

SUPPLY OF PRODUCTS &/OR SERVICES AGREEMENT

between

PARTY 1

and

HELMET INTEGRATED SYSTEMS LIMITED

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).
- (2) HELMET INTEGRATED SYSTEMS LIMITED, a company incorporated and registered in England and Wales with company number 02766754 whose registered office is at UNIT 3 FOCUS 4 FOURTH AVENUE LETCHWORTH SG6 2TU (**Customer**).

Each a 'party' or together the 'parties'.

BACKGROUND

- (A) The Supplier carries on the business of manufacturing and/or selling the Products or providing the Services.
- (B) The Customer wishes to buy, and the Supplier wishes to supply, the Products and/or Services on the terms and conditions set out in this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

ADR notice: has the meaning given in clause 28.1.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date of this agreement.

Confidential Information: has the meaning given in clause 20.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Delivery: completion of delivery of an Order in accordance with clause 9.2 or clause 9.5(a).

Delivery Date: the date specified for delivery of an Order in accordance with clause 6.3.

Delivery Location: the location specified for delivery of an Order in accordance with clause 6.3.

Dispute: has the meaning given in clause 28.1.

Dispute Notice: has the meaning given in clause 28.1.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Force Majeure Event: has the meaning given in clause 25.

Group: in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

holding company: has the meaning given in clause 1.6.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

Key Personnel: any member of the Supplier's Team who is identified as being key in the Project Plan and who is appointed under clause 4.3.

month: a calendar month.

Order: an order for Products submitted by the Customer in accordance with clause 6.

Order Number: the reference number to be applied to an Order by the Supplier in accordance with clause 6.4.

Products: the products set out in Schedule 1 and, where the context requires, the Products ordered by and supplied to the Customer.

Product Price Review: has the meaning given in clause 12.7.

Product Prices: the prices of the Products as determined in accordance with clause 12.1 and **Product Price** means the price of an individual Product as determined in accordance with that clause.

Project: the project as described in the Project Plan.

Project Milestones: a date by which a part of the Project is to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the Project timetable (including Project Milestones) and responsibilities for the provision of the Services agreed in accordance with clause 2.

Proposal: the materials handed to the Customer supporting the Supplier's presentation to the Customer and describing how the Supplier proposes to carry out the Services.

Representatives: has the meaning given in clause 20.2.

Services: the services to be provided by the Supplier under this agreement, as set out in Schedule 1 hereto and the Supplier's obligations under this

agreement, together with any other services which the Customer takes from the Supplier.

Specification: the specification of the Products and/or Services set out in Schedule 2.

subsidiary: has the meaning given in clause 1.6.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier's Manager: the Supplier's manager for the Services appointed under clause 4.3.

Supplier's Team: the Supplier's Manager and all employees, consultants, agents and subcontractors which it engages in relation to the Services and who are appointed under clause 4.3.

Term: the term of this agreement, as determined in accordance with clause 21.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax at the rate applicable on the date or dates that the Supplier issues an invoice or invoices.

year: a calendar year.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability

partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.
- 1.10 A reference to **writing** or **written** includes faxes but not e-mail unless at the same time confirmed in writing posted by first class mail.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to an agreement is a reference to that agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. SUPPLY OF THE PRODUCTS/SERVICES

- 2.1 During the Term, the Supplier shall supply, and the Customer shall purchase, such quantities of Products as the Customer may order under clause 6 in accordance with the terms and conditions of this agreement.
- 2.2 The Supplier shall provide the Services from the date specified in the Project Plan.
- 2.3 The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan and, after that, shall continue to be supplied unless this agreement is terminated by one of the parties giving the other at least 3 months' notice, such notice to expire on the last day of such notice or at any time after that date, unless this agreement is terminated in accordance with clause 22.

3. PROJECT PLAN AND PROJECT SPECIFICATION

3.1 The Project Plan(s) and Project Specification(s) shall be agreed in the following manner:

- (a) the Customer shall provide the Supplier with a request for a Project Plan and Project Specification, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which each stage of the work is to be started and finished, Deliverables, Input Materials and [ANY ADDITIONAL INFORMATION REQUESTED BY THE SUPPLIER FROM THE CUSTOMER TO DETERMINE THE PROJECT PLAN];
- (b) the Supplier shall, within 10 Business Days of receipt of a request for a Project Plan and Project Specification, provide the Customer, at no cost, with a draft Project Plan and Project Specification; and
- (c) the Supplier and the Customer shall discuss and agree the draft Project Plan and Project Specification. When they have been agreed, they shall both sign a copy of them and they shall become Schedule 2, and subject to this agreement.

3.2 Once the Project Plan and Project Specification have been agreed and signed in accordance with clause 3.1(c), no amendment shall be made to them except in accordance with clause 14 and clause 30.

4. SUPPLIER'S RESPONSIBILITIES

4.1 The Supplier shall manage and provide the Services, and deliver the Deliverables to the Customer or to any Authorised Service Recipients, in accordance with Schedule 1 & 2 hereto, and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

4.2 The Supplier shall meet, and time is of the essence as to, any performance dates or Project Milestones specified in the Project Plan and, in any case where clause 3.1 applies, the time stipulated for the delivery of a draft Project Plan and Project Specification. If the Supplier fails to do so, the Customer may (without prejudice to any other rights it may have):

- (a) terminate this agreement in whole or in part without liability to the Supplier;
- (b) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) purchase substitute services from elsewhere;
- (d) hold the Supplier accountable for any loss and additional costs incurred; and
- (e) have all sums previously paid by the Customer to the Supplier under this agreement refunded by the Supplier.

4.3 The Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services;

- (b) subject to the prior written approval of the Customer, appoint or, at the request of the Customer, replace without delay:
 - (i) the Supplier's Manager, who shall have authority under this agreement contractually to bind the Supplier on all matters relating to the Services; and
 - (ii) Key Personnel or any member of the Supplier's Team, who shall be suitably skilled, experienced and qualified to carry out the Services.
- (c) subject to clause 4.3(b), ensure that the same person acts as the Supplier's Manager throughout the term of this agreement;
- (d) procure the exclusive availability of the Supplier's Manager and Key Personnel or Supplier's Team to provide the Services during the term of this agreement;
- (e) promptly inform the Customer of the absence (or anticipated absence) of the Supplier's Manager, or any Key Personnel. If the Customer requires, the Supplier shall provide a suitably qualified replacement;
- (f) not make any changes to the Supplier's Manager or the Key Personnel without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed); and
- (g) ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

4.4 The Supplier shall:

- (a) observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises. The Customer reserves the right to refuse the Supplier's Team access to the Customer's premises, which shall only be given to the extent necessary for the performance of the Services;
- (b) notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- (c) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
 - (i) the Services;
 - (ii) the installation of the Supplier's Equipment;
 - (iii) the use of all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications; and
 - (iv) the use of the Customer's Equipment in relation to the Supplier's Equipment.

4.5 The Supplier acknowledges and agrees that:

- (a) the Customer is entering into this agreement on the basis that the Project Plan is accurate and complete in all material respects, and is not misleading; and
- (b) if it considers that the Customer is not, or may not, be complying with any of the Customer's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this agreement:
 - (i) to the extent that it restricts or precludes performance of the Services by the Supplier; and
 - (ii) if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Customer in writing.

4.6 The Supplier warrants that:

- (a) None of the materials used in implementing the supply of goods to be provided under this agreement is counterfeit or illegally acquired, and that such materials are free of all liens or other claims and charges; and
- (b) All supplies are to be to the correct part/drawing number and issue levels, as specified in Schedules 1 and 2 hereto, and in the relevant purchase order.

4.7 The Supplier shall, within reason, permit the Customer and its customers to have access to the Supplier's premises for quality assurance inspection and surveillance, and to implement additional quality controls required by the Customer and its customers.

4.8 The Supplier shall, within 2 Business Days, provide to the Customer the first article inspection report, for the first item produced from a new tool or any tool modification before continuing manufacture.

5. FORECASTS

5.1 During the Term, the Customer shall, if applicable and unless otherwise agreed, give the Supplier:

- (a) not less than five days before the beginning of each month, a forecast of the Products it expects to purchase during the three months following that month; and
- (b) not less than one month before the end of each year, a forecast of the Products it expects to purchase during the following year.

5.2 Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within two Business Days. The Customer shall act in good faith when forecasting its requirements for Products.

5.3 Forecasts provided under this clause 5 shall not constitute Orders.

- 5.4 If the Supplier anticipates that it will be unable to meet the Customer's forecasted requirements provided in accordance with this clause 5:
- (a) the Supplier shall inform the Customer in writing as soon as practicable;
 - (b) without limiting any other right or remedy that the Customer may have, the Customer may at its option agree alternative delivery dates for the relevant Products, or obtain from any other person substitute products for the Products which the Supplier anticipates it will be unable to supply; and
 - (c) substitute products purchased from a third party supplier as a result of the Supplier anticipating being unable to meet the Customer's forecasted requirements for Products shall for the purposes of any minimum purchase requirements, be deemed to have been purchased from the Supplier at the price paid to the third party supplier.

6. ORDERS

- 6.1 Not less than five days before the beginning of each month during the Term, the Customer shall give the Supplier its Order for that month.
- 6.2 The Supplier shall supply Products in accordance with the Customer's Orders, except that, to the extent that an Order exceeds the most recent forecast provided to the Supplier in accordance with clause 5.1(a), the Supplier shall be free to accept or reject the part of the Order that relates to the Products ordered in excess of forecasts.
- 6.3 Each Order shall:
- (a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days;
 - (b) specify the type and quantity of Products ordered; and
 - (c) unless the parties agree that the Customer may specify the date and location after placing the Order, specify the date on which the Order is to be delivered (**Delivery Date**), and the delivery location (**Delivery Location**). If the Delivery Date and/or Delivery Location are to be specified after the placing of an Order, the Customer shall give the Supplier reasonable advance notice of the relevant information.
- 6.4 The Customer, before issuing an Order, shall assign an Order Number to each Order. In turn the Supplier shall assign its own Order Number to each Order received from the Customer and notify such Order Number to the Customer. The Customer and Supplier shall use both relevant Order Numbers in all subsequent correspondence relating to each Order.
- 6.5 The Customer may at any time prior to despatch of the Products amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order

up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement the Customer shall have no liability to the Supplier in respect of it.

- 6.6 If the Supplier declines an Order for Products in excess of forecasts, and the Customer purchases substitute products from a third party supplier as a result, such substitute products shall for the purposes of any minimum purchase requirements, be deemed to have been purchased from the Supplier at the price paid to the third party supplier.

7. MANUFACTURE, QUALITY AND PACKING

- 7.1 The Supplier shall at all times maintain sufficient manufacturing capacity, stocks of raw materials and packaging, and stocks of Products to enable it to meet the Customer's forecasted requirements to Products as notified to the Supplier in accordance with clause 5.
- 7.2 The Supplier shall manufacture, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable, and in such manner as to enable them to reach their destination in good condition.
- 7.3 The Products supplied to the Customer by the Supplier under this agreement shall:
- (a) conform to the Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer;
 - (c) be free from defects in design, material and workmanship and remain so for 60 months after Delivery; and
 - (d) comply with all applicable statutory and regulatory requirements.
- 7.4 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of this agreement.
- 7.5 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.
- 7.6 The Customer shall have the right to enter the Supplier's premises to:
- (a) inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Products;
 - (b) inspect and take samples of the raw materials, the packaging and the Products; and

(c) inspect stock levels of raw materials and packaging or Products.

- 7.7 Inspections carried out pursuant to clause 7.6 shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Customer immediate access to its premises.
- 7.8 If following an inspection the Customer considers that the Products are not or are not likely to be as warranted under clause 7.3, the Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Products are or will be as warranted under clause 7.3. The Customer shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.
- 7.9 When the Supplier knows or reasonably can foresee that any Product may become obsolete, the Supplier shall provide Customer at least six months written notice of any such Product that may be rendered obsolete. The Customer shall have the right to place additional Orders for the Products and/or components of the Products to satisfy the long term needs of the Customer. Twelve months prior to ending the obsolete Products production, the Supplier shall provide Customer with replacement Products for the obsolete Products which has design parameters and specification documentation fully consistent with the obsolete Product's then current design parameters and then current specification documentation. At the Customer's request, the Supplier shall also make a final production run of sufficient quantity of the obsolete Product to satisfy the Customer's Product life requirements for a last time buy.

8. QUALITY OF SERVICES

- 8.1 The Supplier warrants to the Customer that:
- (a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - (b) the Services will conform with all descriptions and specifications provided to the Customer by the Supplier, including the relevant Project Specification and Project Plan; and
 - (c) the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Customer as soon as it becomes aware of any changes in that legislation.
- 8.2 The Customer's rights under this agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.
- 8.3 The provisions of this clause 8 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

9. DELIVERY

- 9.1 The Supplier shall deliver each Order to the Delivery Location on the Delivery Date. The Supplier shall not deliver an Order more than five Business Days in advance of the Delivery Date without the prior written consent of the Customer.
- 9.2 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location.
- 9.3 Except with the prior written consent of the Customer, the Supplier shall not deliver Orders by instalments. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as references to instalments.
- 9.4 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Customer may have, the Customer may:
- (a) refuse to take any subsequent attempted delivery of the Order;
 - (b) terminate this agreement with immediate effect;
 - (c) obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute products; and
 - (d) subject to clause 18, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.

- 9.5 If the Customer fails to accept delivery of an Order on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:
- (a) the Order shall be deemed to have been delivered at 9.00am on the Delivery Date; and
 - (b) the Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 9.6 Each Order shall be accompanied by a delivery note from the Supplier showing the respective Order Numbers as provided for in clause 6.4 above, the date of the Order, the type and quantity of Products included in the Order, including the code numbers of the Products, and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.

- 9.7 If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

10. ACCEPTANCE AND DEFECTIVE PRODUCTS

- 10.1 The Customer shall not be deemed to have accepted any Products until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent .

- 10.2 If any Products delivered to the Customer do not comply with clause 7.3, or are otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Products and:

- (a) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within five Business Days of being requested to do so; or
- (b) require the Supplier to repay the price of the rejected Products in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Products); and
- (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of this agreement.

- 10.3 The Customer's rights and remedies under clause 10 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.

- 10.4 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.

- 10.5 If the Supplier fails to promptly repair or replace rejected Products in accordance with clause 10.2(a), the Customer may, without affecting its rights under clause 10.2(c), obtain substitute products from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.

11. TITLE AND RISK

- 11.1 Title to Products delivered to the Customer shall pass to the Customer on Delivery.

- 11.2 The risk in Products delivered to the Customer shall pass to the Customer on Delivery.

12. PRODUCT PRICES

- 12.1 The Product Prices for the period from the Commencement Date to 31 December [YEAR] shall be the prices set out in Schedule 1. The Product Prices for subsequent years shall be determined in accordance with clause 12.7.
- 12.2 The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Products.
- 12.3 The Product Prices are inclusive of the costs of packaging, insurance and carriage of the Products.
- 12.4 The Customer shall be entitled to the Supplier's standard discount for prompt payment.
- 12.5 Without compromising the quality of the Products in the slightest, the Supplier shall use best endeavours during the Term to reduce its manufacturing, supply and other costs for the Products, including implementing cost savings initiatives and seeking more competitive supplies of raw materials and equipment. The net benefit of cost reductions shall be applied to reduce the Product Prices with immediate effect.
- 12.6 The Supplier agrees that if at any time during the Term it sells any Product to a comparable customer for less than the Product Price then in force for that Product, it shall reduce the relevant Product Price to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Customer the difference between the Product Price and the lower price in respect of its purchases of the Product after the Supplier began charging the lower price. For the purposes of this clause, "comparable" means a customer that purchases products in substantially similar volumes as the Customer on broadly similar terms and conditions.
- 12.7 The parties shall meet in [SPECIFY MONTH] of each year to review and, where appropriate, agree changes to the Product Prices (**Product Price Review**). Agreed changes shall take effect on 1 January of the following year. The first Product Price Review shall be held in [SPECIFY MONTH AND YEAR]. In agreeing Product Prices for the following year, the parties shall have regard to the following factors:
- (a) changes to the Supplier's costs of manufacturing and/or distributing the Products;
 - (b) the volumes of Products ordered by, and supplied to, the Customer;
 - (c) the price at which the Supplier supplies the Products to comparable customers;
 - (d) the prices at which comparable products are supplied by other suppliers in the open market;

- (e) any cost reductions achieved by the Supplier since the last Product Price Review (to the extent that they have not already been taken into account in the Product Prices); and
- (f) any deficit, should any minimum purchase obligation be applicable.

12.8 If the Product Prices for a year are not agreed or determined by 31 December of the previous year, the Product Prices in force during the previous year shall apply pending agreement or determination of the new Product Prices. Once the new Product Prices are agreed or determined, they shall apply with effect from 1 January of the relevant year. Within one month of agreeing or determining the new Product Prices, the Customer shall pay the Supplier any outstanding sums due in respect of its purchases of Products in the relevant year, together with any applicable VAT, or the Supplier shall refund the Customer for any excess amounts paid on Products purchased in the relevant year, and shall repay any VAT due to be repaid, as appropriate.

- 12.9 The Supplier shall provide all such evidence as the Customer may reasonably request in order to verify:
- (a) invoices submitted by the Supplier;
 - (b) Discount Statements; and
 - (c) cost reductions achieved by the Supplier (including the dates on which cost reductions were achieved).

In addition, the Supplier shall, on request, allow the Customer to inspect and take copies of (or extracts from) all relevant records and materials of the Supplier relating to the supply of the Products as may be reasonably required in order to verify such matters.

12.10 All disputes concerning the Product Prices shall be resolved in accordance with clause 28.

13. TERMS OF PAYMENT

13.1 The Supplier shall be entitled to invoice the Customer for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order Numbers.

13.2 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Schedule 1, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 13.3 shall apply if the Supplier provides Services on a time and materials basis, and clause 13.4 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 13 shall apply in either case.

13.3 Where Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates for the Supplier's Team, details of which are set out in Schedule 1, the Project Plan or the Proposal;

- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
- (c) the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Team unless it has the Customer's prior written consent to do so;
- (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
- (e) the Supplier shall ensure that the members of the Supplier's Team complete time sheets recording time spent on the Services, and, subject to the written approval of them by the Customer's Manager, the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 13.3(f); and
- (f) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 13.3 and clause 13.5. Each invoice shall set out the time spent by each member of the Supplier's Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

13.4 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Schedule 1. The total price shall be paid to the Supplier in instalments, as set out in Schedule 1, with each instalment being conditional on the Supplier achieving the corresponding Project Milestone. On achieving a Project Milestone or at the end of a period specified in Schedule 1 or the Project Plan in respect of which an instalment is due, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials (and VAT, where appropriate) calculated as provided in clause 13.5.

13.5 Any fixed price and daily rate contained in Schedule 1 or the Project Plan excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the Supplier's Team in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost. The Supplier shall obtain the Customer's written approval before incurring any such expense, material or service exceeding £2,500; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

13.6 If a party fails to make any payment due to the other under this agreement by the due date for payment (**due date**), then, without limiting the other party's remedies under clause 22.2, the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether

before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 13.7 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 28. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 13.6. The Supplier's obligations to supply the Products shall not be affected by any payment dispute.
- 13.8 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this agreement against any amounts payable by it to the other party under this agreement.
- 13.9 All payments payable to the Supplier or the Customer under this agreement shall become due immediately on its termination. This clause 13.9 is without prejudice to any right to claim for interest under the law or under this agreement.

14. CHANGE CONTROL

- 14.1 The Customer's Manager and the Supplier's Manager shall meet at least once every 3 months to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall, upon giving written notice not less than 14 days prior to such meeting, submit details of the requested change to the other.
- 14.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 12 Business Days after receipt of the Customer's request), provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on this agreement.
- 14.3 Unless both parties consent to a proposed change, there shall be no change to the relevant Project Plan or this agreement.
- 14.4 If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services, the relevant Project Plan and any other relevant terms of this

agreement to take account of the change that has been reached and this agreement has been varied in accordance with clause 30.

14.5 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Customer's non-compliance with the Customer's obligations, neither the Supplier's charges, the relevant Project Plan or any other terms of this agreement shall vary as a result of such change.

14.6 Change in the Supplier's manufacturing location of Products - In the event that the Supplier intends to close or change the manufacturing location of any Products delivered under this agreement, the Supplier shall, at a minimum, give Customer six months advance notice in writing of: (1) intent to close or change the current manufacturing location; and (2) adequate assurances, including a comprehensive plan, detailing how the Supplier intends to meet its performance obligations and delivery of conforming Product as required under this agreement. In the event that the Supplier fails to provide such written notification and adequate assurances, the Customer, at its option, may terminate this agreement in whole or in part, without obligation or liability of any kind whatsoever to the Supplier, and recover all costs it reasonably incurs and all other damages, and/or specific performance and/or all other remedies available to the Customer hereunder, at law and/or in equity, as a result of such breach by the Supplier of this agreement, including any unperformed balance hereof.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

15.2 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Customer in accordance with clause 15.1.

15.3 The Supplier shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

16. INSURANCE

16.1 During this agreement and for a period of [ONE YEAR] afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance for not less than £5 million per claim; and
- (b) product liability insurance for not less than £25 million for claims arising from any single event or series of connected events.

The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included.

- 16.2 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Customer. On the Customer's written request, the Supplier shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.
- 16.3 The Supplier shall ensure that any of its subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil.
- 16.4 The Supplier shall:
- (a) do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
 - (b) notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 16.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 16.1.
- 16.6 If the Supplier fails or is unable to maintain insurance in accordance with clause 16.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 16.2, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

17. INDEMNITY

- 17.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products;
 - (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or subcontractors; and

- (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

17.2 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

18. LIABILITY

18.1 Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987; or
- (e) the indemnities contained in clause 17; or
- (f) the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

19. ASSIGNMENT AND SUBCONTRACTING

Supplier may not, in whole or in part, assign or transfer or subcontract any of its rights, benefits or obligations under this agreement without the prior written consent of the Customer.

20. CONFIDENTIALITY

20.1 Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 20.2.

20.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 20 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

- (b) as may be required by law, court order or any governmental or regulatory authority.

20.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

21. COMMENCEMENT AND TERM

This agreement shall commence on the Commencement Date and shall remain in effect until terminated in accordance with clause 22 (**Term**).

22. TERMINATION

22.1 Subject to the provisions of clause 21, the Customer may at any time terminate this agreement by giving the Supplier not less than one month's notice in writing.

22.2 A party shall be entitled to terminate this agreement with immediate effect by giving notice in writing to the other party if:

- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
- (c) the other party commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (i) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.2(d) to clause 22.2(j) (inclusive); or
- (l) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (m) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

22.3 Termination of this agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

23. OBLIGATIONS ON TERMINATION

Each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply of the Products and/or Services under this agreement;
- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause 23.

24. SURVIVAL OF OBLIGATIONS

On termination of this agreement the following clauses shall survive and continue in full force and effect:

- (a) Clause 16 (Insurance);

- (b) Clause 17 (Indemnity);
- (c) Clause 18 (Liability);
- (d) Clause 20 (Confidentiality);
- (e) Clause 23 (Obligations on termination);
- (f) Clause 28 (Dispute resolution);
- (g) Clause 35 (Governing law and jurisdiction); and
- (h) Clauses 36 – 41 if applicable.

25. FORCE MAJEURE

25.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event, except as provided in clause 22.

25.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

25.3 For the purposes of this clause 25, a **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

26. COSTS

Save as otherwise provided in this agreement, each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this agreement, and all documents ancillary to it.

27. SEVERANCE

27.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

27.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

28. DISPUTE RESOLUTION PROCEDURE

28.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the [SPECIFY EMPLOYEE TITLE] of the Supplier and [SPECIFY EMPLOYEE TITLE] of the Customer shall attempt in good faith to resolve the Dispute;
- (b) if the [SPECIFY EMPLOYEE TITLE] of the Supplier and [SPECIFY EMPLOYEE TITLE] of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SPECIFY SENIOR OFFICER TITLE] of the Supplier and [SPECIFY SENIOR OFFICER TITLE] of the Customer who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Supplier and [SENIOR OFFICER TITLE] of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

28.2 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings.

29. FURTHER ASSURANCE

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this agreement and the transactions contemplated by it.

30. VARIATION AND WAIVER

30.1 Any variation of this agreement shall be in writing and signed by or on behalf of the parties.

- 30.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 30.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 30.4 No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

31. NOTICES

31.1 A notice served under this agreement:

- (a) shall be in writing in the English language;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent for the attention of the person, and to the address or fax number, given in this clause 31 (or such other address, fax number or person as the relevant party may notify to the other parties in accordance with the provisions of this clause 31); and
- (d) shall be:
 - (i) delivered personally; or
 - (ii) sent by fax; or
 - (iii) sent by commercial courier; or
 - (iv) sent by pre-paid first-class post or recorded delivery; or
 - (v) (if the notice is to be served by post outside the country from which it is sent) sent by airmail requiring signature on delivery.

31.2 The addresses for service of notice are:

(a) SUPPLIER

Address:

For the attention of:

Fax number:

(b) CUSTOMER

Address:

For the attention of:

Fax number:

- 31.3 A notice or any other communication given in connection with this agreement is deemed to have been received:
- (a) if delivered personally, at the time of delivery; or
 - (b) in the case of fax, at the time of transmission; or
 - (c) if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
 - (d) in the case of pre-paid first class post or recorded delivery, 1.00 pm on the second Business Day after posting; or
 - (e) in the case of airmail, 1.00 pm on the fifth Business Day after posting.
- 31.4 For the purposes of this clause:
- (a) all times are to be read as local time in the place of deemed receipt; and
 - (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on any Business Day), the notice shall be deemed to have been received at the opening of business on the next Business Day in the place of receipt.
- 31.5 To prove delivery, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

32. ENTIRE AGREEMENT

- 32.1 This agreement constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 32.2 Each party acknowledges that, in entering into this agreement, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this agreement.
- 32.3 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this agreement.
- 32.4 Nothing in this clause shall limit or exclude any liability for fraud.

33. RIGHTS OF THIRD PARTIES

No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

34. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

35. GOVERNING LAW AND JURISDICTION

35.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

36. HAZARDOUS MATERIALS

36.1 The Supplier shall notify upon signature of this agreement or transmission of the Order acceptance at latest, the Customer of every Product ordered hereunder which contains a substance or material that may be hazardous to the environment or injurious to the health or physical safety of persons even though said hazard or injury may only occur due to mishandling or misuse of the Product. In addition, the Supplier shall identify the hazardous or injurious substance or material and notify the Customer of the effects of such substance or material on the environment, human beings and the physical manifestations that could result. For each Product so identified, the Supplier shall provide to the Customer (i) the name of the substance or material, and the percentage by weight thereof in the Product and in any subcomponent thereof, if any, and (ii) warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and its effects. The same shall apply, if the Supplier's Products contain Substances of Very High Concern ("SVHC") as defined in the Regulation ("EC") No 1907/2006 of the European Parliament and of the Council of December 18, 2006 concerning Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). In addition, the Supplier shall also promptly notify the Customer whenever a Product contains a substance that is added to the REACH Candidate List. The Supplier represents and warrants that no Product contains any hazardous or injurious substance or material, unless duly notified to the Customer in accordance with this Section. The Supplier also represents and warrants that the Product, its supply, its use, including its incorporation into other products, and its import into the European Union, complies with all applicable REACH requirements, including, but not limited to, registration of substances, and notification and authorization of SVHC. The Supplier shall operate a program to ensure that it becomes immediately aware if, at any point in time after the execution of this agreement, any Product contains any hazardous or injurious substance or material, including, but not limited, to substances regulated pursuant to REACH. The Supplier's program shall, inter alia, require the inclusion in agreements with its suppliers

of specific obligations that are no less stringent than those imposed on the Supplier by this agreement.

- 36.2 The Supplier shall comply with all environmental European and national laws and, upon the Customer's request, provide the Customer free of charge with all information and documentation that the Customer deems necessary for responding to the demands of all current and future European and national Laws.
- 36.3 the Supplier shall cooperate with the Customer to ensure that all requirements of European and national laws, including, but not limited to, REACH information and data requirements, are met. The Supplier shall reimburse the Customer for all costs and expenses in connection with any expenditure required by the Customer for compliance of Products with such European and national laws including, but not limited to, testing for REACH compliance which testing shall be performed, at the Customer's option, by the Customer or the Supplier.
- 36.4 The Supplier shall complete the Customer's bi-annual survey in thirty days from receipt of the survey and the Supplier further agrees that the Supplier's non-response within thirty days shall constitute the Supplier's affirmation of compliance with the issues contemplated by this clause 36 and any other issues included in the survey.
- 36.5 Prior to the initial shipment of any Product that contains lithium or any other derivative or combination of matter that contains lithium, the Supplier shall notify the Customer in advance of Product. If there is any material change to the lithium content in subsequent shipments of any Product, the Supplier shall resubmit the notification with the updated information. Such notification of lithium content shall be accurate and complete. Additionally, prior to and during shipment, each Product containing lithium shall meet the labelling and all other requirements set forth in UN (United Nations) Manual of Tests and Criteria, part III, subsection 8.3 as referenced in the US (United States) DOT (Department of Transportation) hazardous materials regulation 49 CFR (Code of Federal Regulations) parts 100-185. Furthermore, prior to and during shipment, each Product that contains lithium shall meet the requirements set forth in the IATA (International Air Transport Authority) Dangerous Goods Regulations Section 4.
- 36.6 The Supplier warrants that:
- (a) Material Safety Data Sheet (MSDS), Technical Data Sheet (TDS) and REACH compliant statement to be supplied with Products deemed hazardous material;
 - (b) Products containing electric/electronic material supplied for production use is to be POGHS compliant unless agreed otherwise by the parties prior to delivery;

- (c) Products containing material with limiting usable life shall have a minimum of 12 months shelf life unless agreed otherwise; and
- (d) It will provide Certificate of Conformance (C of C), at no additional cost, with all supplies unless exemption has been agreed beforehand.

THE FOLLOWING CLAUSES ARE RELEVANT TO ANY SUPPLIER BASED IN THE US, OR A SUPPLIER WHO IS ACTING AS SUB-CONTRACTOR TO THE CUSTOMER WHERE CUSTOMER IS SUPPLYING PRODUCTS OR SERVICES TO AN ORGANISATION IN THE US

37. U.S. EXPORT CONTROL LAWS AND REGULATIONS:

- 37.1 The recipient of information and property under this agreement acknowledges its obligations to control access to technical data and equipment under the U.S. Export Laws and Regulations and agrees to adhere to such Laws and Regulations and any license(s) issued thereunder with regard to any technical data or equipment received under this agreement. The Supplier shall be responsible for obtaining required export licenses or other approvals from the government of the country of origin. Should any government deny a license or approval necessary for the performance of this agreement or any Order for reasons beyond the control of the Supplier, this agreement or any Order may be cancelled in accordance with clause 22 herein. In the event any government agency levies any penalties, fines or charges against the Customer due to the Supplier's failure to provide any necessary Products information for import or export documentation, the Supplier shall reimburse the Customer for all such charges.
- 37.2 The Customer's need for industrial cooperation credits may be one of the reasons for entering into this agreement or any Order. In the event this agreement is awarded to a non-U.S. company, the Customer (including its business units, divisions, and subsidiaries) shall have the exclusive rights to all offset or industrial cooperation credits flowing from this agreement. At the Customer's request, the Supplier shall provide appropriate transaction information which the Customer may need for claiming offset or industrial cooperation credits.
- 37.3 The Supplier shall provide the following information as applicable for all Products to be delivered under this agreement. Inability to provide the required information may be considered a failure to deliver in conformity with this agreement and the Customer may, in its sole discretion and at the Supplier's expense, reject the article at the point of receipt:
 - a. Harmonized Tariff Schedule Number (HTS) (Applicable for the Supplier designed products);
 - b. Export Control Classification Number (ECCN) or USML Category Code (CAT) (Applicable for the Supplier designed Product(s));
 - c. Country of Origin;
 - d. A Certificate of Origin or Manufacturer's Affidavit (MA) for all Product(s) delivered hereunder. If the Product is manufactured in

Canada or Mexico, a NAFTA Certificate of Origin is required. The Supplier must submit a Certificate for each Product by either:

- 1) submitting a blanket Certificate of Origin or MA on an annual basis for all Products to be delivered; or
- 2) submitting an individual Certificate whenever there is a change in country of origin on any Products on this agreement; or
- 3) submitting a new Certificate or MA for any new Customer or Supplier Part Number that is added to this agreement. The Certificates of Origin or MA shall be sent to the Customer's purchasing representative.

37.4 A commercial invoice must be presented for each import into the United States (19 CFR 141.81). If the required commercial invoice is not available, a pro forma invoice may be used in place of a commercial invoice (19 CFR 141.85). The commercial invoice must be prepared in the manner customary in the trade, contain the information required by 19 CFR 141.86 through 141.89, and substantiate the statistical information required by 19 CFR 141.61 (e) to be given on the entry. The Code of Federal Regulations may be found at <http://www.gpoaccess.gov/cfr/retrieve.html>.

37.5 Trade Partnership Against Terrorism (C-TPAT): The Supplier must meet the minimum security requirements under C-TPAT. The Supplier shall provide their C-TPAT SVI number or certification that they comply with the security requirements. Requirements may be found at http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/.

37.6 In the event the Supplier is supplying a Product(s) that is controlled under the International Traffic in Arms Regulations and classified on the United States Munitions List (USML), the Supplier shall provide confirmation in writing to the Customer that the Supplier is registered with the Directorate of Defense Trade Controls (ITAR 22 C.F.R. 122.1). Inability to provide the required information may be considered a failure to deliver in conformity with this Order and the Customer may, in its sole discretion and at the Supplier's expense, reject the Product(s) at the point of receipt

38. UNITED STATES PUBLIC LAWS: The Supplier shall comply with the requirements, as applicable and as amended, of 41 C.F.R. §60-1 Equal Employment Opportunity; 41 C.F.R. §60-250-1 Affirmative Action and Non discrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans of Vietnam; and 29 U.S.C. §793 Employment Under Federal Contracts; 15 C.F.R. 700 Defense Priorities Allocation System, 15 U.S.C. 637(d)(2). Subcontracts for Commercial Products referenced in Federal Acquisition Regulation (FAR) 52.244-6; Contractor Code of Business Ethics and Conduct referenced in FAR 52.203-13; and Employment Eligibility Verification referenced in FAR 52.222-54. The Supplier further warrants that it and its suppliers and/or subcontractors shall certify compliance with the requirements, as applicable and as amended, of the California Civil Code Section 1714.43 (California Transparency in Supply Chains Act) and allow the Customer to perform any activities required for verification thereof.

39. SPECIAL U.S. GOVERNMENT PROVISIONS APPLICABLE TO ALL ORDERS: All Orders shall comply with Defense Federal Acquisition Regulations (DFAR) 252.244-7000 and 252.225-7009.

- 40. **SPECIAL U.S. GOVERNMENT PROVISIONS:** If an Order identifies that it is placed under a U.S. Government firm fixed price prime contract for non-commercial Products, applicable special U.S. Government clauses are found in Attachment "A" and incorporated herein by reference to this agreement.
- 41. **SELLER BUSINESS CLASSIFICATION** – If the Supplier is a U.S.-based seller and considered to be an Alaska Native Corporation or Indian Tribe as defined in FAR 52.219-9(b), the Supplier agrees that the Customer shall receive small business credit for the amount of dollars spent with the Supplier pursuant to FAR 52.219-9(d)(i-ii). The Supplier shall comply, as applicable and amended, with FAR 52.219-8 and shall not designate small business credit to another contractor for any amount spent by the Customer.

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF SUPPLIER]	Director
Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF CUSTOMER]	Director

Schedule 1 The Products/Services and Product/Services Prices

PRODUCT NAME/SERVICE DESCRIPTION [SPECIFY]	[PRODUCT NUMBER] [SPECIFY]	CODE	PRODUCT PRICE [SPECIFY]
---	--------------------------------------	------	--------------------------------

PRODUCT NAME/SERVICE DESCRIPTION [SPECIFY]	[PRODUCT NUMBER] [SPECIFY]	CODE	PRODUCT PRICE [SPECIFY]
---	--------------------------------------	------	--------------------------------

Schedule 2 Product Specification/Project Plan and Project Specification

[INSERT PRODUCT/SERVICES SPECIFICATIONS]

Schedule 3 Authorised Service Recipients