



FoCul Software development, support and maintenance agreement

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Software development, support and maintenance agreement

DATE

[Date]

PARTIES

1. FoCul Ltd, a company incorporated in England and Wales (registration number 4014994) having its registered office at FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE having its principal place of business at FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE; (the "**Developer**"); and
2. *[[INDIVIDUAL NAME] of [address]]* OR *[[COMPANY NAME], a company incorporated in [England and Wales] (registration number [registration number]) having its registered office at [address]]* OR *[[PARTNERSHIP NAME], a partnership established under the laws of [England and Wales] having its principal place of business at [address]]* (the "**Customer**").

BACKGROUND

1. *[Explain background from the Developer's perspective.]*
2. *[Explain background from the Customer's perspective.]*
3. [The Developer and the Customer therefore wish to enter into a contract in accordance with the provisions of this Agreement.]

AGREEMENT

1. Definitions

- 1.1 In this Agreement, except to the extent expressly provided otherwise:

"Acceptance Criteria" means:

- (a) the Software conforming in all material respects with the Software Specification; and
- (b) the Software being free from Software Defects;

"Acceptance Period" means a period of 10 Business Days following the supply of the Software to the Customer or the resupply of the Software to the Customer in accordance with Clause 5, or such other period as the parties may agree in writing;

"Acceptance Tests" means a set of tests designed to establish whether the Software meets the Acceptance Criteria, providing that the exact form of the tests shall be agreed and documented by the parties acting reasonably;

"Additional Development Services" means development services relating to the Software that the parties agree, in accordance with Clause 13, will be provided by the Developer to the Customer after the acceptance or deemed acceptance of the Software;

"Additional Works" means all software and other works and materials that the Developer delivers to the Customer, or has an obligation to deliver to the Customer, under any agreement between the parties for the provision of Additional Development Services;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"Assignment IP" means all Intellectual Property Rights in the Software and the Documentation, excluding the Intellectual Property Rights in the Framework Software, the Customer Materials and the Third Party Materials;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"CCN" means a change control notice issued in accordance with Clause 18;

"CCN Consideration Period" means the period of 10 Business Days following the receipt by a party of the relevant CCN from the other party;

"Change" any change to this Agreement

"Charges" means the following amounts:

- (a) the amounts specified in Paragraph 6 of Schedule 1 (Software Development Particulars);
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Developer's standard time-based charging rates (as notified by the Developer to the Customer before the date of this Agreement) by the time spent by the Developer's personnel performing the Services (rounded down by the Developer to the nearest quarter hour);

"Confidential Information" means the Developer Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Developer at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked as "confidential"; or
 - (ii) should have been reasonably understood by the Developer to be confidential; and
- (b) the Customer Data;

"Customer Indemnity Event" has the meaning given to it in Clause 28.3;

"Customer Materials" means all works and materials supplied by or on behalf of the Customer to the Developer for incorporation into or integration with the Software, or for use in connection with the Services;

"Customer Personal Data" means any Personal Data that is processed by the Developer on behalf of the Customer in relation to this Agreement, but excluding *personal data* with respect to which the Developer is a data controller;

"Customer Representatives" means the person or persons identified as such in Paragraph 7 of Schedule 1 (Software Development Particulars), and any additional or replacement persons that may be appointed by the Customer giving to the Developer written notice of the appointment;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Developer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Developer to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

"Developer Indemnity Event" has the meaning given to it in Clause 28.1;

"Developer Representatives" means the person or persons identified as such in Paragraph 7 of Schedule 1 (Software Development Particulars), and any additional or replacement persons that may be appointed by the Developer giving to the Customer written notice of the appointment;

"Development Services" means the design and development of the Software by the Developer;

"Documentation" means the documentation for the Software produced by the Developer and delivered or made available by the Developer to the Customer;

"Effective Date" means the date of execution of this Agreement;

"Escrow Agent" means such escrow agent of good repute as the parties may reasonably agree in writing from time to time;

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Developer exclusively in connection with, the performance of the Developer's obligations under this Agreement;

"Export Laws" means all applicable laws restricting and/or regulating:

- (a) the inter-jurisdictional import, export, supply, disclosure, transfer or transmission of goods, services, software, technology, technical know-how, data and/or information; and/or
- (b) the import, export, supply, disclosure, transfer or transmission of goods, services, software, technology, technical know-how, data and/or information to designated entities or persons, or to designated classes of entities or persons;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Framework Software" means those elements of the Software created before the Effective Date, the Intellectual Property Rights in which are owned by the Developer upon the Effective Date.

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Issue" means any issue falling into one or more of the following categories: material security risks relating to the Software and arising out of changes to the security environment; material incompatibilities between the Software and any third party software warranted as compatible in this Agreement where those incompatibilities arise out of changes to that third party software; any bugs or errors in the Software that have a material adverse effect on the Customer's use of the Software, whether or not those bugs and errors constitute Software Defects;

"Maintenance Services" means the supply to the Customer

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom;

"Remedy Period" means a period of 20 Business Days following the Customer giving to the Developer a notice that the Software has failed the Acceptance Tests, or such other period as the parties may agree in writing;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Developer provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Set Up Services" means the installation, integration and configuration of the Software in accordance with Paragraph 3 of Schedule 1 (Software Development Particulars);

"Software" means the software identified in Paragraph 1 of Schedule 1 (Software Development Particulars), including the Source Code of that software created by or on behalf of the Developer in the course of the provision of the Development Services and compiled to create the executable version of that software;

"Software Defect" means a defect, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Software;
- (b) any use of the Software contrary to the Documentation by the Customer or any person authorised by the Customer to use the Software;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"Software Specification" means the specification for the Software set out in Paragraph 1 of Schedule 1 (Software Development Particulars) and in the Documentation, as it may be varied by the written agreement of the parties from time to time;

"Source Code" means software code in human-readable form, including human-readable code compiled to create software or decompiled from software, but excluding interpreted code;

"Support Services" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Third Party Materials" means the works and/or materials comprised in the Software excluding the Customer Materials, the Intellectual Property Rights in which are owned by a third party, and which are specified in Paragraph 2 of Schedule 1 (Software Development Particulars) or which the parties agree in writing shall be incorporated into the Software; and

"Update" means a hotfix, patch or minor version update to the Software.

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force subject to termination in accordance with Clause 31 or any other provision of this Agreement.

3. Development Services

- 3.1 The Developer shall provide the Development Services to the Customer.
- 3.2 The Developer shall use all reasonable endeavours to ensure that the Development Services are provided in accordance with the timetable set out in Paragraph 4 of Schedule 1 (Software Development Particulars), and that a copy of the Software and Documentation is delivered to the Customer by means of a secure online file sharing system, on a USB memory stick or on optical disk in accordance with that timetable.
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations under this Agreement may result in a delay in the performance of the Development Services; and subject to Clause 29.1 the Developer will not be liable to the Customer in respect of any failure to meet the Development Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.
- 3.4 The Developer shall ensure that the Source Code, and any interpreted code, comprised in the Software created by or on behalf of the Developer during the provision of the Development Services is written to a professional standard, conforms with any coding standards document agreed between the parties, and incorporates sufficient commentary to enable a competent third party developer to understand, adapt, maintain and update the code.
- 3.5 The Developer shall keep the Customer reasonably informed of the progress of the Development Services and, in particular, shall inform the Customer of any substantial obstacles or likely delays in the performance of the Development Services.
- 3.6 The Developer shall during the course of the Development Services at the request of the Customer make accessible to the Customer a current development version of the Software for the purposes of enabling the Customer to assess the progress of the Development Services and provide feedback to the Developer regarding the Software.

4. Set Up Services

- 4.1 The Developer shall provide the Set Up Services to the Customer.
- 4.2 The Developer shall use all reasonable endeavours to ensure that the Set Up Services are provided promptly following the Effective Date.
- 4.3 The Customer acknowledges that a delay in the Customer performing its obligations in this Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 29.1 the Developer will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.

- 4.4 Any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Developer shall be the exclusive property of the Developer; providing that to the extent that the works arising out of such performance form part of the Software, the Intellectual Property Rights in those works shall be assigned to the Customer in accordance with Clause 6.1.

5. Acceptance procedure

- 5.1 During each Acceptance Period, the Customer shall carry out the Acceptance Tests.
- 5.2 The Developer hereby grants to the Customer a non-exclusive non-transferable non-sublicensable licence to use the Software during each Acceptance Period solely for the purpose of conducting the Acceptance Tests.
- 5.3 The Developer shall provide to the Customer at the Customer's cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as the Customer may reasonably request.
- 5.4 Before the end of each Acceptance Period, the Customer shall give to the Developer a written notice specifying whether the Acceptance Tests have been passed or failed.
- 5.5 If the Customer fails to give to the Developer a written notice in accordance with Clause 5.4 or uses the Software for any purpose other than the conduct of the Acceptance Tests, then the Software shall be deemed to have passed the Acceptance Tests.
- 5.6 If the Customer notifies the Developer that the Acceptance Tests have been failed, then the Customer must provide to the Developer, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.
- 5.7 If the Customer notifies the Developer that the Software has failed the Acceptance Tests:
- (a) if the Developer agrees with the Customer that the Software has not passed the Acceptance Tests, then the Developer must correct the issue and re-supply the Software to the Customer before the end of the Remedy Period; or
 - (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Software has not passed the Acceptance Tests, and if appropriate a plan of action reasonably satisfactory to both parties, and they must record any agreement reached in writing.
- 5.8 Notwithstanding the other provisions of this Clause 5, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 5 shall be 3, and if the final round of Acceptance Tests is failed the Developer shall be deemed to be in material breach of this Agreement.
- 5.9 A notification by the Customer that the Software has passed the Acceptance Tests will not prejudice the Customer's rights in the event of a breach of any warranty given by the Developer to the Customer in this Agreement in relation to the Software; nor will any deemed passing of the Acceptance Tests under this Clause 5, unless the Customer could not reasonably have been expected to have identified the breach of that warranty during the testing process.

6. Assignment

- 6.1 On and from the date of acceptance of the Software by the Customer, the Developer hereby assigns to the Customer with full title guarantee all of the Assignment IP.
- 6.2 The assignment in Clause 6.1 is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals.

- 6.3 The assignment in Clause 6.1 includes the right to bring proceedings in respect of past infringements of the assigned rights, and to recover damages or benefit from any other remedies in respect of any past infringements of the assigned rights.

7. Framework Software

- 7.1 The Developer hereby grants to the Customer from the date of supply of the Software to the Customer until the end of the Term a worldwide, non-exclusive, non-expiring licence to:
- (a) install a single instance of the Framework Software;
 - (b) use a single instance of the Framework Software as an integral part of the Software in accordance with the Documentation for the internal and external business purposes of the Customer;
 - (c) create, store and maintain up to 5 back-up copies of the Framework Software; and
 - (d) fix, patch, improve, integrate, update and upgrade the Framework Software, and create new versions of the Framework Software,
- subject to the limitations and prohibitions set out and referred to in this Clause 7.
- 7.2 The Customer may not sub-license and must not purport to sub-license any rights granted under Clause 7.1 without the prior written consent of the Developer.
- 7.3 The Framework Software may only be used by the officers and employees of the Customer, and the officers and employees of the Customer's Affiliates, agents, subcontractors, customers, clients, suppliers and service Developers.
- 7.4 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 7 shall be subject to the following prohibitions:
- (a) the Customer must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Framework Software;
 - (b) the Customer must not alter, edit or adapt the Framework Software; and
 - (c) the Customer must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer the Framework Software.
- 7.5 The Customer shall be responsible for the security of copies of the Framework Software supplied to the Customer under this Agreement (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

8. Source Code of Framework Software

- 8.1 Nothing in this Agreement shall give to the Customer or any other person any right to access or use the Source Code of the Framework Software or constitute any licence of the Source Code of the Framework Software (except as expressly provided by the Source Code escrow provisions relating to the Framework Software set out herein).

9. Escrow of Source Code of Framework Software

- 9.1 Within the period of 30 days following the Effective Date, the parties may propose to enter into an escrow agreement with the Escrow Agent in relation to a Source Code version of the Framework Software.

- 9.2 Each party shall use all reasonable endeavours to ensure that the escrow agreement is entered into as proposed, including signing the escrow agreement and using all reasonable endeavours to procure the signature of the escrow agreement by the Escrow Agent.
- 9.3 The escrow agreement shall be in the form specified in Schedule 5 (Form of Escrow Agreement), subject to any variations agreed by the parties and the Escrow Agent.

10. Third Party Materials

- 10.1 Subject to any express written agreement between the parties, the Developer shall ensure that the Third Party Materials are:
- (a) licensed to the Customer in accordance with the relevant licensor's standard licensing terms (which the Customer acknowledges may be open source or *Creative Commons* licensing terms);
 - (b) licensed to the Customer on reasonable terms notified by the Developer to the Customer;
 - (c) sub-licensed by the Developer to the Customer on reasonable terms notified in writing by the Developer to the Customer; or
 - (d) sub-licensed by the Developer to the Customer on the basis of a non-exclusive, worldwide, perpetual and irrevocable licence to use the Third Party Materials in connection with the Software.

11. Maintenance Services

- 11.1 The Developer shall provide the Maintenance Services to the Customer from the delivery of the Software to the Customer until the end of the Term.
- 11.2 The Developer shall provide the Maintenance Services with reasonable skill and care
- 11.3 The Developer shall provide the Maintenance Services in accordance with Schedule 2 (Maintenance SLA).
- 11.4 The Developer warrants to the Customer that the application of Updates to the Software by the Developer will not introduce any Software Defects into the Software.
- 11.5 The Developer warrants to the Customer that the application of Updates to the Software by the Customer in accordance with the instructions of the Developer will not introduce any Software Defects into the Software.
- 11.6 The Developer may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Developer under this Agreement is overdue, and the Developer has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.
- 11.7 Either party may terminate the Maintenance Services by giving to the other party at least 30 days' written notice expiring on or at any time after the first anniversary of the Effective Date.
- 11.8 If the Maintenance Services are terminated in accordance with the provisions of this Clause 11:
- (a) the Customer must pay to the Developer any outstanding Charges in respect of Maintenance Services provided to the Customer before the termination of the Maintenance Services;
 - (b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Maintenance Services that were to be provided to the Customer after the termination of the Maintenance Services; and

- (c) the provisions of this Clause 11, excluding this Clause 11.8, shall cease to apply, but the other provisions of this Agreement will continue notwithstanding such termination.
- 11.9 On and from the date of application of an Update to the Software (or, if earlier, the supply of an Update to the Customer, the Developer hereby assigns to the Customer with full title guarantee all of the Intellectual Property Rights in the Update and in the alterations to the Software resulting from the application of the Update, excluding the Intellectual Property Rights in the Framework Software, the Customer Materials and the Third Party Materials. This assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and this assignment includes the right to bring proceedings in respect of past infringements of the assigned rights, and to recover damages or benefit from any other remedies in respect of any past infringements of the assigned rights.
- 11.10 From the date of the application of an Update, the "Software" shall where the context allows be deemed to include the alterations to the Software resulting from the application of the Update.

12. Support Services

- 12.1 The Developer shall provide the Support Services to the Customer during the Term.
- 12.2 The Developer shall provide the Support Services with reasonable skill and care
- 12.3 The Developer shall provide the Support Services in accordance with Schedule 3 (Support SLA).
- 12.4 The Developer may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Developer under this Agreement is overdue, and the Developer has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
- 12.5 Either party may terminate the Support Services by giving to the other party at least 30 days' written notice expiring on or at any time after the first anniversary of the Effective Date.
- 12.6 If the Support Services are terminated in accordance with the provisions of this Clause 12:
- (a) the Customer must pay to the Developer any outstanding Charges in respect of Support Services provided to the Customer before the termination of the Support Services;
 - (b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Support Services that were to be provided to the Customer after the termination of the Support Services; and
 - (c) the provisions of this Clause 12, excluding this Clause 12.6, shall cease to apply, but the other provisions of this Agreement will continue notwithstanding such termination.

13. Additional Development Services

- 13.1 From time to time during the Term, the parties may agree that the Developer shall provide to the Customer Additional Development Services.
- 13.2 The parties must ensure that the following matters relating to any Additional Development Services (at least) are agreed in accordance with Clause 13.1 before the Developer begins the provision of those Additional Development Services: the scope of the Additional Development Services and the specification of the Additional Works, the timetable for the provision to the Additional Development Services, the Customer's specific obligations in relation to the Additional Development Services, what (if any) acceptance procedure will apply to the Additional Works, how the Intellectual Property Rights in the Additional Works will be assigned and/or licensed, what warranties the Developer will give to the Customer in relation to the

Additional Works, and the amount or calculation of the Charges payable in respect of the Additional Development Services.

- 13.3 The Developer shall provide any Additional Development Services with reasonable skill and care and shall use all reasonable endeavours to provide the Additional Development Services in accordance with the timetable agreed by the parties.

14. Customer obligations

- 14.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Developer, or procure for the Developer, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Developer to perform its obligations under this Agreement.

- 14.2 The Customer must provide to the Developer, or procure for the Developer, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Developer to enable the Developer to perform its obligations under this Agreement.

15. Customer Materials

- 15.1 The Customer must supply to the Developer the Customer Materials specified in Paragraph 5 of Schedule 1 (Software Development Particulars), in accordance with the timetable specified in Paragraph 4 of Schedule 1 (Software Development Particulars).

- 15.2 The Customer hereby grants to the Developer a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Materials to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement, together with the right to sub-license these rights to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement.

- 15.3 The Customer warrants to the Developer that the Customer Materials will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

16. Representatives

- 16.1 The Developer shall ensure that all instructions given by the Developer in relation to the matters contemplated in this Agreement will be given by a Developer Representative to a Customer Representative, and the Customer:

- (a) may treat all such instructions as the fully authorised instructions of the Developer; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

- 16.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in this Agreement will be given by a Customer Representative to a Developer Representative, and the Developer:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and

- (b) may decline to comply with any other instructions in relation to that subject matter.

17. Management

- 17.1 The parties shall hold management meetings at each party's offices, by telephone conference or using internet-based conferencing facilities:
 - (a) once per calendar year during the Term; and
 - (b) at the reasonable request of either party.
- 17.2 A party requesting a management meeting shall give to the other party at least 10 Business Days' written notice of the meeting.
- 17.3 Wherever necessary to enable the efficient conduct of business, the Developer shall be represented at management meetings by at least 1 Developer Representative and the Customer shall be represented at management meetings by at least 1 Customer Representative.

18. Change control

- 18.1 The provisions of this Clause 18 apply to each Change requested by a party.
- 18.2 Either party may request a Change at any time.
- 18.3 A party requesting a Change shall provide to the other party a completed CCN in the form specified in Schedule 4 (Form of CCN).
- 18.4 A party in receipt of a CCN may:
 - (a) accept the CCN, in which case that party must countersign the CCN and return it to the other party before the end of the CCN Consideration Period;
 - (b) reject the CCN, in which case that party must inform the other party of this rejection before the end of the CCN Consideration Period; or
 - (c) issue an amended CCN to the other party before the end of the CCN Consideration Period, in which case this Clause 18 will reapply with respect to the amended CCN.
- 18.5 A proposed Change will not take effect until such time as a CCN recording the Change has been signed by or on behalf of each party.

19. Charges

- 19.1 The Customer shall pay the Charges to the Developer in accordance with this Agreement.
- 19.2 If the Charges are based in whole or part upon the time spent by the Developer performing the Services, the Developer must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Developer any Charges in respect of Services performed in breach of this Clause 19.2.
- 19.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Developer.
- 19.4 The Developer may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation providing that the sum of variations to the element of the charges over a 12 month period shall not exceed 5% over the annual

percentage increase of the most recent variation of the “Private Sector Earnings series“ published by the UK Office for National Statistics

20. Expenses

- 20.1 The Customer shall reimburse the Developer in respect of any Expenses, providing that the Developer must obtain the prior written authorisation of the Customer before incurring any Expenses exceeding such limitations as may be agreed in writing by the parties from time to time.
- 20.2 The Developer must collect and collate evidence of all Expenses, and must retain such evidence during the Term and for a period of 90 days following the end of the Term.
- 20.3 Within 10 Business Days following receipt of a written request from the Customer to do so, the Developer must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Developer as the Customer may specify in that written request.

21. Timesheets

- 21.1 The Developer must:
- (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
 - (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.
- 21.2 Within 10 Business Days following receipt of a written request, the Developer shall supply to the Customer copies of such of the timesheets referred to in Clause 21.1 and in the Developer's possession or control as the Customer may specify in that written request.

22. Payments

- 22.1 The Developer shall issue invoices for the Charges to the Customer from time to time during the Term.
- 22.2 The Customer must pay the Charges to the Developer within the period of 30 days following the issue of an invoice in accordance with this Clause 22
- 22.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Developer to the Customer from time to time).
- 22.4 If the Customer does not pay any amount properly due to the Developer under this Agreement, the Developer may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

23. Confidentiality obligations

- 23.1 The Developer must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Developer uses to protect the Developer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and

23.2 The Customer must:

- (a) keep the Developer Confidential Information strictly confidential;
- (b) not disclose the Developer Confidential Information to any person without the Developer's prior written consent, and then only under conditions of confidentiality approved in writing by the Developer;
- (c) use the same degree of care to protect the confidentiality of the Developer Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Developer Confidential Information; and

23.3 Notwithstanding Clauses 23.1 and 23.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

23.4 No obligations are imposed by this Clause 23 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

23.5 The restrictions in this Clause 23 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

23.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

23.7 Following the termination of this Agreement, and within 5 Business Days following the date of receipt of a written request from the other party following the date of termination of this Agreement, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.

23.8 The provisions of this Clause 23 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

24. Publicity

- 24.1 Neither party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 24.2 Nothing in this Clause 24 shall be construed as limiting the obligations of the parties under Clause 23.

25. Data protection

- 25.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 25.2 The Customer warrants to the Developer that it has the legal right to disclose all Personal Data that it does in fact disclose to the Developer under or in connection with this Agreement.
- 25.3 The Customer shall only supply to the Developer, and the Developer shall only process, in each case under or in relation to this Agreement:
- (a) the Personal Data of data subjects falling within the categories specified in Paragraph 1 of Schedule 6 (Data processing information) (or such other categories as may be agreed by the parties in writing); and
 - (b) Personal Data of the types specified in Paragraph 2 of Schedule 6 (Data processing information) (or such other types as may be agreed by the parties in writing).
- 25.4 The Developer shall only process the Customer Personal Data for the purposes specified in Paragraph 3 of Schedule 6 (Data processing information).
- 25.5 The Developer shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 25.
- 25.6 The Developer shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the UK), as set out in this Agreement or any other document agreed by the parties in writing.
- 25.7 The Customer hereby authorises the Developer to make the following transfers of Customer Personal Data:
- (a) the Developer may transfer the Customer Personal Data internally to its own employees, offices and facilities providing that such transfers must be protected by appropriate safeguards;
 - (b) the Developer may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in Paragraph 5 of Schedule 6 (Data processing information), providing that such transfers must be protected by any appropriate safeguards identified therein; and
 - (c) the Developer may transfer the Customer Personal Data to a country, a territory or sector to the extent that the European Commission has decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 25.8 The Developer shall promptly inform the Customer if, in the opinion of the Developer, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

- 25.9 Notwithstanding any other provision of this Agreement, the Developer may process the Customer Personal Data if and to the extent that the Developer is required to do so by applicable law. In such a case, the Developer shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 25.10 The Developer shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 25.11 The Developer and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Paragraph 4 of Schedule 6 (Data processing information).
- 25.12 The Developer must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Developer shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Developer must not implement the changes. The Developer shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Developer by this Clause 25.
- 25.13 As at the Effective Date, the Developer is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Paragraph 5 of Schedule 6 (Data processing information).
- 25.14 The Developer shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 25.15 The Developer shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Developer may charge the Customer at its standard time-based charging rates for any work performed by the Developer at the request of the Customer pursuant to this Clause 25.15.
- 25.16 The Developer must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after the Developer becomes aware of the breach.
- 25.17 The Developer shall make available to the Customer all information necessary to demonstrate the compliance of the Developer with its obligations under this Clause 25 and the Data Protection Laws. The Developer may charge the Customer at its standard time-based charging rates for any work performed by the Developer at the request of the Customer pursuant to this Clause 25.17, providing that no such charges shall be levied with respect to the completion by the Developer (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.
- 25.18 The Developer shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 25.19 The Developer shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Developer's processing of Customer Personal Data with the Data Protection Laws and this

Clause 25. The Developer may charge the Customer at its standard time-based charging rates for any work performed by the Developer at the request of the Customer pursuant to this Clause 25.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Developer of this Agreement or any security breach affecting the systems of the Developer.

25.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

26. Warranties

26.1 The Developer warrants to the Customer that:

- (a) the Developer has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Developer will comply with all applicable legal and regulatory requirements applying to the exercise of the Developer's rights and the fulfilment of the Developer's obligations under this Agreement; and
- (c) the Developer has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

26.2 The Developer warrants to the Customer that:

- (a) the Software as provided will conform in all material respects with the Software Specification;
- (b) the Software will be supplied free from Software Defects and will remain free from Software Defects for a period of at least 60 days following the supply of the Software;
- (c) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (d) the Software shall incorporate security features reflecting the requirements of good industry practice.

26.3 The Developer warrants to the Customer that the Software and Documentation, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

26.4 The Developer warrants to the Customer that the Software and Documentation, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

26.5 If the Developer reasonably determines, or any third party alleges, that the use of the Software by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Developer may acting reasonably at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or
- (b) procure for the Customer the right to use the Software in accordance with this Agreement.

- 26.6 The Customer warrants to the Developer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 26.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

27. Acknowledgements and warranty limitations

- 27.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Developer gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 27.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Developer gives no warranty or representation that the Software will be entirely secure.
- 27.3 The Customer acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Developer does not warrant or represent that the Software will be compatible with any other software.
- 27.4 The Customer acknowledges that the Developer will not provide any legal, financial, accountancy, Engineering, Safety, Operations or taxation advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Developer does not warrant or represent that the Software or the use of the Software by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

28. Indemnities

- 28.1 The Developer shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Developer of this Agreement (a "**Developer Indemnity Event**").
- 28.2 The Customer must:
- (a) upon becoming aware of an actual or potential Developer Indemnity Event, notify the Developer;
 - (b) provide to the Developer all such assistance as may be reasonably requested by the Developer in relation to the Developer Indemnity Event;
 - (c) allow the Developer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Developer Indemnity Event; and
 - (d) not admit liability to any third party in connection with the Developer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Developer Indemnity Event without the prior written consent of the Developer,

and the Developer's obligation to indemnify the Customer under Clause 28.1 shall not apply unless the Customer complies with the requirements of this Clause 28.2.

- 28.3 The Customer shall indemnify and shall keep indemnified the Developer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Developer and arising directly or indirectly as a result of any breach by the Customer of this Agreement (a "**Customer Indemnity Event**").

28.4 The Developer must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Developer under Clause 28.3 shall not apply unless the Developer complies with the requirements of this Clause 28.4.

28.5 The indemnity protection set out in this Clause 28 shall be subject to the limitations and exclusions of liability set out in this Agreement.

29. Limitations and exclusions of liability

29.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

29.2 The limitations and exclusions of liability set out in this Clause 29 and elsewhere in this Agreement:

- (a) are subject to Clause 29.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

29.3 The Developer shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

29.4 The Developer shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

29.5 The Developer shall not be liable to the Customer in respect of any loss of revenue or income.

29.6 The Developer shall not be liable to the Customer in respect of any loss of use or production.

29.7 The Developer shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

29.8 The Developer shall not be liable to the Customer in respect of any loss or corruption of any data or database.

29.9 The Developer shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

- 29.10 The liability of the Developer to the Customer under this Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) 10,000 GBP; and
 - (b) the total amount paid and payable by the Customer to the Developer under this Agreement in the 12 month period preceding the commencement of the event or events.
- 29.11 The aggregate liability of the Developer to the Customer under this Agreement shall not exceed the greater of:
- (a) 10,000 GBP; and
 - (b) the total amount paid and payable by the Customer to the Developer under this Agreement.

30. Force Majeure Event

- 30.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.
- 30.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 30.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

31. Termination

- 31.1 The Developer may terminate this Agreement by giving to the Customer not less than 30 days' written notice of termination.
- 31.2 The Customer may terminate this Agreement by giving to the Developer not less than 30 days' written notice of termination.
- 31.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
 - (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 31.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:

- (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
 - (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

31.5 The Developer may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Developer under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Developer has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 31.5.

32. Effects of termination

32.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 5.9, 7, 11.10, 20.2, 20.3, 21, 22.2, 22.4, 23, 24, 25.1, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 28, 29, 32, 33, 35, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

32.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

32.3 Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Developer any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

33. Non-solicitation of personnel

- 33.1 The Customer must not, without the prior written consent of the Developer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Developer who has been involved in any way in the negotiation or performance of this Agreement.
- 33.2 The Developer must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of this Agreement.

34. Notices

- 34.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 34.2 Any notice given by the Customer to the Developer under this Agreement must be:
- (a) delivered personally;
 - (b) sent by courier;
 - (c) sent by recorded signed-for post;
 - (d) sent by fax;
 - (e) sent by email; or
 - (f) submitted using the Developer's online contractual notification facility, using the relevant contact details set out in Clause 34.4.
- 34.3 Any notice given by the Developer to the Customer under this Agreement must be:
- (a) delivered personally;
 - (b) sent by courier;
 - (c) sent by recorded signed-for post;
 - (d) sent by fax;
 - (e) sent by email; or
 - (f) submitted using the Customer's online contractual notification facility, using the relevant contact details set out in Clause 34.4.
- 34.4 The parties' contact details for notices under this Clause 34 are as follows:
- (a) in the case of notices sent by the Customer to the Developer, means FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE having its principal place of business at FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE; and
 - (b) in the case of notices sent by the Developer to the Customer as set out in the **xx**
- 34.5 The addressee and contact details set out in Clause 34.4 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 34.
- 34.6 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

- 34.7 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
- (a) in the case of notices delivered personally, upon delivery;
 - (b) in the case of notices sent by courier, upon delivery;
 - (c) in the case of notices sent by post, 48 hours after posting;
 - (d) in the case of notices sent by fax, at the time of the transmission of the fax (providing the sending party retains written evidence of the transmission);
 - (e) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent); and
 - (f) in the case of notices submitted using an online contractual notification facility, upon the submission of the notice form.

35. Further assurance

- 35.1 The Developer must use reasonable endeavours:
- (a) do or procure the doing of all acts; and
 - (b) execute or procure the execution of all documents,
- that the Customer may reasonably request from time to time in order to perfect or confirm the Customer's ownership of the rights assigned by this Agreement.
- 35.2 The Developer must provide to the Customer at the cost and expense of the Customer such reasonable assistance as the Customer may request in order to register the Customer's rights in the Assignment IP with any intellectual property office or registry.
- 35.3 The Developer must provide to the Customer at the cost and expense of the Customer all reasonable assistance in connection with any legal proceedings relating to the rights assigned under this Agreement that are brought by, or against, the Customer.

36. Subcontracting

- 36.1 The Developer must not subcontract any of its obligations under this Agreement without the prior written consent of the Customer, providing that the Customer must not unreasonably withhold or delay the giving of such consent.
- 36.2 The Developer shall remain responsible to the Customer for the performance of any subcontracted obligations.

37. Assignment

- 37.1 The Customer hereby agrees that the Developer may assign, transfer or otherwise deal with the Developer's contractual rights and obligations under these Terms and Conditions.
- 37.2 The Developer hereby agrees that the Customer may assign, transfer or otherwise deal with the Customer's contractual rights and obligations under these Terms and Conditions.

38. No waivers

- 38.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 38.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

39. Severability

- 39.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 39.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

40. Third party rights

- 40.1 This Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.
- 40.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

41. Variation

- 41.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party, without prejudice to the requirements of Clause 18.

42. Entire agreement

- 42.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 42.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 42.3 The provisions of this Clause 42 are subject to Clause 29.1.

43. Export control

- 43.1 The Customer acknowledges that materials and/or information supplied to the Customer under this Agreement may be subject to the Export Laws.
- 43.2 The Customer must comply with the Export Laws insofar as they affect materials and information supplied to the Customer under this Agreement.
- 43.3 Without prejudice to the generality of Clause 43.2, the Customer:
 - (a) must not import, export, supply, disclose, transfer or transmit any materials or information supplied to the Customer under this Agreement if such import, export,

supply, disclosure, transfer or transmission would contravene any embargo or exclusion list applying under the Export Laws; and

- (b) must, where applicable, obtain all licences and consents required under the Export Laws for any import, export, supply, disclosure, transfer or transmission by or on behalf of the Customer of materials or information supplied to the Customer under this Agreement.

44. Law and jurisdiction

- 44.1 This Agreement shall be governed by and construed in accordance with English law.
- 44.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

45. Interpretation

- 45.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 45.2 The Clause headings do not affect the interpretation of this Agreement.
- 45.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 45.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY *[[individual name]* on [.....], the Developer] OR *[[individual name]* on [.....],
duly authorised for and on behalf of the Developer]:

.....

SIGNED BY *[[individual name]* on [.....], the Customer] OR *[[individual name]* on [.....],
duly authorised for and on behalf of the Customer]:

.....

SCHEDULE 1 (SOFTWARE DEVELOPMENT PARTICULARS)

1. Specification of Software

[Specify Software]

2. Third Party Materials

[Identify Third Party Materials]

3. Set Up Services

[Specify Set Up Services and timetable]

4. Timetable

[Insert timetable]

5. Customer Materials

[Specify Customer Materials]

6. Financial provisions

[Insert financial provisions]

7. Representatives

The Developer Representatives are: *[identify representatives]*.

The Customer Representatives are: *[identify representatives]*.

SCHEDULE 2 (MAINTENANCE SLA)

1. Introduction

1.1 This Schedule 2 sets out the service levels applicable to the Maintenance Services.

2 Response and resolution

2.1 Issues raised through the Support Services shall be categorised as follows:

(a) critical: applications are inoperable or a core function is unavailable;

(b) serious: a core function of the application is significantly impaired;

(c) moderate: a core function of the application is impaired, where the impairment does not constitute a serious issue; or a non-core function of the application is significantly impaired; and

(d) minor: any impairment of the application not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

2.2 The Developer shall determine, acting reasonably, into which severity category an issue falls.

2.3 The Developer shall use reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

(a) critical: 1 Business Hour;

(b) serious: 4 Business Hours;

(c) moderate: 1 Business Day; and

(d) minor: 5 Business Days.

2.4 The Developer shall ensure that its response to a request for Support Services shall include an acknowledgement of receipt and a ticket number.

3.5 The Developer shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

(a) critical: 4 Business Hours;

(b) serious: 12 Business Hours;

(c) moderate: 5 Business Days; and

(d) minor: a commitment to fix the issue.

SCHEDULE 3 (SUPPORT SLA)

1. Introduction

1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1 The Developer shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Developer shall ensure that the helpdesk is accessible by telephone, email and using the Developer's web-based ticketing system.

2.4 The Developer shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

3.1 Issues raised through the Support Services shall be categorised as follows:

- (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
- (b) serious: a core function of the Hosted Services is significantly impaired;
- (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
- (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

3.2 The Developer shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Developer shall use reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 Business Hour;
- (b) serious: 4 Business Hours;
- (c) moderate: 1 Business Day; and
- (d) minor: 5 Business Days.

- 3.4 The Developer shall ensure that its response to a request for Support Services shall include an acknowledgement of receipt and a ticket number.
- 3.5 The Developer shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:
 - (a) critical: 4 Business Hours;
 - (b) serious: 12 Business Hours;
 - (c) moderate: 5 Business Days; and
 - (d) minor: a commitment to fix the issue.

4. Provision of Support Services

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

- 5.1 If the total hours spent by the personnel of the Developer performing the Support Services during any calendar month exceed 15 hours then for non bug related support requests :
 - (a) the Developer will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
 - (b) the Developer may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 5.2 The Developer shall have no obligation to provide Support Services in respect of any issue caused by:
 - (a) the improper use of the Hosted Services by the Customer; or
 - (b) any alteration to the Hosted Services made without the prior consent of the Developer.

SCHEDULE 4 (FORM OF CCN)

1. Introduction

Title of Change: *[insert title]*

CCN number: *[insert number]*

Change proposed by: *[insert individual name(s)]*

Date of issue of CCN: *[insert date]*

Summary details of proposed Change: *[insert details]*

2. Change details

[Insert full details of proposed Change]

3. Impact of Change

Impact upon resources: *[insert details]*

Impact upon timetable: *[insert details]*

Impact upon Charges: *[insert details]*

Other effects of Change: *[insert details]*

4. Agreement to Change

The parties have indicated their acceptance of the Change described in this CCN by signing below.

SIGNED BY *[[individual name]* on *[.....]*, the Developer / *[individual name]* on *[.....]*, duly authorised for and on behalf of the Developer]:.....

SIGNED BY *[[individual name]* on *[.....]*, the Customer / *[individual name]* on *[.....]*, duly authorised for and on behalf of the Customer]:.....

SCHEDULE 5 (FORM OF ESCROW AGREEMENT)

[Insert form of escrow agreement.]

SCHEDULE 6 (DATA PROCESSING INFORMATION)

1. Categories of data subject

The Customer's employees (including temporary or casual workers)

The Customer's suppliers and sub-contractors.

2. Types of personal data

Names, postal addresses, email addresses and telephone numbers

3. Purposes of processing

To co-ordinate customer activities