



Registered Office: The Power House, 21 Woodthorpe Road, Ashford Middlesex, TW15 2RP, United Kingdom. Registered in England & Wales - Number 08779740

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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is dated:

[20]

PARTIES

(1) **Spectromax Solutions Ltd** incorporated and registered in England and Wales with company number 08779740, whose registered office is at The Power House, 21 Woodthorpe Road, Ashford, Middlesex, TW152RP (**Supplier**)

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER], whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

(A) The Supplier provides certain professional services which it makes available via the G-Cloud on a time and materials basis in accordance with framework arrangements established with the Government Procurement Service.

(B) The Customer wishes to use the Supplier's professional services.

(C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's professional services subject to the terms and conditions of this agreement and in accordance with the Call Off Terms.

AGREED TERMS

1. INTERPRETATION

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

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Call Off Terms: the standard terms for the provision of services (as required under the framework arrangements with the Government Procurement Service) agreed between the Customer and the Supplier and which are in addition to and which should be read in conjunction with the terms of this agreement.

Catalogue: the Government Electronic Marketplace or any subsequent pan-government catalogue or such other relevant medium in relation to the Services provision as the Supplier may notify to the Customer.

Change of Control: the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

Charge(s): the charges (including disbursements and fees) to be paid under this agreement to Supplier by Customer in consideration of the Services, as are more particularly set out in clause 7 and Schedule 3 (Charges and Payment) and specified in relation to any particular order in the Order Form.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such, ought reasonably to be understood as confidential in nature subject to the terms of this agreement or which is identified as confidential in clause 10.

Contract Manager: the person as defined in clause 3.1

Customer Data: data provided by the Customer during the Services.

Deliverables: means all products and materials in any media developed or enhanced by Supplier in relation to provision of the Services, including, without limitation, software solutions and

configurations, tools, computer data, diagrams, reports, publications and specifications; and such other outputs as may be specified in the Order Form at Schedule 1 (Order Form).

FOIA: the Freedom of Information Act 2000.

Force Majeure Event: any event which is beyond a party's reasonable control and as set out in clause 15.

G-Cloud: the UK Government Cloud (computing) Programme.

Government Procurement Service: means the UK government executive agency managing procurement within government more details of which are set out at gps.cabinet.office.gov.uk or such other successor URL used from time to time.

Initial Term: the initial term of this agreement being [two (2) years] from the date of the agreement or date of last signature whichever is the later or if the Services are provided in respect of a particular project until the completion of that project as defined in the Order.

Intellectual Property Rights: all patents, copyrights (including (without limitation) rights in computer software, source code and object code, configurations and/or customisations), design rights, trademarks, trade secrets, know-how, confidential information, moral rights, database rights and all other rights or forms of protection of a similar nature (registered or unregistered) and all applications for the same, anywhere in the world.

Milestones and Milestone Dates: the key stages and dates in performance of the Services under an Order as may be specified in the Order Form at Schedule 1 (Order Form).

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order Form: the form specifying an order (**Order**) for Services as set out in Schedule 1 (Order Form).

Order Term: the period of the Order as stated in the Order Form at Schedule 1 (Order Form).

Pre-existing Materials: means all materials, including without limitation any data, publications, reports and software, which existed before the execution of this agreement;

Principal Locations: means those locations as may be identified in the Order Form.

Renewal Period: the period of [twelve (12) months] following expiry of the Initial Term and automatically renewing on a 'rolling' basis for successive periods of [twelve (12) months] unless the Services provided relate to a project which has a finite term as specified in more detail in the Order in which case the term of that Order will come to an end at the end of the completion of the project.

Services: the professional services provided by the Supplier to the Customer under this agreement via the G-Cloud as more particularly described in Schedule 2 (Services) or in the Service Definition (as the case may be) and specified and agreed by the parties in the Order Form and which may include certain services provided or supported by subcontractors of the Supplier appointed from time to time as may be notified to the Customer, and such services as may be specified in Schedule 1 (Order Form).

Service Definition: the document in which the Supplier sets out in detail the specifications and parameters of the Services and related support arrangements.

Software: any software applications used, provided or made accessible by the Supplier during the course of the provision of the Services.

Subsidiary: means any company in which another has an interest of fifty per cent (50%) or more.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as described in the Service Definition.

Term: the total period of the agreement commencing on the date of the agreement and comprising the Initial Term and subsequent Renewal Period(s) or in relation to a particular project ending on completion of that project as defined in the Order.

Testing Requirements: the testing requirements as may be specified in the Order Form at Schedule 1 (Order Form).

1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 Reference to this agreement shall include its recitals, schedules and annexes, each of which shall form part of the agreement.

1.6 A reference to writing or written includes faxes but not e-mail.

1.7 In the event of any inconsistency between the terms in the main body of this agreement and the Order (under schedule1) and the remaining schedules, then the Order, followed by the terms in the main body of the agreement, shall take precedence.

1.8 In the event of any inconsistency between the terms of this agreement (including its schedules) and the Call Off Terms, the terms of the Call Off Terms shall prevail.

2. SERVICES

2.1 The Supplier shall during the Term or as specified the term set out in the Order Form for the provision of the services provide the Services to the Customer subject to the terms of this agreement, and use commercially reasonable endeavours to make the Services available [five (5) days a week] and during Normal Business Hours, or the period agreed by the parties in the Order Form except in the case of any Force Majeure Event or the temporary suspension of Services due to certain assurance and accreditation verification requirements of the Government Procurement Service, and in such circumstances the Supplier shall notify the Customer of the suspension of Services and the anticipated duration of any disruption likely due to such suspension as soon as is reasonably practicable.

2.2 The Supplier will, as part of the Services use reasonable endeavours to provide the Services in accordance with Supplier's normal customer support services as described in the Service Definition (and as may be agreed in the Order Form) and in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its absolute discretion. The Customer may purchase enhanced levels of service and/or support services separately at the Supplier's then current rates.

2.3 The Services shall be supplied in conformity with the specifications and entries set out in the Catalogue (as this may be updated or amended from time to time subject to the approval of the Government Procurement Service).

3. Account MANAGEMENT

3.1 Each party shall appoint a delivery lead to supervise and co-ordinate the performance of its obligations under this agreement (**Account Manager**) and shall inform the other in writing of the name and contact details of that appointed representative. Either party may change its lead person at any time upon written notice to the other.

3.2 The parties shall procure that their Contract Managers shall meet/communicate at regular intervals during the continuance of this agreement to discuss and minute the progress of the agreement and seek to pre-empt and resolve any possible disputes.

4. CUSTOMER DATA AND DATA PROTECTION

4.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4.2 The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up). The Customer shall be responsible for backing up any of its Customer Data provided to or received from using the Services in accordance with good industry practice.

4.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

(a) the Supplier shall not transfer or share personal data outside of the European Economic Area without the prior written consent of the Customer;

(b) the Customer shall ensure that it is entitled to transfer the relevant personal data to the Supplier and its subcontractors so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;

(c) the Customer shall ensure that any relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

(d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

4.4 Each party agrees that it shall and shall procure that its employees, agents and sub-contractors shall, at all times, comply with the provisions of the Data Protection Act 1998 in relation to its obligations under this agreement.

4.5 The Customer agrees that following termination of the framework arrangements including the Call Off Terms in place with the Government Procurement Service or expiry or termination of the last Order made under Schedule 1, the Supplier may retain certain data (including as required Customer Data) or information relating to the recipients of the Services, prices paid for the Services (and such other information as may be required to be maintained by the Supplier at the request of the Government Procurement Service) for a period of twelve (12) months.

5. SUPPLIER'S OBLIGATIONS

5.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

5.2 The Services will perform substantially in accordance with the Services Description.

5.3 The Supplier shall ensure that any of its personnel or representatives providing the Services will have the necessary skill and expertise to provide the Services on the terms set out in this agreement and shall ensure that while any such personnel are on the Customer's premises (where applicable) they will conform to the Customer's normal codes of staff and security practice to the extent Customer has provided notice in writing of such codes and practices.

5.4 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order Form acknowledging that any such dates shall be estimates only and time shall not be of the essence.

5.5 The Supplier shall maintain full and accurate records of the time spent by the Supplier personnel and/or subcontractors in providing the Services and shall produce such records to the Customer for inspection at all reasonable times on request.

5.6 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services, Software and/or any other materials or Deliverables by the Customer under this agreement contrary to the Supplier's instructions, or modification or alteration of the Services, Deliverables and/or any other materials provided by the Supplier. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, unless otherwise agreed in writing the Supplier or set out in the Order Form

(a) does not warrant that the Customer's use of the Services or any materials or Deliverables provided by the Supplier under this agreement will be error-free, or that the Services, any Deliverables and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services or Deliverables arising for the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.7 This agreement shall not prevent the Supplier from entering into similar agreements with third parties.

5.8 The Supplier shall be responsible for the acts and omissions of its subcontractors.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

(a) provide the Supplier with all necessary co-operation in relation to this agreement and all necessary access to information, premises, data, facilities and support by appropriately qualified personnel as may be reasonably requested by the Supplier in order to provide the Services, including but not limited to:

(i) Customer Data and security access information;

(ii) management information (e.g. in relation to Orders, invoicing, reporting and administrative data and documents associated with Orders and any arrangements made between Contract Managers);
and

(iii) without prejudice to Supplier's obligations of confidentiality, any other data or information requested by the Supplier to assist the Supplier fulfil its obligations of accountability and transparency as required by the Government Procurement Service;

and ensure any data or information is provided to the Supplier on a timely basis and is accurate and complete in all material respects;

(b) comply with all applicable laws and regulations with respect to its activities under this agreement;

(c) be responsible (at Customer's cost) for making available and preparing any relevant premises for the supply of the Services;

(d) ensure that the Customer's use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Customer's breach of this agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement including without limitation providing access to the Services;

(f) ensure that its employees and any sub-contractors co-operate fully with the Supplier in relation to the provision of the Services;

(g) assist the Supplier in fulfilment of its reporting obligations to the Government Procurement Service as may reasonably be requested by the Supplier from time to time;

(h) notify Supplier immediately if Customer becomes aware of any unauthorised use of the whole or any part of the Deliverables, Software or Services by any person and Customer shall assist Supplier in taking all reasonable steps to defend Supplier's rights therein; and

(i) acknowledge and agree that Customer may be identified by Supplier to any of Supplier's subcontractors as necessary for the Supplier's performance of its obligations under this agreement, and the Customer shall provide or procure the provision of such data or information as Supplier may reasonably request to be shared with Supplier's subcontractors (subject to Supplier's obligations to have in place appropriate agreements with its subcontractors, including in relation to confidentiality and data protection).

6.2 The Customer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Services or any other materials or Deliverables provided by the Supplier or its subcontractors under this agreement in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software and/or Services or any other materials or Deliverables provided by the Supplier or its subcontractors under this agreement; or

(b) use the Services and/or Services or any other materials or Deliverables provided under this agreement to provide services to third parties unless otherwise agreed in writing with the Supplier; or

(c) subject to the terms of this agreement, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or any other materials or Deliverables provided under this agreement available to any third party except the Customer.

6.3 The rights provided under this clause 6 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, unless otherwise agreed by the Supplier in writing.

6.4 If Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission or failure to comply with the terms of this agreement by Customer, Customer's subcontractors or employees, Supplier shall be excused (without liability) for non-performance of the Services or increased costs incurred to the extent that it results from such act or omission by the Customer.

6.5 Customer shall:

- (a) provide in a timely manner or as specified in the Order Form all reasonable access to its premises facilities, systems and personnel as the Supplier may reasonably request to perform the Services;
- (b) provide in a timely manner or as specified in the Order Form such information as the Supplier may reasonably request and ensure that such information is accurate in all material respects;
- (c) be responsible for (at its own cost) preparing the relevant premises facilities and systems of the supply of the Services

7. CHARGES AND PAYMENT

7.1 The Customer shall pay the Charges to the Supplier in accordance with this clause 7 and schedule 3 and as specified in the Order Form at the [daily/hourly] rates agreed.

7.2 The Customer shall on the date of the agreement provide to the Supplier valid, up-to-date and complete credit card details (as appropriate and agreed between the parties) or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card on the date of the agreement or as otherwise specified in the Order Form, or if an Order is placed during the Term the date(s) specified in the Order Form for the Charges payable in respect of the first month (or in respect of the first tranche of work carried out under the Order) and on the first day of each month or at subsequent points during the project as stipulated in the Order or such other period specified thereafter, or as otherwise agreed by the parties (the **due date**);
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer on the date of the agreement or as otherwise specified in the Order Form, or if an Order is placed

during the Term the date(s) specified in the Order Form for the Charges payable in respect of the first month (or in respect of the first tranche of work carried out under the Order); and on the first day of each month or at subsequent points during the project as stipulated in the Order thereafter or such other period specified thereafter and the Customer shall pay each invoice within thirty (30) days after the date of such invoice (the **due date**).

7.3 If the Supplier has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of the Supplier:

(a) the Supplier may, without liability to the Customer, suspend provision of the Services and as applicable disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid, the Supplier will not act unreasonably in such circumstances and will provide the Customer with reasonable notice of its intended action(s) in this respect to enable the Customer to make any outstanding payment; and

(b) interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bank of England at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.4 All amounts and Charges stated or referred to in this agreement shall be payable in pounds sterling; are, subject to the terms of this agreement, non-cancellable and non-refundable; and are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

7.5 The Charges in relation to any new personnel or tasks which the parties agree from time to time shall be agreed and confirmed in writing before any such new work is commenced.

7.6 Supplier shall render itemised invoices to the Customer and shall show any Value Added Tax separately on such invoices.

8. PROPRIETARY RIGHTS

8.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and Software and Deliverables or materials provided under this Agreement. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights (including Intellectual Property Rights) or licences in respect of the Services, Deliverables or other materials provided under this Agreement and the Software.

8.2 Subject to any rights held in Pre-existing Materials, which shall remain vested in the party holding them, all Intellectual Property Rights and all other rights in the Deliverables and software and/or the services (including any modifications howsoever made to such Deliverables) shall be owned by and shall remain the property of Supplier.

8.3 The Customer shall retain ownership of and/or own all Intellectual Property Rights in the Customer Data.

8.4 Supplier hereby licences all rights to Customer on a non-exclusive basis to such extent as is necessary to enable Customer to make use of Software, Deliverables and the Services for the purpose of this agreement and as more particularly defined in the Order Form and within the limitations set out in the terms of this agreement and as may be specified in the Order.

8.5 The parties acknowledge and agree that use of Intellectual Property Rights including in Pre-Existing Materials (and any such other materials, software or services as may be relevant) may require a party to obtain a written end-user licence from the relevant licensor on such terms as will entitle a party to use materials, software and other outputs to perform specified obligations under this agreement and in such circumstances both parties will work together in good faith to ensure such end user licences are established and agreed as may be necessary. Where any Software is provided

to Customer it will be done so on Supplier's separate licensing or Service terms from time to time in force.

8.6 Nothing in this agreement will prevent or restrict the Supplier from developing and using any techniques, ideas, concepts, information or know-how relating to the methods or processes of general application including those at the level of information technology business process and management consultancy.

8.7 Customer shall notify the Supplier immediately if Customer becomes aware of the whole or any unauthorised use of the use of the whole or any part of the Services or Deliverables by any person and Customer shall assist Supplier in taking all reasonable steps to defend the Supplier's right there

8.8 To the extent that any materials, Deliverables or software vest in customer contrary to the provisions above the customer hereby agrees to assign to Supplier with the full guarantee those rights to give effect to the intentions of the points above.

8.9 The provisions of this clause 8 shall survive expiration or termination of this agreement.

9. ACCEPTANCE

9.1 All Deliverables shall be deemed to have been accepted by the Customer if no issues concerning their quality or contents have been raised by the Customer within five (5) Business Days of their delivery to the Customer by the Supplier. The Customer shall not in any event unreasonably withhold or delay its acceptance.

9.2 Completion of the Services shall be deemed to have occurred when the Deliverables have been accepted by the Customer or as specified in clause 9.1 above, or as otherwise agreed between the parties.

10. CONFIDENTIALITY AND TRANSPARENCY

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; is independently developed by the receiving party, which independent development can be shown by written evidence; or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless permitted by the terms of this agreement or required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for purposes not in accordance with this agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

10.3 Subject to the terms of this agreement, neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.4 The Customer acknowledges and agrees that this agreement or parts of it may be made publically available in accordance with the Government Procurement Service's policy on transparency (subject to any redactions made at the discretion of the Government Procurement Service by considering and applying relevant exemptions under FOIA or such other successor legislation).

10.5 The Customer acknowledges and agrees that Supplier may pass information and Confidential Information (including pricing information) received under this agreement to the Government Procurement Service and which the Government Procurement Service at its discretion may decide

to share with another relevant Crown body or G-Cloud contracting entity in order to benefit the effective administration of the G-Cloud and/or for transparency purposes. In such circumstances the Supplier shall notify the Government Procurement Service in advance of any Confidential Information and request that such information not be shared with parties other than relevant Crown bodies or contracting entities participating in the G-Cloud.

10.6 The obligations of confidentiality under this clause 10 shall continue for the duration of this agreement and after its termination or expiration (howsoever caused) for a period of [two (2) years].

11. FREEDOM OF INFORMATION

11.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and Environmental Information Regulations and shall assist and co-operate with the Customer to enable the Customer to comply with its information disclosure obligations.

12. INDEMNITY

12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) incurred by the Supplier and/or its licensors arising out of or in connection with the Customer's use of the Services, Software, Deliverables or other materials provided by the Supplier, the Supplier's processing of the Customer Data in accordance with this agreement or any unauthorised use of the Services, Software, Deliverables or other materials provided to the Customer by the Supplier, provided that the Customer is given prompt notice of any such claim; the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim (at the Customer's expense); and the Customer is given sole authority to defend the claim.

12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services infringes any United Kingdom patent effective as of the date of this agreement, EU copyright, EU trade mark, EU database right or right of confidentiality, and shall indemnify the

Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that the Supplier is given prompt notice of any such claim; the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim (at the Supplier's expense); and the Supplier is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on a modification of the Services by anyone other than the Supplier; or the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights including any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

(a) arising under or in connection with this agreement;

(b) in respect of any use made by the Customer of the Services or any part of them; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

(b) 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 this agreement; and

(c) the Services are provided to the Customer on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

(a) the Supplier shall not be liable whether in tort (including for breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, lost savings, loss of business, lost turnover, loss of business opportunity, depletion of or damage to goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, punitive, incidental, exemplary, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

(b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2 or otherwise set out in this agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Charges paid for the Services during the twelve (12) months immediately preceding the date on which the claim arose, or where the claim occurs in the first year of this agreement the Charges paid up to the point of the claim or in respect of any particular Order the amount paid by the Customer in respect of that Order (whichever is the lesser amount) or as agreed in any particular Order from time to time.

13.5 The parties accept that the exclusions and limitations detailed above are reasonable and reflect a fair and reasonable allocation of commercial risk between them.

14. TERM AND TERMINATION

14.1 The agreement will be effective from the date of the agreement or date of last signature whichever is the later and (subject to earlier termination in accordance with its terms) shall continue for the Initial Term and thereafter shall be automatically renewed on a 'rolling' basis for successive twelve (12) month Renewal Periods, and continuing in force for the Term until terminated in accordance with the terms of this agreement save that if this agreement relates to the one Order only this agreement shall continue until the completion of that Order as specified in Order Form.

14.2 The agreement may be terminated at the end of the Initial Term or the then current Renewal Period by either party giving the other party thirty (30) days written notice prior to the end of the Initial Term or then current Renewal Period (as applicable) or the Customer may place a further Order for the Service.

14.3 This agreement may be terminated by the Customer on thirty (30) days written notice to the Supplier if the Supplier notifies the Customer that Supplier's provision of Services via the G-Cloud and/or the framework arrangements in place between the Supplier and the Government Procurement Service shall terminate.

14.4 This agreement may not be terminated by either party 'for convenience.'

14.5 The Order Term of any Order shall not be effected by termination of this agreement, howsoever arising save that the terms of this agreement shall continue in force in respect of any Order that is in flight on termination of this Agreement provided that:

(a) the Order shall terminate at the end of the Initial Term (if in the first year of the Order) or at the end of the next current Renewal Period (as applicable);

(b) the Customer and Supplier shall continue to comply with the provisions of this agreement with regard to any such in-flight Order and the terms of this agreement shall continue (and in respect of any continuing Order until the Order terminates).

14.6 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other on written notice if:

(a) the other party commits a material breach of any of the terms of this agreement which is irremediable or (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or

(b) the other party (in the case of the Customer) fails to pay any undisputed Charge on the due date and fails to pay such sum within thirty (30) days after receipt of written notice from the Supplier requiring it to do so; or

(c) the other party commits a number of persistent or continuous breaches where the continuous or persistent breaches amount to a material breach; or

(d) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

(e) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder; or

(f) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

(g) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(h) the other party ceases, or threatens to cease, to trade; or

(i) there is a Change of Control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010; or

(j) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.7 Subject at all times to the provisions of clause 14.5 on termination of this agreement (for any reason):

(a) all provision of, access to and use of the Services and/or Deliverables by the Customer (and any licence granted under this agreement) shall immediately terminate and the Supplier shall be under no further obligations to supply the Services;

(b) subject to the terms of the agreement, each party shall at their own expense within thirty (30) days return and make no further use of any property, information (including Confidential Information), documentation, trade marks and other items (including copies) belonging to the other party, unless they receive instructions to dispose of such in which case they will effect such disposal in accordance with the other party's request. Notwithstanding the foregoing, 'latent' data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by information technology experts and is generally considered inaccessible without the use of specialised tools and techniques will not be required to be returned or destroyed;

(c) the Customer shall upon request pay any outstanding invoices then owing and due to the Supplier;

(d) subject to clause 14.5 the Supplier may destroy or otherwise permanently dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all Charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning/disposing of Customer Data. To the extent that the Customer reasonably requires that the Supplier store Customer Data or any other materials or files belonging to the Customer on or after termination of this agreement the Supplier shall be entitled to charge the Customer at its then current rates for such storage; and

(e) the accrued rights of the parties as at termination shall not be affected or prejudiced.

15. FORCE MAJEURE

15.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by a Force Majeure Event including events, acts, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, terrorism, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15.2 Notwithstanding the above the Supplier shall use all reasonable endeavours to continue to perform its obligations under this agreement for the duration of such Force Majeure Event.

15.3 Either party may, during the continuance of any Force Majeure Event terminate this agreement immediately on written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the performance of the obligations hereunder, and which continues for more than one hundred and twenty (120) days.

16. WAIVER

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

17. SEVERANCE

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

part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

18.1 This agreement and any Order made under it, the Service Definition and the Call Off Terms constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. VARIATION

19.1 Requests for variations to the agreement or Services made by the Customer shall be made to the Supplier's Account Manager and the parties shall act reasonably and in good faith to discuss the request and as the case may be, agree such variation and any corresponding variations to Charges and the agreement, but Supplier shall be under no obligation to accept and implement any such request for a variation.

19.2 Supplier may update, vary or discontinue the Services (or any part of them) provided under this agreement from time to time at its absolute discretion. In relation to any material variations Supplier shall provide Customer with five (5) days written notice in advance of such variations. Such material variations/discontinuation shall not affect any Order that has been entered into between the parties under this agreement, but Supplier shall only agree new Orders subject to such the variations and shall not accept new Orders for any Services that have been discontinued.

19.3 Subject to the terms of the agreement, no variation of the agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

20. ASSIGNMENT

20.1 Save as provided in clause 20.2 below, the parties shall not be entitled to assign, novate, transfer or sub-contract any of their rights or obligations under this agreement.

20.2 The Supplier shall be entitled (subject to the prior written approval of the Customer which shall not be unreasonably withheld or delayed) to engage the services of independent contractors of its own to assist it with its duties hereunder, provided that the Supplier:

(a) shall not be relieved from any of its obligations hereunder by engaging any such independent contractor;

(b) shall inform the Customer of the identity of each such independent contractor before allowing such independent contractor to work on the Customer's premises; and

(c) shall secure binding obligations from any such independent contractor so as to ensure that the Supplier can comply with its obligations under this agreement including, in particular, its obligations of confidentiality and data protection.

21. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. NOTICES

23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post at the following details:

Supplier: Spectromax Solutions Limited

The Power House, 21, Woodthorpe Road, Ashford, TW15 2RP

Customer: []

[Address/Fax]

or such other address/fax as may be notified by the parties for such purposes.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

24. ETHICAL BEHAVIOUR

24.1 The parties shall not, and each party shall ensure that its personnel shall not, induce or do or agree to do any other act, failure to act or thing in connection with the Services, that contravenes any applicable law, regulation, code of conduct or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including:

(a) the UK Bribery Act 2010, the Proceeds of Crime Act 2002, the Theft Act 1968, the Fraud Act 2006 and the Companies Act 2006;

(b) in the case of a public official, any applicable law applicable to the public official in his capacity as such; and

(c) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the commentaries to it (as amended and/or added to from time to time).

24.2 Each party agrees to notify the other party and confirm the same promptly in writing immediately upon discovering any instance where it has, or any of its personnel have, failed to comply with any provisions of this clause 24.

25. GENERAL

25.1 On termination of the agreement (or any Order made under the agreement) howsoever arising, any clauses expressly or impliedly intended to survive, shall continue in full force and effect.

25.2 No public announcement, advertisement, press release, statement or other such publicity in connection with the agreement shall be made by the Customer without Supplier's prior written approval.

25.3 Supplier shall be allowed to use any Customer trade names or refer to Customer or this agreement or the Services to be rendered hereunder, directly or indirectly, in connection with any product, promotion or publication.

25.4 Both parties undertake not to make any offer of employment nor to employ nor contract with any person who is employed by the other party at any time during the life of this agreement and who is

involved in the receipt or supply of Services. This prohibition will survive the termination of this agreement for a period of one (1) year.

25.5 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this agreement.

25.6 Where required under the Government Procurement Service Framework requirements the parties agree they shall comply with the provisions of the Official Secrets Act 1911 to 1989 and section 182 of the Finance Act 1989.

26. GOVERNING LAW AND JURISDICTION

26.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

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

Service Order Form

Customer's Name	
Customer's Address	
Invoice Address	
Principal Contact	
Name:	
Address:	
Phone:	
E-Mail:	
Fax:	

Suppliers Name	Spectromax Solutions Limited
Suppliers Address	Power House, 21 Wood Thorpe Road, Ashford,TW15 2RP
Account Manager	
Name:	

Address:	
Phone:	
E-Mail:	
Fax:	

Short Service Description	
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Location	
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Services	
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Milestone Dates	
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Limitations from Customer	
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Customer

Signature

Supplier

Signature

BY SIGNING AND RETURNING THIS ORDER FORM BOTH PARTIES enter a legally binding agreement whereby the Customer offers to buy and the Supplier accepts to provide the Services specified in the Order Form, and by signing below the parties intend to be bound by the Order and the terms of Spectromax Solutions Limited Professional Services Agreement.