

Redsquad.

Master Services Agreement

1. AGREEMENT STRUCTURE

- 1.1 The definitions and rules of interpretation set out in Schedule 1 shall apply to each Agreement.
- 1.2 This MSA is an overall contractual framework governing the provision of Services by Supplier to Client. Where Client requires specific Services to be provided by Supplier, the Parties will agree an Order Form. The term will be specified on the order, if no such term is specified the agreement will be for a minimum term of 36 months unless otherwise stated from the supply of each service and subsequent renewal terms
- 1.3 Each agreement of an Order Form operates as a separate agreement for the provision of the specific Service(s) as set out in the Order Form, and is made up of the following documents (which together are referred to as the "Agreement"): (i) this MSA; (ii) all relevant Service Specific Terms applicable to the Services set out in the Order Form; and (iii) the Order Form, incorporating the appropriate Service Description and any relevant Statement of Work.
- 1.4 This MSA is supplemented by the following which shall apply to the provision of the Services and are incorporated into this document by reference: (i) the Acceptable Use Policy; (ii) the Billing Guide; (iii) the Operations Manual; and (iv) the Service Level Agreement.
- 1.5 Each Agreement is a separate agreement and shall be interpreted without reference to any other Agreement, Service Specific Terms or Order Form.
- 1.6 In the event of conflict between the terms making up each such Agreement, the following order of precedence shall apply where those items earlier in the list shall take precedence over those items later on: (i) the Order Form and any relevant Service Descriptions; (ii) the Service Specific Terms; (iii) the Clauses of this MSA; (iv) the Billing Guide; (v) the terms of any Schedules to this MSA; (vi) the Operations Manual; and (vii) the Acceptable Use Policy.

2. THE GOODS & SERVICES

- 2.1 Supplier will provide each Service for the Fees in accordance with the terms of the Agreement.
- 2.2 Any goods or equipment provided by Supplier shall be provided on a temporary basis (to be returned at Supplier's request following termination of the relevant Agreement), unless specifically documented in an Order Form as being sold to Client. Any goods sold shall be on the basis that risk transfers to Client on delivery, but title shall not pass until Supplier has received payment in full for the goods and all monies owed by Client to Supplier; and in the meantime Client holds the goods as bailee for Supplier. Client irrevocably agrees that Supplier may enter its premises during Business Hours to recover goods to which Supplier retains title if Client is in breach of any Agreement or on termination.
- 2.3 Any goods or equipment provided by the Client shall remain the client's and they shall retain responsibility, risk and title in and for them. Supplier will hold them as bailee. Client shall be responsible for insuring them with a reputable broker (including for any damage or loss they may cause while they are on the Supplier's premises).

3. RELATIONSHIP AND GOVERNANCE

- 3.1 Each Party will cooperate with the other Party in good faith in the performance of its respective activities contemplated by the Agreement through, among other things, making available, as reasonably requested by the other Party, such management decisions, information, resources, facilities, technology, approvals and acceptances in order that the provision of the Service under the Agreement may be accomplished in a proper, timely and efficient manner. Except as expressly provided otherwise, where agreement, approval, acceptance or consent of either Party is required by any provision of the Agreement, such action will not be unreasonably withheld or delayed.
- 3.2 The Parties shall meet or communicate as required to discuss the delivery and receipt of the Services, any Change Order proposals and any other issues relating to the Services, and may agree a more regular meeting commitment as required (to be specified in an Order Form or Statement of Work).

4. FEES AND PAYMENT

- 4.1 Client will pay Supplier the Fees as set out in the applicable Order Form in accordance with the billing and payment terms set out in the Billing Guide.
- 4.2 All Fees are stated exclusive of VAT or other local applicable equivalent taxes, which shall be paid by Client at the rate and the manner prescribed by law from time to time.
- 4.3 All Fees shall be paid without set-off or counterclaim and without any deduction or withholding.

5. CLIENT RESPONSIBILITIES

- 5.1 In addition to any other responsibilities or obligations described in the Agreement (including in the Service Specific Terms and the applicable Order Form), Client shall:
 - a. appoint a manager in respect of the Services to be performed under each Order Form, such person as identified in the Order Form. That person shall have authority to contractually bind Client on all matters relating to the relevant Services (including by signing Change Orders);
 - b. provide access to Client's premises and data and other facilities as may reasonably be requested by Supplier and agreed

- with Client in advance, for the purposes of performing the Services;
- c. provide to Supplier, in a timely manner, such materials, documentation, instructions and other information as Supplier may reasonably require in order to perform the Services and ensure that they are accurate and complete in all material respects;
 - d. secure any underlying rights, licences, wayleaves and consents and comply with any regulatory requirements associated with Client's use of the Services, or which relate to Client's industry or regulatory requirements;
 - e. implement from time to time Supplier's reasonable recommendations in relation to capacity and design, in particular to ensure that the Services are not under-dimensioned for their intended purpose;
 - f. use the Services in accordance with the Acceptable Use Policy; and
 - g. not, unless set out in the Order Form, offer services, whether by way of resale or otherwise, which are similar to or competitive to those provided by Supplier to any other Client of Supplier, including but not limited to internet access or other connectivity services.

5.2 Client acknowledges that Supplier's performance is dependent on Client's timely and effective performance of its responsibilities and other timely decisions and approvals. Client will be responsible for any losses or claims arising from: (i) a failure by Client, its third party contractors or other agents to perform its responsibilities in a timely and / or adequate manner; or (ii) any other act or omission of Client, its third party contractors or other agents which Client knew, or ought reasonably to have known, would result in any failure or delay to the Services; or (iii) failure of Client Equipment ("**Client Event**").

5.3 Supplier will be excused from failures to perform, or delays in performance of, its obligations under the Agreement ("**Supplier Default**") to the extent that: (i) a Client Event causes or contributes to a Supplier Default; or (ii) a Supplier Default is caused by Supplier following an express instruction from Client.

5.4 Supplier will: (i) notify Client as soon as reasonably practicable after it becomes aware of each Client Event; (ii) use its reasonable endeavours to continue to perform despite the Client Event; and (iii) use its reasonable endeavours to mitigate the adverse consequences of the Client Event.

5.5 Notwithstanding that Supplier may be impeded from the performance of its obligations as a result of a Client Event, Supplier will be entitled: (i) to continue to invoice (and Client must pay) the Fees in relation to all Services notwithstanding the Client Event; (ii) to receive an equitable adjustment in the performance schedule to take into account the impact of the delay (to be no less than the period of delay caused by the Client Event) and increased compensation to reflect any additional costs and expenses incurred (including in relation to any Supplier personnel which should have been providing the Services); and (iii) to charge Client for additional resources required as a result of the Client Event. Unless otherwise agreed, Client shall pay Supplier's applicable time and materials rates, or costs incurred for any additional resources or level of effort expended by Supplier (including wasted effort) as a result of a Client Event.

6. INTELLECTUAL PROPERTY

6.1 Each Party (or its licensors as applicable) shall retain ownership of: (i) its IPR which were existing prior to each respective Agreement; or (ii) IPR developed, licensed or acquired by or on behalf of a Party or its licensors independently from the Service, in each case, including any modifications or derivatives thereof which may be created as part of the Service (collectively "**Pre-Existing IP**").

6.2 Supplier grants to Client, during the term of each Agreement, a non-exclusive, non-transferable licence to use Supplier's Pre-Existing IP solely to the extent necessary to receive and use the Services for its own internal purposes.

6.3 Client grants to Supplier (and its subcontractors), during the term of each Agreement, a non-exclusive, fully paid, worldwide, non-transferable, limited licence to use Client's Pre-Existing IP (and shall obtain the same licence / consent as required from any third party), solely for the purpose of providing the Service.

6.4 Additional provisions relating to IPR may be included in the Service Specific Terms. Notwithstanding any provision to the contrary in the Agreement: (i) each Party is free to use concepts, techniques and know-how retained in the unaided memories of those involved in the performance or receipt of the Service; (ii) Supplier is not precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Services provided to the extent that they do not contain Client Confidential Information; (iii) nothing in this MSA shall operate to prevent Supplier from making use of know-how acquired, principles learned or developed or experience gained during the performance of the Services; and (iv) Supplier name, Supplier logo, and the product names associated with the Services are trademarks of Supplier or third parties, and no right or license is granted to Client to use them.

7. CONFIDENTIALITY

7.1 Each Party may have access to Confidential Information and the receiving Party agrees that Confidential Information may only be used for the purposes set out in the Agreement and that it will protect Confidential Information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

7.2 Confidential Information may only be disclosed by the receiving Party to an employee, subcontractor or (with the consent of the disclosing Party) to a third party if required for the purpose of the Agreement and provided such Parties are bound by substantially similar obligations of confidentiality.

- 7.3 Supplier may retain and use Confidential Information relevant to its business purposes (including to provide or enhance services) so long as its use of such Confidential Information is in an aggregated and anonymised or pseudonymised manner.
- 7.4 Nothing in any Agreement will prohibit or limit either Party's use of information: (i) previously known to it without an obligation not to disclose such information; (ii) independently developed by or for it without use of Confidential Information; (iii) obtained from a third party which was not, to the receiving Party's knowledge, under an obligation not to disclose such information; or (iv) which is or becomes publicly available through no breach of any Agreement by the receiving Party.
- 7.5 Each Party is entitled to disclose Confidential Information to the extent required by law or by any statutory or regulatory authority, provided that promptly upon receiving any such request and to the extent legally permissible, it: (i) advises the other Party of the full circumstances of the required disclosure; (ii) takes actions necessary or reasonably required by the other Party to minimise any disclosure; and (iii) to the extent possible, obtain confidentiality undertakings from the entity to whom the Confidential Information is to be disclosed.
- 7.6 The disclosing Party may, at any time, request that the receiving Party returns, destroys or deletes (and confirms the destruction or deletion of the same) as instructed, and in such a manner that it cannot be recovered, all Confidential Information of the disclosing Party in the receiving Party's possession or control. Notwithstanding the foregoing, each Party may archive all copies of Confidential Information that it is required to retain to comply with law and its other record-keeping requirements.
- 7.7 Neither Party will use the other Party's name outside its organisation without prior written consent of the other Party.
- 7.8 The provisions of this Clause 7 shall continue to apply for a period of three (3) years after termination or expiry of the last surviving Agreement.

8. DATA PROTECTION

- 8.1 Both Parties will fully comply with all applicable requirements of Data Protection Legislation. In relation to data transfers with EU countries, if required and on request, Supplier will enter into the Standard Contractual Clauses as published by the European Commission with Client.
- 8.2 The Parties acknowledge that depending on the Services being provided, Supplier will be either a Data Controller, a Data Processor or both under the Agreement.
- 8.3 To the extent that Supplier is required to process Personal Data on behalf of Client as a Data Processor, the Parties shall comply with their responsibilities as set out in Schedule 2 (Data Processing), in addition to what is agreed in the Order Form for the processing of Personal Data.
- 8.4 Supplier shall comply with RIPA 2000 and Client consents to Supplier doing all such acts as may be necessary for Supply to comply with such requirements.

9. WARRANTIES

- 9.1 Each Party warrants that upon its execution, the Agreement will not materially violate any term or condition of any agreement that such Party has with any third party and that the officers executing the Agreement are authorised to bind such Party to the applicable terms and conditions.
- 9.2 Supplier warrants that each Service will be performed with reasonable skill and care and that it will be provided substantially in accordance with the relevant Service Description.
- 9.3 These preceding warranties together with any service specific warranties set out in the Service Specific Terms (if any) exclude all other warranties, terms, conditions and representations, express or implied, including fitness for purpose, merchantability, non-infringement, satisfactory quality, quiet enjoyment or otherwise.

10. EMPLOYEES; SUBCONTRACTING

- 10.1 Supplier will, where reasonably possible, maintain continuity of personnel throughout the provision of the Services but shall always reserve the right to determine which personnel shall be assigned to perform Services, and to replace or reassign such personnel during the Term.
- 10.2 Supplier may, without Client's prior approval: (i) enter into subcontracts for provision of any part of the Services; or (ii) cause its Affiliates to provide any of the Services. Client hereby consents to Supplier's use of Supplier Affiliates and subcontractors in the performance of the Agreement. If Client expresses any concerns to Supplier of material performance issues with any Supplier subcontractors, Supplier will cooperate with Client to resolve such concerns on a reasonable, mutually acceptable basis. The use of any such subcontractors or Affiliates shall not release Supplier from its responsibilities and obligations under the Agreement.

11. LIMITATION OF LIABILITY

- 11.1 Nothing under any Agreement excludes or limits the liability of a Party:

- a. for death or personal injury caused by its (or its agents') negligence;
 - b. for any loss to the extent it is caused by fraud or fraudulent misrepresentation;
 - c. for any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - d. for any other liability which cannot lawfully be excluded or limited.
- 11.2** Except as set out in Clauses 11.1 and 11.4, in no event will either Party be liable, whether based on an action or claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, the Agreement, for:
- a. loss of profits, business, revenue, data, contracts, opportunity, anticipated savings, goodwill or reputation; or
 - b. any consequential or indirect losses or damages (including where such loss or damage is of the type specified in Clause 11.2(a)).
- 11.3** Subject to Clauses 11.1 and 11.4, the total aggregate liability of either Party to the other whether based on an action or claim in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, each Agreement will be limited to an amount equal to 125% of the Fees paid or payable by Client under the relevant Agreement during the twelve (12) month period immediately preceding the event giving rise to the claim.
- 11.4** The limitations and exclusions of liability set out in Clause 11.2 and 11.3 will not apply to:
- a. the indemnities set out in Clause 17; or
 - b. the obligation of Client to pay the Fees;
 - c. the obligation in clause 2.3 relating to property damage and insurance.
- 11.5** Each Party shall comply with its common law duty to mitigate loss.

12. TERM AND TERMINATION

- 12.1** The term of this MSA will commence on the Effective Date and will continue in force for the duration of all Agreements to which it applies and after all Agreements expire or are terminated, this MSA will continue until terminated for convenience by either Party on ninety (90) days' written notice to the other Party ("**Term**").
- 12.2** Each Agreement will start on the Service Commencement Date and shall continue in force for the Initial Service Term unless and until terminated in accordance with this Clause 12. From the end of the Initial Service Term, unless otherwise expressly stated in the Order Form, the Agreement shall automatically continue until no later than ninety (90) days notice has been served.
- 12.3** Either Party may terminate an Agreement for material breach, upon giving ninety (90) days' written notice, unless the Party receiving the notice cures such breach within the ninety (90) day period.
- 12.4** Supplier may terminate services and any or all Agreements by written notice with immediate effect if Client fails to pay any Fees for more than thirty (30) days.
- 12.5** Either Party may terminate an Agreement with immediate effect upon written notice if the other Party ceases its business operations, if any step is taken for the appointment of administrators, liquidators or receivers (or an equivalent in any jurisdiction), or for a compromise or voluntary arrangement with creditors, or if a liquidator is appointed (excluding the presentation of a petition by a creditor for administration or liquidation unless that is not dismissed within ninety (90) days, and excluding the taking of any step as part of a solvent reorganisation of the business) or otherwise becomes generally unable to meet its obligations under the Agreement.
- 12.6** Client may terminate an Agreement for convenience by notice in writing before the expiry of the Initial Service, for which an early termination fee will be payable. The early termination fee shall be equal to the fees payable in the remaining part of the Initial Service Term or any Extended Service Term.
- 12.7** This agreement or termination of individual services within the agreement can be ended by either party by giving the (90) days notice in writing provided that the end of the notice period coincides with the end of the Minimum Period
- 12.8** If we give you notice you must pay rental up to the end of that notice. If you give us notice, you must pay rental until the (90) Days from the date we receive your notice, or until the end of the notice if that is later. The (90) Days notice period will not apply if we are terminating services with immediate effect.
- 12.9** If you give notice that terminates the agreement or any part of the agreement prior to the end of the Minimum Period (other than because we have materially altered the conditions of this Agreement) then we will levy a cancellation charge in accordance with the following: Agreed monthly rental of service multiplied by the number of months remaining on agreement.
- 12.10** All early termination calculations in accordance with clause 12.9 will be calculated at the standard pricing of the tariff and not the negotiated discounted tariff. In the avoidance of doubt, all tariffs are discounted by a minimum of 25% off standard pricing, unless advised in writing differently from a director of the supplier.
- 12.11** An Agreement may be terminated in part if it includes more than one Service. If a Service is dependent upon another Service that is terminated (under any Agreement), Client will be responsible for the consequences of the partial termination and Supplier will be released from the obligation to provide that affected Service to the extent of the dependency, without change to the fees payable by Client for the affected Service.

- 12.12 If an Order Form specifies the provision of multiple Services with differing Initial Service Terms, Service Commencement Dates, applies to some but not all of those Services, or where an Agreement is terminated in part, each Service shall be treated as a separate Agreement for the purposes of calculating any notice period for termination of the Agreement or any fee on termination (including early termination).
- 12.13 If an Agreement or Service is terminated, Client will pay Supplier for all Services rendered and expenses incurred prior to the date of termination.
- 12.14 If Client wishes to continue to use a Service after the date given in any termination notice, and Supplier agrees to continue to provide that Service, that Service shall continue to be provided on the terms of the preceding Agreement. The price of the Service shall change to Supplier's standard price for such Services on a periodic basis equivalent to the level of Client's commitment.
- 12.14.1 Once the minimum term for each Connectivity or Hosted service(s) has lapsed, Redsquid reserves the right to increase your monthly charges by 10% for all out of contract service(s). The price increase will occur automatically to your account starting 30 days after the lapse of the contract. The new price will remain in place until a new minimum term contract is in place or until you serve notice to end this agreement. You have the right to end the agreement after the minimum term serving 90 day's notice in writing to cancellations@redsquid.co.uk
- 12.15 Except where otherwise specified in an Order Form, termination of an Agreement does not affect any other Agreement.

13. NON-PAYMENT, SUSPENSION OF THE SERVICES

- 13.1 If Supplier, acting reasonably, considers that the continued use or provision of the Services: (i) may pose a security risk for Supplier, Client or any third party; or (ii) may cause Supplier or Client to be in violation of any Law, order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority, Supplier may temporarily suspend the Services in whole or in part until the Parties acting reasonably and working together in good faith reach a mutually agreeable solution.
- 13.2 Supplier may also suspend any or all of the Services under any Agreement with Client in whole or in part if Client fails to pay when due any of the Fees exceeding (in the aggregate) five hundred pounds (£500) and such failure continues for at least thirty (30) days following the provision by Supplier of notice requiring payment.
- 13.3 Any suspension shall not automatically relieve Client of the obligation to pay any Fees, it shall not generate any liability for Supplier whatsoever, nor count towards any service credit calculation or other performance criteria.

14. FORCE MAJEURE; DELAY

- 14.1 Neither Party will be liable for any delays or failures to perform due to a Force Majeure Event. If a default due to a Force Majeure Event shall continue for more than sixty (60) days, then either Party will be entitled to terminate any affected Agreement by giving not less than thirty (30) days written notice to the other. Neither Party shall have any liability to the other in respect of the termination of an Agreement as a result of a Force Majeure Event save and except for Client's payment obligations up to and including the effective date of termination of the Agreement.
- 14.2 Without limiting the foregoing, to the extent Client fails to perform any of its responsibilities described in the Agreement, Supplier shall be excused from failure to perform any affected obligations under the Agreement and, in the event of delay, shall be entitled to a reasonable extension of time considering the particular circumstances, and a reasonable reimbursement of cost. Each Party will notify the other as promptly as practicable after becoming aware of the occurrence of any such condition.
- 14.3 If the Services are delayed for any other reason whatsoever (including a third party's action or inaction, a Client Event or as a result of new information or requirements that become clear as the Supplier delivers the Services) the Parties shall meet and agree on a commercially reasonable basis a revised timetable for delivery.

15. CHANGE CONTROL

- 15.1 Each Party may propose a change to the scope, terms or conditions of this MSA or any Order Form and such change shall only be effective when it is set forth in writing executed by authorised representatives of both Parties ("Change Order"). If Supplier, at the request of or with the prior written agreement of Client, performs work without a Change Order that is not covered by an Order Form or that exceeds the scope of Services defined in the applicable Order Form, such work shall be considered Services provided under this MSA or such Order Form and Client shall pay Supplier's applicable time and materials rates, or costs incurred for any additional resources or level of effort expended by Supplier. Once approved, such a change will be deemed to supplement or modify, as applicable, the terms and conditions of this MSA and the applicable Order Form. The procedure outlined in this Clause 15 shall be referred to as the "**Change Control Procedure**".

16. COMPLIANCE WITH LAWS

- 16.1 Each Party shall comply with:
- I. all Laws applicable to their respective businesses; all Anti-Corruption Laws, and shall;
 - II. have and maintain its own policies and adequate procedures, to ensure compliance with the Anti-Corruption Laws.

and will enforce them where appropriate;

- III. promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Agreement; and
- IV. immediately notify the other Party if a foreign public official becomes one of its officers or employees or acquires a direct or indirect interest in the first Party (and the first Party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of any Agreement); and
- V. all export control and economic sanctions laws applicable to its performance under the Agreement. Client will not use the Services for any activities involving a country subject to comprehensive economic sanctions (including Cuba, Iran, North Korea, Sudan, Syria or the Crimea region of Ukraine), or involving a party in violation of such applicable trade control laws, or that require government authorisation, without first obtaining the written consent of Supplier and the required authorisation.

16.2 Any breach of this Clause 16 shall be deemed a material breach under Clause 12.

17. TRANSFER REGULATIONS

17.1 Subject to Clause 17.4, the Parties consider that there will be no employees transferring under the Transfer Regulations on commencement or cessation of the provision of any of the Services (or any part of them), irrespective of whether the Services (or the relevant part of them) are taken over from or by Client or a third party.

17.2 If as a consequence of the commencement of the provision of any of the Services (or any part of them) it is found or alleged that the employment of any Client employee has transferred to Supplier, pursuant to the Transfer Regulations or otherwise, Client shall indemnify and keep indemnified Supplier against any employment claims made by such Client employee.

17.3 If as a consequence of the cessation of the provision of any of the Services (or any part of them) it is found or alleged that the employment of any Supplier employee has transferred to Client, pursuant to the Transfer Regulations or otherwise, Supplier shall indemnify and keep indemnified Client against any employment claims made by such Supplier employee.

17.4 Prior to entering into an Agreement, the Parties will discuss in good faith whether any special provisions are required to be included in the Order Form to take into account the risks associated with any transfer under the Transfer Regulations that may occur upon commencement or cessation of the Services under that Agreement, including taking into account any arrangements that Client or any Affiliate of Client may have with third parties where there is a risk that their staff may transfer to Supplier under the Transfer Regulations.

18. ASSIGNMENT

18.1 Neither Party may assign the Agreement without the prior written consent of the other (other than, upon written notice, to a Party's Affiliate based in the same country as such assigning Party and provided the assigning Party remains liable for the payment of any Fees due under the Agreement should the assignee fail to pay as required under the Agreement).

19. EXIT ASSISTANCE

19.1 Without prejudice to any other rights and obligations in an Agreement, Supplier shall co-operate and provide reasonable assistance required by Client to ensure an orderly transition of the Services to Client or any replacement supplier in the event of termination or expiry of an Agreement.

20. MISCELLANEOUS

20.1 **Entire Agreement.** The Agreement sets forth the entire understanding between the Parties and supersedes, without limitation, all prior discussions, communications, representations and arrangements between them with respect to the subject matter of that Agreement. Each Party acknowledges that it is entering into the Agreement solely on the basis of the agreements and representations contained herein, and that it has not relied upon any representations, warranties, promises, or inducements of any kind, whether oral or written, and from any source.

20.2 **Severability.** If a court of competent jurisdiction finds any term of the Agreement to be invalid, illegal or otherwise unenforceable, such term will not affect the other terms of the Agreement and will be deemed modified to the extent necessary, in the court's opinion, to render such term enforceable while preserving to the fullest extent permissible the intent and agreements of the Parties set forth in the Agreement.

20.3 **No waiver.** No waiver of any provision of the Agreement will be effective unless it is in writing and signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under the Agreement is not a waiver of that Party's right to later enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise of these rights or any other right.

20.4 **Notices.** Any notice or other communication provided under the Agreement will be in writing, and may be given at the address given for the party in this MSA by hand (on delivery), by nationally recognised courier or certified post (at gam on the Business Day after it is certifiably received); or by email to an authorised person (24 hours from delivery if sent to the

correct email address and no notice of delivery failure is received). In relation to email, any termination notice must also be sent to also to cancellations@redsquid.co.uk to be effective. An authorised person will be the manager person by each party as the usual contact point, as each Party may notify the other from time to time. Any legal proceedings must be issued on paper to the physical address. Either Party may designate a different address by giving ten (10) days' written notice to the other Party.

- 20.5 Affiliates:** Supplier may rely upon services provided by its Group Companies from time to time to provide the Services. Client may arrange for one of its Group Companies to receive the Services. This will be recorded in the relevant Order Form and will be governed by and enforceable by those Group Companies as if they were parties to this MSA, but in the event of default may be enforced against the relevant Group Company, or Supplier or Client (as appropriate), as if they were the relevant defaulting party.
- 20.6 Third Party Rights.** Each Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.
- 20.7 Survival.** All provisions of the Agreement that are by their nature intended to survive expiry or termination of the Agreement will survive such expiry or termination.
- 20.8 Variation.** Supplier may make changes to the Service Descriptions, Billing Guide, Acceptable Use Policy and / or Operations Manual from time to time. Changes which are operational by nature, or purely for clarification will be effective immediately upon notice. Material changes will become effective thirty (30) days after the notice is given unless Client notifies Supplier within that thirty (30) day period that that Client does not agree with the change. The Parties shall then act reasonably and work together in good faith to reach a mutually agreeable solution. Except as set out above, the Agreement may not be modified or amended except by the mutual written agreement of the authorised representatives of the Parties.
- 20.9 Counterparts.** Any Agreement may be executed electronically and in multiple counterparts, each of which will be considered an original, and all of which together will constitute one agreement binding on the Parties.
- 20.10 Independent contractor.** Each Party is an independent contractor and does not have any authority to bind or commit the other. Nothing in the Agreement will be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between such Parties for any purpose.
- 20.11 Non-solicitation.** Neither Party will solicit, offer work to, employ, or contract with, directly or indirectly, any of the other Party's or its affiliates' employees during their engagement in the Services or during the twelve (12) months after the employee ceases to be engaged in such Services. This restriction will not apply to employees who independently respond to indirect solicitations (such as general advertisements) not targeting such employees.

21. DISPUTE RESOLUTION

- 21.1** The Parties agree to use reasonable endeavours to resolve any dispute or claim relating to an Agreement in accordance with this Clause 21 in good faith. Each Party must follow the procedures in this Clause 21 before starting court proceedings (except for urgent injunctive or declaratory relief).
- 21.2** If a dispute or claim arises between the Parties that cannot be resolved promptly between the Parties at an operational level, either Party may notify the other Party of a formal dispute. Each Party must nominate a senior executive to meet within fifteen (15) days of the date of the notice (or any other agreed period) to resolve the dispute or claim. In the event that the dispute is still not resolved the parties may refer the dispute to Ofcom to decide under Section 186 of Communications Act 2003 whether it is appropriate for them to handle the dispute.

22. GOVERNING LAW AND JURISDICTION

- 22.1** The construction, validity and performance of the Agreement and all non-contractual obligations arising from or connected with the Agreement shall be governed by the laws of England.
- 22.2** Subject to Clause 21, each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Agreement.

Acceptable Use Policy

shall mean the Supplier's acceptable use policy available at <https://redsquid.co.uk/> as may be amended by the Supplier from time to time;

Affiliate

means, in relation to either Party, a company which is a subsidiary or holding company of it, or any company which, is a subsidiary of any such holding company, "holding company" and "subsidiary" having the meanings ascribed to them in section 1159 Companies Act 2006;

Agreement

means the agreement between the Customer and Supplier, which includes the terms and conditions of this Agreement, the Schedules (including any annex thereto), the Tariffs and the Order;

Ancillary Equipment

means the equipment (including any Software) owned and licensed by the Supplier, its subcontractors or Third-Party Supplier and placed on the Customer's premises, which is required to access the Service;

Applicable Law

means any legislation, authorisations, permissions, rules, regulations, codes of practice, orders and guidelines relating to the provision and/or use of the Services, including any directives or other requirements issued by any regulator from time to time;

Change of Control

means in relation to the Customer where there is a material change in the exercise, control or holding of the voting shares (unless this is due to an internal group reorganisation);

Charges

means the fees payable for the Services, Support Services and/or Equipment as set out in the Order, the applicable **Schedule 3 (Services)** and/or **Schedule 4 (Support Services)**, or as published on the Supplier's website at <https://redsquid.co.uk/>

Confidential Information

means any information of a confidential nature whether disclosed in writing or orally, is expressly stated to be confidential or can reasonably be expected to have been considered confidential, including without limitation, information in relation to a Party's affairs or business or method of carrying on business and the terms of this agreement;

Commencement Date

means either,

- a. the date the Customer is notified by the Supplier that the Service (or any part of the Service, including each Site) will be ready to use, or;
- b. where Service comprises of multiple Connections, a Connection will be Connected to the Network, or;
- c. if earlier, the date upon which the Customer first uses the Service (or any part of the Service, including each Site) or Connection;

Connection

means the connection of the Services (or any part thereof, including each Site) to the Network and "Connected" shall be construed accordingly;

Controller, Data Subject, Personal Data, Processor and Processing

shall have the respective meanings given to them in applicable Data Protection Legislation from time to time (and related expressions, including process, processed, processing and processes shall be construed accordingly) and international organisation and Personal Data Breach shall have the respective meanings given to them in the GDPR;

Customer Complaints Code

shall mean the Supplier's complaints code available at <https://redsquid.co.uk/> as may be amended from time to time;

Customer Equipment

means the existing Customer premises equipment and any purchased Hardware (including Software) used by the Customer in connection with the Service, other than the Ancillary Equipment and Rental Equipment;

Customer Network

means the Customer's physical telecommunications and/or data network infrastructure, systems and Equipment located at the Site to which the Services will be connected;

Data Protection Legislation

means, as binding on either party or the Services:

- a. the Data Protection Act 2018, European Privacy and Electronic Communications Directive 2002/58/EC and, the General Protection Regulation (EU) 2016/679 ("**GDPR**");
- b. any laws which implement such laws; and (iii) any laws or regulations which replace, extend, re-enact, consolidate or amend any of the foregoing.

Documentation

means the documentation made available to the Customer by the Supplier or by its suppliers with manufacturers recommendations and instructions for use of the Services;

Equipment means the Customer Equipment, Hardware and the Ancillary Equipment and as listed in the Order, or where applicable

Fair Use Policy shall mean the Supplier's fair use policy available at <https://redsquid.co.uk/> as may be amended by the Supplier from time to time;

Fraudulent Activity means any activity which constitutes threat or breach of security, theft, fraud and/or deception (whether actual or attempted), including but not limited to use of the Services;

- a. without the Customer's knowledge.
- b. utilizing the Customer's authentication details; or
- c. from an authenticated IP address.

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means physical equipment purchased by the Customer from the Supplier and which is necessary for provision of the Services;

Industry Regulations means rules and regulations set by relevant industry governing bodies which control and/or govern specific business activities (e.g. The Office of Communications "Ofcom");

Intellectual Property Rights means any copyright, patent, registered design, design rights, utility models, trademarks, trade secrets, know how, database rights, Confidential Information or any other registered or unregistered intellectual property rights of whatever nature subsisting anywhere in the world;

Minimum Term means the initial period of this Agreement as specified in the Order and if not specified shall be the period calculated in accordance with clause 1.2

MACD Services means the provision of "moves, additions, changes and deletions" being engineering services within the scope of this Agreement which the Supplier is requested to carry out by the Customer in accordance with sub-clauses 3.17 to 3.19 inclusive;

Network means a Third-Party Supplier telecommunications and/or data network providing connectivity to the Service;

Normal Working Hours means 09:00hrs to 17:30hrs on a Working Day;

Order means an order issued by the Supplier for the provision of Services, Hardware, Software and/or Ancillary Equipment under this Agreement

Privacy Policy shall mean the Supplier's privacy policy available at <https://redsquid.co.uk/> as may be amended by the Supplier from time to time;

Professional Services means technical engineer support, including but not limited to project management, planning and design, network assessments, business requirement deliverables, configurations of user interfaces, number porting, phone deployment and training, as specified in the Order and further detailed in

Schedule (Professional Services);

Quality Standards shall mean a series of documents that provide requirements, specifications, guidelines or characteristics that are used consistently to ensure that materials, products, processes and services meet good quality, such as ISO 9001 Quality Management Systems;

Rental Equipment means the equipment (including any Software) identified in the Order or the applicable Schedule, which is owned and licensed by the Supplier and leased to the Customer under a separate lease agreement for use by the Customer in connection with the Service, other than the Ancillary Equipment and Customer Equipment;

Additional Schedules (Services) means a series of sub-schedules (including any annex thereto) describing the relevant Services provided under this Agreement;

Site(s) means (where applicable) a physical location as specified in the Order and where the Equipment shall be located and/or to which the Service will be provided;

Software means the software to be licensed to the Customer as specified in an Order or Schedule together with any imbedded software, which is necessary for the provision of Services and/or use of the Equipment and may also include Third-Party Software;

Supplier's Policies shall mean the Supplier's Acceptable Use Policy, Fair Use Policy, Privacy Policy and any other relevant policy applicable to the provision of the Services, which are available at <https://redsquid.co.uk/> as may be amended by the Supplier from time to time;

Support Services means the provision of support services, provided by Supplier to the Customer as specified in the Order and further detailed in **Schedule (Support Services);**

Tariffs means the applicable tariffs as referred to in this Agreement and the Order for the provision of the Services available on the Supplier's website <https://redsquid.co.uk/> and as periodically updated from time to time

Termination Charges means any compensatory charges which become due and payable by the Customer to the Supplier on termination of this Agreement before the end of the Minimum Term.

Data Processing

- 1.1. In the Agreement the terms "**Personal Data**", "**Data Processor**", "**Data Subject**", "**process**", and "**Data Controller**" are as defined in the Data Protection Legislation.
- 1.2. Where Personal Data is processed by Supplier on behalf of Client in performing its obligations under the Agreement, Client is the Data Controller and Supplier is the Data Processor.
- 1.3. Client will: (i) be solely responsible for determining the purposes for which and the manner in which Personal Data are, or are to be, processed; and (ii) ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Supplier for the duration and purposes of the Agreement.
- 1.4. Where Supplier processes Personal Data on behalf of Client, Supplier shall, in respect of such Personal Data:
 - (a) act only on written instructions and directions from Client and shall comply promptly with all such instructions and directions received from Client from time to time;
 - (b) immediately notify Client if, in Supplier's opinion, any instruction or direction from Client infringes the Data Protection Legislation but shall continue processing according to such direction or instruction except to the extent Client withdraws or amends such direction or instruction;
 - (c) not process Personal Data for any purpose other than for the provision of Services to Client and only to the extent reasonably necessary for the performance of the Agreement;
 - (d) not disclose Personal Data to any employee, director, agent, contractor or affiliate of Supplier or any third party except as necessary for the performance of the Services, to comply with Law or with Client's prior written consent;
 - (e) implement all and appropriate technical and organisational measures:
 - (i) to protect the security and confidentiality of Personal Data processed by it in providing the Services; and
 - (ii) to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, access, or processing; and
 - (iii) as required under Data Protection Legislation to ensure a level of security appropriate to the risk, including as appropriate: (A) the pseudonymisation and encryption of Personal Data; (B) the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services; (C) the ability to restore the availability and access to the Personal Data in a timely manner; and (D) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring and maintaining the security of the processing;
 - (f) notify Client without undue delay of any request made by a Data Subject under Data Protection Legislation in relation to or in connection with Personal Data processed by Supplier on behalf of Client and, if required by Client, permit Client to handle such request and at all times cooperate with and assist Client to ensure its compliance with its obligations under the Data Protection Legislation in relation to such Data Subject requests, including where Data Subjects exercise their rights to (i) access, rectify or erase Personal Data; (ii) restrict or object to the processing of Personal Data; or (iii) the portability of Personal Data. If Client elects not to handle any Data Subject request received by Supplier, Supplier shall comply with such request. In all cases, Supplier shall provide a copy to Client of all Personal Data which it does so disclose.
 - (g) process the Personal Data in accordance with any specified duration, purpose, type and categories of data subjects as set out in the Order Form.
- 1.5. Supplier shall, without undue delay and in any event within 48 hours of becoming aware, notify Client in writing of any actual or suspected accidental, unlawful or unauthorised destruction, loss, alteration, access to, disclosure of or processing of Personal Data ("**Incident**"). Such notice shall include reasonable details of the Incident including without limitation: (i) a description of the Incident; (ii) likely consequences of the Incident; (iii) the number of data subjects affected, number of records affected and the types of records affected; and (iv) the measures taken or proposed to be taken to address the Incident, including measures to mitigate possible adverse effects of the Incident. Supplier shall co-operate fully with any investigation regarding the Incident and take all necessary measures to limit further unauthorised disclosure

of or unauthorised processing of Personal Data in connection with the Incident.

- 1.6. Supplier shall cooperate and provide Client with such reasonable assistance as Client requires in relation to any complaints made by Data Subjects or investigations or enquiries made by any regulatory authority relating to Client's or Supplier's obligations under the Data Protection Legislation.
- 1.7. In relation to Personal Data processed by Supplier under the Agreement, Supplier shall co-operate with Client to the extent reasonably necessary to enable Client to adequately discharge its responsibility as a Data Controller under Data Protection Legislation, including without limitation that Supplier shall cooperate and provide Client with such reasonable assistance as Client requires in relation to preparation of data protection impact assessments to the extent required under the Data Protection Legislation.
- 1.8. Supplier shall provide such co-operation as Client reasonably considers to be necessary to enable Client to audit and verify Supplier's compliance with this Schedule 2 from time to time. Such co-operation may include helping Client to carry out risk assessments of Supplier's data processing operations, in particular providing information about, and permitting Client to inspect, those operations.
- 1.9. No Personal Data processed by Supplier pursuant to the Agreement shall be exported outside the European Economic Area and/or the UK without the prior written permission of Client. Where that permission is given it will be conditional on any export being done on the terms of a binding agreement incorporating the EU standard clauses on the transfer of Personal Data from Data Controller to Data Processor entered into between Client and Supplier (or any other valid transfer mechanism under Data Protection Legislation with Client's prior written consent).

Supplier agrees to accept any modifications to such standard clauses which are necessary to comply with Laws applicable to such data transfer. Such binding agreement shall be without prejudice to the rights of Client under this Agreement.
- 1.10. On termination or expiry of the Agreement, at Client's request, Supplier shall delete or return to Client all Personal Data processed on behalf of Client, and Supplier shall delete existing copies of such Personal Data except where necessary to retain such Personal Data strictly for the purposes of compliance with Law.
- 1.11. In no event may Supplier subcontract the processing of any Personal Data which Supplier processes on Client's behalf, without the prior written consent of Client. Where that consent is given it will be conditional upon Supplier having executed a written contract with the third party which contains terms for the protection of Personal Data which are no less protective than the terms set out in this Schedule 2. For the avoidance of doubt, if Supplier engages a sub-processor, Supplier shall remain liable to Client for the performance of the sub-processor's obligations under Data Protection Legislation or any acts or omissions of the sub-processor.
- 1.12. Supplier undertakes to provide training as necessary from time to time to its personnel with respect to Supplier's obligations in this Schedule 2 to ensure that its personnel are aware of and comply with such obligations.
- 1.13. Supplier shall ensure that any Supplier personnel with access to Personal Data are bound by confidentiality obligations in respect of access, use or processing of such Personal Data.
- 1.14. Client agrees and acknowledges that Supplier is reliant upon Client for direction as to the extent to which Supplier is entitled to use and process Personal Data disclosed by Client. Accordingly, Supplier shall not be liable for any claim brought by a Data Subject arising from any act or omission by Supplier, to the extent that any such act or omission results from Client's instructions.