruption to 5Y's operations. Customer will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; or (ii) Customer reasonably believes a further audit is necessary due to a data breach suffered by 5Y;
- 13.2.11 5Y shall inform the Customer immediately if, in its opinion, it receives an instruction from the Customer which infringes applicable Data Protection Law;
- 13.2.12 5Y shall notify the Customer without undue delay after becoming aware of any personal data breach affecting the Customer; and
- 13.2.13 5Y shall not transfer any such personal data outside of the European Economic Area to a jurisdiction which is not covered by an adequacy decision issued by the European Commission without the prior written consent of the Customer which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into standard contractual clauses in the form approved by the European Commission).

14 SOLICITATION

- 14.1 Neither Party will, without the consent of the other Party, either during or within 12 months after the termination of this Agreement, engage, employ, or otherwise solicit to employ,

or contract work to, any person who during that period was an employee of the other Party, or a subcontractor or an employee of a subcontractor of the other Party.

14.2 It is acknowledged and agreed that:

14.2.1 nothing in clause 14.1 shall prevent either Party from recruiting any person who replies to a publicly issued advertisement open to all comers and not specifically targeted at any employees of the other Party; and

14.2.2 the provisions of clause 14.1 will not apply in the event that a Party hires an employee or former employee of the other Party and by written documentation and other evidence can demonstrate that such discussions with the other Party's personnel were underway before the Effective Date of this Agreement.

15 NON-PERFORMANCE

15.1 The successful performance of the Specified Services may be dependent on the performance by the Customer of tasks or responsibilities set out in the applicable SOW. In the event that the Specified Services provided by 5Y do not achieve the desired result because of Customer's failure to perform its tasks or responsibilities in accordance with the applicable SOW (a "**Customer Non-Performance**"), 5Y accepts no liability in consequence of this non-performance, except to the extent arising as a direct result of a negligent act or willful misconduct by 5Y, provided that:

15.1.1 5Y shall promptly notify the Customer upon becoming aware of the occurrence of such a Customer Non-Performance and its impact on the ability of 5Y to perform its obligations in respect of the affected Specified Services, referring specifically to this clause 15;

15.1.2 the Customer Non-Performance has not occurred as a result of any failure by 5Y to perform any task or responsibility in accordance with the applicable SOW (and provided that, where the Customer is aware of such failure by 5Y, the Customer shall notify 5Y); and

15.1.3 5Y shall take all such measures as are reasonably necessary to mitigate the impact of the Customer Non-Performance on the performance of 5Y's obligations under the relevant SOW.

16 BREACH OF CONTRACT AND INDEMNITY

16.1 5Y shall defend, indemnify and hold harmless Customer and Customer's officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers ("Losses") arising out of or resulting from any third party claim, suit, action or proceeding (each, an "Action") arising out of or resulting from any of the Specified Services or Deliverables or the Company's receipt or use thereof infringes any Intellectual Property Right of a third party (the "Intellectual Property Indemnity").

16.2 The Customer shall defend, indemnify and hold harmless 5Y and 5Y's officers, directors, employees, agents, successors and permitted assigns from and against all Losses arising out of or resulting from any Action that 5Y's receipt or use in accordance with the terms of this Agreement or any SOW of any Customer Materials infringes any Intellectual Property Right of a third party.

17 LIMITATION ON AND EXCLUSION OF DAMAGES

17.1 Nothing in this Agreement or any SOW shall limit or exclude either Party's liability for death or personal injury caused by negligence; fraud; willful abandonment; the Intellectual Property Indemnity provided by 5Y in clause 16 (*Breach of Contract and Indemnity*); the indemnity provided by the Customer in clause 16.2 (*Breach of Contract and Indemnity*); liability under

clause 8 (*Confidentiality and Secrecy*), liability under clause 13 (*Data Protection*); the Customer's payment obligations under any SOW; or any other liability that may not be limited or excluded under applicable law.

- 17.2 Subject to clause 17.1 above, 5Y's total liability to the Customer for any claim whether in contract, tort (including negligence) or otherwise, arising out of or in connection with any SOW shall not exceed an amount equal to 100% of the total fees paid and payable by the Customer under such SOW.
- 17.3 Subject to clause 17.1 above, the Customer's total liability to 5Y for any claim whether in contract, tort (including negligence) or otherwise, arising out of or in connection with any SOW shall not exceed an amount equal to 100% of the total fees payable by the Customer under such SOW.
- 17.4 In no event shall either Party be liable for any special, incidental, indirect, punitive or consequential loss or damages, howsoever arising, including any loss of profit, loss of business opportunity or loss of anticipated savings.

18 TERM AND TERMINATION

- 18.1 This Agreement shall commence as of the Effective Date and shall continue for a term of one (1) year after the Effective Date (the "**Initial Term**"). At the expiration of the Initial Term, this Agreement shall automatically renew for an additional one (1) year term (the "**Renewal Term**") and, together with the Initial Term, the "**Term**") unless a Party notifies the other Party at least ninety (90) days prior to the end of the then-current term of its intention not to renew.
- 18.2 Any SOW shall commence on the commencement date specified therein and, subject to early termination in accordance with its terms, shall continue in full force and effect for the period specified therein.
- 18.3 This Agreement and any SOW may be terminated by 5Y in writing:
- 18.3.1 with immediate effect if there is a material breach by Customer of the terms of this Agreement or such SOW and (if such breach is remediable) Customer fails to remedy that breach within fourteen days of being required in writing to do so;
 - 18.3.2 with immediate effect if Customer fails to pay any undisputed amount properly invoiced by 5Y under such SOW on the due date for payment and remains in default not less than 60 days after being notified by 5Y in writing, specifically citing this clause, to make such payment
 - 18.3.3 for convenience upon written notice to the Customer of not less than 90 days and provided that any such notice would not affect any SOW under which there are outstanding 5Y obligations to be completed/satisfied.
- 18.4 This Agreement and any SOW may be terminated by Customer:
- 18.4.1 on written notice with immediate effect if 5Y is in material breach of any provision of this Agreement or any SOW and (if such breach is remediable) fails to remedy the breach within fourteen days of being required in writing to do so;
 - 18.4.2 on giving written notice to 5Y of not less than 90 days.
- 18.5 This Agreement may be terminated without terminating any SOW then in force and any SOW may be terminated without terminating this Agreement or any other SOW. If this Agreement is terminated in circumstances where one or more SOWs remains in force after termination of this Agreement, then any provision of this Agreement which forms part of such SOW shall

continue to apply to such SOW. Termination or expiration shall not relieve either Party of any obligation or liability accrued under this Agreement or a terminated SOW prior to termination and shall not relieve either Party of continuing rights and obligations pursuant to this Agreement or any in force SOW.

- 18.6 If the Customer is entitled to terminate this Agreement or any SOW for any reason then the Customer may, at its discretion, terminate: (a) this Agreement or such SOW, or both.

If the Customer is entitled to terminate the Software Terms and Conditions for any reason, then the Customer may, at its discretion, terminate: (a) the Software Terms and Conditions only; or (b) the Software Terms and Conditions and this Agreement or any SOW then in force, or the Software Terms and Conditions, this Agreement and any SOW then in force

- 18.7 Upon the termination or expiration of this Agreement or any SOW for any reason, 5Y shall provide all assistance and information to Customer and any new service provider engaged by the Customer to ensure an order transition of any Specified Services from 5Y to the Customer and/or such new service provider.

19 FINAL PAYMENT

In the event that any SOW is terminated for whatever reason, Customer warrants that full payment of any undisputed amount properly invoiced by 5Y in accordance with such SOW in respect of work already completed and work undertaken during the notice period, will be made immediately following the end of the notice period.

20 POST TERMINATION AND OBLIGATIONS

Save as expressly provided otherwise in this Agreement or any SOW, termination shall not affect any accrued rights of either Party.

21 NON-ASSIGNMENT

This Agreement and each SOW is personal to 5Y and Customer and neither can without the written consent of the other assign or dispose of any rights hereunder or thereunder.

22 WAIVER

Failure by either Party at any time to enforce any of the provisions of this Agreement or any SOW shall not be a waiver of that Party's rights and shall not prejudice that Party's rights to take action in respect of the same or any later breach.

23 SEVERABILITY

If any term of this Agreement or any SOW is held by any court or other competent authority to be wholly or partially void, invalid, or unenforceable then such term shall be severed from the body of these terms (which shall continue to be valid and enforceable to the fullest extent permitted by Law).

24 PRIORITY OF DOCUMENTS

If there is an inconsistency between any of the provisions of this Agreement and the provisions of a SOW, save as otherwise expressly provided in the SOW, the provisions of this Agreement (including any such provisions which also form part of the SOW) shall prevail.

25 ENTIRE AGREEMENT

- 25.1 This Agreement (including its schedules) constitutes the entire agreement between the Parties with respect to its subject matter, supersedes all previous agreements and understandings between the Parties with respect to its subject matter, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

- 25.2 Each SOW (including its schedules and any provisions of this Agreement which form part of such SOW) constitutes the entire agreement between the Parties with respect to its subject matter, supersedes all previous agreements and understandings between the Parties with respect to its subject matter, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

26 REPRESENTATION AND WARRANTIES

- 26.1 5Y represents and warrants to the Customer that:
- 26.1.1 it is a duly organised, validly existing legal entity of the type described in the preamble;
 - 26.1.2 it has the full power and authority to enter into this Agreement and each SOW and to perform the obligations hereunder and thereunder;
 - 26.1.3 this Agreement and each SOW is executed and delivered by 5Y's authorised representative and constitutes the valid, legal and binding obligation of 5Y in accordance with its terms;
 - 26.1.4 it is, and its performance under the Agreement and each SOW will be, in compliance with all applicable acts, laws, statutes, regulations and orders ("**Laws**");
 - 26.1.5 it will abide by and maintain adequate data security measures consistent with industry standards and technology best practices designed to protect content from unauthorised disclosure or acquisition by unauthorised sources;
 - 26.1.6 it shall implement and maintain a written information security program, including appropriate policies, procedures and risk assessments that are reviewed periodically;
 - 26.1.7 Specified Services and Deliverables shall be performed and delivered in a professional and workmanlike manner using personnel of required skill, experience and qualifications in accordance with the best industry practices;
 - 26.1.8 Specified Services and Deliverables shall materially comply with any specifications set forth in the applicable SOW, be free of any material defects, and, in respect of such Deliverables that are developed specifically for the Customer and for which it is intended that title shall pass to the Customer, be free from all liens or other encumbrances, and good title in and to such Deliverables shall be conveyed by 5Y to Customer; and
 - 26.1.9 Neither the Specified Services nor the Deliverables shall violate or in any way infringe upon the Intellectual Property Rights of third parties.
- 26.2 Each Party acknowledges that, in entering into this Agreement and any SOW, it does not do so on the basis of or rely on any representation, warranty or other provision except as expressly provided in this Agreement or such SOW. The warranties and remedies of Customer contained in this Agreement and any SOW shall be in addition to any warranties or remedies available to Customer pursuant to Law or at equity. Any liability or remedy for innocent or negligent misrepresentation is expressly excluded.

27 FORCE MAJEURE

- 27.1 If either Party is prevented or delayed in the performance of any of its obligations under this Agreement or any SOW by Force Majeure (the "**Affected Party**"), then the Affected Party shall not be in breach of this Agreement or such SOW or otherwise liable for any such failure or delay in the

performance of such obligations for so long as such cause of prevention or delay shall continue. For the purpose of this clause “**Force Majeure**” shall be deemed to be any cause affecting the performance of this Agreement or any SOW arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such Party and inter alia including the following:

- strikes, lockouts, or other industrial action
- civil commotion, riot, invasion, war threat or preparation for war
- fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster
- impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport
- political interference with the normal operations of any party.

27.2 The Affected Party shall:

27.2.1 as soon as reasonably practicable after the start of the Force Majeure but no later than 21 days after its start, notify the other Party in writing of the Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Force Majeure on its ability to perform any of its obligations under the Agreement or any SOW, as applicable; and

27.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure on the performance of its obligations.

27.3 If Force Majeure prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 60 days, the Party not affected by the Force Majeure may terminate this Agreement or the affected SOW, or both, by giving 30 days' written notice to the Affected Party.

28 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement or any SOW is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either Party the agent of another Party, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

29 THIRD PARTY RIGHTS

29.1 This Agreement and any SOW does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or any SOW.

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

30 NOTICES

30.1 Any notice or document to be given or delivered under this Agreement or any SOW must be given by delivering it personally or sending it by pre-paid post, or by special delivery (courier), or email to the address and for the attention of the relevant Party as follows:

In the case of a notice to be served on 5Y:

Pre-paid post/special delivery (courier): FAO: James Finnegan at 5Y Technology Limited, 288 Bishopsgate, London, United Kingdom, EC2M 4QP.

Email: JFinnegan@5ytechnology.com

In the case of a notice to be served on the Customer:

Pre-paid post/special delivery (courier): FAO:

Email:

- 30.2 Any notice of termination given by e-mail shall be followed up with delivery as outlined in clause 30.1. Each such notice or document shall (a) if sent by hand, be deemed to have been given when delivered at the relevant address; (b) if sent by prepaid airmail, be deemed to have been given seven (7) days after posting; or (c) if sent by email be deemed to have been given when transmitted. Either Party may change its contact information by written notice to the other Party.

31 INSURANCE

- 31.1 During the term of this Agreement and each SOW and for a period of 12 months after the expiry or termination of this Agreement and the last to expire or terminate SOW, 5Y is responsible for maintaining its own workers' compensation, commercial general liability, errors and omissions, and other forms of insurance which shall include, as a minimum:

- 31.1.1 employers' liability insurance: 5Y will maintain employers' liability insurance with a minimum coverage of £10 million per occurrence or series of occurrences arising from a single cause. This insurance will cover all employees of 5Y engaged in the performance of the services under this Agreement;
- 31.1.2 public liability insurance: 5Y will maintain public liability insurance with a minimum coverage of £2 million per occurrence; and
- 31.1.3 professional indemnity insurance: 5Y will maintain public liability insurance with a minimum coverage of £2 million per claim and in aggregate.

and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

32 DISPUTE RESOLUTION PROCEDURE

- 32.1 If a dispute arises out of or in connection with this Agreement or any SOW, including its performance, validity or enforceability (a "**Dispute**") then the Parties shall follow the procedure set out in this clause:

- 32.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the General Counsel of the Customer and Global Business Development Director of 5Y shall attempt in good faith to resolve the Dispute;

- 32.1.2 if the General Counsel of the Customer and Global Business Development Director of 5Y are for any reason unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice, the Parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate the mediation, a Party must serve notice in writing ("**Mediation Request**") to the other Party to the Dispute, requesting a mediation. Neither Party shall be obliged to engage in mediation but the Party in receipt of the Mediation Request shall be obliged to confirm to the other Party within 5 Business Days of the date of receipt of the Mediation Request, whether it agrees to engage in such mediation ("**Agreement to Mediate**"). If there is an Agreement to Mediate, in the event that the Parties are unable to agree on a choice of mediator within 5 Business Days of the Agreement to Mediate, either Party may request the International Centre for Effective Dispute Resolution to nominate a mediator. Each Party shall bear its own costs in respect of the mediation.

- 32.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to any Dispute.
- 32.3 Without prejudice to clause 32.2 above, if a Dispute is not resolved within 40 Business Days after service of the Mediation Request, or either Party fails to participate actively or to continue to participate actively in the mediation before the expiration of the said period of 40 Business Days, or the mediation terminates before the expiration of the said period of 40 Business Days, either Party may seek to have the Dispute resolved by the courts of England and Wales.

33 APPLICABLE LAW

- 33.1 This Agreement and each SOW shall be interpreted and construed in accordance with the laws of England and Wales. All disputes arising out of or in connection with this Agreement or any SOW, including any non-contractual disputes, shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 33.2 Where this document is provided in a language other than English, whilst the translation is believed to be accurate, no warranty to that effect is given, and the English language version shall prevail.

34 SUBCONTRACTORS

5Y may use subcontractors and/or third-party vendors to fulfil its obligations under this Agreement or any SOW. Subcontractors and/or third-party vendors may only be engaged or replaced by the prior written consent of Customer. In any such case, 5Y will remain fully responsible and liable for the performance of any such subcontractors and vendors as well as their compliance with all terms and conditions of this Agreement and any SOW.

35 SURVIVAL

The parties' rights and obligations that by their nature should continue beyond the expiration or termination of this Agreement and any SOW shall survive the expiration or termination of this Agreement and such SOW for any reason.

36 REMEDIES CUMULATIVE

Save as expressly provided otherwise in this Agreement or any SOW, the rights, powers and remedies contained in this Agreement and any SOW are cumulative and not exclusive of any rights, powers or remedies provided by law or otherwise.

37 COUNTERPARTS

This Agreement and any SOW may be executed in any number of counterparts each of which when executed and delivered by one or more of the Parties is an original, but all the counterparts together constitute the same document provided that this Agreement shall not be effective until each Party has executed and delivered at least one counterpart.

38 ELECTRONIC SIGNATURES

Each Party expressly consents to the electronic execution (and witnessing) of this Agreement and any SOW, to the provision of any information in connection with this Agreement or any SOW by electronic means, and to the retention and use of the executed Agreement and any SOW as an electronic original. Each Party also confirms that any electronic signature inserted on this Agreement or any SOW by (or on behalf of) such Party was inserted by the relevant signatory for the purpose of signing and authenticating this Agreement or such SOW, as applicable.





IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

For and on behalf of Murphy Group

SIGNATURE

NAME

TITLE

DATE

For and on behalf of 5Y Technology Limited

SIGNATURE

NAME

TITLE

DATE

SCHEDULE A to MASTER SERVICES AGREEMENT

This Schedule A is made a part of the Master Services Agreement between 5Y Technology Limited and Customer with an Effective Date of **xx/yyyy/202x**.

Client name: CUSTOMER NAME
Location(s):

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Fees & Payment Terms (including agreement on expenses)

- a. Invoices may be issued by 5Y upon the occurrence of the applicable payment milestones specified in the applicable SOW and will be payable within 30 days of the date of receipt by Murphy of the invoice, except to the extent that they are disputed by the Customer in good faith, in which case the disputed part shall not be due until such dispute is resolved.
- b. All rates exclude expenses and are based on standard working hours of 9am – 5pm.
- c. Expenses will be charged at cost; mileage will be charged at 50 pence per mile. All expenses shall be reimbursed only with the prior written approval of Customer's project leader or his or her designee. 5Y shall support such expenses with appropriate documentation submitted to Customer's project leader. All expenses shall be in accordance with Customer's stated expense policies.
- d. All rates provided will be subject to tax at the prevailing rates.

Equipment:

No special equipment has been identified at this time. See individual SOWs for any special equipment.