大成 DENTONS

Axcelot

Services Agreement

Dated

Axcelot Ltd
(Supplier)

[*Insert customer name*]
(Customer)

Dentons UK and Middle East LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Dated

PARTIES

(1) **Axcelot Ltd** (company no 11256135) whose registered office is at 2 Mill Road, Haverhill, United Kingdom, CB9 8BD ("**Axcelot**")

(2) **[*Insert*]** (company no [*insert*]) whose registered office is at [*insert*] ("**Customer**")

BACKGROUND

(A) Customer wishes to appoint Axcelot as its provider of managed detection and response services.

(B) Axcelot wishes to be appointed to provide the Services (as defined below) to Customer on the basis set out in this Agreement.

It is agreed:

This Agreement is made up of the following:

(a) the Order Form;

(b) the general terms and conditions set out in this Agreement (the "General Terms");

(c) the Schedules of this Agreement; and

(d) any documents incorporated by reference into this Agreement.

General Terms

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"**Access**" has the meaning set out in Clause 4.1.

"**Adverse Event**" has the meaning set out in Clause 3.5.

"**Affiliate**" means a party or any business entity at any time Controlling, Controlled by, or under Common Control with, either party.

"**Agreement**" means this written agreement, including the Schedules, as varied, novated, supplemented, amended, or replaced from time to time in accordance with its terms.

"**Applicable Laws**" means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

"**Applicable Data Protection Laws**" means the GDPR, the Data Protection Act 2018 and any other applicable data privacy or data protection laws or regulations, each as applicable and as amended, supplemented, substituted or replaced from time to time.

"**Assets**" means all assets, including:

(a) information networks, computers and information systems, computer equipment, telecommunications equipment and technical infrastructure;

(b) any rights in software (including computer programs, interfaces and tools), documentation and firmware and other Intellectual Property Rights; and

(c) any spare parts, consumables, tools or other assets.

"**Axcelot Assets**" means Assets owned or licensed by Axcelot.

"**Axcelot Group**" means Axcelot's Group.

"**Axcelot Subcontractors**" has the meaning set out in Clause 8 (*Subcontractors*).

"**Business Day**" means any day which is not a Saturday, Sunday or public or bank holiday in England.

"**Charges**" means the charges to be paid by Customer for the Services calculated in accordance with Clause 5 (*Charges*).

"**Commencement Date**" has the meaning set out in the Order Form.

"**Control**" means in respect of a company, the power of a person to directly or indirectly secure that the affairs of the company are conducted in accordance with the wishes or directions of that person. "**Controlling**", "**Controlled by**" and "**under Common Control**" shall be construed accordingly.

"**Customer Assets**" means Assets owned or licensed by Customer.

"**Customer Data**" means all personal data in whatever form or medium which is (i) supplied, or in respect of which access is granted, to Axcelot by Customer, or (ii) produced or generated by or on behalf of Axcelot specifically for Customer pursuant to the terms of this Agreement.

"**Force Majeure Event**" has the meaning set out in Clause 18 (*Force majeure*).

"**GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

"**Group**" means a party, its parent undertaking and the subsidiary undertakings of its parent undertaking and its associated companies.

"**Initial Term**" means the period of [*x*] years from the Commencement Date or such other period agreed by the parties in writing.

"**Intellectual Property Rights**" or "**IPR**" means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and

get-up (and goodwill attaching to those trade marks and that get up), domain names, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software and semiconductor topographies, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

"**Losses**" means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).

"**Malpractice**" includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

"**Order Form**" means the order form signed by both parties on [*insert date*].

"**Reportable Breach**" means any unauthorised or unlawful processing, disclosure of, or access to, Customer Data and/or any accidental or unlawful destruction of, loss of, alteration to, or corruption of Customer Data, in each case, as may arise in the performance of the Services.

"**Required Consents**" means all consents, approvals and licences required by Customer's suppliers, licensors, lessors, government regulators and other third parties which are necessary to support or permit the provision of the Service by Axcelot under this agreement and do not include consents, approvals and licences that Axcelot is required to obtain generally as part of its business of providing the Services.

"**Services**" means the services set out in Schedule 1 (*Service Definitions*).

"**Supervisory Authority**" means any EU competent data protection authority to whose jurisdiction the Customer is subject in relation to the Customer Data and the Services and where Axcelot provides the Services.

"**Term**" means the period during which the Agreement is in force.

"**Termination Date**" means the date of termination of the Agreement for whatever reason.

"**Termination**" means the termination or expiry of the Agreement, howsoever occurring.

"**Third Party Software**" means software which is proprietary to any third party and that is either licensed to Customer or is used by Axcelot in the provision of the Services.

"**VAT**" means value added tax.

"**Virus**" means any software, virus, Trojan horse, time bomb or other computer programming code (including Java applets, ActiveX controls, scripting languages, browser plug-ins or pushed content) which is constructed with the intent to, and which does, damage, interfere with, enable unauthorised access to or theft from, or otherwise improperly affect the operation of other computer programs, data files or hardware without the knowledge or consent of the end user.

1.2 Interpretation

1.2.1 In the Agreement:

(a) a statute or statutory provision includes a reference to:

(i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;

(ii) all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and

(iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment;

(b) a "**person**" includes a legal or natural person, partnership, association, trust, company, corporation, joint venture, government, state or agency of the state or other body;

(c) a governmental, local governmental, regulatory or administrative authority or agency includes its successors;

(d) Clause or Schedule is to a clause of or schedule to the Agreement and any reference to the Agreement includes its Schedules;

(e) a paragraph is to a paragraph in a Schedule and, where no specific Schedule is mentioned, to the Schedule in which the reference is located;

(f) the terms "**personal data**", "**controller**", "**processor**", "**processing**", "**data subject**", shall have the meanings given to them under GDPR;

(g) the terms "**holding company**", "**subsidiary**", "**parent undertaking**", "**subsidiary undertaking**" and "**wholly-owned subsidiary**" shall be interpreted in accordance with the Companies Act 2006, and the term "**associated company**" shall be interpreted in accordance with section 449 of the Corporation Tax Act 2010; and

(h) any agreement (including the Agreement) or other document or the provisions of them is a reference to that agreement, document or provision as amended, novated, supplemented, extended, restated or replaced from time to time.

1.2.2 The headings in the Agreement are for ease of reference only and are to be ignored when interpreting the Agreement.

1.2.3 In the Agreement the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.2.4 In the Agreement, unless otherwise stated, time shall not be of the essence for the performance of any obligation.

2 Term

2.1 The Agreement shall commence on the Commencement Date and shall (except as expressly provided otherwise in the Agreement) continue in force for the Initial Term.

2.2 After the Initial Term, the Agreement shall (except as expressly provided otherwise in the Agreement) continue in force unless and until terminated by either party giving not less than [3] months' notice of termination to the other party, such notice to expire at any time on or after the end of the Initial Term.

3 Services

3.1 Axcelot shall provide the Services to Customer in accordance with the terms of the Agreement.

3.2 Customer shall appoint Axcelot to be the exclusive provider of services equivalent to the Services to Customer.

3.3 Axcelot shall not be required to provide any service or other function that is not set out in Schedule 1 (*Service description*) unless such service or function has been agreed by the parties in writing.

3.4 Axcelot may make commercially reasonable modifications to the Services, provided that such modifications do not reduce or adversely affect the nature, scope or quality of the Services.

3.5 Axcelot shall notify Customer, as soon as reasonably practicable, of any unauthorised or unlawful processing, loss of, damage to or destruction of Customer Assets caused by a Virus ("**Adverse Event**"), of which Axcelot becomes aware in providing the Services.

4 Customer obligations

4.1 Customer authorises Axcelot and Axcelot Subcontractors to have access, whether directly or remotely ("**Access**") to Customer Assets for the performance of the Services. For the avoidance of doubt, it is Customer's sole responsibility to decide which Customer Assets Axcelot requires access to and Axcelot shall not be responsible for any Losses as a result of being given Access incorrectly by or on behalf of Customer.

4.2 Customer shall be responsible for obtaining all Required Consents to enable Axcelot to perform the Services. Axcelot shall not be liable for any Losses to the extent caused by, or as a result of, Customer's failure, delay or inability to obtain any such Required Consents.

4.3 Axcelot shall comply with all reasonable security and other procedures and requirements of Customer as notified to Axcelot in writing from time to time at least [5] Business Days in advance in relation to Access. Customer shall be responsible for any costs incurred by Axcelot in complying with Customer's security and other procedures and requirements.

4.4 [In the event that any Axcelot Assets are used in the provision of the Services:

(a) Customer acknowledges that Axcelot Assets are and will remain the sole property of Axcelot and/or its licensors and that Axcelot may take possible of Axcelot Assets following the Termination of this Agreement in accordance with Clause 16 (*Termination*).

(b) Customer shall:

(i) keep Axcelot Assets free and clear of any lien and not pledge as security or otherwise encumber Axcelot Assets in any way;

(ii) use Axcelot Assets only to access the Services and comply with reasonable Axcelot Assets use instructions provided in writing by Axcelot;

(iii) not alter in any way, or remove, or relocate or move Axcelot Assets from the specific location where they were first installed, without prior written approval by Axcelot, not to be unreasonably withheld;

(iv) provide adequate, secure, and proper space at Customer premises to install Axcelot Assets, it being agreed and understood that Axcelot shall not be obliged to install Axcelot Assetsin a poorly ventilated/air conditioned or inadequately maintained room that could result in damage to Axcelot Assets;

(v) to the extent that Axcelot Assets are installed at Customer premises, insure the Axcelot Assets with a reputable insurer on terms no more onerous than are commonly available for that type of insurance and without any excess that is unusual for that type of insurance; and

(vi) except to the extent that such loss or damage was caused directly or indirectly by Axcelot or defects in Axcelot Assets, be responsible to Axcelot for all risk of loss and damage to Axcelot Assets.

(c) Customer shall indemnify Axcelot on demand from and against all Losses incurred by Axcelot, its Affiliates, employees, officers, agents, and contractors arising out of or in connection withy any damage caused to Axcelot Assets comprising real or tangible property, included as a result of any negligence, by Customer or its employees, officers, agents and contractors]

5 Charges

5.1 Customer shall pay Axcelot the Charges.

5.2 Customer shall reimburse to Axcelot all reasonable travel and accommodation expenses incurred by Axcelot in connection with the provision of the Services. Reimbursement under this Clause 5.2 shall be made within [30] days of receipt by Customer of an invoice for such expenses.

6 VAT

6.1 The Charges do not include VAT which Customer shall pay in addition to the Charges at the rate prevailing on the date that the relevant Services were supplied.

6.2 The Charges do not include any additional taxes, duties, charges and levies which may become payable as a result of the provision of the Services. Customer shall pay such additional taxes, duties, charges and levies as and when due.

7 Payment

7.1 Axcelot shall invoice Customer as set out in the Order Form

7.2 Customer shall pay the Charges within 15 days of receipt of a valid VAT invoice. Time for payment shall be of the essence.

7.3 If a party fails to pay in full on the due date any sum payable by it under or in connection with the Agreement, interest on the outstanding amount shall accrue on a daily basis from the due date until the date of payment (whether before or after judgment) at the rate of 2.5% per annum above the base rate of the Bank of England from time to time.

7.4 The parties agree that Clause 7.3 is a substantial remedy and is fair for the purposes of section 8 of the Late Payment of Commercial Debts (Interest) Act 1998.

7.5 If Customer has not paid an undisputed invoice or part thereof within 30 days of the due date for payment of that invoice (that is, 45 days from the date of that invoice) and the non-payment of that invoice has been brought to Customer's attention, Axcelot shall be entitled to suspend the provisions of any Services until the relevant invoice has been paid in full.

7.6 All sums payable to Axcelot under the Agreement shall become immediately payable on Termination.

8 Subcontractors

Axcelot may engage subcontractors, suppliers and/or agents to provide the Services or any of them at any time during the Term. Such subcontractors, suppliers and/or agents shall be "**Axcelot Subcontractors**" for the purpose of the Agreement.

9 Fraud, bribery and corruption

9.1 Axcelot will maintain its own anti-bribery policies and adequate measures to comply with mandatory anti-bribery laws.

9.2 Each party represents and warrants that:

(a) it shall, and shall ensure that its Affiliates shall, engage in only legitimate business and ethical practices and shall adhere to and comply with all Applicable Laws, including but not limited to the anti-corruption laws of the United Kingdom;

(b) it shall not, and shall ensure that its Affiliates shall not, either directly or indirectly, give, offer, agree or promise to give any money or other thing of value to anyone, nor seek or receive any money or other thing of value from anyone, as an inducement or reward for favourable action or forbearance from action or the exercise of influence. This applies to any gift, offer, agreement or promise made to or with any official of any national or regional government, any director or manager of any body corporate or any other person; and

(c) all of the information that each party has provided to the other and its representatives in connection with its obligations under this Clause 9 is current, accurate and complete. If there are any material changes to this information, the relevant party shall notify the other party of such changes as soon as possible.

9.3 Notwithstanding any provision to the contrary, upon any admission or finding that either party or any of its Affiliates has failed to comply with this Clause 9, the party in breach shall indemnify on demand the other from and against all Losses incurred by the other party, its Affiliates, employees, officers, agents and contractors arising out of or in connection with any resulting liability.

10 Warranties

10.1 Each party represents and warrants that:

(a) it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms; and

(b) in performing its obligations under the Agreement it shall comply with all Applicable Laws.

10.2 To the maximum extent permitted by Applicable Law, other than those warranties which are set out in the Agreement, all conditions, warranties and representations, whether express or implied, are excluded and, in particularly, Axcelot does not warrant that:

(a) the Services will meet Customer's particular requirements, whether or not those requirements have been made known to Axcelot; or

(b) the Services are of satisfactory quality or fit for any particular purpose.

10.3 Customer warrants and represents that:

(a) Customer maintains sufficient procedures to prevent any Virus being introduced into the Customer Assets or any data, software or any source code otherwise used in the provision of the Services.

(b) Customer maintains up-to-date anti-Virus software.

10.4 Axcelot shall act in accordance with Good Industry Practice to prevent any Virus being introduced in to the Customer Assets or any data, software or any source code otherwise used in the provision of the Services. For the avoidance of doubt, Axcelot shall not be liable for any Losses arising out of or in connection with any unauthorised access to Customer Assets due to either:

(a) lack of sufficient; or

(b) failure of,

Customer security procedures.

11 Intellectual Property Rights

11.1 General

The parties acknowledge that there shall be no change as a result of the Agreement in the ownership of Intellectual Property Rights in any material or items existing as at the Commencement Date, nor does the Agreement assign any Intellectual Property Rights which are created or developed by or on behalf of either party outside the Agreement or where such assignment is not expressly provided for in the Agreement.

11.2 Axcelot underlying IPR and Third Party Software

11.2.1 For the purposes of this Clause 11.2, all references to Third Party Software shall exclude Customer Third Party Software.

11.2.2 With effect from the Commencement Date, Axcelot grants to Customer a royalty-free, worldwide, non-exclusive licence during the Term solely in connection with the receipt of the Services.

11.3 Termination of Licences

11.3.1 In the event of Termination of this Agreement, the licences referred to in this Clause 11 (*Intellectual Property Rights*) shall terminate automatically at the end of the Term.

11.4 IPR indemnity

11.4.1 Subject to Clause 11.4.2, each party shall on demand indemnify the other party from and against all Losses incurred by that other party arising out of or in connection with any claim, demand or action alleging that the products or services provided by the indemnifying party have infringed any Intellectual Property Rights of a third party.

11.4.2 Where there is a third party action, demand or claim under Clause 11.4.1 ("**Claim**"):

(a) the party seeking to rely on the indemnity (the "**Indemnified Party**") shall promptly notify the indemnifying party of the Claim;

(b) the indemnifying party shall have the sole conduct of all negotiations and litigation, and settle all litigation, arising from the Claim;

(c) the Indemnified Party shall provide the indemnifying party with all such available information and assistance as the indemnifying party may reasonably require; and

(d) the Indemnified Party shall make no admissions in respect of the Claim.

11.4.3 If, within [30] days after Customer's receipt of notice of any Claim from Axcelot, Customer fails to take reasonable action to defend the same, and such Claim is not withdrawn, Axcelot may, at Customer's expense, undertake the defence, compromise or settlement of the Claim. Upon the assumption of the defence of the Claim, Axcelot may defend, compromise or settle the Claim as it sees fit, provided that Axcelot agrees to take reasonable steps to keep Customer informed of any reasonable settlement proposals made by the claimant.

11.4.4 Neither party shall have any liability to indemnify under Clause 11.4 (*IPR Indemnity*) if the Claim arises as a result of:

(a) any modification of the products or services by anyone other than the indemnifying party or its authorised representatives;

(b) the use of the products or services otherwise than in accordance with the Agreement; or

(c) the use of the products or services in combination with any other products or services that have not been supplied or expressly authorised by the indemnifying party where, without such combination, no Claim would arise.

11.4.5 If the use of products or services in accordance with the Agreement is either:

(a) found to be infringing; or

(b) in the indemnifying party's opinion reasonably likely to be infringing, the indemnifying party shall at its option and expense:

(i) procure for the Indemnified Party the right to continue to use the products or services in accordance with the Agreement;

(ii) modify the products or services so that they are not infringing (but without materially detracting from its functionality of performance), in which case the Indemnified Party shall cease using the infringing products or services as soon as the indemnifying party makes such modification available; or

(iii) if in the indemnifying party's reasonable opinion neither of the above options is commercially viable, require the Indemnified Party to cease use of the infringing products or services.

11.4.6 This Clause 11.4 (*IPR Indemnity*) states each party's sole and exclusive remedy and each party's entire liability in respect of any Claim.

11.4.7 The indemnity in Clause 11.4 (*IPR Indemnity*) shall not apply to any Claim which is brought more than [one] year after the circumstances giving rise to the Claim have come, or should reasonably come, to the attention of the Indemnified Party.

12 Data

12.1.1 The Customer and Axcelot hereby agree that for the purposes of this Agreement, Axcelot (and each permitted subcontractor, including Axcelot Subcontractors if applicable) shall be a data processor.

12.1.2 In respect of Customer Data which is not governed by GDPR, references in this Clause 12 to: (i) specific Articles and/or Chapters of GDPR shall be deemed to be references to the equivalent rules under Applicable Data Protection law; and (ii) "European Union or member state law" shall be deemed to be references to Applicable Data Protection Law.

12.1.3 Axcelot, to the extent acting as data processor, shall:

(a) only process the Customer Data as necessary to perform its obligations under this Agreement or as required by Applicable Data Protection Laws (provided that Axcelot first informs Customer of that legal requirement before processing unless that law prohibits this on important grounds of public interest);

(b) ensure that all staff who have access to Customer Data have committed themselves to appropriate obligations of confidentiality;

(c) maintain all appropriate technical and organisational measures to ensure security of the Customer Data. Such measures shall be compliant with Axcelot's applicable IT security policies (which Customer confirms offers an appropriate level of security in respect of Customer Data);

(d) assist Customer to fulfill its obligation to respond to requests for exercising of data subject rights (including access requests) set out in Chapter III of GDPR (Rights of the data subject);

(e) freely engage other sub-processors (including, if applicable, Axcelot Subcontractors) as it deems necessary to provide the services and Customer gives Axcelot its general consent to appoint such sub-processors (including, if applicable, Axcelot Subcontractors) and Axcelot shall inform Customer of any proposed changes to any such sub-processors. In the event Customer reasonably objects to the appointment of any such sub-processor on the basis of that sub-processors ability to comply with Applicable Data Protection Laws, the parties shall use all reasonable endeavours to resolve such matter, failing which Axcelot may terminate the Services (in whole or in part) without liability to the Customer. Axcelot shall enter into a written agreement with each sub-processor containing obligations which are equivalent to those set out in this Clause 12.

(f) not transfer any Customer Data outside the UK or European Economic Area save as required to deliver the Services and having put in place appropriate safeguards (or having relied on an appropriate derogation) as provided for in Chapter 5 of GDPR;

(g) subject to reasonable access arrangements and save for disclosure of information which is confidential, commercially sensitive or privileged, permit Customer or a third-party auditor acting under Customer's direction, to conduct, at Customer's cost, data protection audits, assessments and inspections concerning Axcelot's data protection procedures relating to its compliance with this Clause 12 and shall inform Customer as soon as reasonably practicable if, in Axcelot's opinion, any instruction issued by Customer breaches any of GDPR or any other applicable data protection law;

(h) notify Customer without undue delay, and in writing if it becomes aware of, a Reportable Breach and provide Customer with assistance in responding and mitigating it. Axcelot shall maintain a log of Reportable Breaches;

(i) assist Customer in complying with Article 35 (**Data protection impact assessment**) and Article 36 (**Prior consultation**) of GDPR in respect of any new type of processing proposed; and

(j) on termination or expiry of this Agreement, for whatever reason, either destroy all Customer Data or transfer it to Customer or a nominated third party (in a mutually agreed format and by a mutually agreed method) save that Axcelot shall not be obliged to destroy Customer Data where required to retain them under European Union or Member State Law.

12.1.4 The Customer warrants that:

(a) its collection, use, processing and disclosure of Customer Data and its transfer of Customer Data to Axcelot pursuant to the Agreement is compliant with Applicable Data Protection Law;

(b) it has obtained all necessary consents and provided all necessary notices to data subjects to allow for the lawful processing of the Customer Data by Axcelot pursuant to this Agreement as required by Applicable Data Protection Law; and

(c) it will inform Axcelot as soon as reasonably practicable and, in any event, within 5 Business Days if a data subject exercises a right which requires the Customer and Axcelot to stop processing or otherwise restrict the Customer Data relating to that data subject.

13 Confidentiality and announcements

13.1 "**Confidential Information**" means all information of a confidential nature in the disclosing party's possession or control, whether created before or after the date of the Agreement, whatever its format, and whether or not marked "confidential"[, including all confidential or proprietary information relating to the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, product information, know-how, technical information, designs, trade secrets or software of the disclosing party; any information, findings, data or analysis derived from such information; any other information that is identified as being of a confidential or proprietary nature; and the existence and terms of the Agreement, and negotiations relating to it, but not including information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party's possession or comes into the other party's possession without breach of any third party's confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.

13.2 Each party shall safeguard the other party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Agreement.

13.3 Nothing in the Agreement shall be construed so as to prevent one party from disclosing the other's Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first party promptly notifies the other party in advance and discloses only that part of the other party's Confidential Information that it is compelled to disclose.

13.4 Each party shall tell the other immediately if it discovers that this Clause 13 (*Confidentiality and announcements*) has been breached and shall, on request, return to the other all of the other party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

13.5 No announcement shall be made in relation to the Agreement:

(a) without the other party's written consent, such consent not to be unreasonably withheld; or

(b) unless it is required to be made by Applicable Law, in which case that party shall, to the extent reasonably practicable, consult with the other party as to the form, content and timing of the announcement.

13.6 The obligations in this Clause 13 (*Confidentiality and announcements*) shall continue without limit in time.

14 Limitations of liability

14.1 Subject to Clause 14.3, Axcelot's liability under or in connection with the Agreement, whether arising from contract, negligence or otherwise, shall be limited to [X]% of price paid.

14.2 Axcelot shall not be liable to Customer for any of the following types of loss or damage even if, in each case, Axcelot has been advised of the possibility of such loss or damage:

(a) special, indirect or consequential loss;

(b) pure economic loss, costs, damages or charges;

(c) loss of profits;

(d) loss of revenue;

(e) loss of contracts;

(f) loss of anticipated savings;

(g) loss of business;

(h) loss of use;

(i) loss of goodwill; and

(j) loss or damage arising from loss, damage or corruption of any data.

14.3 The exclusions and limitation of liability set out in Clause 14.2 do not apply to:

(a) liability arising from death or injury to persons caused by negligence;

(b) Customer's obligation to pay the Charges;

(c) wilful abandonment by Axcelot;

(d) breach of terms regarding title implied by section 12 of the Sale of Goods Act 1979 and/or section 2 of the Supply of Goods and Services Act 1982;

(e) either party's liability arising as a result of fraud or Malpractice; and

(f) anything else which cannot be excluded or limited by Applicable Law,

to which no limit applies.

15 Insurance

15.1 Without prejudice to Clause 14 (*Limitations on liability*), Axcelot shall maintain in force at its own expense appropriate insurance for the provision of the Services.

15.2 Within [30] days of receipt of a request from Customer, Axcelot shall provide evidence of the insurances which it is obliged to maintain under Clause 15.1.

16 Termination

16.1 Either party may terminate the Agreement with immediate effect by giving the other party notice if that other party commits a material breach of the Agreement which:

(a) is not capable of remedy; or

(b) is capable of remedy, but which the party in breach fails to remedy within [30 days] of receiving written notice from the innocent party specifying the breach and requiring the breach to be remedied.

16.2 Either party may terminate the Agreement with immediate effect by giving the other party notice if:

(a) such other party becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);

(b) such other party ceases or threatens to cease to carry on the whole or a substantial part of its business;

(c) any distress or execution shall be levied upon such other party's property or assets;

(d) such other party shall make or offer to make any voluntary arrangement or composition with its creditors;

(e) any resolution to wind up such other party (other than for the purpose of a *bona fide* reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other party shall be presented [and not withdrawn or dismissed within seven days] or an order is made for the winding up of such other party;

(f) such other party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it;

(g) a receiver or administrative receiver is appointed over all or any of such other party's undertaking property or assets;

(h) any bankruptcy petition is presented or a bankruptcy order is made against such other party;

(i) an application is made for a debt relief order, or a debt relief order is made in relation to such other party;

(j) such other party is dissolved or otherwise ceases to exist; or

(k) the equivalent of any of the events described in Clause 16.2(a) to Clause 16.2(j) occurs in relation to such other party under the laws of any jurisdiction.

16.3 Axcelot may terminate the Agreement in accordance with the provisions of Clause 17 (*Force majeure*).

16.4 For the purposes of this Clause 16 (*Termination*), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

16.5 Termination shall not affect either of the parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

17 Survival of Clauses

Termination shall not affect either of the parties' accrued rights or liabilities, or affect the coming into force or the continuance in force of any provision which is expressly or by

implication intended to come into or continue in force on or after such Termination, including all of the indemnities given by one party to the other party under the Agreement. This includes those under Clause 4.4(c) (*Customer obligations),* Clause 9.3 (*Fraud, bribery and corruption*), Clause 11(*Intellectual Property Rights*), Clause 12 (*Data*), Clause 13 (*Confidentiality and announcements*), Clause 14 (*Limitations of liability*), Clause 15 (*Insurance*), Clause 16 (*Termination*), Clause 17 (*Survival of Clauses*), Clause 18 (*Force Majeure*), Clause 20 (*Third parties*), Clause 22 (*No partnership or agency*), Clause 23 (*Waiver*), Clause 31 (*Notices*) and Clause 32 (*Governing law and jurisdiction*).

18 Force majeure

18.1 "**Force Majeure Event**" means an event beyond the reasonable control of a party (the "**Affected Party**") which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action, sabotage or riots, and floods, fires, explosions or other catastrophes, and any other event which is not attributable to the fault or negligence, but is beyond the reasonable control, of either party.

18.2 Neither party shall be responsible for any failure to carry out any of its duties under the Agreement to the extent that the failure is caused by a Force Majeure Event, provided that the Affected Party:

(a) has taken all reasonable steps to prevent and avoid the Force Majeure Event;

(b) carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure Event;

(c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;

(d) on becoming aware of the Force Majeure Event, informs the other party (the "**Unaffected Party**") in writing that something has happened which is a Force Majeure Event, giving details of the Force Majeure Event, together with a reasonable estimate of the period during which the Force Majeure Event shall continue; and

(e) tells the Unaffected Party when the Force Majeure Event has stopped.

18.3 If the Force Majeure Event prevents Axcelot from materially complying with its obligations under the Agreement and it continues for more than 30 days, Axcelot may terminate the Agreement with immediate effect by giving Customer notice.

19 Assignment

19.1 Customer may not, without the written consent of Axcelot (which may be withheld in its absolute discretion) assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under the Agreement or any interest in them.

19.2 Axcelot may, without the consent of Customer, assign all or any of its rights under the Agreement to any member of the Axcelot Group. Before ceasing to be a member of the Axcelot Group any assignee shall assign all assigned rights back to Axcelot or to another member of the Axcelot Group.

19.3 The liability of a party to an assignee of rights under the Agreement shall be limited to the liability it would have had to the assigning party had the assignment not occurred.

20 Third parties

20.1 The parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third parties) Act 1999 or otherwise, except where such third party is an assignee of rights under the Agreement and such assignment is in accordance with Clause 19 (*Assignment*).

20.2 The parties may terminate or vary the Agreement without the consent of any third party.

21 Entire agreement

21.1 The Agreement is the entire agreement between the parties, and replaces all previous agreements and understandings between them, relating to its subject matter.

21.2 The parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of the Agreement other than those which are expressly stated in the Agreement.

21.3 Neither party shall have any remedy in respect of any statement not set out in the Agreement upon which it relied in entering into the Agreement, unless the statement was made fraudulently.

22 No partnership or agency

Nothing in the Agreement is intended to or shall operate to:

(a) create a partnership or joint venture of any kind between the parties;

(b) create a relationship of principal and agent between any of the parties; or

(c) otherwise authorise any party to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

23 Waiver

A failure or delay in exercising any right or remedy under the Agreement shall not constitute a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not prevent the further exercise of that right or remedy. A waiver of a breach of the Agreement shall not constitute a waiver of any other breach.

24 Variations

No party may amend or change this Agreement without the written consent of the other party.

25 Conflicts

If there is any conflict or inconsistency between the Agreement (excluding any Schedules) and any of its Schedules, the provisions of the Agreement (excluding the Schedules) shall prevail.

26 Invalidity

If a competent court or administrative body finds that any provision of this Agreement is invalid, illegal or unenforceable:

(a) the rest of this Agreement shall remain unaffected and in force;

(b) if deleting part of the provision would make it valid, legal or enforceable, it shall apply with all changes necessary to make it valid, legal or enforceable;

(c) if Clause 26(b) does not apply, the parties shall try to replace the provision with a valid, legal or enforceable provision which achieves as closely as possible the effect that the relevant provision would have achieved; and

(d) the obligations of the parties under the relevant provision shall be suspended during any attempt at substitution under Clause 26(c).

27 Further assurance

Each party must, at its own expense, take any action which the other party reasonably requests to:

(a) carry out the intended purpose of this Agreement; or

(b) perfect, preserve, protect or enforce the other party's rights under this Agreement; and

(c) ensure that third parties do the same.

28 Cumulative rights

The rights and remedies arising from this Agreement are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise.

29 Costs

Each party must pay its own costs in connection with the negotiation, preparation, execution, printing, perfection and implementation of this Agreement and the Order Form.

30 Counterparts

The parties may execute this Agreement in any number of counterparts, each of which is an original. A set of counterparts, executed by all the parties, together forms one and the same instrument.

31 Notices

31.1 All notices

This Clause applies to all notices and other communications between the parties under this Agreement (Notices). Notices must be in writing.

31.2 Delivery

Notices must be delivered by one of these methods:

(a) by hand;

(b) prepaid first class recorded delivery post; or

(c) prepaid airmail recorded delivery post (for an address outside the United Kingdom).

31.3 Address for Notices

Notices must be addressed to the party to be served at one of the following:

(a) if addressed to a company, at the following address

(i) **Customer**

Address: [*insert*]

Email address: [*insert*]

Attention: [*insert*]; or

(ii) **Supplier**

Address: [*insert*]

Email address: [*insert*]

Attention: [*insert*; or

(b) if addressed to an individual, at the address given at the beginning of this Agreement or, if the party to be served has notified the other party of any replacement address in the United Kingdom for service of Notice, at the replacement address.

31.4 When Notices take effect

A Notice delivered by hand is effective at delivery. A Notice sent by fax is effective on the next Business Day after the fax was sent. A Notice sent by post is effective:

(a) (for national mail) on the [second] Business Day after posting; and

(b) (for international mail) on the [fifth] Business Day after posting.

32 Governing law and jurisdiction

32.1 English law governs:

(a) this Agreement and its interpretation; and

(b) any non-contractual obligations arising from or connected with this Agreement.

32.2 The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Each party agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

The Agreement has been entered into on the date stated at the beginning of the Agreement.

EXECUTION PAGE

Signed by)
[name of duly authorised person])
for and on behalf of **Axcelot Ltd**:)

Duly authorised person

Signed by)
[name of duly authorised person])
for and on behalf of [name of company] :)

Duly authorised person

Schedule 1 – Service Definitions