

PANAYA

MSA

Doc ver 1.0

Master Services Agreement for IT Services

This Master Services Agreement for IT Services (the “**Agreement**”) is made as of [date] (the “**Effective Date**”)

between

Infosys Limited

Electronics City, Hosur Road

Bangalore 560 100

India

(hereinafter the “**Supplier**”)

and

[Customer name],

[Customer address]

(hereinafter the “**Customer**”).

(each hereinafter individually referred to as „**Party**“ or jointly as the “**Parties**“)

Table of Contents

1.	DEFINITIONS	4
2.	PERFORMANCE BY THE SUPPLIER	5
3.	ACCEPTANCE OF DELIVERABLES	6
4.	GOVERNANCE	7
5.	GENERAL CONTRACTUAL OBLIGATIONS OF THE CUSTOMER.....	8
6.	PAYMENT TERMS.....	9
7.	TAXES	11
8.	COMPLIANCE WITH LAWS.....	12
9.	PERSONNEL.....	13
10.	INTELLECTUAL PROPERTY RIGHTS	15
11.	INFRINGEMENT OF THIRD PARTY RIGHTS	16
12.	CONFIDENTIALITY	16
13.	WARRANTIES	17
14.	LIMITATION OF LIABILITY	18
15.	TERM.....	19
16.	TERMINATION	19
17.	NOTICES	19
18.	GENERAL PROVISIONS	20
	Annexure A to the Master Services Agreement	24
	Annexure B to the Master Services Agreement	30

The Customer is _____. The Supplier is an IT service provider and offers IT services such as e.g. software consulting, software development, software modification, software support and maintenance services to its clients.

This Agreement describes the general contractual terms agreed between the Parties with regard to the delivery and receipt of the above mentioned services, whereas the services and their detailed scope will be subject to and defined in additional separate Work Orders (as defined below), which the Parties might enter into under this Agreement from time to time.

1. DEFINITIONS

The following definitions shall apply to this Agreement and to all Work Orders, Change Orders and any other agreements made between the Parties under this Agreement:

- 1.1 **"Affected Employees"** means employees of Customer and/or a contractor to Customer and/or any third party who are engaged in the supply of the Services (or services which are equivalent or identifiably similar to the Services) to Customer either prior to, at or after the Effective Date and shall include persons who have ceased to be employed by Customer and/or a contractor to Customer and/or any third party;
- 1.2 **"Affiliate"** of either Party shall mean a person or entity directly or indirectly controlling, controlled by, or under common control with such Party. "Control" for the purposes of this clause shall mean with respect to any person or entity, the right to exercise or cause the exercise more than 50% of the voting rights in such person or entity.
- 1.3 **"ARD"** means the Council Directive 2001/23/EC of the Council of the European Union on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses of 12 March 2001, O.J. L82, p.16 (22 March 2001), as amended from time to time, including national implementing legislation enacted by relevant EU Member States to implement such directive, as such legislation is amended from time to time and also including laws made in any other country not in the European Union that have equivalent or similar rules (in whole or part) as are contained in the said Directive;
- 1.4 **"Business Day"** means Monday to Friday excluding local public holidays.
- 1.5 **"Change Order"** shall mean the proposal for a change to any Work Order as issued in accordance with Section 2.3.
- 1.6 **"Deliverables"** shall mean the work results defined in the Work Order, which are to be created by the Supplier specifically for the Customer under the Work Order, including the agreed Documentation.
- 1.7 **"Documentation"** shall mean one copy of the agreed documentation in English language in the agreed format that the Supplier shall provide under the Work Order(s).
- 1.8 **"Fixed Price Services"** means any Services and/or Deliverables, which are charged by the Supplier at a fixed price to the Customer.
- 1.9 **"New Supplier"** means a supplier (who is not the Supplier) who supplies the Services (or services which are equivalent or identifiably similar to the Services) in succession to the Supplier on expiry

of this Agreement or the earlier cessation of the Services or, on the partial cessation of the provision of any part of the Services by the Supplier, any successor to the Supplier in the provision of Services which are equivalent or identifiably similar to the part of the Services which are to cease to be provided by the Supplier;

- 1.10 **"Onsite"** or **"Onsite Services"** shall mean Services, which are provided by the Supplier at the agreed Customer locations defined in the applicable Work Order.
- 1.11 **"Offshore"** or **"Offshore Services"** shall mean Services, which are provided by the Supplier from its locations and development centers in India, China, Canada, Mauritius, Mexico and other development centers it might establish.
- 1.12 **"Personnel"** means all persons used by a Party for the performance of its obligations under the Agreement and/or any Work Order from time to time, including employees, agents, consultants and/or subcontractors and their employees.
- 1.13 **"Relevant Date"** means the date or dates on which any cessation or partial cessation of the provision of Services by the Supplier takes effect;
- 1.14 **"Services"** shall mean services such as software consulting, software development, software modification, software support and maintenance services or any other IT services to be performed by the Supplier as agreed between the Parties in a Work Order.
- 1.15 **"Third Party Materials"** shall mean any third party product, third party software, third party hardware or other third party tool, material or service required for the performance of this Agreement and/or any Work Order.
- 1.16 **"Time and Material Services"** means any Services and/or Deliverables, which are charged by the Supplier to the Customer based on the actual efforts spent by the Supplier and at the agreed rates as defined in Annexure B.
- 1.17 **"Warranty Period"** shall mean a period of 30 days from delivery of the Deliverables to the Customer.
- 1.18 **"Work Order"** shall mean a written individual contract entered into between the Parties under the terms of this Agreement in accordance with Section 2.1 below, which defines the specific mutual rights and obligations of the Parties, in particular the Services and Deliverables to be provided by the Supplier as well as the applicable charges.

2. PERFORMANCE BY THE SUPPLIER

2.1 Work Orders

The Supplier will deliver the services in-scope in a professional and diligent manner, exercising due care and skill and in accordance with agreed service levels and other such conditions. In performing the services, the Supplier shall at all times comply with the applicable Customer guidelines and policies notified to the Supplier in writing from time to time.

The Supplier shall deliver the Services and any related Deliverables in accordance with the applicable Work Order. The Supplier may also use its worldwide Affiliates for the performance of the Services.

The Supplier will only have to provide Services and Deliverables under this Agreement if a respective Work Order referring to the Agreement has been executed between the Parties. Any Work Order shall be based on the sample Work Order attached hereto as Annexure A (Sample Work Order). Each Work Order will only be effective if it was signed by an authorized representative of each Party. Each Work Order will be governed by the terms of this Agreement, which will become an integral part of each Work Order.

The Supplier's Affiliates may also independently enter into Work Orders directly with the Customer and/or the Customer's Affiliates under this Agreement by referring to the terms of this Agreement in the respective Work Order. If a Work Order is entered into by any of the Supplier's Affiliates and/or any of the Customer's Affiliates directly, for the purpose of the respective Work Order, all references to the "Supplier" in this Agreement are references to the Supplier Affiliate that has signed such Work Order and all references to "the Customer" in this Agreement are references to the Customer Affiliate that has signed such Work Order.

2.2 Service Locations

- 2.2.1 The Supplier shall provide the required Services under each Work Order Onsite and/or Offshore as defined in the relevant Work Order. The Supplier may provide Offshore Services from its development centers in India, China, Canada, Mauritius, Mexico and other development centers it might establish.

2.3 Change Orders

- 2.3.1 If the Customer desires to modify the scope of the Services and/or the Deliverables to be provided under a Work Order, the Customer shall provide to the Supplier a detailed description of such proposed modifications. Within 15 days of the Supplier's receipt of such proposal (or other period of time as agreed by the Parties), the Supplier shall create and deliver to the Customer a change order (each a "Change Order") setting forth all necessary changes to the Work Order resulting from such proposed modifications, including any changes to the charges and the time schedule for the respective Services and/or Deliverables.
- 2.3.2 In case the modifications requested by the Customer should require an extensive review by the Supplier in order for the Supplier to determine if and to which extent the Supplier is able to implement the requested changes, the Supplier may request to be paid a fee for the efforts related to such review, provided the Supplier has notified the Customer thereof and the Customer has nevertheless instructed the Supplier to continue with the review and/or the preparation of the respective Change Order.
- 2.3.3 Upon execution of the Change Order by an authorized representative of both Parties, such Change Order shall be effective and shall become a part of the Work Order. If the Supplier does not deliver a Change Order within the applicable time period as defined in Section 2.3.1 and/or the Parties should not reach an agreement with regard to the terms of a Change Order, the Work Order shall continue in effect as originally executed by the Parties.
- 2.3.4 The Supplier may also propose changes to the scope and/or compensation agreed under a Work Order and the Customer shall consider such proposed changes.

3. ACCEPTANCE OF DELIVERABLES

- 3.1 If the Supplier provides defined Deliverables under a Work Order, such Deliverables shall be accepted by the Customer in accordance with the following provisions:
- 3.2 Unless otherwise agreed in the applicable Work Order, the Customer shall have 10 Business Days following the date on which the Deliverables were provided to it by the Supplier to complete the testing or review of the Deliverables (the "Acceptance Period"). If the test or review reveals that the Deliverables materially conform to the acceptance criteria defined in the Work Order, the Customer shall immediately declare acceptance of the Deliverables in writing ("Acceptance"). If the test or review establishes that the Deliverables do not materially conform to the acceptance criteria, the Customer shall immediately notify the Supplier and the Supplier shall, within a reasonable time period, modify the Deliverables to make them conform to the acceptance criteria.

- 3.3 If no written notification of a material non-conformance with the acceptance criteria is received by the Supplier within the Acceptance Period or if the Deliverables are utilized for purposes other than testing or reviewing by the Customer, the Deliverables shall be deemed accepted by the Customer.
- 3.4 If the Customer notifies the Supplier in writing of any material non-conformance with the acceptance criteria in the Deliverables and if the Supplier is unable to remedy such material non-conformance despite three attempts (each within a reasonable cure period) to do so, the Customer's sole and exclusive remedy shall be to reject the defective Deliverables in writing and to recover from the Supplier the amount paid by the Customer to the Supplier for the defective Deliverable upon return of the defective Deliverable to the Supplier.
- 3.5 Unless explicitly agreed otherwise in the applicable Work Order, the provisions of this Section 3 shall only be applicable to Fixed Price Services. Time and Material Services as well as software maintenance and/or support services shall not be subject to Acceptance, i.e. they shall be deemed accepted upon delivery.

4. GOVERNANCE

4.1 Project Managers

The Supplier and the Customer shall each designate for each Work Order a "Project Manager" who will serve as the liaison between the Parties with respect to the Services and Deliverables to be provided under such Work Order. Each Party's Project Manager shall

- a) have day-to-day responsibility for supervising the performance of the respective Party's obligations under the relevant Work Order; and
- b) have responsibility for seeking all necessary approvals to commit the respective Party to any course of action, undertaking, obligation or responsibility in connection with the respective Party's performance of its obligations under the relevant Work Order.

4.2 Problem Management and Escalation

- 4.2.1** If any dispute or disagreement between the Parties with respect to any matter should arise from the Agreement and/or any Work Order, either Party shall by written notice to the other refer the dispute at the first instance to the attention of the other Party's corresponding Project Manager.
- 4.2.2** If the dispute is not resolved within 10 Business Days after it was notified to the Project Manager, such dispute shall be escalated to the other Party's corresponding executive to whom the respective Project Manager reports.
- 4.2.3** If the dispute is not resolved by such executive within 10 Business Days after it was escalated to such executive, such dispute shall be escalated to an appropriate senior executive of the other Party.
- 4.2.4** If the dispute is not resolved by such senior executive within 10 Business Days after it was escalated to such senior executive, both Parties shall resolve the dispute in accordance with the dispute resolution mechanism specified in Section 18.8.

4.3 Reports

- 4.3.1** Not less frequently than quarterly in a contract year, the Supplier and the Customer shall conduct a meeting (via conference call or other method as agreed by the Parties) to review matters regarding operations, security, billing, the general relationship and other subjects that relate to the Supplier's provision and the Customer's receipt of the Services.
- 4.3.2** The Customer and the Supplier shall deliver to each other the items that they would like to discuss at the relevant meeting at least five Business Days prior to the meeting date, it being understood that additional issues

may be subsequently added to the agenda by each Party as such Party deems appropriate.

- 4.3.3** The quarterly review meetings shall be attended by both Parties' Project Managers and any other appropriate qualified Personnel relevant to the issues to be addressed based on the agendas proposed by the Parties.
- 4.3.4** In addition to the quarterly review meetings described above, the Supplier agrees to communicate with the Customer via conference call within such periods as reasonably requested by the Customer to discuss status, workflow, operational issues and other matters that relate to the Supplier's provision of the Services.
- 4.3.5** If any of the Supplier's Personnel are required to travel to meetings, which take place at an agreed location other than where they are currently performing Services, the Customer shall bear all expenses related thereto.

5. GENERAL CONTRACTUAL OBLIGATIONS OF THE CUSTOMER

5.1 General

- 5.1.1** In addition to any obligations of the Customer stated elsewhere in this Agreement a Work Order already, the Customer shall perform the below contractual obligations at its own expense to enable the Supplier to perform the Services.
- 5.1.2** The Supplier is in particular not liable for any delay in the performance of the Services and/or Deliverables or for any breach of the Agreement or of the relevant Work Order, including defects to the Deliverables, if such delay or breach results from a delay or non-performance on the part of the Customer in complying with any of its obligations under this Agreement and/or any Work Order, including the Customer's obligation to provide the facilities, materials, hardware software or information etc., as applicable.

5.2 Source Code Library and Third Party Materials

- 5.2.1** The Customer shall promptly provide the Supplier with a complete library of necessary source code and documentation if the Services that the Supplier is required to perform under a Work Order include modification of existing software.
- 5.2.2** The Parties shall specify in each Work Order any Third Party Materials to be utilized for, incorporated into or provided as part of any of the Services and/or Deliverables to be provided under such Work Order. Unless stated otherwise in the applicable Work Order, the Customer shall provide such Third Party Materials to the Supplier and shall be responsible for obtaining at its own expense all rights, licenses and consents necessary for the Parties to use such Third Party Materials.
- 5.2.3** In particular, except as otherwise stated in the applicable Work Order,
 - a) the Supplier shall provide, at the Supplier's cost and expense, the generic software and hardware required in connection with its performance of the Services at the Supplier's development centers; and
 - b) the Customer shall provide, at the Customer's sole cost and expense all non-generic software and hardware. Further, the Customer shall provide, at the Customer's sole cost and expense, any and all hardware or software to be utilized outside of the Supplier's development centers and any other technology assets or facilities (including the facilities stated in Section 5.3 below), which are required for the performance of the Services by the Supplier.
- 5.2.4** The Customer shall cooperate with the Supplier's performance of Services and shall promptly respond to the Supplier's request for any hardware, software, Third Party Materials or information that the Supplier reasonably determines to be necessary for the performance of the Services. These items shall be provided on loan basis by the Customer and shall be returned to the Customer after the project is completed in the same condition as it

was delivered, reasonable wear and tear excluded. The Customer shall be responsible for the shipping, handling, insurance, and annual maintenance costs of all loaned hardware, software and other materials.

5.3 Facilities

- 5.3.1** If the Supplier is required to provide the Services Onsite, the Customer shall provide to the Supplier and its Personnel all facilities that are reasonably required by the Supplier for the Supplier to provide the Services, including but not limited to computing resources and reprographic facilities. The Customer shall ensure an appropriate ergonomic environment for the Supplier's Personnel working Onsite.
- 5.3.2** The Supplier shall use the Customer facilities for the sole purpose of providing the Services. The Supplier shall not permit any person to use the facilities other than the Supplier Personnel without the Customer's prior written permission, which the Customer shall not unreasonably withhold. The Supplier shall permit the Customer and its agents and representatives access to the Customer facilities at any time.
- 5.3.3** Save as otherwise provided herein, the Supplier shall provide all space that is necessary to provide the Services at the Supplier's own facilities. With respect to the Services that are to be performed at the Supplier's facilities, the Supplier shall provide the security measures and safeguards to protect the Customer's property or the Customer's data that might be maintained or stored at the Supplier's facilities..

5.4 Decisions

The Customer shall make available any management decisions, information, approvals and acceptances, all as reasonably requested by the Supplier so that the Supplier is able to accomplish its obligations and responsibilities under any Work Order.

6. PAYMENT TERMS

- 6.1** The Customer shall pay the Supplier the charges as detailed in the relevant Work Order for the Services and Deliverables provided by the Supplier under such Work Order.
- 6.2** If the Parties have agreed in a Work Order that the Services are to be provided as Fixed Price Services, the applicable fixed price will be defined in the respective Work Order.
- 6.3** If the Parties have agreed in a Work Order that the Services are to be provided as Time and Material Services, the Supplier will charge the Customer based on time and material for the hours/man-days spent by the Supplier's Personnel for the performance of the Services, based on the hourly/daily rates as stated in the attached Annexure B, subject to any increases as defined in this Section 6.
- 6.4** For billing purposes, a man-day performed by the Supplier's Personnel at the Onsite locations shall consist of a maximum of 8 hours and a man-day performed by the Supplier's Personnel at the Supplier's Offshore locations shall consists of a maximum of 8.8 hours. In any case, the working times shall not exceed the maximum working hours as provided for by mandatory local working time regulations.

If the Customer and the Supplier have agreed that the Supplier's Personnel should deliver the Services for the Customer for more than the above defined maximum hours on any one working day, the Supplier may charge an overtime rate for each completed extra hour, which is 1.5 times the hourly rate or, if daily rates are applicable, the daily rate divided by the maximum daily hours as defined above and multiplied by 1.5. If the Customer and the Supplier have agreed that the Supplier's Personnel should deliver the Services on Saturdays, Sundays or on public holidays at the onsite or offshore location where the respective member of the Supplier's Personnel is located, the applicable hourly/daily rates for all hours/man-days performed will be two times the hourly rate or, if daily rates are applicable, the daily rate divided by the maximum daily hours as defined above and multiplied by two. Any such overtime as well as any work performed during weekends and public holidays will always be subject to the respective mandatory local working time regulations.

- 6.5** The rates in Annexure B will be valid for a period of one year starting from the Effective Date of this Agreement. Before the expiration of the initial one year validity term, and thereafter annually by the first anniversary date from the effective date of the last rate adjustment, the Parties agree to negotiate an adjustment to the then

current rates applicable during the following 12 months. If the Parties should fail to agree on a rate revision by the expiration of the initial one year validity term or by each following anniversary date, as applicable, the rates applicable for the following 12 months will be based on the then current rates, which will be automatically increased as follows:

The then current rates applicable to Offshore Services provided at the Supplier's development centers in India will be increased by the then current consumer price index (CPI) percentage as published by the OECD for sourcing India inflation on <http://stats.oecd.org/Index.aspx> -> *Prices and Purchasing Power parities* -> *Prices and Price Indices* -> *Consumer Price Indices (MEI)* -> *Consumer Prices (All Items)* (or any successor URL).

The then current rates applicable to Onsite Services will be increased in accordance with the then current local consumer price index (CPI) percentage applicable to the respective country.

Unless otherwise agreed, the new increased rates will be effective as of the first day of the first calendar month after the expiration of the initial one year validity term or the respective anniversary date, as applicable.

- 6.6 The Supplier shall invoice all Time and Material Services on a monthly basis based on the efforts actually rendered during the respective month. Fixed Price Services shall be invoiced by the Supplier in accordance with the agreed upon milestones as stated in the applicable Work Order. The Supplier may raise all invoices in electronic form and payment shall be made by the Customer in accordance with the instructions provided on the Supplier's invoice. All invoices shall be paid within 30 calendar days from the date of invoice.
- 6.7 If payments are delayed beyond the above payment period, the Supplier may charge an interest rate of one per cent per month.
- 6.8 Any Affiliate of the Supplier, which renders Services and/or Deliverables to the Customer, may raise its own invoices upon the Customer for such Services.
- 6.9 Without prejudice to the Customer's obligations stated in Section 5, in addition to the charges for the Services and Deliverables, the Customer shall further reimburse the Supplier for any reasonable expenses incurred while performing Services, provided prior approval for such expenses is obtained from the Customer. In addition, the Customer shall pay for any business related travel of the Supplier's Personnel to and from the primary Onsite work location in accordance with the same travel allowance guidelines, which the Customer has in effect for its own employees.
- 6.10 The Customer shall not set off any of its counterclaims against any of the Supplier's claims.
- 6.11 In addition to any other price adjustment mechanisms specified in this Agreement and/or any Work Order, the following adjustment shall be made for foreign exchange rate movements as explained below:

All prices are subject to annual adjustment for foreign exchange rate movements beyond a threshold of 5% in accordance with this clause and with reference to the relevant rate published on <http://www.oanda.com> or <http://www.ft.com>.

Initial Rate is the exchange rate between USD and the currency agreed between the Parties determined based on the three (3) month average exchange rate as on the effective date of the contract.

Anniversary Date means the date occurring on each anniversary of the effective date of contract (each an "Anniversary Date").

Subsequent Rate means the average exchange rates for the three (3) months immediately preceding a particular Anniversary Date.

Reset Rate means the variance between the Subsequent Rate at an Anniversary Date compared to the Subsequent Rate of the immediately preceding Anniversary Date. Provided that, on the first Anniversary Date, the variance considered will be between the Subsequent Rate for the first Anniversary Date and the Initial Rate.

The contract price will be annually adjusted on a prospective basis on each Anniversary Date by the Reset Rate in the manner contemplated below:

VARIATION	IMPACT
The Reset Rate is equal to or within +/- 5%	No change in price/rates
The Reset Rate is more than +/- 5% but less than +/- 10%	Adjustment to the price/rates to the extent of a variation beyond +/- 5%. Example: If the Reset Rate (i.e. variance) is 6%, the adjustment will be 1%; If the Reset Rate is 7%, the adjustment will be 2%.
The Reset Rate is more than +/- 10%	Contract/Rate re-negotiation.

Foreign exchange rates assumed do not consider extraneous circumstances. Any extraneous currency movements shall result in the parties engaging in negotiations to mitigate the effect of such currency movements. Extraneous currency movements are movements in currency exchange rates that are not related to trade and which are not reasonably foreseeable. Examples include governmental actions to adjust exchange rates or enactment of legislations that restrict the repatriation of foreign exchange.

The rates shall be valid for successive periods of one (1) year starting from the Effective Date of this Agreement ("Rate Period"). The parties agree to negotiate a rate revision within one month from the end of each relevant Rate Period. Failing an agreed revision, the rates shall be increased by three percent (3%) at onsite and five percent (5%) at offshore over the prevailing rates. The new rates shall be effective as of the first day of the new Rate Period

7. TAXES

- 7.1 Notwithstanding anything contained in any other clause in this Agreement and/or any Work Order, any rates, charges or fees specified in this Agreement and/or any Work Order are exclusive of all transaction taxes. The Customer shall bear all transaction taxes on the services (or goods) provided hereunder (including, but not limited to, sales, excise, use, value added, goods and services, service, provincial sales tax, harmonized sales tax, PIS, COFINS, ISS, consumption and business taxes, and similar taxes) and any stamp tax or similar taxes payable on conclusion of contracts or issue of purchase orders, Work Orders and similar documents. The Supplier shall state the applicable transaction taxes on its invoice and pay all collected taxes to the appropriate taxing authority. The Supplier shall not charge transaction taxes if the Customer, to the satisfaction of the Supplier, provides an exemption certificate acceptable to the taxing authorities. The Customer shall separately state the invoicing location and beneficiary location for any Services provided under any Work Order or any other document issued under this Agreement. If the Supplier has not charged any transaction taxes and the tax authorities subsequently opine that the Supplier should have charged such taxes, the Customer shall pay such taxes (including any interests, levies and penalties) as required by the authorities.
- 7.2 The Customer may withhold income taxes as applicable to the country of invoicing on the amounts payable to the Supplier if required by law, except to the extent that the Supplier submits a certificate of exemption from / reduced withholding. The Customer shall remit the withholding taxes to the tax authorities and enable the Supplier to claim a tax credit by providing an appropriate and timely certificate of withholding. If the Supplier cannot claim credit due to delay in providing such certificate by the Customer or due to deficiencies in such certificate, then the Customer shall reimburse the previously withheld taxes to the Supplier.
- 7.3 Each Party shall bear (a) taxes on its net income, assets, capital, or property or equipment it owns, (b) employee taxes (employer's responsibility for income tax withholding and social security taxes); and (c) real / personal property taxes. The Customer shall bear property taxes on property or equipment used by the Supplier specifically at the request of the Customer to provide the Services to the Customer.
- 7.4 The Parties shall cooperate (a) to determine, and lawfully reduce, their respective tax liabilities (including by providing resale / exemption certificates, information related to out-of-state/country sales or use of hardware and other reasonably requested information); and (b) in the event of enquiries or audits by a tax authority on inter-party transactions. Liability on account of taxes not covered herein shall be mutually agreed. Unless otherwise agreed in the above clauses, the Party that is liable for payment of any tax upon which interest and penalties are imposed shall bear such interest and penalties.
- 7.5 In particular, if the performance of the Project requires processing of personal data, the parties shall enter into such documentation as is required in order to ensure compliance with applicable data protection legislation prior to such processing.

8. COMPLIANCE WITH LAWS

- 8.1 Each Party shall comply with all laws and regulations specifically applicable to it as regards its provision or receipt of the Services and Deliverables respectively.
- 8.2 Notwithstanding anything to the contrary stated in this Agreement, before the signature of the relevant Work Order, the Customer shall notify the Supplier of all laws, regulations, government or regulatory approved codes of practice or orders and all similar or analogous requirements that are specifically applicable to the Customer and/or its business or industry in the jurisdiction where the Services are to be performed or received and which the Customer wishes the Supplier and/or the Services to comply with ("Customer Specific Laws"). The Supplier shall only be responsible to comply with the Customer Specific Laws if the respective Customer Specific Laws as well as the related activities to be performed by the Supplier are included in the Work Order as part of the specifications.

- 8.3 Further, promptly upon becoming aware of any changes or proposed changes to such Customer Specific Laws, the Customer shall promptly inform the Supplier of the same. If there are any changes in the governing law and/or in the Customer Specific Laws, which require changes to the Services and Deliverables under any Work Order the Parties shall amend the applicable Work Order, including the charges and the timelines, if required, in accordance with the Change Order mechanism described in Section 2.3.
- 8.4 The Customer acknowledges that the majority of the Supplier's personnel are non-U.K., non-EU and non-U.S nationals and that products, software and/or technology provided by the Customer to the Supplier in connection with the Services will be exported to and processed in locations outside of the U.K., the EU and the U.S, e.g. to/in locations in India. The Customer shall comply with all applicable laws and regulations relating to providing such products, software and/or technology. Notwithstanding any other provisions of this Agreement and/or any Work Order, the Customer shall not provide any products, software or technology to the Supplier, the export of which to India is restricted by U.K., EU or U.S. export laws, without the Customer first obtaining any necessary export licenses and the Supplier shall have no obligation under this Agreement and/or any Work Order to receive, use, process or maintain any such products, software or technology.
- 8.5 Notwithstanding anything to the contrary in this Agreement, in the event that there are any changes in laws (including without limitation any governmental orders/actions, notifications, policies, rules, directives regulation requirements) that make the performance of Services financially or operationally unviable for the Supplier, the Parties shall mutually agree to address such impact by way of a Change Order. If the Parties are unable to agree the Change Order within thirty (30) days either Party shall have the right to terminate the affected services and/or the Agreement/SOW immediately with written notice without any liability. In the event of such termination, the Customer shall pay for the Services rendered up to and including the effective date of termination, applicable termination fee (if any) and unamortised investments and deferred fees.
- 9. PERSONNEL**
- 9.1 The Supplier shall assign Supplier Personnel to perform the Services who are properly educated, trained and qualified for the Services they are to perform.
- 9.2 The Supplier shall instruct all its Personnel who perform the Services at the Customer's premises to comply with all rules and policies of the Customer, which are applicable on the premises of the Customer, provided the Customer provides the Supplier with written notice of such rules and policies before the signature of the applicable Work Order and upon any amendment to the same during the term of the Work Order. To the extent an amendment of the rules and policies should have an impact on the costs of the Supplier, the Supplier may request an adjustment of the charges via the Change Order procedure described in Section 2.3.
- 9.3 It is the Parties' intention that neither this Agreement nor any Work Order is deemed to constitute a body/labour leasing arrangement as defined by applicable law in any country. Accordingly, the effect of any suggestions or guidelines, which the Customer might give to the Supplier's Personnel, will be limited to the effective performance of the Supplier's contractual obligations and the Customer's compliance with applicable laws on occupational safety and health. The Customer shall otherwise not interfere with the Supplier's Personnel execution of the Work Order since only the Supplier or its subcontractors in their capacity as the Supplier Personnel's employers may make decisions in that regard. The Customer explicitly renounces the right or the possibility to exercise any authority with respect to the Supplier's Personnel and acknowledges that the supervisory and directive authority vests exclusively in the Supplier. Accordingly, the Supplier's Personnel will only receive instructions and guidelines from the coordinator or Project Manager appointed by the Supplier. The Customer shall not take any actions and shall cause that no such actions are performed on its behalf, which could result in the local laws on body/labour leasing to apply.
- 9.4 It is the Parties' intention that no contract of employment of any Affected Employee will have effect after the Effective Date as if originally entered into between the Supplier and such Affected Employee by virtue of the ARD or will transfer to the Supplier pursuant to the ARD or otherwise; and that no liability for the employment or

termination of employment of any Affected Employee will transfer to the Supplier.

9.5 Notwithstanding paragraph 9.4, if it is asserted or established that

(i) the contract of employment of any Affected Employee shall have effect or have had effect as if originally made between the Supplier and the Affected Employee concerned as a result of the provision of the Services by the Supplier, by virtue of the ARD and/or any judicial decision interpreting the same or will transfer to the Supplier pursuant to the ARD or otherwise; or

(ii) any liability for the employment or termination of employment of any Affected Employee has transferred to the Supplier pursuant to the ARD or otherwise,

the Customer shall indemnify the Supplier against all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis), which the Supplier suffers or incurs and which arise in connection with or relate to the employment of such Affected Employee and/or the termination thereof. This indemnity shall include but shall not be limited to the full cost to the Supplier of employing and terminating the employment of such Affected Employee plus any social security payments; claims for breach of contract; redundancy payments and other termination indemnities; any other payments owing on termination; claims for unlawful discrimination (without limitation sex, sexual orientation, race, religious belief, age, disability, and discrimination based on part-time or fixed-term status); and failure to inform or consult with any trade union, works council or other employee representatives in connection with the arrangements put into place by this Agreement.

9.6 It is further the Parties' intention that if any of the Services (or services which are equivalent or identifiably similar to the Services) begin to be carried out by the Customer, or by a New Supplier on termination, variation, amendment or other alteration of this Agreement or on the cessation of the Services (or part thereof) for any reason, no contract of employment between the Supplier or any permitted sub-contractor and any individual will have effect after the Relevant Date as if originally entered into between Customer or any New Supplier and such individual by virtue of the ARD and/or any judicial decision interpreting the same or will transfer to Customer or a New Supplier pursuant to the ARD or otherwise; and that no liability for the employment or termination of employment of such individual will transfer to Customer or a New Supplier.

9.7 Notwithstanding Section 9.6, if it is asserted or established that

(i) the contract of employment of any individual shall have effect or has had effect as if originally made between either the Customer or any New Supplier and the individual concerned, or would have had such effect but for the termination of employment of the individual concerned, as a result of the cessation or partial cessation of provision of the Services by the Supplier, by virtue of the provisions of the ARD and/or any judicial decision interpreting the same or will transfer to the Supplier pursuant to the ARD or otherwise; or

(ii) any liability for the employment or termination of employment of any such individual will transfer to the Customer or a New Supplier pursuant to the ARD or otherwise,

the Supplier will, on demand by the Customer, indemnify the Customer and/or any New Supplier against all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which the Customer and/or any New Supplier may suffer or incur and suffers or incurs and which arise in connection with or relate to the employment of such Affected Employee and/or the termination thereof. This indemnity shall include but shall not be limited to the full cost to the Customer or a New Supplier of employing and terminating the employment of such individual plus any social security payments; claims for breach of contract; redundancy payments and other termination indemnities; any other payments owing on termination; claims for unlawful discrimination (without limitation sex, sexual orientation, race, religious belief, age, disability, and discrimination based on part-time or fixed-term status); and failure to inform or consult with any trade union, works council or other employee representatives in connection with the alleged transfer of any individual.

- 9.9 Except as otherwise agreed to by the Supplier in writing, during the term of this Agreement and any Work Order and for a period of one year following termination or expiration of this Agreement or any Work Order, whichever occurs later, the Customer agrees not to directly or through third parties actively solicit any of the Supplier's current or previous employees (unless a period of 12 months has elapsed from the last date that the employee was employed by the Supplier).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Deliverables and any other materials produced by the Supplier pursuant to this Agreement (including any intellectual property rights subsisting in them) shall be owned by the Customer and the Supplier will do any such acts as are reasonably necessary in order to give effect to this provision. Notwithstanding the preceding sentence, all rights in the Supplier's general know-how and in the Supplier's intellectual property created, developed and/or acquired by the Supplier prior to the start of the Project, shall continue to vest solely in the Supplier. In the event that any such intellectual property of the Supplier is embedded into the work results, Supplier will grant to the Customer a non-exclusive, royalty free, perpetual license to use such intellectual property of the Supplier solely to enable the Customer's use of the work results. All intellectual property rights in any information, material, systems and databases provided to the Supplier for the provision of the services shall remain exclusive property of the Customer and its licensors. The Supplier shall have the right to use such items strictly for the purpose of providing the services under this Agreement.
- 10.2 Where the Services consist of modifications or enhancements to the Customer's intellectual property, including but not limited to maintenance, conversion, or reengineering services, the work results (including the software code and all other literary elements) created by the Supplier specifically for the Customer and comprising the Deliverable, shall be the sole and exclusive property of the Customer and the Customer shall be granted the exclusive, worldwide, perpetual right to use and exploit such work results upon payment in full for such Deliverable.
- 10.3 Notwithstanding anything to the contrary stated in this Agreement or any Work Order, the Customer acknowledges and agrees that in the performance of the Services the Supplier may utilize general know-how and intellectual property of the Supplier, including but not limited to software code, utility routines, generalized interfaces, algorithms, ideas, techniques, concepts, proprietary processes, tools, methodologies and improvements thereon, which was or is created, developed and/or acquired by the Supplier prior to and/or independently from the Services and/or not specifically for the Customer and which is used or useable in connection with the providing of products, deliverables and services by the Supplier to other persons, firms and entities. Accordingly, the Customer acknowledges and agrees that the Supplier may use all such general know-how and intellectual property in connection with the providing of products, deliverables and services to others. Further, the Customer acknowledges and agrees that, subject to Section 10.4, all rights in such general know-how and intellectual property of the Supplier continue to vest solely in the Supplier.
- 10.4 If any such intellectual property of the Supplier is embedded into a Deliverable, the Supplier shall grant to the Customer a non-exclusive, non-transferable, royalty free, perpetual right to use such embedded intellectual property solely to enable the Customer's use of such Deliverable. The Customer shall not use or exploit such intellectual property of the Supplier in its stand-alone form separate and apart from the Deliverables.
- 10.5 Provided that the Supplier makes no use of the Customer's intellectual property or the Customer's Confidential and Proprietary Information, nothing in this Agreement or any Work Order shall be construed so as to preclude the Supplier from
- a) creating any deliverables or providing any services that are competitive with that prepared for the Customer hereunder, irrespective of whether such deliverables or services are similar in functionality or design or are otherwise related to the Deliverables developed by the Supplier for the Customer under this Agreement or from
 - b) using the know-how, which was used and acquired by the Supplier during the performance of the Services at its own direction and for its own benefit or for the benefit of third parties.

- 10.6 The Customer acknowledges that the Deliverables might include third party software. Nothing in this Agreement or any Work Order issued hereunder shall be construed to grant the Customer rights to such third party software and it will be the sole responsibility of the Customer to obtain the requisite license. Upon the Customer's request, the Supplier shall reasonably cooperate with the Customer, at the Customer's cost and expense, to secure appropriate licenses.

11. INFRINGEMENT OF THIRD PARTY RIGHTS

- 11.1 The Supplier shall indemnify, defend and hold harmless the Customer against all liability, claims, costs, losses, damages, and expenses incurred by the Customer arising from or related to any claim, suit, or action brought against the Customer by a third party for infringement of such third party's copyright, or European Union patent by any Deliverable designed and provided by the Supplier to the Customer under this Agreement and/or any Work Order. The Supplier shall have sole control and authority over the defence and/or settlement of such a claim, suit or action, including the right, at its sole discretion to (i) procure for the Customer the right to use the infringing Deliverable, (ii) replace the infringing Deliverable with a non-infringing, functionally equivalent one, (iii) suitably modify the infringing Deliverable so that it is non-infringing, or (iv) accept return of the infringing Deliverable and refund a pro-rata portion (based on a five-year straight line depreciation commencing upon delivery) of any fees paid by the Customer to the Supplier with respect to such Deliverable.
- 11.2 The Customer shall give the Supplier prompt written notice of, and the Parties shall cooperate in, the defence of any claim, suit or action, including appeals and negotiations. This indemnity shall not extend to any claim of infringement to the extent resulting from: (i) the Customer's specifications, (ii) modification of the Deliverables unless made by the Supplier, (iii) use or incorporation of the Deliverables in a manner for which they were not designed; or (iv) use or combination of the Deliverables with items not provided by the Supplier. ANY CLAIM FOR INDEMNIFICATION UNDER THIS SECTION 11.2 MUST BE BROUGHT WITHIN ONE (1) YEAR OF DELIVERY OF THE INFRINGING DELIVERABLE. AFTER SUCH TIME PERIOD, THIS INDEMNIFICATION PROVISION WILL TERMINATE AND HAVE NO FURTHER FORCE OR EFFECT. THE INDEMNITY SET FORTH IN THIS SECTION 11.2 STATES THE SUPPLIER'S ENTIRE OBLIGATION AND LIABILITY, AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE DELIVERABLES.
- 11.3 The Customer shall, at its own expense, indemnify the Supplier from and against any action brought against the Supplier by third parties for infringement or misappropriation of a third party's copyright, patent, trade secret or other intellectual property rights by any intellectual property provided by the Customer to the Supplier under this Agreement, and shall pay any damages or settlement assessed against the Supplier under such a claim. the Supplier shall be obligated to give the Customer prompt written notice of, and the Parties shall cooperate in, the defence of any claim, suit or action, including appeals and negotiations. This indemnity shall not extend to any claim of infringement or misappropriation resulting from the Supplier's modification of such intellectual property other than for the performance of the Services. Except as specified above, the Customer shall not be liable for any costs or expenses incurred without its prior written authorization.

12. CONFIDENTIALITY

- 12.1 "Confidential and Proprietary Information" as used in this Agreement shall mean any and all technical and non-technical information, which is in any way related to the current, future and proposed business, products and services of either of the Parties, including but not limited to business plans, business forecasts, research, financial information, procurement requirements, purchasing requirements, manufacturing, customer lists, sales and merchandising efforts, marketing plans, experimental work, development, design details, specifications, engineering, patents, copyrights, trade secrets, proprietary information, methodologies, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents and formulae. Confidential and Proprietary Information might be disclosed to the receiving Party either orally, visually, in writing (including graphic material) or by way of consigned items.

- 12.2 The receiving Party shall take all reasonable security precautions, including precautions at least as great as it takes to protect its own confidential information, to protect the secrecy of Confidential and Proprietary Information. The receiving Party shall not disclose Confidential and Proprietary Information to its employees or consultants other than on a need-to-know basis. The receiving Party shall execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement. Except as provided in Section 12.3 below, the Party which receives any Confidential and Proprietary Information from the other Party shall treat the same as confidential and shall not divulge such information, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose, and shall not make use of such information, without the prior written consent of the disclosing Party.
- 12.3 Information shall not be deemed Confidential and Proprietary Information if it is:
- a) publicly available prior to this Agreement or a Work Order or becomes publicly available without a breach by the receiving Party;
 - b) rightfully received by the receiving Party from third parties without accompanying confidentiality obligations;
 - c) already in the receiving Party's possession and was lawfully received from sources other than the disclosing Party;
 - d) independently developed by the receiving Party; or
 - e) approved by the disclosing Party for release.
- 12.4 The Supplier shall have and hereby reserves the right to disclose Confidential and Proprietary information, on request, to governmental or statutory authorities without an obligation to notify the Customer if such notification is prohibited by applicable law. The Supplier shall make reasonable efforts to seek permission from above mentioned authorities to disclose such information request to the Customer.
- 12.5 The secrecy of the Confidential and Proprietary Information disclosed under this Agreement shall be maintained for a period of five years following disclosure thereof.
- 12.6 In case of breach, the affected party shall have the right to seek injunctive relief, which relief shall not exclude any other recourse provided by law.
- 12.7 Each disclosing Party understands that the receiving Party might develop or receive information that might be similar to the disclosing Party's Confidential and Proprietary Information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that the receiving Party will not develop products or provide services, or have products developed for it or receive services that, without violation of this Agreement, compete with the disclosing Party's Confidential and Proprietary Information.
- 12.8 Upon the termination or expiration of this Agreement, each Party agrees to promptly deliver to the other Party all Confidential and Proprietary Information of the other Party then in such Party's possession or to destroy all Confidential and Proprietary Information upon the other Party's demand. This shall not apply to copies of electronically exchanged Confidential and Proprietary Information made as a matter of routine information technology backup or to the general correspondence between the Parties or to documents and Confidential and Proprietary Information, which a Party needs to retain for record keeping purposes as required by mandatory law.
- 12.9 The confidentiality of the Confidential and Proprietary Information disclosed pursuant to this letter shall be maintained for a period of five (5) years following disclosure thereof.
13. WARRANTIES
- 13.1 As of the Effective Date of this Agreement and upon entering into each Work Order, each Party warrants that:
- a) it is a corporation duly incorporated, validly existing and in good standing under the laws of the state or country in which it was incorporated;
 - b) it has all necessary corporate power and authority to enter into this Agreement and each of the Work Orders and that the execution, delivery and the consummation of the transactions contemplated thereby have each been authorized by all necessary corporate action and do not violate any judgment, order, or decree;

- c) the execution, delivery, performance and consummation of the transactions contemplated by this Agreement and any Work Order do not and will not constitute a material default under any contract by which it or any of its material assets are bound.

- 13.2** The Supplier warrants to the Customer that it will provide the Services and Deliverables in accordance with generally accepted industry standards and practices.
- 13.3** The Supplier warrants that the Deliverables provided as part of Fixed Price Services will perform in all material respect with the specification set out in the Work Order during the Warranty Period. THE SUPPLIER AND THE CUSTOMER AGREE THAT THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR NON-CONFORMING SERVICES AND DELIVERABLES SHALL BE REPLACEMENT/RE-PERFORMANCE BY THE SUPPLIER, IF SUCH NON CONFORMITY IS NOTIFIED BY THE CUSTOMER TO THE SUPPLIER DURING THE WARRANTY PERIOD.
- 13.4** The Customer warrants and represents that it is the lawful owner or licensee of any proprietary material (including but not limited to hardware, software and specifications) provided to the Supplier for the performance of the Services contemplated hereunder; such proprietary material has been lawfully developed or acquired by the Customer and that the Customer has the right to permit the Supplier access to and use of such proprietary material.
- 13.5** Notwithstanding anything to the contrary in this Agreement or any Work Order, in no event shall the Supplier be responsible for any failure to perform in accordance with the requirements of this Agreement or a Work Order to the extent such failure results from: (i) the acts or omissions of the Customer or any agent, employee or contractor of the Customer; (ii) hardware, software or system failures not attributable to the Supplier's negligence; or (iii) a force majeure event as contemplated under Section 18.2 of this Agreement; (iv) change to the technical environment in which the Deliverables operate.
- 13.6** Except as expressly set forth in this Agreement, the Supplier hereby disclaims all warranties and conditions, whether express, implied, statutory or otherwise, including those related to satisfactory quality, merchantability and fitness for particular purpose, with respect to the Services and Deliverables provided under this Agreement and/or Work Orders issued hereunder and all components and elements thereof. the Supplier does not represent or warrant that Services or Deliverables, including but not limited to software, will be error or bug free or that the software will function without interruption or that any of the Services or Deliverables are designed to meet the Customer's business requirements.

14. LIMITATION OF LIABILITY

- 14.1** Subject to Section 14.3, the total, cumulative liability of the Supplier to the Customer (including its Affiliates and the service recipients) under or in connection with this Agreement and all Work Orders, whether in contract, tort (including negligence) or otherwise, shall be limited to 100% of the net charges paid by the Customer to the Supplier under the relevant Work Order in the twelve (12) months immediately preceding the event causing such liability. In each case any amounts paid by the Supplier for any earlier claim(s) shall be taken into account to reduce the amount to the liability cap available for later claims, i.e. the foregoing maximum liability amount represents a total aggregate liability cap and not an occurrence based liability cap.
- 14.2** Subject to Section 14.3, notwithstanding anything to the contrary in this Agreement or any Work Order, in no event shall either Party be liable for the following loss or damage arising out of or in connection with this Agreement and/or any Work Order, howsoever caused and whether or not the other Party has been advised of the possibility of such damages:
- a) any loss of profits, revenue or contracts or loss of anticipated savings;
 - b) loss or corruption of business information or data;
 - c) loss of goodwill;
 - d) any indirect, special, incidental, consequential or punitive damages;
- 14.3** Nothing in this Section 14 shall limit or exclude the Customer's obligation to pay the charges.
- 14.4** Nothing in this Agreement shall limit or exclude a Party's liability for fraud, personal injury (including death) caused by that party's negligence or for any other liability that by law cannot be excluded or limited.

- 14.5** The limitation of liability provisions set forth in sections 14.1 and 14.2 above are a material part of the bargain. The Customer acknowledges that the Supplier would not be willing to enter into this Agreement and/or any Work Order without such provisions.

15. TERM

This Agreement is only binding if signed by authorized representatives of both Parties. Upon both Parties' signature, it becomes effective on the Effective Date and shall continue for a period of xxx years unless terminated sooner in accordance with the provisions of this Agreement. Obligations under this Agreement and/or any Work Order, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement and/or a Work Order shall survive termination, cancellation or expiration of this Agreement and/or the respective Work Order.

16. TERMINATION

- 16.1** Either Party has the right to terminate this Agreement or the relevant Work Order if the other is in material breach or default of any material obligation hereunder which breach or default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) calendar days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize).
- 16.2** Either Party may terminate this Agreement and/or any Work Order by written notice to the other if (i) the other Party becomes insolvent or admits a general inability to pay its debts as they come due or (ii) makes an assignment for the benefit of creditors or (iii) a petition under any bankruptcy act is filed by the other party or such a petition is filed by any third party or (iv) an application for a receiver of the other Party is made by anyone and such petition or application is not dismissed within one hundred and twenty (120) days or (v) such party sells all or substantially all of its assets. In the event that any of the above events occurs, that party shall immediately notify the other Party of its occurrence.
- 16.3** Either Party may terminate this Agreement and/or any Work Order without cause, by providing the other with written notice of not less than sixty (60) days, unless a different notice period is set forth in the Work Order. In the event of such termination, the Customer shall pay the Supplier all amounts due for Services rendered up to the effective date of termination including for works in progress. In cases where the Customer terminates under this section, the Customer shall pay the Supplier further a termination for convenience fee.
- 16.4** The expiration or termination of this Agreement shall not affect the completion of any Work Orders, which are still effective at the effective date of expiration or termination of this Agreement. Any such Work Orders, which are still effective, shall continue to be governed by the terms and conditions of this Agreement until the expiration or termination of such Work Orders.
- 16.5** Subject to Section 12.8, upon the termination or expiration of this Agreement and/or any Work Order, each Party forthwith shall return to the other all papers, materials and other properties of the other held by it in connection with the performance of this Agreement and/or the respective Work Order.
- 16.6** If a Work Order is terminated by either Party for any reason, the Customer shall pay to the Supplier at least the charges for all Services and Deliverables provided to the Customer through the effective date of termination including for works in progress.

17. NOTICES

All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by courier or other

express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party as follows:

To the Customer:

To the Supplier:

Infosys Limited
Attention: Head of the Legal Department
Electronics City, Hosur Road
Bangalore 560 100
India

With a copy to:

Infosys Limited
Zweigniederlassung Deutschland
Attention: Legal Department
Operturm, Bockenheimer Landstraße 2-4
60306 Frankfurt am Main
Germany

Either Party may change such address by notice to the other Party.

18. GENERAL PROVISIONS

- 18.1 No amendment, alteration, or modification of this Agreement and/or any Work Order will be binding unless made in writing and signed by both the Customer and the Supplier. The failure of either the Customer or the Supplier at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

- 18.2 Neither Party shall be liable to the other for any delay or failure to perform its obligations under this Agreement or any Work Order as a result of natural disasters, actions or decrees of governmental bodies, communication line failures not the fault of the affected party, or any other delay or failure which arises from causes beyond a Party's reasonable control (hereafter referred to as a "Force Majeure Event"). If a Force Majeure Event arises, the party whose performance has been so affected shall immediately give notice to the other party and shall do everything reasonably possible to resume performance. Upon receipt of such notice, the obligations of the affected party under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may by giving written notice terminate this Agreement or the relevant Work Order. A Force Majeure Event shall not relieve the Customer of its payment obligations for Services and Deliverables actually rendered by the Supplier.
- 18.3 The Supplier may assign or subcontract any of its rights or obligations under this Agreement and any Work Order. If any of its obligations under this Agreement or a Work Order are assigned or subcontracted, the Supplier shall cause its assignees and subcontractors to observe the confidentiality and other relevant requirements defined in this Agreement and the Work Order. The Customer shall not assign any of its rights or obligations under this Agreement or any Work Order without the prior written consent of the Supplier. Any assignment in contravention of these terms and conditions shall be null and void.
- 18.4 This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns and no other person or entity shall have or acquire any right by virtue of this Agreement.
- 18.5 It is expressly understood that the Supplier and the Customer are contractors independent of one another, and that neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other.
- 18.6 This Agreement allows the Supplier to include the Customer's name in general listings of the Supplier's customers. The general listings will not include any details about specific projects. With the Customer's prior written consent, which shall not be unreasonably withheld, the Supplier may prepare case studies from time to time which provide specific details about the Services being provided to the Customer.
- 18.7 If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement or of any Work Order to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provision, or portions of them, will not be affected.
- 18.8 In the event of any dispute arising out of or in connection with this Agreement or any Work Order issued hereunder, the Parties shall attempt in good faith to resolve such dispute through negotiations between them. Where the Parties are unable to resolve a dispute by means of negotiation, the dispute shall be finally settled by arbitration conducted in accordance with the rules of the United Nations Commission and International Trade Law (UNCITRAL) as in effect on the Effective Date of this Agreement (the "UNCITRAL Rules"). Such disputes will be resolved by majority decision of three (3) arbitrators as determined under the UNCITRAL Rules. Each Party will appoint one (1) arbitrator within thirty (30) days of a request by the other Party for arbitration. The third arbitrator will be appointed by the arbitrators appointed by the Parties within thirty (30) days of the selection of the second arbitrator. The third arbitrator will serve as chairman of the arbitration. The seat of arbitration will be the metro London, England. The language of the arbitration will be English. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrators may, in their discretion, award costs and fees to the prevailing party. Judgment upon the award may be entered in any court having jurisdiction over the award or over the applicable Party or its assets.
- 18.9 This Agreement, all Annexures, Work Orders and agreements entered into hereunder and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of England, excluding any laws that direct the

application of another jurisdiction's laws. The Parties hereby acknowledge and agree that all of the following provisions shall not apply (i) the United Nations Convention on Contracts for the International Sales of Goods; (ii) the Commercial Code of California and like statutes of any other jurisdiction; and (iii) the Uniform Computer Information Transactions Act ("UCITA").

- 18.10 With the exception of Affiliates of the Supplier, a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or any subsequent amendments to such Act. Any amendments to this Agreement shall not require the consent of any third party.
- 18.11 This Agreement, including the Annexures attached hereto, reflects the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior oral and written agreements, understandings, representations, conditions, proposals, presentations and all other communications relating thereto. Neither party has relied on any representation not expressly set out in this Agreement.
- 18.12 Should any inconsistency exist or arise between a provision of this Agreement and a provision of any Annexure or Work Order, the provisions of this Agreement will prevail. The terms of a Work Order or of an Annexure will take precedence over the terms of this Agreement only in so far as a deviation from the Agreement is explicitly provided for in the Work Order/Annexure, including a reference to the relevant Sections of this Agreement, which are not applicable or which are modified for the purpose of the respective Work Order/Annexure. Any general terms and conditions of either Party, e.g. purchase terms and conditions included in the Customer's purchase orders, etc., will not apply to the Services and Deliverables to be provided under this Agreement and any Work Order and the Supplier hereby rejects all such general terms and conditions of the Customer.
- 18.13 Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement and/or any Work Order.
- 18.14 The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement (including Work Orders) will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature.
- 18.15 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- 18.16 The section headings used in this Agreement and/or any Work Order are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.
- 18.17 Signatures:

Infosys Limited

Date

Authorized Signatory

Name

Title

[Customer name]

Date

Authorized Signatory

Name

Title

Annexure A to the Master Services Agreement

Sample Work Order

WORK ORDER

REFERENCE NUMBER : XXXXX [Number]

This Work Order is made on [date] (effective date) between:

[[insert customer name and address] (**[Customer name]** or **"Customer"**)

and

Infosys Limited Electronics City, Hosur Road, Bangalore 560 100, India (**"Infosys"** or **"Supplier"**).

(each hereinafter referred to as **"Party"** or jointly as the **"Parties"**)

This Work Order is issued under and governed by the Master Services Agreement entered into between the Parties with effective date [*insert date of MSA*] (hereinafter the "Agreement") and sets forth the specific terms and conditions relating to the provision of the Services referred to in this Work Order.

1. Products to be provided

1.1 Description of the Licenses

This Annexure authorizes Infosys to resell Panaya tool platform licenses to **[Customer name]** for **[number of years]** year duration, starting **[date]** till **[date]**

The scope of tool license includes:

- **XXXX [List of Products]**

1.2 Support

- Customer support requests should be sent by logging into Panaya support portal via Panaya application or by an e-mail to support@panaya.com.
- Support queries sent to other Panaya email addresses will not be considered as support requests.
- All support queries are logged within Panaya's CRM system and allocated an ID reference number.
- Support queries are prioritized by the Panaya support team who will respond to the Customer either by a message in the Panaya support portal, an email or phone during the following working hours:
Sunday- Friday between 8:00-20:00 GMT, according to the case priority and the set response time per the table in the next page:

Priority	Priority Definition	Response Time	Examples
High	The issue reported causes a complete standstill at the Customer's project and prevents the Customer from using Panaya's main functionality, causing a significant impact on the Customer's project.	Up to 12 Hours	1. Customers cannot generate extraction file or upload changes for analysis. 2. Test recorder/player doesn't work for all or a substantial number of users. 3. Customers cannot create basic entities such as requirements, tests, or defect
Medium	The issue reported prevents the Customer from using part of the Panaya functionality and/or causes an impact on the Customer's Panaya project.	Up to 24 Hours	1. A single user cannot access the Panaya application or record and play. 2. Inquiries regarding Panaya Tasks. 3. Installation/Setup issues for a single user. 4. Risk Analysis results are not available
Low	The issue reported causes a low or no impact on the Customer's Project and the daily operation with Panaya is not harmed.	Up to 36 Hours	1. Consulting and best practices inquiries. 2. Special report request.

2. Third Party Materials

3. Customer's Obligations and Dependencies

4. Further Assumptions

- 4.1 Panaya Platform Licenses are non-cancellable and non-refundable for the committed **[number of years]** year duration subscribed.
- 4.2 The commercials proposed are exclusive of all taxes such as local, sales, service, value added tax and any other transactions related taxes payable on services received.
- 4.3 **[Customer]** will take care of the infrastructure related activities – e.g., server setup, firewall rules, access etc. with its existing supplier.
- 4.4 Access to required software, applications would be provided by **[Customer name]**
- 4.5 **[Customer]** will take care of Hardware, Servers & Infrastructure support.
- 4.6 Support of any other Applications not included in scope.
- 4.7 The service/ support commitment does not apply to any unavailability, suspension, or termination
- 4.8 caused by:
 - 4.8.1 Factors outside of Panaya's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Panaya and/or Amazon EC2;
 - 4.8.2 That result from any actions or inactions of the Customer or any third party; or
 - 4.8.3 Arising from our suspension and termination of the Customer's right to use the Panaya platform;
 - 4.8.4 That results from the equipment, software, or other technology of you or any third party (other than third party equipment within our direct control);
 - 4.8.5 That results from failures of Cloud Services not attributable to Unavailability;
 - 4.8.6 Any planned software release that Panaya performs on its SaaS platform during weekends (GMT). Customers will be informed of planned maintenance at least one week in advance on the login screen;
 - 4.8.7 Any unplanned maintenance that Panaya performs on its SaaS platform during weekends (GMT). Customers will be informed of unplanned maintenance at least 3 days in advance on the login screen.
- 4.9 All prices that are quoted exclude taxes, any withholding, levies, or duties which shall be exclusively borne by Customer.
- 4.10 Infosys may be required to charge VAT on your order pursuant to local VAT laws. Your order will be taxed using the applicable VAT rate for your shipping address.
- 4.11 By accepting this proposal, you agree to Panaya's standard Terms and Conditions as found at <http://www.panaya.com/panayaterms-of-use/master-subscription-agreement/> and to Panaya's Data Processing Agreement as found at <http://www.panaya.com/dataprocessing-agreement/>
- 4.12 Any additional or different terms (whether included in your purchase order, your response to this proposal, or elsewhere) or any terms that may be implicit from course of conduct shall be disregarded and not bind Panaya or Infosys.

5. Contacts / Project Executives

Customer Project Executive:

Telephone	
Fax	
E-Mail	

Supplier Project Executive :

Telephone	
Fax	
E-Mail	

Other Contacts

Telephone	
Fax	
E-Mail	

6. Reporting & Meetings

7. Term

The term of this Work Order shall commence on [date] and be completed on [date].

8. Charges

[Choose Appropriate Option for Payment]

8.1 Payment Schedule for Products

Billing Point	Description of Milestones for Billing Purposes	Milestone Date	Amount

The Licenses will be invoiced upfront at start of the License date. All invoices shall be paid within thirty (30) calendar days of the date of invoice. If payments are delayed beyond the above payment period, the applicable interest rate is 1% per month. The Customer / the bill to party is not entitled to set off amounts owed to it by Infosys against amounts due to Infosys under this SoW .

8.2 Rates for Time and Material Services *[only applicable if rates are not defined in the Annexure of the Agreement]*

Role	Grade	Base Location	No of Days	Daily rate	Currency

9. Taxes and Invoicing Instructions

The rates stated in this Work Order are exclusive of all taxes. Any transaction taxes including but not limited to sales tax, value added tax, service tax, GST, customs duty, excise or any tax of similar nature shall be borne by <Work Order issuing entity>. Taxes shall further be treated in accordance to the terms of the Agreement.

Invoicing/Billing details:

<Entity> < address> < country>

<Work Order issuing entity> confirms that the services provided by the Supplier are consumed by

<Entity> < address> < country>

If the above information turns out to be incorrect and/or if any authority of any jurisdiction claims that another entity of the Customer to be the recipient of the services, then the Customer shall indemnify Infosys for all claims raised by any authority in those jurisdictions, including but not limited to, transaction taxes, interest, penalties, and related legal cost

10. Signatures

Infosys Limited

Date

Authorized Signatory

Name

Title

[Customer Name]

Date

Authorized Signatory

Name

Title

Annexure B to the Master Services Agreement

(Rate Card for Time & Material Based Services)

[Please insert rate card]

Infosys Limited

Date

Authorized Signatory

Name

Title

[Customer Name]

Date

Authorized Signatory

Name

Title