

**ROC TECHNOLOGIES LIMITED STANDARD CONDITIONS OF CONTRACT FOR SALE AND/OR SUPPLY OF SERVICES AND/OR PRODUCTS**

**I. INTERPRETATION**

I.1 In these Conditions, the following words and expressions shall have the following meanings:

'Acceptance of the Order Form'	means a written acceptance of the Order Form signed by a properly authorised representative of Roc Technologies.
'Affiliate'	means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
'Agreement'	means the agreement between Roc Technologies and the Customer, comprised of the Contract Documents.
'Background IP'	means any Intellectual Property (other than Project IP) owned by, licensed to or otherwise controlled by Roc Technologies or its Affiliates before the date of the Agreement.
'Business Day'	means a day other than Saturday, Sunday or a public holiday in England when banks in London are open for business.
'Conditions'	means these conditions, together with any amendments agreed in writing between the parties from time to time.
'Confidential Information'	means all information (written or oral) concerning the business and affairs of either party (or their respective affiliates) that the other party shall have obtained or received as a result of the discussions leading up to, or entering into, a Contract.
'Consultant'	means a consultant of Roc Technologies.
'Contract'	any contract between Roc Technologies and the Customer for the sale and purchase of Hardware and/or Software and/or the provision of Services, which incorporates these Conditions.
'Contract Documents'	<ul style="list-style-type: none"> <li>• The Proposal.</li> <li>• The Acceptance of the Order Form, signed by or on behalf of Roc Technologies.</li> <li>• These Conditions.</li> <li>• Any EULA.</li> </ul>
'Contract Price'	means the price and other charges payable for the supply of the Hardware, Software and Services contained in the Order Form and/or the Proposal.
'Customer'	means the person, firm, company or entity who purchases Software and/or Hardware and/or Services from Roc Technologies.
'Customer Data'	means the data inputted by the Customer, any authorised user or Roc Technologies on the Customer's behalf for the purpose of using the Services and/or the System, or facilitating the Customer's use of the Services and/or the System.
'Customer Materials'	means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Roc Technologies in connection with the Services.
'Data Protection Legislation'	means all data protection and privacy legislation in force from time to time in the UK, including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI/2003/2426), as amended.
'Documentation'	means all documents and online documents made available to the Customer by Roc Technologies, which set out a description of the Hardware and/or Software and/or the user instructions for the Hardware and/or Software.

'Effective Date'	has the meaning given in clause 2.2 of these Conditions.
'EULA'	means the 'End User Licence Agreement(s)' applicable to the Contract.
'Environmental and Usage Assumptions'	means the assumptions as to the working and use of the System as set out in Schedule 1.
'GDPR'	means the General Data Protection Regulation ((EU) 2016/679).
'Hardware'	means the computer hardware to be purchased from Roc Technologies by the Customer and detailed in the Proposal and/or the Order Form.
'Hardware and Software Conditions'	means the conditions for the sale and supply of Hardware and/or Software set out in Schedule 3.
'Intellectual Property'	patents, utility models, rights to inventions, supplementary protection certificates, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights in software, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, and all other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
'Interest'	means in respect of the late payment of any sum due under the Agreement (as well as after and before judgment), on a daily basis at a rate of 4% above the Bank of England base rate in force from time to time from the due date until payment.
'Order Form'	means any order, purchase order, order form or similar for the purchase of Hardware and/or Software and/or Services.
'Place of Use'	means that part of the Customer's premises at the Site where the Hardware is to be installed and operated.
'Products'	means the Hardware and/or Software and/or Services contracted to be sold or supplied by Roc Technologies to the Customer in the Contract Documents.
'Project IP'	any Intellectual Property generated, developed, derived, conceived, or first reduced to practice in the course of activities performed by or on behalf of Roc Technologies pursuant to the Agreement, but excluding the Background IP.
'Project Management and Training Conditions'	means the conditions relating to project management and training set out in Schedule 2.
'Proposal'	means (as applicable) the proposal, quotation, project initiation document and/or statement of works prepared by Roc Technologies in response to the Customer's requirement.
'Roc Technologies'	means Roc Technologies Limited (company number: 07579363), the supplier under the Agreement.
'Schedule 2'	means Schedule 2 of these Conditions, which shall apply to and only to the supply of Project Services (as defined in Schedule 2).
'Schedule 3'	means Schedule 3 of the Conditions, which shall apply to and only to the sale and Installation (as defined in Schedule 3), where applicable, of Hardware and Software and the supply of any Subscription Services (as defined in Schedule 3).
'Services'	means any services to be provided by Roc Technologies to the Customer as set out in the Proposal, including but not limited to, any Project Services, Subscription Services and/or Installation (each as defined in Schedule 2 or Schedule 3).
'Site'	means the address for delivery of the Products specified by the Customer and set out in the Proposal.
'Software'	means the computer software (and all related documentation) set out in the Proposal to be purchased and/or licensed by the Customer.
'System'	means the computer system formed by the combination of the Hardware and the Software.

## 1.2 Interpretation

- a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- b) A reference to **writing** or **written** in these Conditions shall exclude faxes (but not email).
- c) The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Schedules.
- d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- e) These Conditions shall be binding on, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.
- f) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- g) A reference to these Conditions or to any other agreement or document referred to in these Conditions is a reference of these Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of the agreement or document in question) from time to time.
- h) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. APPLICATION OF CONDITIONS

- 2.1 Any Order Form from the Customer shall be an offer to Roc Technologies by the Customer to purchase the Products, subject to the Contract Documents.
- 2.2 The Order Form shall be deemed to be accepted on Roc Technologies issuing Acceptance of an Order Form, at which point the Contract shall come into existence (the 'Effective Date').
- 2.3 Roc Technologies shall be entitled to assume, without having to make further enquiry, that a duly authorised representative of the Customer has signed the Order Form.
- 2.4 No terms or conditions endorsed on, delivered with or contained in any order from the Customer, or acknowledgement or correspondence or any other document, will form part of the Contract, except for the Contract Documents. The Customer waives any right that it otherwise might have to rely on any terms and conditions that are not a Contract Document.
- 2.5 No variation to these Conditions shall have effect, unless expressly agreed in writing by and signed by an authorised signatory of each party.
- 2.6 No Order Form which has been accepted by Roc Technologies may be cancelled by the Customer except with the agreement in writing of Roc Technologies and on terms that the Customer shall reimburse Roc Technologies in full for all reasonable unavoidable costs incurred by Roc Technologies in relation to such cancellation. Nothing in this clause 2.6 shall prejudice the Customer's right to properly exercise any other termination right expressly set out in the Contract Documents.
- 2.7 The Customer acknowledges that (in relation to Hardware and Software) Roc Technologies is trading as a reseller only and is not in any way the author, writer, manufacturer or any other developing party of any Software or Hardware supplied by it. Accordingly, save as expressly stated in the Contract Documents, Roc Technologies gives no warranty whatsoever as to fitness for purpose, satisfactory quality or performance of the Software or Hardware, whether express or implied by statute or common law.
- 2.8 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement.
- 2.9 Notwithstanding clauses 2.7 and 2.8, Roc Technologies warrants to the Customer that it holds all necessary consents and permissions to provide the Services and licence the Software to the Customer as set out in the Agreement.
- 2.10 Roc Technologies' employees, agents or Affiliates are not authorised to make any representations concerning the Products, unless confirmed by Roc Technologies in writing. Subject to clause 8.3, in entering into the Contract the Customer acknowledges that it does not rely on any such representations (which are not so confirmed).
- 2.11 Roc Technologies will work with the Customer to formulate a delivery plan which meets the Customer's business needs and circumstances. However, it is recognised that unforeseen events happen and plans sometimes need to change, and Roc Technologies will endeavour to be flexible in its resourcing and support arrangements throughout the engagement. As a professional services provider, however, Roc Technologies must ensure its resources are utilised in a commercially effective way, maximising resource allocation to where it is needed and minimising allocation to where it is not. Roc Technologies requires, therefore, a minimum of five (5) working days' notice if its resources are not needed as planned (for example, if internal factors prevent Roc Technologies' delivery, or if pre-requisites will not be in place). Failure to provide this notice may incur the following charges:

- a) if two (2) – four (4) working days' notice: 50% of the prevailing daily Consultant rate for the first day cancelled, if Roc Technologies' resource(s) cannot be redeployed; or
  - b) if less than two (2) days' notice: 100% of the prevailing daily Consultant rate for the first day cancelled, if Roc Technologies' resource(s) cannot be redeployed.
- 2.12 Following a cancellation of Consultant works, Roc Technologies will endeavour to be flexible regarding rescheduling, but immediate Consultant availability cannot be guaranteed and the default position is that five (5) working days' notice (from the first day cancelled) will be required for re-planning.

### **3. TERMINATION**

- 3.1 Roc Technologies and the Customer shall have the right at any time, by giving notice in writing to the other, to terminate the Contract forthwith if:
- a) Except in relation to non-payment of any sums due, the other party commits a material breach of any term of the Agreement and, where such breach is capable of remedy, the party has failed to remedy such breach within thirty (30) days of receiving notice from the terminating party, specifying the breach and requiring its remedy;
  - b) the other party fails to pay any sum properly due to the other party on or before the date that it becomes due;
  - c) 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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
  - d) any distress, execution or other process is levied upon any of the assets of the other party;
  - e) the other party enters any compromise or arrangement with its creditors, commits any act of bankruptcy or an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other party's undertaking or assets;
  - f) the other party ceases or threatens to cease to carry on its business;
  - g) the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
  - i) the financial position of the other party deteriorates to such an extent that in the reasonable opinion of the terminating party the capability of the other party to adequately fulfill its obligations under the Agreement has been placed in jeopardy.
- 3.2 In addition, Roc Technologies and the Customer shall have the rights of termination in relation to any component of the Contract as are set out in Schedule 2 and/or Schedule 3, but any such right shall relate only to that component unless otherwise expressly stated.
- 3.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of Roc Technologies and the Customer accrued prior to termination. Those Conditions that expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 3.4 On termination or expiry of the Agreement:
- 3.5 the Customer shall immediately pay to Roc Technologies all of Roc Technologies' outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Roc Technologies may submit an invoice, which shall be payable immediately on receipt;
- 3.6 the Customer shall promptly return all of Roc Technologies' equipment. If the Customer fails to do so, then Roc Technologies may enter the Customer's premises and take possession of such equipment. Until it has been returned or repossessed, the Customer shall be solely responsible for its safe keeping.
- 3.7 Within seven (7) days of termination or expiry of the Agreement, Roc shall, at the option of the Customer, either return in a non-proprietary agreed format or destroy any Customer Data in its possession and certify that it no longer holds any copies of the same. The Customer shall pay all reasonable expenses incurred by Roc Technologies in returning or disposing of Customer Data. If the Customer so requests, Roc Technologies will export all Customer Data in its possession into a standard form resource for the Customer.
- 3.8 On termination of the Agreement for any reason, each party shall return and make no further use of any equipment, property and Documentation and other items (and all copies of them) belonging to the other party.

### **4. DISCREPANCY IN DOCUMENTS**

- 4.1 If any discrepancy or conflict is found in any Contract Document, the following order of priority shall apply:
- a) the Proposal;
  - b) the EULA;
  - c) these Conditions;
  - d) the Acceptance of the Order Form (incorporating the Order Form).

## 5. CUSTOMER OBLIGATIONS

- 5.1 The Customer undertakes not to export the whole or any part of the Software and/or Hardware (as applicable) from the United Kingdom without obtaining all necessary prior consents and licences, including (but not limited to) any licences or consents from the Department of Business, Energy and Industrial Strategy or the United States Department of Commerce (or any successor of or substitute for any such body). Subject to the requirements of the EULA, the Customer may use the Software in any country in which its Affiliates are based.
- 5.2 The Customer shall provide Roc Technologies with all necessary co-operation in relation to the Agreement and all necessary access to such information as may reasonably be required by Roc Technologies in order to provide the Products and the System.
- 5.3 The Customer shall keep and maintain Roc Technologies' equipment in accordance with Roc Technologies' instructions from time to time and shall not dispose of or use such equipment other than in accordance with Roc Technologies' written instructions.
- 5.4 Each party shall carry out its responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Roc Technologies may adjust any agreed timetable or delivery plan as reasonably necessary.

## 6. SYSTEM WARRANTY

- 6.1 Without prejudice to the warranties or quality assurances given in respect of individual components of the System under Schedule 2 and Schedule 3, and subject to the Environmental and Usage Assumptions and the Customer's compliance with its obligations under the Agreement, Roc Technologies hereby warrants to the Customer that:
  - a) the System will work in a standard environment and represents a reasonable and appropriate solution to the Customer's data processing requirements specified in the Contract Documents; and
  - b) the System will perform in accordance with the Proposal.
- 6.2 Subject to clause 6.1, and save as where expressly stated elsewhere in the Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the merchantability, fitness for purpose or performance of the System are excluded.

## 7. CUSTOMER WARRANTY

The Customer warrants that Roc Technologies may rely on the Environmental and Usage Assumptions in connection with the supply of Products, as set out at Schedule 1.

## 8. LIMITATION OF LIABILITY

- 8.1 The following provisions set out each party's entire liability (including any liability for the acts and omissions of its agents and employees) to the other party in respect of:
  - a) any breach of its contractual obligations under the Agreement; or
  - b) any representation statement or tortious act or omission, including negligence, arising under the Agreement,

**and the Customer's attention is, in particular, drawn to the provisions of this clause 8.**

- 8.2 Any act or omission on the part of a party falling within clause 8.1 shall, for the purposes of this clause 8, be known as an 'Event of Default'.
- 8.3 Nothing in the Agreement excludes or limits the liability of either party for death or personal injury arising from its own negligence, or for any fraudulent pre-contractual misrepresentation on which the other can be shown to have relied, to the extent that the same cannot be lawfully limited or excluded.
- 8.4 The total liability of Roc Technologies to the Customer in contract, tort (including negligence) or otherwise arising out of the Agreement in respect of damage to the Customer's tangible property, including data, is limited to the lower of the value of the Contract Price or £1,000,000.00 (One Million Pounds).
- 8.5 Save in respect of clauses 8.3, 8.4, 9 and paragraphs 3.3, 5.2 and 3(b) of Schedule 3, the maximum aggregate liability of either party to the other in contract, tort (including negligence) or otherwise in relation to or arising out of all Events of Default shall not in any circumstances exceed an amount equal to 100% of the Contract Price, paid or due and payable from time to time.
- 8.6 Subject to clause 8.3, neither party shall be liable to the other in respect of any Event of Default for indirect or consequential loss, loss of profits, revenue, business, anticipated savings, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the other party as a result of an action brought by a third party), even if such loss was reasonably foreseeable or a party had been advised of the possibility of the other party incurring the same.

- 8.7 Unless the Customer notifies Roc Technologies that it intends to make a claim in respect of an event within the notice period, Roc Technologies shall have no liability for that event. The 'notice period' for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.8 Nothing in this clause 8 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

## **9. CONFIDENTIALITY AND IPR OWNERSHIP**

- 9.1 Each of the parties may be given access to Confidential Information from or on behalf of the other party in order to perform its obligations under the Agreement. Accordingly, each party undertakes to the other to hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 9.2 A party's Confidential Information shall not be deemed to include information that:
- is already in its lawful possession, other than as a result of a breach of this clause 9;
  - is in the public domain, other than as a result of a breach of this clause 9; or
  - is required to be disclosed by any regulator, or court of competent jurisdiction.
- 9.3 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this clause 9 by its employees, agents, Affiliates and sub-contractors.
- 9.4 All Background IP is and shall remain the exclusive property of Roc Technologies (or, where applicable, the third party from whom its right to use the Background IP has derived) and nothing in the Agreement shall operate to transfer any Background IP to the Customer or any of its Affiliates. Except as expressly agreed otherwise elsewhere in the Contract Documents, the Customer shall own all rights, title and interest in and to any Project IP.
- 9.5 Roc Technologies grants to the Customer and its Affiliates a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence during and after the term of the Contract to use the Background IP comprised in the Services to the extent required for the purpose of receiving and using the Services in their business. The Customer shall not, and shall procure that its Affiliates shall not, sub-license, assign or otherwise transfer the rights granted in this clause, and the Customer shall ensure that all such Background IP is kept confidential on the terms of clause 9.1.
- 9.6 Roc Technologies shall not, and shall procure that its Affiliates shall not, use the Project IP for any purpose except to provide the Services, and will ensure that it and its Affiliates keep the Project IP confidential on the terms of clause 9.1.
- 9.7 The Customer grants to Roc Technologies a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Agreement for the purpose of providing the Services to the Customer.
- 9.8 The Customer:
- warrants that the receipt and use of the Customer Materials in the performance of the Agreement by Roc Technologies, its agents, subcontractors or consultants shall not infringe any Intellectual Property rights of third parties; and
  - shall indemnify Roc Technologies in full against (in each case, properly and reasonably incurred) claims, actions, proceedings, losses, damages, expenses, costs (including without limitation court costs and reasonable legal fees) suffered or incurred by Roc Technologies arising out of or in connection with any claim brought against Roc Technologies, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property rights, arising out of, or in connection with, the receipt or use in the performance of the Agreement of the Customer Materials.

## **10. FORCE MAJEURE**

- 10.1 Neither party hereto shall be liable for any breach of its obligations under the Agreement resulting from causes beyond its reasonable control including fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and/or raw materials requirements or regulations of any civil or military authority (an 'Event of Force Majeure').
- 10.2 Each party hereto agrees to give written notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 10.3 If a default due to an Event of Force Majeure shall continue for more than thirty (30) consecutive days, then either party shall be entitled to terminate the Agreement. Subject always to clauses 3.3 and 8.3, neither party shall have any liability to the other solely in respect of the termination of the Agreement being the result of an Event of Force Majeure.

## **11. WAIVER**

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.



## **12. NOTICES**

- 12.1 Any demand, notice or communication in connection with the Agreement shall be deemed to have been properly given if sent to the address or email address of the party set out in in the Order Form, (or any address or email address subsequently notified by that party to the other in accordance with this clause 12) and:
- a) if delivered by hand to the address for service, if before 5p.m. on a Business Day then on the Business Day that it is delivered, but if at or after 5p.m. then on the next following Business Day;
  - b) if sent by email, provided no error message is received, if before 5p.m. on a Business Day then on the Business Day that it is transmitted, but if at or after 5p.m. then on the next following Business Day; and
  - c) if sent by prepaid first class post, then two Business Days after posting.

## **13. INVALIDITY AND SEVERABILITY**

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

## **14. ENTIRE AGREEMENT**

- 14.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating its subject matter.
- 14.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligence misrepresentation or negligent misstatement based on any statement in the Agreement.
- 14.3 Nothing in this clause shall limit or exclude liability for fraud.

## **15. NON-SOLICITATION**

- 15.1 For the term of the Agreement and for a period of twelve (12) months thereafter, without the prior written consent of the other party, neither party shall (directly or indirectly) solicit or entice away (or seek or attempt to entice away) from the employment of the other party any person(s) employed by it (or any person(s) who have been so employed in the preceding twelve (12) months by that other party or its third party contractors). For the avoidance of doubt, this clause shall not apply to unsolicited responses by employees to general recruitment advertising.
- 15.2 If either party breaches clause 15.1, it shall (within 30 days of the breach) pay to the other party, by way of liquidated damages, an amount equivalent to six (6) months' gross salary of such employee as at their date of termination of employment. Each party acknowledges that this is a reasonable assessment of the likely loss to the other party of losing and/or replacing the services of such employee.

## **16. SUCCESSORS**

This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

## **17. ASSIGNMENT**

Neither party shall be entitled to assign any of their rights under the Agreement without the prior written consent of the other, not to be unreasonably withheld. Neither party shall be entitled to assign any of their obligations under the Agreement without the prior written consent of the other (at such party's absolute discretion).

## **18. SUBCONTRACTING**

Roc Technologies shall at all times be responsible for the acts and omissions of its subcontractors.

## **19. REMEDIES ARE CUMULATIVE**

Each right or remedy of each party under the Contract is without prejudice to any other right or remedy of a party (whether under the Contract or not and including those in the following parts of these Conditions).

## **20. HEADINGS**

Headings to clauses in the Agreement are for the purpose of information and identification only and shall not be construed as forming part of the Agreement.

## **21. PAYMENT**

- 21.1 Payment of the Contract Price and any special delivery costs (together with value added tax thereon) shall become due in accordance with the terms set out in the Order Form, but if the Order Form does not specify terms for payment then that

part of the Contract Price which relates to the sale of Hardware, Software, Documentation and Services shall become due within thirty (30) days of receipt of the invoice.

21.2 If the Customer fails to make payment due to Roc Technologies under the Agreement, then, without limiting Roc Technologies' remedies under clause 3, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 21.2 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

21.3 All sums payable by the Customer under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). If any such deduction or withholding is required by law, the Customer shall, when making the payment to which the deduction or withholding relates, pay to Roc Technologies such additional amount as will ensure that Roc Technologies receives the same total amount that it would have received if no such deduction or withholding had been required.

## **22. PURCHASE PRICE VARIATION**

22.1 The Contract Price set out in the Order Form is based upon Roc Technologies' current list prices.

22.2 Roc Technologies reserves the right to increase the Contract Price on an annual basis with effect from each anniversary of the Effective Date in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period. The first such increase shall take effect on the first anniversary of the Effective Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

## **23. VAT**

Except as otherwise expressly provided, all amounts stated in the Agreement are expressed exclusive of VAT and any VAT arising in respect of any supply made pursuant to the Agreement shall be paid to Roc Technologies by the Customer in addition to the Contract Price. Roc Technologies shall issue a VAT invoice for the amount of the VAT paid.

## **24. PAYMENT CURRENCY**

24.1 Payment of the Contract Price in any currency other than GBP sterling shall be made by either:

- a) electronic bank transfer; or
- b) currency cheque, which shall incur a 4% handling charge.

## **25. RECOVERY OF PAYMENTS DUE**

Roc Technologies may, at its discretion, recover any sums which are due from the Customer by exercising the right to set-off such sums against any payments due to the Customer from Roc Technologies under or in relation to the Agreement.

## **26. THIRD PARTY RIGHTS**

The parties do not intend the Agreement or any part of it to be enforceable under or by virtue of the Contracts (Rights of third Parties) Act 1999 by any person who is not a party to the Agreement.

## **27. DATA PROTECTION**

27.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 27 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

27.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Roc Technologies is the Data Processor (where 'Data Controller' and 'Data Processor' have the meanings as defined in the Data Protection Legislation).

27.3 Without prejudice to the generality of clause 27.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Roc Technologies for the duration and purposes of the Agreement.

27.4 Without prejudice to the generality of clause 27.1, Roc Technologies shall, in relation to any Personal Data processed in connection with the performance by Roc Technologies of its obligations under the Agreement:

- a) process that Personal Data only on the written instructions of the Customer;
- b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- d) not transfer any Personal Data outside of the European Economic Area except with the prior written consent of the Customer;



- and
- e) notify the Customer without undue delay on becoming aware of a Personal Data breach.

## **28. DISPUTES, GOVERNING LAW AND JURISDICTION**

- 28.1 Any dispute arising out of or in connection with the Agreement, including any question regarding the existence, validity or termination of any Contract Document, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 28.2 This Agreement and any dispute or claim out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Subject to clause 28.1, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

**SCHEDULE I: ENVIRONMENTAL AND USAGE ASSUMPTIONS**

- I. In connection with the provision of the System and Services, Roc Technologies shall be entitled to assume the following (which is not an exhaustive list):
  - I.1 The environment provided within which the System is installed is environmentally suitable in accordance with Roc Technologies' standard practice and the manufacturer's guidelines.
  - I.2 All telecommunications hardware and related software not provided by Roc Technologies but forming part of the System are properly installed and such hardware and software components, together with the communication network(s) with which they interconnect, are functioning normally in accordance with their respective specifications.
  - I.3 Unless otherwise agreed in writing, the number of users accessing the System at any given time is within the parameters set out in the Proposal and/or the EULA.
  - I.4 Unless otherwise agreed in writing, the mix of functions demanded by users of the System at any one time is within the parameters set out in the Proposal and/or the EULA.
  - I.5 The System is operated by persons possessing appropriate technical skills and experience.
  - I.6 All on-line information feeds forming part of the System are working in accordance with their respective specifications.

## **SCHEDULE 2: PROJECT MANAGEMENT AND TRAINING**

1. Schedule 2 shall apply to (but only to) the supply of Project Services.

### **2. Definitions**

2.1 In this Schedule 2, the following words and expressions shall have the following meanings:

- a) 'Completion Date' means the date scheduled for completion in the Project Plan.
- b) 'Fees' means those costs being part of the Contract Price to be paid in consideration of the performance of the Project Services, to be calculated and paid in the manner set out in the Order Form.
- c) 'Project' means the delivery and installation of the System.
- d) 'Project Plan' means the plan for the implementation of the Project, set out in the Proposal.
- e) 'Project Services' means the project management services and the training services to be provided pursuant to paragraphs 3 and 6 of this Schedule 2.

### **3. Project management**

3.1 With effect from the date hereof, Roc Technologies undertakes to provide such management, organisational and coordinating services and carry out all such other work as may be agreed in writing to ensure the orderly implementation of the Project on or before the Completion Date.

3.2 Roc Technologies (with support from the Customer's representative) shall be responsible for:

- a) organising regular meetings (at intervals as set out in the Proposal, or as otherwise agreed in writing) at which they shall review the progress of the Project;
- b) providing (subject to obligations of confidentiality) all information and documentation reasonably required by Roc Technologies or the Customer (as the case may be) for the performance of the Project Services; and
- c) complying with all of its obligations within the Project Plan.

3.3 Each party shall inform the other of any change in the identity of its representative during the course of the Agreement.

3.4 Roc Technologies' representative shall prepare a progress report (at the same intervals as for meetings of the Project) and shall deliver a copy to the Customer's representative prior to the meetings referred to at paragraph 3.2(a) of this Schedule 2.

3.5 In consideration of the performance of the Project Services, the Customer shall pay the Fees.

### **4. Staff**

The Project Services shall be performed by employees or experienced contractors of Roc Technologies, who shall possess suitable skills and experience for the performance of the Project Services.

### **5. Office facilities**

5.1 The Customer shall make available to Roc Technologies' staff, free of charge, the use of such office facilities at the Site as shall be specified in the Proposal.

5.2 Roc Technologies shall ensure that its employees and contractors will comply with all reasonable security and other office procedures implemented by the Customer at the Site and notified to Roc Technologies, including where necessary the wearing of name badges or passes.

### **6. Training**

6.1 Roc Technologies shall provide to the Customer the training services set out in the Proposal.

6.2 Any additional training services requested by the Customer shall be provided by Roc Technologies at the rates set out in the Proposal.

### **7. Warranty**

7.1 Subject to the limitations upon its liability set out in clause 8 of these Conditions, Roc Technologies warrants that it will perform the Project Services:

- a) with reasonable care and skill,
- b) in accordance with the Proposal; and
- c) in accordance with good industry practice.

7.2 Each party shall give notice to the other as soon as it is reasonably able upon becoming aware of a breach of warranty.

7.3 Subject to the foregoing and save where expressly stated in the Agreement, all conditions, warranties terms and



undertakings, express or implied, statutory or otherwise in respect of the performance of the Project Services are hereby excluded.

### **SCHEDULE 3: SALE AND INSTALLATION OF HARDWARE AND SOFTWARE**

1. Schedule 3 shall apply to (but only to) the sale and installation (where applicable) of Hardware and Software and any supply of Subscription Services.

#### **2. Definitions**

2.1 In this Schedule 3, the following words and expressions shall have the following meanings:

- a) 'EULA' means the end user licence agreement applicable to the Software.
- b) 'Installation' means the installation of Software and/or Hardware performed by Roc Technologies for the Customer.
- c) 'Subscription Services' means the Software subscription services provided by Roc Technologies to the Customer.

#### **3. Property and confidentiality in the licensed program materials**

3.1 The Software contains Intellectual Property rights of third parties and is subject to the EULA, which is made available to the Customer via Roc Technologies.

3.2 It is the responsibility of the Customer to comply with, and ensure compliance by its employee's, agents, Affiliates and contractors (together, 'Associated Parties') with, the EULA supplied to the Customer and to ensure that it has purchased sufficient licences for the requirements of the Contract.

3.3 The Customer shall defend, indemnify and hold harmless Roc Technologies against (in each case, properly and reasonably incurred) claims, actions, proceedings, losses, damages, expenses, costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's, or its Associated Parties', use of the Subscription Services and any non-compliance by the Customer, or its Associated Parties, with the EULA, provided that:

- a) the Customer is given prompt notice of any such claim;
- b) Roc Technologies provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense;
- c) the Customer is given sole authority to defend the claim, always provided that the Customer shall obtain Roc Technologies' prior approval of any settlement terms, such approval not to be unreasonably withheld; and
- d) the claim is NOT based on license fees owed to the IP owner already paid by the Customer to Roc Technologies.

3.4 The Customer shall comply with the obligations as to copyright in relation to the program Documentation.

#### **4. Warranty in respect of the Hardware, Software, Installation and Subscription Services**

4.1 Roc Technologies warrants to the Customer that:

- a) it will pass the benefit of any manufacturer's warranty in respect of the Hardware and/or Software to the Customer;
- b) it will perform the Subscription Services and any Installation with reasonable care and skill and in accordance with good industry practice; and
- c) the Software will perform in accordance with the Proposal.

4.2 The Customer shall give prompt notice to Roc Technologies of any alleged defect or fault in the Hardware and or Software.

4.3 Roc Technologies shall, as soon as it is reasonably able, investigate any alleged defect or fault and give reasonable assistance to the Customer in connection with procuring that the manufacturer will deal with the matter under the terms of its warranty.

4.4 Subject to the foregoing and with the exception of the condition and warranties implied by section 12 of the Sale of Goods Act 1979, all conditions, warranties, terms and undertakings, express or implied statutory or otherwise in respect of the Hardware and the provision of the Services are hereby excluded.

4.5 Roc Technologies does not warrant the performance of the Software or Hardware purchased or that the Software or Hardware will be uninterrupted or error free. Unless otherwise agreed in writing, Roc Technologies is not responsible for fixing any bugs, errors or omissions in the Software or Hardware. Roc Technologies is not responsible for any delays in the Services caused by bugs, errors or omissions in the Software or Hardware.

4.6 The Customer accepts that the Software was not designed and produced to its individual requirements.

#### **5. Software, Documentation and Copyright**

5.1 The Customer acknowledges that copyright exists in the Software and the Documentation in favour of the copyright holder (whether the manufacturer of the Hardware or the Software), or in Roc Technologies in relation to its Documentation. The Customer agrees with Roc Technologies that it will not:

- a) infringe the copyright of the copyright holder;
- b) make or agree to any unauthorised alteration, modification or adjustment to the Hardware, the Software or the Documentation without the copyright holder's, or (as applicable) owner's, prior written consent; or
- c) combine, connect, operate or use the Hardware, the Software or the Documentation with any other equipment, software, services or documentation without prior written consent from the copyright holder, or (as applicable)

owner.

5.2 The Customer shall defend, indemnify and hold harmless Roc Technologies against (in each case, properly and reasonably incurred) claims, actions, proceedings, losses, damages, expenses, costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any breach of paragraph 5.1.

5.3 Roc Technologies:

- a) warrants that the receipt and use of the Services and the Software by the Customer and its Affiliates shall not infringe the rights, including any Intellectual Property rights, of any third party; and
- b) shall indemnify the Customer in full against all (in each case, properly and reasonably incurred) costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer arising out of, or in connection with, any breach of paragraph 5.3(a).

5.4 Roc Technologies does not warrant the accuracy or completeness of the manufacturer's Documentation.

5.5 The Customer shall ensure that all its employees, agents, Affiliates and Associated Parties use the Software and the Documentation in accordance with these Conditions and the EULA and shall be responsible for any breach of the Agreement by any such persons.

## 6. Equipment variation

The Customer shall not be entitled at any time to vary all or any of the Hardware or Software set out in the Proposal or the EULA, although Roc Technologies will use reasonable endeavours to assist the Customer in the event of a request by them for variation, and on the further condition that Roc Technologies shall not be liable for any resultant delay in the delivery or installation of the System so varied.

## 7. Telecommunications

7.1 Where the Customer intends to attach the Hardware and Software to a telecommunications network (the 'Network') as set out in the Proposal or the EULA, the Customer shall be responsible for:

- a) obtaining the consent of the owner of the Network (the 'Owner') for the connection of the Hardware and Software to the Network;
- b) purchasing and installing all equipment necessary to make the said connection to the Network;
- c) paying all charges from time to time levied by the Owner for connection to the Network; and
- d) at all times complying with such technical and other regulations that the Owner shall impose as a condition of connection to the Network.

7.2 The Customer shall ensure that its network and systems comply with the relevant specifications provided by Roc Technologies from time to time, and is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Roc Technologies' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links caused by the internet.

7.3 Roc Technologies does not warrant that the manufacturer of the Hardware has confirmed that the Hardware has received approval from the relevant Authority (the 'Authority') for connection to the Network.

7.4 Roc Technologies does not warrant that the Owner or the Authority will not withdraw the consent referred to in paragraph 7.1(a) of Schedule 3 or the approval referred to in paragraph 7.2 of Schedule 3.

7.5 Roc Technologies shall not be liable for any loss or damage resulting from the acts or omissions of the manufacturer of the Hardware or the Owner, or the breach by the Customer of its obligations under paragraph 7.1 of Schedule 3.

## 8. Access to the Place of Use

The Customer shall allow Roc Technologies, including its employees, agents and sub-contractors, such reasonable access to the Place of Use as it shall from time to time require to perform its obligations under the Agreement.

## 9. Limitation of Liability

9.1 Except as expressly and specifically provided in the Agreement:

- a) the Customer assumes sole responsibility for results obtained from the use of the Subscription Services and/or System and/or the Documentation by the Customer, and for conclusions drawn from such use. Roc Technologies shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Roc Technologies by the Customer in connection with any Subscription Services, or any actions taken by Roc Technologies at the Customer's direction, but shall have liability for any such damage, including damage to customer's data, caused by errors or omissions in any information, instructions or scripts provided by Roc Technologies to the Customer; and
- b) the Subscription Services and the Documentation are provided to the Customer on an "as is" basis.