

# Master Service Agreement

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This agreement is made on XXXX 202X between **ROC TECHNOLOGIES LIMITED** (company no: 07579363) whose registered office is 1 Lindenmuth Way, Greenham Business Park, Thatcham, Berkshire, RG19 6AD ("**Supplier**") and **XXXXXX** (company number: XXXXXXXXX) whose registered office is XXXXXXXXXX ("**Customer**").

## 1. Definitions

1.1. In this agreement, unless the context otherwise requires the following words have the following meanings:

**"Additional Fees"**

The fees payable by the Customer to the Supplier relating to the Deliverables which are in addition to the Service Fees.

**"Adjustment Event"**

An event in which the Customer has provided inaccurate, incomplete or inadequate information to the Supplier relating to the Deliverables or an event where there is a material change in the requirements of the Customer for the Deliverables which may include changes in the number of items of Equipment, the Locations or changes to the number of Incidents which are within the Customer's control.

**"Agreement"**

Means this agreement, any signed Statement of Work, any Equipment Schedule and any Purchase Order.

**"Applicable Laws"**

Any and all laws, legislation, statutes, regulations, bye-laws, decisions, notices, orders, rules (including any rules or decisions of court), local government rules, statutory instruments or other delegated or subordinate legislation and any directions, codes of practice issued pursuant to any legislation, and voluntary codes that are applicable to the provision or receipt of the Deliverables from time to time.

**"Bribe"**

Any payment, gift, benefit or advantage of any kind, which is offered, promised, given, authorised, requested, accepted or agreed, whether directly or indirectly (through one or more intermediaries) and whether as an inducement or reward, for any form of improper conduct by any person in connection with their official, public, fiduciary, employment or business role, duties or functions; and/or anything that would amount to an offence of

bribery or corruption under the Applicable Laws; and "Bribes", "Bribed", "Bribing" and other variants of "Bribe" shall be construed accordingly.

**"Business Day"**

Monday to Friday, excluding public and bank holidays in England.

**"Confidential Information"**

Information disclosed by one party to the other party that the disclosing party considers to be confidential or which the recipient ought reasonably to conclude is confidential, including the details of the Agreement, business and technical information, plans, research, designs, methods, techniques, know-how and results whether tangible or intangible and whether or not stored, compiled or memorized physically, electronically or graphically or in writing.

**"CPI"**

The consumer price index published by the Office of National Statistics, or such other index as may replace or supersede the same.

**"Customer Data"**

Any information that is provided by the Customer to the Supplier as part of the Customer's use of the Deliverables, including any information derived from such information.

**"Customer Equipment"**

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 of the Deliverables, including any such items specified in a Statement of Work.

**"Customer Materials"**

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 the Supplier in connection with the Deliverables.

**"Customer Personnel"**

The officers, employees, agents and subcontractors of the Customer appointed by the Customer from time to time.

**"Data Processing Schedule"**

Schedule 9 of the Statement of Work, which sets out the terms and conditions applicable to the processing of any personal data by the Supplier for the Customer under the Agreement pursuant to clause 20

**"Data Protection Legislation"**

Means all applicable laws, regulations and rules of any government, agency or authority, applicable to the processing of personal data or the privacy of individuals including:



- a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and
- b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

**“Deliverables”**

The Equipment, the Software and the Services, or some or all of them as the context requires.

**“Effective Date”**

The date of this agreement.

**“End User”**

Any person authorised by the Customer to receive the benefit of the Deliverables (as applicable) in accordance with the terms of the Agreement.

**“Equipment”**

The hardware, servers, devices and/or other computer equipment listed in any Statement of Work, including that of any Third Party (and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it) provided by the Supplier to the Customer in accordance with the terms of the Agreement and the applicable Statement of Work, but not the Customer Equipment.

**“Equipment Inventory”**

The detailed inventory of the Equipment (and, where applicable, the Customer Equipment) as set out in the relevant Statement of Work.

**“Event of Default”**

Has the meaning given to it in clause 17.1.

**“Exclusions”**

The assumptions and excluded items specified in the Supplier Solution and/or the relevant Statement of Work in relation to the provision of Deliverables.

**“Fees”**

The Service Fees and any Additional Fees.

**“Force Majeure Event”**

An event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than, in each case by the party seeking to rely on a Force Majeure Event, or companies in the same group as that party); and interruption or failure of utility service. Force Majeure Event does not include an inability to pay.

**“Good Industry Practice”**

An exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances.

**“Incident”**

A fault, an unplanned interruption to a Service, or a material reduction in the quality of the Services.

**“Initial Term”**

The fixed initial term set out in the relevant Statement of Work.

**“Intellectual Property Rights”**

Any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, rights in software, proprietary work flow models, utility models, domain names and all similar rights and other intellectual property rights, in each case:

- a) Whether registered or not,
- b) Including any applications to protect or register such rights Including all renewals and extensions of such rights or applications
- c) Whether vested, contingent or future
- d) Which may subsist anywhere in the world



**“Location(s)”**

The location(s) of the Equipment (and where applicable, the Customer Equipment) at the addresses set out in the Equipment Inventory or any Statement of Work, or any other location(s) where Supplier Personnel is required to visit in connection with the Deliverables.

**“Loss”**

Subject to clause 17, all and any loss, damage, cost, claim or expense reasonably and properly incurred by the claiming party.

**“Permitted Subcontractors”**

Any subcontractor agreed in writing from time to time between the Supplier and the Customer; e-mail shall be sufficient for these purposes.

**“Primary Point of Contact (PPOC)”**

The Customer Personnel appointed by the Customer as its primary point of contact pursuant to clause 10.1.

**“Purchase Order”**

The Customer's order for the Services, from time to time.

**“Renewal Term”**

A fixed term equivalent to the Initial Term of the Statement of Work in question, commencing on expiry of the Initial Term.

**“Services”**

The services provided by the Supplier to the Customer as set out in the applicable Statement of Work (Subject to the Exclusions) and such other services as the Supplier may agree in writing to provide to the Customer from time to time.

**“Services Commencement Date”**

In respect of any Statement of Work, the date on which the Supplier is to commence provision of the Services, as set out in that Statement of Work.

**“Services Fees”**

The fees payable by the Customer to the Supplier for the Deliverables, as set out in the relevant Statement of Work and as may be varied from time to time in accordance with the Agreement.

**“Services Specification”**

The Customer's requirements in respect of the Services as agreed with the Supplier, including (as applicable) the Supplier Proposal and any specification for specific Services as set out in the relevant Statement of Work.



**“Software”**

The Supplier Software and Third Party Software as identified in the relevant Statement of Work (or such other document or schedule as the Supplier may provide to the Customer from time to time).

**“Software Specification”**

The Customer's requirements in respect of the Software as have been agreed with the Supplier including the specification for specific Software as set out in the relevant Supplier Proposal and/or a Statement of Work.

**“Statement of Work”**

A detailed plan and scope of work describing the Services to be provided to the Customer.

**“Supplier IPR Claim”**

Has the meaning given to it in clause 19.4.

**“Supplier Personnel”**

Those agents, directors, officers and employees of the Supplier engaged from time to time in performing the Supplier's obligations under the Agreement, together with the Permitted Subcontractors and any agents, directors, officers and employees of the Permitted Subcontractors who are so engaged.

**“Supplier Proposal”**

The Supplier's proposal for the Deliverables (if any), as set out in Appendix A.

**“Supplier Software”**

To the extent that any is provided, the software set out in the applicable Supplier Proposal and/or Statement of Work which is proprietary to the Supplier and which may be used by the Supplier for the purpose of providing the Services (and all modifications, enhancements and upgrades to such software during the Term).

**“Tax”**

Any tax, levy, impost, duty, charge or fee.

**“Term”**

The term of the Agreement, as set out in clause 4.1.

**“Third Party”**

The third party who licences the Third Party Software or provides Equipment or third party services to the Supplier or the Customer, as the case may be.

#### **“Third Party Software”**

The software set out in the Supplier Proposal and/or the applicable Statement of Work that is proprietary to the Third Party, which may be used by the Supplier for the purpose of providing the Services (and all modifications, enhancements and upgrades to such software during the Term).

#### **“Technical Point of Contact (TPOC)”**

The Customer Personnel appointed by the Customer as its technical point of contact pursuant to clause 10.2.

#### **“Ts & Cs”**

The Supplier’s standard terms and conditions of business from time to time.

1.2. Words in the singular shall include the plural and vice versa.

1.3. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.4. Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.5. References to clauses and Schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule. Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.6. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.7. A reference to **indemnify** or **indemnifies** means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after tax basis.

1.8. The Agreement shall be binding on, and enure to the benefit of, the parties to it and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9. A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.



## 2. Scope of agreement

2.1 The Agreement governs the overall relationship of the parties in relation to the Deliverables provided by the Supplier to the Customer.

2.2 The Customer shall be entitled from time to time to request the provision of the Deliverables from the Supplier.

## 3. Conflict and Ts & Cs

3.1 If there is conflict or inconsistency between any of the provisions in:

3.1.1 Any Third Party Software licence and/or any cloud, support or maintenance service terms and conditions for any Third Party Software, Equipment or services (which shall apply by virtue of clause 12);

3.1.2 A Statement of Work

3.1.3 The Schedules

3.1.4 The main body of this agreement

3.1.5 The Ts & Cs

3.1.6 The Supplier Solution

The documents shall prevail in the order of precedence set out in this clause 3.

3.2 No Customer terms or conditions endorsed on, delivered with or contained in any Purchase Order, or acknowledgement, correspondence or any other document provided by or on behalf of the Customer (in each case, whether provided before or after the Effective Date), will form part of the Agreement. **The Customer waives any right that it otherwise might have to rely on any terms and conditions that are not referred to in clause 3.1**

3.3 If the Supplier makes any changes to its Ts & Cs from time to time after the Effective Date, then to the extent that such changes do not impose a greater liability on the Customer than the Ts & Cs contained in this MSA, the updated Ts & Cs shall apply to the Customer and the Agreement from the date that they are provided to the Customer.

## 4. Commencement and term

- 4.1 This agreement shall start on the Effective Date and shall continue, unless terminated earlier in accordance with its terms, until the expiry of the last Statement of Work entered into under the Agreement ("**Term**").
- 4.2 Each Statement of Work shall become effective on the relevant Services Commencement Date and shall continue for its Initial Term and (if applicable on the terms of this agreement) its Renewal Term, unless terminated earlier in accordance with this agreement.
- 4.3 After its Initial Term, unless terminated earlier in accordance with the terms of this agreement each Statement of Work shall continue automatically for its Renewal Term unless terminated by either party by giving the other not less than ninety (90) days' written notice before the end of (as applicable) the Initial Term or the Renewal Term in question.
- 4.4 The terms of clause 4.3 shall apply to any Renewal Term as if it were the Initial Term.
- 4.5 Unless this agreement is terminated in accordance with its terms, the termination or expiry of any particular Statement of Work shall not affect any other Statement of Work or the status of this agreement.

## 5. Quotations

- 5.1 The Customer shall provide the Supplier with as much information as the Supplier reasonably requires in order to prepare a quotation.
- 5.2 A quotation is an invitation to order Deliverables and is not an offer by the Supplier. Quotations are valid for a period of thirty (30) days from the date of the quotation, unless otherwise specified in writing by the Supplier.
- 5.3 Any charges, samples, drawings, descriptions or performance figures contained in or referred to in any quotation are estimates only and shall not form part of the Agreement unless expressly included.
- 5.4 The Supplier is not bound by, and hereby excludes liability for, any error in or omission in any quotation (other than for fraud or fraudulent misrepresentation) which is manifest or which ought reasonably to be considered apparent to the Customer, and the Customer undertakes not to rely on any such error or omission, or to enforce rights or bring any claim against the Supplier on the basis of any quotation to the extent of such error or omission.



## 6. Purchase orders and statements of work

- 6.1 A Purchase Order constitutes an offer by the Customer to purchase the Deliverables specified in the quotation, in accordance with this agreement.
- 6.2 No Purchase Order shall be binding on the Supplier unless accepted by the Supplier. Purchase Orders shall only be deemed to be accepted when the Supplier provides a duly signed acknowledgment copy of the Purchase Order to the Customer.
- 6.3 Unless otherwise agreed in writing by the parties, no Purchase Order may be cancelled by the Customer except with the Supplier's written agreement and the Customer shall indemnify the Supplier against Loss incurred by the Supplier as a result of the cancellation.
- 6.4 Each Purchase Order shall be deemed to incorporate the terms of the Agreement once accepted by the Supplier in accordance with clause 6.2.
- 6.5 As soon as reasonably practicable after a Purchase Order is accepted by the Supplier in accordance with clause 6.2, the Supplier shall provide a Statement of Work to the Customer which shall be agreed in the manner set out in clause 6.6. Each Statement of Work shall be deemed to incorporate the terms of the Agreement.
- 6.6 Each Statement of Work shall be agreed as follows:
- 6.6.1 The Customer shall provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Deliverables requested;
  - 6.6.2 Following receipt of the information requested from the Customer, the Supplier shall (subject to the Supplier's acceptance of the Purchase Order applicable to the Deliverables requested) provide the Customer with a draft Statement of Work;
  - 6.6.3 The Supplier and the Customer shall discuss and agree the draft Statement of Work; and
  - 6.6.4 Both parties shall sign the Statement of Work when it is agreed.
- 6.7 Once a Statement of Work has been agreed and signed in accordance with clause 6.6.4 no amendment shall be made to it except in accordance with the express provisions of this agreement.

## 7. Services

- 7.1 From the relevant Services Commencement Date, the Supplier shall provide the Services in accordance with the Statement of Work in all material respects.
- 7.2 The Supplier shall endeavour to meet any performance dates for the Services specified in the Statement of Work, but unless expressly agreed otherwise in the Statement of Work any such dates shall be approximate only and time of performance of the Services is not of the essence.
- 7.3 Subject to the terms of the relevant Statement of Work, the Supplier reserves the right to make any changes to the Services which are necessary to comply with any Applicable Laws or safety requirement, or which do not materially affect the nature or quality of the Services, in each case without an increase in Fees.
- 7.4 The Customer shall accept all Services which meet, in all material respects, the requirement of clause 13.1.1 In the event of any non-conforming Services, the provisions of clauses 13.1.2 to 13.1.4 (inclusive) shall apply.

## 8. Equipment

- 8.1 The Supplier shall provide Equipment to the Customer in accordance with the terms of the Agreement.
- 8.2 Delivery of the Equipment shall be made by or on behalf of the Supplier. The Supplier shall use reasonable endeavours to deliver the Equipment by the date and time set out in the Statement of Work but, unless expressly agreed otherwise in the Statement of Work, any such dates shall be approximate only and time for delivery of the Equipment is not of the essence.
- 8.3 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery.
- 8.4 Ownership of the Equipment shall not pass to the Customer until the Supplier receives the Fees in full (in cash or cleared funds) and any other sums owed by the Customer to the Supplier in respect of which payment has become due. Until ownership of the Equipment has passed to the Customer, the Customer shall:
- 8.4.1 Store the Equipment separately from all other equipment held by the Customer so that it remains readily identifiable as the Supplier's property;
  - 8.4.2 Not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;



- 8.4.3 Maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price from the date of delivery; and
  - 8.4.4 Give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 8.5 Before ownership of the Equipment passes to the Customer, the Supplier may at any time:
- 8.5.1 Require the Customer to deliver up all Equipment in its possession; and
  - 8.5.2 If the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored (including the Location(s)) in order to recover it.

## 9. Customer obligations

- 9.1 To enable the Supplier to perform the Services, the Customer shall, at its own expense, provide the Supplier with:
- 9.1.1 All necessary co-operation in relation to the Agreement, including access to the Customer Personnel, the Software, the Equipment and the Location(s) as well as adequate office accommodation and services at the Location(s) during the hours of support designated in the applicable Statement of Work and at such other reasonable times as the Supplier may request on reasonable prior notice;
  - 9.1.2 All necessary access to such information as may reasonably be required by the Supplier, including print-outs, sample data, security access information and software interfaces to the Customer's other business applications;
  - 9.1.3 Clear information regarding any hazards or potential hazards at the Location(s) (or presented by any activities or conditions present within the Location(s)) as well as the precautions to be taken to ensure the safety and security of the Supplier Personnel at all times when on site at the Location(s);
  - 9.1.4 Any additional computing and ancillary facilities as identified by the Supplier as required to be provided by the Customer, which shall be in good and continuing working order to the extent required for the Supplier to provide the Services; and
  - 9.1.5 Such telecommunication facilities as are reasonably required by the Supplier for remote testing and diagnostic purposes.

9.2 During the Term, the Customer agrees that, in a timely and professional manner, it shall.

- 9.2.1 Comply with all Applicable Laws with respect to its activities under the Agreement, including its use of the Equipment and Software;
- 9.2.2 Install, accept and use the Equipment and Software in Accordance with the Supplier's and the manufacturer's instructions and procedures given in the published manuals. The Customer acknowledges that any acceptance testing procedures for the Equipment and/or Software shall be agreed between the parties and set out in the Statement of Work applicable to that Equipment and Software;
- 9.2.3 Take and maintain daily back-up copies of all Customer Data and computer records in accordance with Good Industry Practice;
- 9.2.4 Ensure that the Equipment and Software is used in a proper manner by competent trained employees only, or by persons under their supervision;
- 9.2.5 Notify the Supplier promptly if the Equipment or Software is not operating correctly in accordance with the procedures set out in the Supplier Solution or applicable Statement of Work, or as otherwise communicated in writing by the Supplier to the Customer from time to time;
- 9.2.6 Not alter, adapt or modify the Equipment or Software in any way that has not been agreed in writing by the Supplier, nor provide them or the Services to third parties (except End Users);
- 9.2.7 Ensure that all the Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Deliverables and conforms to all applicable standards or requirements;
- 9.2.8 Obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Equipment and the use of the Customer Equipment;
- 9.2.9 Not request or permit anyone other than the Supplier to provide any support services in respect of the Equipment or Software, unless the Supplier refuses or is unable to provide the Services in accordance with the Agreement; and
- 9.2.10 Comply with any additional responsibilities of the Customer as set out in the relevant Statement of Work.

9.3 If the Supplier's performance of its obligations under the Agreement is prevented or delayed by any act or omission of Customer Personnel then,



without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer Personnel.

## 10. Personnel

- 10.1 The Customer shall appoint members of the Customer Personnel to be the PPOC and to act as the principal point of contact between the parties for the purposes of each Statement of Work. The PPOC shall have authority to contractually bind the Customer on all matters relating to the Services and shall be those individuals specified in the Statement of Work, unless the Supplier is otherwise notified in writing by the Customer that such details have changed.
- 10.2 The Customer Personnel at the Location(s) shall, in the first instance, request Services in respect of the Software and/or Equipment via the TPOCs, who shall contact the Supplier for assistance (subject to the provisions of the applicable Statement of Work).
- 10.3 The Supplier is entitled to use Permitted Subcontractors for the provision of any part of the Services, but any sub-contracting shall not relieve the Supplier from its obligations under the Agreement.

## 11. Supplier software licence

- 11.1 To the extent that any Supplier Software is provided by the Supplier to the Customer under the Agreement, the Supplier grants to the Customer during the Term a non-exclusive and non-transferable licence to use such Supplier Software in object code form in accordance with the terms of the Agreement and to the extent required for the Customer to use the Deliverables.
- 11.2 Unless otherwise agreed in writing between the parties, the Customer shall not (and shall procure that its End Users and Customer Personnel shall not):
  - 11.2.1 Make copies of the Supplier Software, except for such back-up copies as are reasonably necessary, provided that the Customer keeps accurate and up-to-date records of such copying containing such information as the Supplier reasonably requests;
  - 11.2.2 Translate, adapt, disassemble, reverse engineer or decompile the Supplier Software or any part of it, nor arrange or create derivative works based on the Supplier Software;
  - 11.2.3 Make any modifications, additions or enhancements to the Supplier Software;



11.2.4 Permit the Supplier Software or any part of it to be combined or merged with or become incorporated in any other program;

11.2.5 Allow the Supplier Software to become the subject of any charge, lien or encumbrance; or

11.2.6 Use the Supplier Software on behalf of, or make it available to, any third party or allow or permit a third party to do so.

11.3 The customer shall permit the Supplier to inspect and have access to any premises at or on which the Software is being kept or used (including the Location(s)), and have access to any records kept in connection with the Agreement, the Equipment, the Software and the Services for the purposes of ensuring that the Customer is complying with the terms of the Agreement, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. The Supplier shall use its reasonable endeavours to ensure that the conduct of each inspection does not unreasonably disrupt the business operations of the Customer. The Supplier shall be entitled to increase its Service Fees in accordance with clause 15 and charge the Customer (and the Customer shall pay) for the reasonable costs and expenses incurred by the Supplier in performing an inspection under this clause 11.3 in circumstances where the Customer is found to be in breach of its obligations under the Agreement. In the event of any disputes arising under this clause 11.3 the parties shall resolve the matter in accordance with clause 24.

## 12. Third party software, equipment and services

12.1 The Supplier shall grant or procure the direct grant of a non-exclusive and non-transferable licence for the Customer to use the Third Party Software in accordance with the terms of the Agreement.

12.2 The Customer shall (and shall procure that its End Users and Customer Personnel shall) comply with any licence or usage conditions, restrictions or acceptable use policies for the Third Party Software together with any equipment, cloud, support or maintenance service terms and conditions imposed by the relevant Third Party for its Third Party Software, equipment or service which the Supplier may communicate to the Customer from time to time, or as set out in (or incorporated by reference by) the relevant Statement of Work.

## 13. Warranties

### 13.1 Services

- 13.1.1 The Supplier warrants to the Customer that the Services shall be performed in accordance with the Agreement and Good Industry Practice.
- 13.1.2 The Customer must notify the Supplier of non-conforming Services by providing written notice to the Supplier within five (5) Business Days of completion of the relevant part of the Services.
- 13.1.3 If the Customer has a valid claim in relation to non-conforming Services which has been notified to the Supplier in accordance with clause 13.1.2, the Supplier shall re-perform non-conforming Services at its own cost until such point as they become conforming Services. No representation or warranty is given by the Supplier that all defects will be fixed within a specified period of time.
- 13.1.4 The terms of the Agreement apply to any Services which are re-performed under clause 13.1.3 as they apply to the Services.

### 13.2 Equipment

- 13.2.1 In relation to any Equipment provided by or on behalf of the Supplier to the Customer under the Agreement, the Supplier does not provide any warranties to the Customer; the Customer will only receive those warranties it receives from the relevant Third Party in relation to that Equipment.

### 13.3 Software

- 13.3.1 The Supplier warrants to the Customer that:
  - a) It has the right to grant the Customer the rights contemplated herein and supply the Software; and
  - b) To the extent that any Supplier Software is provided under a Statement of Work, that Supplier Software shall conform in all material respects to the Software Specification unless specified otherwise in the applicable Statement of Work.
- 13.3.2 If the Customer notifies the Supplier in writing of any defect or fault in the Supplier Software in consequence of which it fails to conform in all material respects to the Software Specification, and the Supplier (acting reasonably) validates that non-conformance, the Supplier shall, at the Supplier's option, do one of the following:

- a) Repair the non-conforming Supplier Software;
- b) Replace the non-conforming Supplier Software;

#### **13.4 Third Party Software**

In relation to any Third Party Software, the Supplier does not provide any warranties to the Customer; the Customer will only receive those warranties it receives from the relevant Third Party in relation to that Third Party Software.

#### **13.5 General Warranties**

- 13.5.1 Each party warrants that it shall at all times during the Term use its reasonable endeavours to ensure that it does not introduce a software virus into the systems of the other party and will not knowingly introduce any logic bombs, trojan horses, time bombs, worms, malware or any other software which will adversely affect the other's systems or the provision of the Services at any time.
- 13.5.2 Without prejudice to the other warranties set out in the Agreement, each party warrants to the other that throughout the Term it has the legal right and full power and authority and all necessary consents, approvals, licences and title to enter into and to perform its obligations under the Agreement and that the Agreement is executed by its duly authorised representative.

#### **13.6 Warranty Exclusions**

- 13.6.1 The Supplier shall not be liable under clause 13.1.1 if:
  - a) The relevant Services are provided based on inaccurate or misleading information provided by the Customer;
  - b) The Services are provided in accordance with the instructions of the Customer; or
  - c) The Customer is in breach of its obligations under the Agreement.
- 13.6.2 The Supplier shall have no obligation to perform the Services where defects arise from:
  - a) Items which enable the Supplier to perform its obligations being missing or defective as a result of the acts or omissions of the Customer or any Customer Personnel (including electricity lines or cables, control or main fuses, energy or telecommunications supply) or



- b) Use of the Software by the Customer, any Customer Personnel or any End User in combination with any equipment (including the Customer Equipment) or software not provided by the Supplier, or any fault in any such equipment or software.

13.6.3 The Customer acknowledges and agrees that:

- a) The Software has not been developed to meet all of the Customer's individual requirements and that it cannot be tested in every operating environment so as to produce software which is wholly error free or operates without interruption; and
- b) It is the Customer's responsibility to ensure that the facilities and functions of the Supplier Software described in the Software Specification meet the Customer's requirements.

13.6.4 Without prejudice to the Customer's other remedies under the Agreement, the Supplier does not warrant or represent that the Software and/or the operation of the Software shall be wholly uninterrupted or error free, that all non-material deficiencies can be corrected or that the Software will be compatible with third party software or equipment, other than the Equipment.

13.6.5 The Supplier shall have no liability under the Agreement in respect of, nor be required to remedy any problem arising from or caused by, any modification (whether by way of alteration, addition or otherwise) made to the Equipment (or any part thereof) and/or the Services by anyone other than the Supplier (or a person authorised by the Supplier).

13.6.6 Any warranties given by the Supplier shall be subject to the Customer using the Software properly in compliance with the Agreement, and shall not apply to the extent that:

- a) The Customer has failed to implement any update, fix or improvement which has previously been provided to it by the Supplier;
- b) The defect or error is wholly caused by any equipment (including the Customer Equipment) or third party software used in connection with the Software (save to the extent that the Supplier requested or required the use of equipment or such third party software); or
- c) The Software or any part of it (including any data structure) has been modified (whether by alteration, deletion, addition or otherwise), enhanced or changed in any way by the Customer or an End User without the Supplier's prior written consent.

13.7 If a reported problem or Incident is found upon investigation by the Supplier to be due to the incorrect operation (including any failure to implement any update, fix or improvement which has previously been provided to the Customer by the Supplier), any unauthorised change, modification, alteration, use (including use with third party equipment or software), misuse or abuse (wilful or otherwise) of the Deliverables by the Customer or any End User, the Supplier shall be entitled to charge (and the Customer shall pay) for any and all reasonable costs and expenses suffered or incurred by the Supplier which arise out of or in connection with conducting such investigation and the resolution of the reported problem or Incident. The Supplier shall also be entitled to charge (and the Customer shall pay) for that investigation and resolution, which shall be calculated on a time and materials basis at the Supplier's then current rates.

13.8 Unless otherwise agreed between the parties, the remedies in this clause 13 shall be the Customer's sole and exclusive remedy for any non-conforming Deliverables, and the Supplier shall have no further liability to the Customer in respect thereof.

## 14. Payment Terms

14.1 The Customer shall pay to the Supplier in pounds sterling the Fees in accordance the terms of the Agreement and the relevant Statement of Work.

14.2 All Fees are exclusive of VAT or other applicable tax, which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law.

14.3 The Service Fees are payable (without set-off, deduction or counterclaim) within thirty (30) days of the date of invoice.

14.4 Any costs, expenses, materials and third party services shall be invoiced by the Supplier to the Customer as agreed in a Statement of Work.

14.5 The Additional Fees (if any) shall be calculated on a time and material basis in accordance with the Supplier's then-current rates and shall be invoiced monthly in arrears and be payable (without set-off, deduction or counterclaim) within thirty (30) days of the date of invoice. Additional Fees shall be payable by the Customer if:

14.5.1 The Customer requests that the Supplier attends a Location and the Supplier reasonably considers that there was no valid reason for such attendance;

14.5.2 There is a breach by the Customer of its obligations under clause 9;



14.5.3 The Supplier reasonably considers that any item or items in the Equipment Inventory are beyond economic maintenance, and for which a separate quotation for refurbishment will be issued to the Customer.

14.6 Time for payment of any Fees shall be of the essence.

14.7 If any sum payable to the Supplier under the Agreement is in arrears for more than fifteen (15) days after the due date, the Supplier reserves the right, without prejudice to any of its rights or remedies, to:

14.7.1 Charge interest on such overdue sum on a day to day basis from the original due date, until paid in full at a rate of 8% above HSBC Bank Plc's base lending rate in force from time to time; and/or

14.7.2 Suspend the provision of the Services on five (5) days' prior written notice until such sums and interest payable in accordance with clause 14.7.1 have been paid in full.

14.8 The Customer shall make all payments under the Agreement without withholding or deduction of, or in respect of, any Tax, unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

## 15. Pricing and variation provisions

15.1 The Supplier may, from time to time, vary the Service Fees for periods subsequent to the first year of the Initial Term by giving not less than thirty (30) days' written notice to the Customer, provided that any increase shall not exceed a percentage of the then current Service Fees equal to the percentage increase in CPI published for the period from the Services Commencement Date (in the case of the first such increase), or the date on which the immediately preceding increase came into effect pursuant to this clause 15.1 (in the case of the second or subsequent increases), up to the date of such notice and provided further that no increase may be made until at least 12 months has elapsed since the date on which the immediately preceding increase came into effect pursuant to this clause 15.1.

15.2 In addition to the variation provisions set out in clause 15.1, the Service Fees may be subject to annual review by the Supplier, upon the Supplier giving not less than thirty (30) days' written notice to the Customer. If notice of any additional increase to the Service Fees is given pursuant to this clause 15.2, the Customer shall have the right to terminate the Agreement on the day immediately prior to the effective date of the price

increase, by giving to the Supplier written notice of termination not less than fourteen (14) days before such effective date.

## 16. Change control

### Assumptions and Exceptions

- 16.1 The Customer and the Supplier acknowledge that the Services, the Supplier Solution and the Statements of Work are dependent upon the accuracy of the information provided by the Customer to the Supplier and Exclusions set out in the Supplier Solution and applicable Statement(s) of Work.
- 16.2 The Customer and the Supplier shall meet at least once within the first six (6) months of the Initial Term to discuss matters relating to the Services and the Customer shall provide to the Supplier such documents, reports and other information as is reasonably necessary or desirable for the Supplier to verify the information received from the Customer, as detailed in the Agreement.
- 16.3 If, during the first six (6) months of the Initial Term, the Supplier discovers an Adjustment Event requiring a change to be made to the scope or execution of the Deliverables, including a change to a Statement of Work, the Exclusions or an Equipment Inventory, it shall notify the Customer of such Adjustment Event and the parties shall seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under the Agreement (including the Fees payable to the Supplier) through the execution of an amendment. Any such adjustment shall be made only to the extent necessary to reflect the impact of the Adjustment Event. If the parties are unable to reach agreement on such amendment within thirty (30) days after the Customer has been notified of the Adjustment Event, the Supplier shall have the right to invoke the dispute resolution procedure specified in clause 24.

### Ordinary course change control

- 16.4 Either party may propose changes to the scope or execution of a Statement of Work, the Services, the Equipment, the Software, the Exclusions and/or an Equipment Inventory (other than as a result of an Adjustment Event being discovered by the Supplier), but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties.
- 16.5 A "Change Order" shall set out the proposed changes and the effect that those changes will have on the Deliverables, the Fees, the timetable for the Deliverables and any of the other terms of the relevant Statement of Work.

16.6 If the Supplier wishes to make a change to the Deliverables, it shall provide a draft Change Order to the Customer.

16.7 If the Customer wishes to make a change to the Deliverables:

16.7.1 It shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and

16.7.2 The Supplier shall, as soon as reasonably practicable after receiving the information at clause 16.7.1, provide a draft Change Order to the Customer.

16.8 If the parties:

16.8.1 Agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work

16.8.2 Are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 24

16.9 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer on a time and materials basis at the Supplier's daily rates then in force.

16.10 If the effect of any agreed change resulting from changes proposed by the Customer is to reduce the original Service Fees by more than fifty percent (50%) under a Statement of Work, then the Supplier shall have the right to charge an administration fee of twenty-five percent (25%) of the original Service Fees for that Statement of Work to recover the set-up costs incurred by the Supplier in connection with the agreed change.

16.11 The Customer is liable for all existing Service Fees until any Change Order variation is agreed by both parties, or determined pursuant to clause 24.

## 17. Limitation of liability

17.1 The following provisions of this clause 17 set out the maximum liability of the Supplier in respect of the following (each being an "**Event of Default**"):

17.1.1 A breach by the Supplier of the Agreement; and

17.1.2 A tortious act or omission (including negligence), breach of statutory duty, or misrepresentation or misstatement, of the Supplier which arises under or in connection with the Agreement.



- 17.2 Nothing in the Agreement shall limit or exclude the liability of the Supplier for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability to the extent it cannot be limited or excluded by law.
- 17.3 Subject always to clause 17.2, the Supplier's total financial liability under the Agreement which arises out of or in relation to any and all Events of Default shall be limited to the total Fees paid or then due and payable by the Customer to the Supplier under the Statement of Work in which the liability in question arises.
- 17.4 Subject always to clause 17.2, in no event shall the Supplier be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Agreement for any:
- 17.4.1 Loss for which the Customer has assumed the risk under the Agreement;
  - 17.4.2 Loss of profit;
  - 17.4.3 Loss of reputation;
  - 17.4.4 Loss of business, revenue or goodwill;
  - 17.4.5 Loss of anticipated savings;
  - 17.4.6 Consequential or indirect loss;
- Regardless (in each case) of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.
- 17.5 All warranties, conditions or terms not set out in the Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to title to the Equipment) are hereby excluded, except to the extent they may not be excluded or limited by law.
- 17.6 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 13.1.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are also, to the fullest extent permitted by law, excluded from the Agreement.

## 18. Confidentiality

18.1 Each party undertakes to the other, in relation to the Confidential Information of the other:

18.1.1 To keep confidential all Confidential Information;

18.1.2 Not to disclose Confidential Information, without the other's prior written consent, to any other person except those of its employees, subcontractors or advisers who have a need to know the Confidential Information (and for whose compliance with this clause 18 the disclosing party is liable);

18.1.3 Not to use Confidential Information except for the purposes of performing its obligations under the Agreement (and, in particular, not to use Confidential Information to obtain a commercial, trading or any other advantage).

18.2 The provisions of clause 18.1 shall not apply to Confidential Information to the extent that it is or was:

18.2.1 Already in the possession of the other party, free of any obligation of confidentiality on the date of its disclosure;

18.2.2 In the public domain other than as a result of a breach of this clause 18.

Required to be disclosed:

- a) Pursuant to Applicable Laws, or the rules of any exchange on which the securities of a party are or are to be listed; or
- b) In connection with proceedings before a court of competent jurisdiction or under any court order, or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure.

18.3 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of this clause 18. Accordingly, a party shall be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of this clause 18.

## 19. Intellectual property

- 19.1 Except for the Customer's right to use the Software as expressly granted in the Agreement, the Customer shall not acquire in any way, any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Software (or in any copies of them) or the Services and, except as expressly set out in the Agreement, no Intellectual Property Rights of either party are transferred or licenced as a result of the Agreement.
- 19.2 The Customer agrees not to conceal, modify, remove or destroy in any way any proprietary markings of the Supplier on or in the Software, including any copyright notices or confidential legends places upon or contained within the Software and/or or any related materials and documentation. The Customer shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.
- 19.3 Each party shall be entitled to use in any way it deems fit any skills, techniques or know how acquired or developed or used in performance of the Agreement, provided always that such skills, techniques or know how do not:
- 19.3.1 Infringe the other party's Intellectual Property Rights;
  - 19.3.2 Disclose or breach the confidentiality of the other party's Confidential Information.
- 19.4 Subject to clauses 19.5 and 19.6, if a third party brings any action or claim against the Customer that the Customer's use of the Supplier Software or the Services in accordance with the terms and conditions of the Agreement infringes a valid third party UK Intellectual Property Right ("Supplier IPR Claim"), the Supplier will defend that action at its expense and will pay the costs and damages finally awarded against the Customer by any competent court or as part of any settlement, provided that the Supplier shall have no such liability if the Customer:
- 19.4.1 Does not notify the Supplier in writing setting out full details of any Supplier IPR Claim of which it has notice as soon as is reasonably possible;
  - 19.4.2 Makes any admission of liability or agrees any settlement or compromise of the relevant Supplier IPR Claim without the prior written consent of the Supplier (which shall not be unreasonably withheld or delayed);
  - 19.4.3 Does not let the Supplier, at its request and own expense, have the conduct of or settle all negotiations and litigation arising from the Supplier IPR Claim; or
  - 19.4.4 Does not, at the Supplier's request and own expense, give the Supplier all reasonable assistance in the circumstances described above.

19.5 If a Supplier IPR Claim is brought against the Customer or, in the Supplier's reasonable opinion, is likely to be brought, the Supplier will at its sole option and expense:

19.5.1 Procure for the Customer the right to continue using or receiving the affected Supplier Software and/or Services;

19.5.2 Replace or modify such element of the Supplier Software and/or Services (without detracting from its or their overall performance) so that it becomes non-infringing.; [or

19.6 The Supplier shall have no liability to the Customer for that part of the alleged infringement which arises from:

19.6.1 Any use by the Customer, the Customer Personnel or any End User of the Supplier Software and/or the Services:

a) In combination with equipment, products, materials or services which are not specified in the Services Specification at the time of use or are not provided by the Supplier; and/or

b) In a manner or for a purpose not consistent with the Agreement; and/or

19.6.2 Any modification to the Supplier Software and/or Services not made by the Supplier or any modifications made to the foregoing by the Supplier substantially pursuant to the Customer's specific instructions.

19.7 The Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the Services to the Customer

19.8 The Customer:

19.8.1 Warrants that the receipt and use in the performance of the Agreement by the Supplier Personnel of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

19.8.2 Shall indemnify the Supplier against all Loss suffered or incurred or paid by the Supplier or Supplier Personnel arising out of or in connection with any claim brought against the Supplier or Supplier Personnel for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of the Agreement of the Customer Materials.

## 20. Data protection

- 20.1 To the extent personal data is included in any Customer Data, the Supplier shall process that data on the Customer's behalf as a data processor in accordance with the Data Processing Schedule and the terms and conditions of the Agreement.
- 20.2 In the event of any conflict or inconsistency between the Data Processing Schedule and other elements of the Agreement, the Data Processing Schedule will prevail.

## 21. Anti-bribery and anti-corruption

- 21.1 Each party shall comply with all Applicable Laws relating to Bribery, including the Bribery Act 2010.
- 21.2 The Supplier shall not, and shall procure that Supplier Personnel shall not, Bribe in connection with the Agreement or its performance.
- 21.3 The Customer shall not, and shall procure that Customer Personnel shall not, Bribe in connection with the Agreement or its performance.
- 21.4 Each party shall adopt, implement, maintain, enforce and update (as necessary) adequate policies designed to prevent Bribery from occurring. Each party shall provide adequate training to its personnel in order to ensure an understanding of its policy and procedures and their obligations arising from it on a continuing basis.
- 21.5 Each party shall notify the other party promptly in writing upon becoming aware of, or suspecting, any failure to comply with any provisions of this clause 21.

## 22. Termination

- 22.1 On a valid termination of this agreement on its terms, howsoever arising, each Statement of Work then in force at the date of such termination shall also terminate automatically without notice.
- 22.2 Each party may terminate this agreement immediately by giving written notice to the other party if the other party:
- 22.2.1 Commits a material or persistent breach of the Agreement (except for non-payment by the Customer) and, if such a breach is remediable, fails to remedy that breach within twenty-eight (28) days of receipt of notice in writing of the breach;



- 22.2.2 Suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 22.2.3 Commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party (a "Solvent Reorganisation");
- 22.2.4 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a Solvent Reorganisation;
- 22.2.5 An application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- 22.2.6 The holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 22.2.7 A person becomes entitled to appoint a receiver over all or Any of the assets of the other party, or a receiver is appointed over all or any of the assets of the other party;
- 22.2.8 A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 22.2.9 Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.2.2 to clause 22.2.8 (inclusive) or
- 22.2.10 The other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 22.3 In addition to its rights pursuant to clause 22.2, the Supplier may terminate this agreement immediately by giving written notice to the Customer if the Customer fails to pay any sum payable by it to the Supplier within five (5) Business Days of its due date.

22.4 Termination of the Agreement is without prejudice to any other rights or remedies a party may be entitled to under the Agreement or at law and shall not affect any rights of the parties accrued up to the date of termination, including in relation to the payment of Fees in respect of Deliverables provided up to that date.

22.5 No term of the Agreement shall survive expiry or termination of the Agreement unless expressly and/or impliedly intended to survive such expiry or termination.

22.6 The Supplier acknowledges, and the Customer agrees, that any termination of the Agreement howsoever caused shall invoke an exit plan mutually agreed by both parties. The exit plan shall provide continuity of service to the Customer and shall not exceed three (3) months in duration. If it elects to do so, the Supplier may charge its reasonable expenses and fees on a time and materials basis at the Supplier's then current rates. Neither party shall unreasonably withhold their agreement to such plan. No assets critical to the continuing delivery of service to the Customer shall be removed by the Supplier during the exit plan period. If locally-based Supplier Personnel have resigned (in the light of the contract being terminated), the Supplier shall use reasonable endeavours to supply appropriate skills to ensure the delivery of the exit plan.

22.7 Upon termination (however it arises) or expiry of the Agreement:

22.7.1 The Customer's right to receive the Services shall cease automatically;

22.7.2 Any amounts due to the Supplier by the Customer shall become immediately due and payable;

22.7.3 Subject to the terms of the relevant Statement of Work, the Customer shall immediately destroy or (at the Supplier's option) return to the Supplier all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so, unless such licence was expressly granted on a perpetual basis to run beyond the Term;

22.7.4 All licences granted to the parties pursuant to clauses 11, 12 and 19 shall cease and the parties shall cease all activities authorised by such licences, unless such licence was expressly granted on a perpetual basis to run beyond the Term.

## 23. TUPE

To the extent that TUPE applies to the Agreement, the provisions of Schedule 7 shall apply.



## 24. Resolution of disputes

24.1 In the event of any dispute between the parties arising out of the Agreement or any part of it, each party shall first each use its reasonable endeavours in good faith to resolve any such dispute by escalation as follows:

24.1.1 Initially, by negotiation between the PPOC and the Supplier's account manager;

24.1.2 If the PPOC and the Supplier's account manager fail to resolve the dispute within fourteen (14) days of the dispute being referred to them, by the referral to, and negotiation between, a director other than the CEO of each of the parties; and

24.1.3 If the directors fail to resolve the dispute within fourteen (14) days of the dispute being referred to them, by the referral to, and negotiation between, the CEOs of each party;

24.1.4 If the CEOs fail to resolve the dispute within fourteen (14) days of the dispute being referred to them, by referring to a mediator approved by mutual agreement or, failing mutual agreement, by the President from time to time of the British Computer Society (or any successor organisation), who shall consider the resolution of the dispute in a prompt and expeditious manner. Both parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties and to bear equally between them the fees and expenses of the mediator.

24.2 Neither party may initiate any legal action until the procedure described in clause 24.1 has been completed, except where:

24.2.1 A party has good cause to do so to avoid damage to its business or to protect or preserve any rights of action it may have; or

24.2.2 The dispute is not resolved within 60 days after the mediation process referred to in clause 24.1.4 has commenced; or

24.2.3 Either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days; or

24.2.4 The mediation terminates before the expiration of the said period of 60 days.

24.3 Whilst this dispute resolution procedure is being followed, the parties shall be obliged to continue, as far as reasonably practicable in view of any dispute, to fulfil their respective obligations under the Agreement or any Statement of Work.

## 25. Force Majeure

25.1 Any party that is subject to a Force Majeure Event shall not be in breach of the Agreement, provided that:

25.1.1 It promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

25.1.2 It has used reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

25.2 If the Force Majeure Event continues for a period in excess of thirty (30) days, then by written notice to the affected party the other party may terminate the Agreement as of the date specified in the notice, being not less than 30 days from the date of the notice. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Agreement occurring prior to such termination.

## 26. Notices

26.1 Any notice to be given under the Agreement shall be:

26.1.1 In writing in the English language;

26.1.2 Signed by or on behalf of the party giving it; and

26.1.3 Addressed to the other party at its registered office or principal place of business, or such other address as may have been notified for these purposes on the terms of this clause 26.

26.2 A notice shall either be:

26.2.1 Delivered by hand;

26.2.2 Sent by first class pre-paid post, recorded delivery or special delivery; or

26.2.3 Sent by airmail or by reputable international overnight courier (If the notice is to be served by post to an address outside the country from which it is sent).

26.3 A notice shall be deemed to have been received:

26.3.1 If delivered by hand, on signature of a delivery receipt;



26.3.2 If sent by pre-paid first class post, recorded delivery or special delivery (or equivalent service) to an address in the United Kingdom, at 10.00 am on the second Business Day after posting;

26.3.3 If sent by pre-paid airmail to an address outside the country from which it is sent, at 10.00 am on the fifth Business Day after posting; or

26.3.4 If sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt.

## 27. Non-solicitation

27.1 The Supplier and the Customer agree that they will not during the Term and for a period of six (6) months thereafter, without the other party's prior written consent, directly or indirectly solicit or offer employment or engagement (Or in any way attempt to solicit or offer employment or engagement) to any of the other party's personnel, who at the time of such action or during a period of twelve (12) months immediately preceding such action was employed by the Supplier or the Customer, other than by means of a national advertising campaign open to all and not specifically targeted at any personnel of the other party.

27.2 In the event of a breach of clause 27.1, the offending party will pay to the other party damages equivalent to twelve (12) months' gross salary of the individual concerned plus the reasonable recruitment costs incurred by the claiming party in replacing such individual. The parties agree that the amounts set out in this clause represent a reasonable estimate of the losses that the claiming party may incur.

## 28. Insurance

The Supplier shall provide to the Customer written confirmation from its insurers that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which may reasonably arise in connection with the Agreement. The Supplier shall, at its own expense, maintain such policies in force for the term of the Agreement and shall, on demand by the Customer, provide a certificate of insurance from its insurers of such policy to the Customer at least once during each year of the Term.

## 29. Assignment and other dealings

The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Supplier.



## 30. Third party rights

Except as expressly provided otherwise in the Agreement, a person who is not a party to the Agreement shall not have any rights whether statutory or otherwise to enforce any of its terms.

## 31. No partnership or agency

31.1 Nothing in the Agreement 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.

31.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 32. Variation

Except as expressly provided, no amendment or variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 33. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 34. Severance

34.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 34 shall not affect the validity and enforceability of the rest of the Agreement.

34.2 If any provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.



## 35. Entire agreement

35.1 The Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

35.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement.

35.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in the Agreement (whether made innocently or negligently) shall be for breach of contract.

35.4 Nothing in this clause 35 shall limit or exclude liability for fraud.

## 36. Governing law

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

## 37. Jurisdiction

Subject to clause 24, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 38. Marketing

By entering into this Agreement, the Customer grants Roc Technologies the non-exclusive right to use the Customer's name and logo for the purpose of promoting and marketing the products and services provided under this Agreement. Roc Technologies may also use the Customer's name and logo in joint marketing materials and advertisements throughout the life of the service delivered by Roc Technologies to the Customer. All joint marketing materials will be sent to the Customer prior to publication to provide written approval, which shall not be unreasonably withheld. The parties agree to cooperate in good faith in the production of any such joint marketing materials. Any promotional, marketing or advertising content generated throughout this Agreement will be continued to be used by Roc Technologies until Roc Technologies deem a time it becomes outdated to do so.

## 39. Counterparts

39.1 The Agreement (and any constituent part of it) may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

39.2 Transmission of the executed signature page of a counterpart of the Agreement (or any constituent part of it) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the document in question.

|                                                      |       |                               |       |
|------------------------------------------------------|-------|-------------------------------|-------|
| Signature:                                           | ..... | Signature:                    | ..... |
| Signed by:                                           |       | Signed by:                    |       |
| For and on behalf of <b>ROC TECHNOLOGIES LIMITED</b> |       | For and on behalf of <b>X</b> |       |
| Date:                                                |       | Date:                         |       |