

# Master Services Agreement

**MASTER SERVICES AGREEMENT** made on \_\_\_\_\_ ("Effective Date")

## Between

- (1) [REDACTED] a company registered in England and Wales, with company number [REDACTED], whose registered office is at [REDACTED] (the "**Customer**"); and
- (2) **SPECIALIST COMPUTER CENTRES PLC**, a company registered in England and Wales, with company number 01428210, whose registered office is at James House, Warwick Road, Birmingham ("**SCC**" or the "**Supplier**");

together the "Parties".

## WHEREAS:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement and each Order, the terms used shall have the meanings set out in Schedule 1 and in the applicable Order.

### 2. AGREEMENT STRUCTURE AND ORDERS

- 2.1 Each Order shall form a separate contract between the Parties and incorporate clauses 1 to 23 of this Agreement.
- 2.2 Any amendment to this Agreement agreed by SCC and the Customer pursuant to clause 8 (Change Control Procedure) shall be deemed to apply to all further Orders from the effective date of such amendment (unless expressly stated otherwise in such amendment).
- 2.3 A Customer Affiliate may execute an Order under this Agreement, provided always that the Customer shall:
- (a) ensure that the Customer Affiliate comply with the Customer's obligations under the applicable Order; and
  - (b) be responsible for the acts, omissions, defaults or negligence of its Customer Affiliates as fully as if they were acts, omissions, defaults or negligence of the Customer itself.
- 2.4 In the event of a conflict or ambiguity between the provisions in Clauses 1 to 23 of this Agreement and the provisions in an Order, the provisions in the Order shall take precedence.

### 3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall come into force on the Effective Date and shall, unless terminated earlier in accordance with clause 17 (Termination), continue in full force and effect for an initial period of five (5) years.

### 4. PROVISION OF SERVICES

- 4.1 SCC shall provide the Services from the applicable Service Commencement Date and, unless terminated earlier in accordance with clause 17 (Termination), shall continue to provide the Services for the duration of the applicable Initial Services Term and thereafter until either Party gives written notice to the other for no less than the applicable Notice Period (such notice to end no earlier than the last day of the Initial Services Term).
- 4.2 SCC reserves the right to modify:
- (a) the Services (in whole or in part) to the extent compelled by any applicable regulatory or legislative requirement to ensure compliance with such regulatory or legislative requirement; and
  - (b) any particular aspect of the Services to maximise the effectiveness of such Services, provided that such modification does not have a material adverse effect on the Services.

- 4.3 Where Service Credits apply to the Services, Service Credits shall be the Customer's sole and exclusive remedy for the breach of the relevant Service Level unless otherwise specified in an Order.
- 4.4 SCC agrees to provide the Services and commits to the Service Levels on the basis that the Customer's existing infrastructure, hardware, software, processes, policies and any other Customer provided elements which are integral to the successful provision of the Services (the "Customer Infrastructure") does not prevent SCC from providing the Services or meeting the agreed Service Levels in accordance with the relevant Order ("Fit for Purpose").
- 4.5 The Customer acknowledges and accepts that SCC shall not be liable for any Service Credits or any failure to provide the Services or meet the Service Levels to the extent that such failure is due to the fact that the Customer Infrastructure does not meet the requirements of clause 4.4, provided always that SCC continues to use reasonable endeavours to meet the Service Levels notwithstanding any such issues.
- 4.6 Where SCC is providing Services in respect of Supported Equipment pursuant to an Order, the Parties agree that the standard SCC Supported Equipment Terms and Conditions at <https://www.scc.com/supported-equipment-terms-and-conditions> will apply to such Services.
- 4.7 Where in respect of an Order SCC is reselling any third party manufactured or developed computer hardware or software, networking and telecommunications equipment, or peripheral products or any public cloud, SaaS, extended vendor warranty and support and third party subscription based products and services delivered directly to the Customer by a third party on separate end user terms which apply directly between the Customer and the third party provider and which SCC is appointed to supply on a resale basis), the Parties agree that clauses 5 to 15 (inclusive) of the SCC Terms and Conditions for Sale of Products at <https://www.scc.com/terms-conditions-for-sale-of-products/> will apply in respect of the resale of such third party products and services and the provisions applicable to Services in this Agreement shall not apply unless expressly agreed otherwise in an Order.
- 4.8 SCC shall not provide support in any language other than English.

## **5. CUSTOMER OBLIGATIONS**

- 5.1 The Customer shall:
- (a) provide SCC with all reasonable assistance, materials and information, including providing access to staff and technical data concerning the Customer's operations which may be reasonably necessary for SCC to undertake any of the Services;
  - (b) ensure that all information provided in accordance with clause 5.1 are accurate and complete;
  - (c) provide full and safe access to the Customer Site, equipment and telecommunications facilities as SCC shall reasonably require to provide the Services;
  - (d) ensure that all personnel assigned by the Customer to provide assistance to SCC have the requisite skills, qualifications and experience to perform the tasks assigned to them;
  - (e) (unless otherwise specified in an Order) obtain all necessary permissions, consents, permits or licences for SCC to perform the Services, including any consents required for any alterations to the Customer Site;
  - (f) keep confidential any passwords, login details and other access methods provided to it by, or on behalf of, SCC in respect of the Services; and
  - (g) ensure that all equipment connected to a Service is connected to and used with the Service in accordance with the applicable equipment manufacturer's and/or SCC's instructions and any safety and security procedures notified to the Customer.
- 5.2 Unless such Services are expressly stated as being the responsibility of SCC in the relevant Order, the Customer shall be solely responsible for the performance and management of its data backup and data recovery.
- 5.3 SCC maintains title and the Customer shall bear the risk of loss or damage (unless such loss or damage is caused by SCC or its personnel) to any equipment provided by or on behalf of SCC during the performance of the Services.
- 5.4 The Customer shall not charge, mortgage or otherwise deal with any of the equipment referred to in clause 5.3 and use all reasonable efforts to prevent third parties from asserting rights in relation to such equipment.

## **6. DEPENDENCY FAILURES AND RELIEF**

- 6.1 If the Customer delays or fails to carry out any task or activities expressed to be a customer obligation or is in breach of a customer obligation or another term of this Agreement or an Order ("Dependency Failure"), then without prejudice to SCC's other rights and remedies:
- (a) SCC shall not be in breach of its own obligations under this Agreement and/or the relevant Order (including its obligation to perform the Services in accordance with any Service Levels) to the extent that the Dependency Failure has caused SCC's breach or delay; and
  - (b) any dates for performance of the Services that are impacted by such Dependency Failure shall be extended by such period of time as is reasonable to compensate for such Dependency Failure.
- 6.2 If, and to the extent of a direct result of a Dependency Failure, SCC can demonstrate that it has incurred additional costs, SCC shall be entitled to recover such amount actually incurred from the Customer.

## **7. CONTRACT MANAGEMENT**

- 7.1 To manage the relationship of the Parties under this Agreement:
- (a) SCC shall assign an SCC Account Manager with responsibility for liaising and reporting to the Customer Contract Manager;
  - (b) the Customer shall assign a Customer Contract Manager with responsibility for liaising with the SCC Account Manager; and
  - (c) the Parties shall comply with any additional contract management, contract governance and reporting requirements specified in an Order.
- 7.2 The Parties shall ensure that the SCC Account Manager and Customer Contract Manager meet at the agreed intervals to discuss the performance of the Services and any disputes or disagreements which may have arisen (which shall, if necessary, be referred for resolution in accordance with the Dispute Resolution Procedure).

## **8. CHANGE CONTROL PROCEDURE**

- 8.1 Change requests may originate from either Party.
- 8.2 Unless and until a Change Control Note is formally agreed by both Parties, the Parties shall continue to perform their respective obligations without taking account of the change request.
- 8.3 Upon signature by both Parties' authorised representatives of a Change Control Note, the Agreement and/or Order shall be deemed amended in accordance with the provisions of that Change Control Note.

## **9. CHARGES**

- 9.1 The Charges shall be as specified in the relevant Order. Further detail in respect of the charging, invoicing, and payment principles used to calculate the Charges are set out in this clause 9 and the Billing Guide at: <https://www.scc.com/billing-guide/>.
- 9.2 The Charges may be subject to change in accordance with the provisions of the applicable Order.
- 9.3 Without prejudice to clause 9.2 provided that SCC provides the Customer with no less than thirty (30) days' prior written notice of its intention to do so, SCC shall be entitled to increase the relevant Charges on any day after expiry of the Initial Services Term (the "Increase Date"). If the Customer elects not to accept such increase, the Customer may terminate the relevant Order provided such notice is received by SCC no later than fifteen (15) days after receipt of SCC's written notice of increase, such termination to be effective no earlier than the end of the Initial Services Term.
- 9.4 If an Order (or part thereof) is terminated early for any reason, SCC shall be entitled (in addition to any other rights it may have) to be paid for any work completed by it, or for that part of the Services performed.
- 9.5 The Customer acknowledges that, for certain Services provided under this Agreement, SCC is reliant on variable pricing arrangements with third party suppliers who may change their charges to SCC from time to time. Consequently SCC shall be entitled to increase or decrease the Charges to pass on the respective increase or decrease in charges payable by SCC specifically to the third party providers of the following: (a) data centre colocation or hosting (including private cloud) services due to price increases from the applicable supplier of racks or electricity/power; (b) network connectivity (including in connection with SCC's private cloud Services) and telecommunications services provided by network carrier(s); and (c) software used by SCC as a managed service provider in the delivery of our Services.

- 9.6 All rates and Charges detailed within each Order, unless specifically excluded within the relevant Order, are subject to an annual indexation adjustment to reflect the impact of inflation. The adjustment shall be applied on the first anniversary of the Order, and each anniversary thereafter (the "Indexation Date") and shall be determined by multiplying the respective rate or Charge by the Consumer Price Index ("CPI") rate published by the Office of National Statistics (ONS) two (2) months prior to the applicable anniversary date. For example, if the anniversary falls during the month of June, the CPI rate used will be the March rate published by ONS in April.
- 9.7 Where the Order is longer than twelve (12) months in duration, any professional services rate cards included within the Order will also be updated on each anniversary date of that Order (whether or not adjusted for inflation in accordance with clause 9.6).

## **10. INVOICING AND PAYMENT**

- 10.1 SCC may issue an invoice for the Charges relating to the Services in accordance with the timescales specified in the relevant Order.
- 10.2 The Customer shall pay all invoices within thirty (30) days of the date of such invoice.
- 10.3 All payments to be made by the Customer under an Order will be made in full and without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.
- 10.4 If any sum payable under an Order which is not the subject of a good faith dispute is not paid by the due date, then without prejudice to SCC's other rights and remedies, SCC reserves the right to:
- (a) charge interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of four percent (4%) per annum above HSBC's base rate from time to time in force. Such interest shall be paid on demand; and
  - (b) if such payment is delayed in excess of seven (7) days after notice of the delay in writing from SCC, suspend provision of the Services (or delivery of the Products) under such affected Order until payment has been received in full.

## **11. WARRANTIES**

- 11.1 Each Party warrants to the other that:
- (a) it has and shall maintain all necessary consents, approvals, permits, rights, licences, authority, power and capacity to enter into and perform its obligations under this Agreement and each Order and that all necessary actions have been taken to enter into it properly and lawfully;
  - (b) its entry into and performance of this Agreement and each Order does not and will not conflict with any of its contractual obligations or with any applicable laws; and
  - (c) it shall comply with all applicable laws in connection with the performance of its obligations under this Agreement and each Order.
- 11.2 SCC warrants that:
- (a) the Services will:
    - i. comply with the relevant Order; and
    - ii. be carried out with reasonable skill and care and by suitably trained and qualified persons; and
  - (b) it has and shall maintain the necessary rights and consents to perform the Services and to permit the Customer to use the SCC Intellectual Property in connection with the receipt and use of the Services.
- 11.3 The Customer shall notify SCC of any breach of clause 11.2(a) within ninety (90) days from the date of performance of such deficient Services.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Customer shall retain all Intellectual Property Rights in any materials it or any of its Affiliates provides to SCC for the purposes of SCC performing its obligations under this Agreement and each Order (the "Customer Intellectual Property").
- 12.2 The Customer has and shall maintain the necessary rights and consents to permit SCC to perform the relevant Services and use the Customer Intellectual Property. The Customer shall grant SCC

and its subcontractors a non-exclusive and royalty free licence to use the Customer Intellectual Property during the term of the relevant Order for the sole purpose of performing its obligations under such Order.

- 12.3 SCC hereby grants to the Customer a non-exclusive, personal and non-transferrable licence to SCC Intellectual Property Rights during the term of the Order to the extent necessary for and for the sole purpose of accessing and using the Services only.

### **13. IPR INDEMNITY**

- 13.1 SCC shall indemnify the Customer in full and on demand, from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by the Customer howsoever arising from a claim that the receipt and/or use of the Services in accordance with the Order infringes a third party's Intellectual Property Rights, other than to the extent any such claims arise from a breach of clause 12.2 (Intellectual Property Rights) by the Customer.
- 13.2 The Customer shall indemnify SCC in full and on demand, from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by SCC howsoever arising from any claim by a third party that the possession of or use by SCC of the Customer Intellectual Property Rights infringes that third party's Intellectual Property Rights (other than where any such claim arises from a breach of clause 12.2 (Intellectual Property Rights) by SCC).
- 13.3 If any third party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under an indemnity given in this clause 13 (a "Claim"), the Indemnified Party shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Indemnifying Party, specifying the nature of the Claim in reasonable detail;
  - (b) if requested by the Indemnifying Party, give conduct of the defence of the Claim to the Indemnifying Party;
  - (c) co-operate fully, at the Indemnifying Party's cost, with the Indemnifying Party and its legal representatives in the investigation and defence of the Claim; and
  - (d) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party.
- 13.4 If a Claim is made, or in the Indemnifying Party's reasonable opinion is likely to be made, the Indemnifying Party may at its sole option and expense:
- (a) procure for the Indemnified Party the right to continue using, developing, modifying or maintaining the infringing materials (or any part of them), in accordance with the terms of this Agreement and relevant Order;
  - (b) modify the infringing materials (or any part of them), so that they cease to be infringing; or
  - (c) replace the infringing materials (or any part of them), with non-infringing works.
- 13.5 The Indemnifying Party shall not have any liability to the Indemnified Party under clause 13.1 or clause 13.2 (as applicable) in respect of a Claim to the extent that such Claim is attributable to:
- (a) the combination, operation or use of infringing materials (or any part of them), with equipment or software provided by the Indemnified Party where such infringing materials (or any part of them), would not otherwise have been infringing;
  - (b) the Indemnifying Party's compliance with designs, specifications or instructions provided by the Indemnified Party and any other requirements and/or instructions set out in an Order;
  - (c) use of the infringing materials (or any part of them) by or on behalf of the Indemnified Party, not in accordance with or in an application or environment for which such materials were not designed or contemplated under an Order;
  - (d) modifications or alterations of the infringing materials (or any part of them), by anyone other than the Indemnifying Party or in accordance with the relevant Indemnifying Party's instructions, where the unmodified version of the infringing materials (or any part of them), would not have been infringing; or
  - (e) the Indemnified Party's continued use of the infringing materials (or any part of them) after having been notified of the Claim.

#### **14. TUPE**

- 14.1 The Parties do not believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending those provisions (the "Transfer Regulations") will apply upon the commencement of any Services.
- 14.2 If, notwithstanding the intention of the parties in clause 14.1, the Transfer Regulations do apply upon the commencement of any of the Services which are the subject matter of an Order, the Customer shall indemnify and hold harmless SCC and any subcontractor of SCC, from and against all liability and loss suffered and any costs and expenses reasonably and properly incurred by SCC and any subcontractor of SCC as a result of the Transfer Regulations applying or any claim that the Transfer Regulations apply, including any liabilities that arise in connection with the employment or termination of employment of former employees of the Customer or its Affiliates or any of the Customer's or its Affiliate's other contractors, including any claims for breach of statutory duty, any claims for damages for breach of contract and/or compensation for unfair or wrongful dismissal or redundancy arising from any such employees having ceased for any reason to be employed.

#### **15. NON-SOLICITATION**

- 15.1 Each Party agrees with the other that it shall not, and it shall ensure that its Affiliates shall not, solicit or approach in any way, any of the other Party's employees or contractors who are engaged in connection with Services under an Order with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the term of the relevant Order and for a period of six (6) months after the termination or expiration of the relevant Order, other than by means of a general advertising campaign not specifically targeted at any of the staff of the other Party (including its contractors).

#### **16. LIABILITY**

- 16.1 This clause 16 sets out the total liability of each Party in respect of or in connection with its obligations under this Agreement and each Order.
- 16.2 Nothing in this Agreement or an Order shall exclude or limit either Party's liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) the indemnity in clause 13 (Indemnity); or
  - (d) any liability which cannot legally be excluded or limited.
- 16.3 Nothing in this Agreement or any Order shall operate to exclude or limit the Customer's liability to SCC for any Charges which are properly due and owing under an Order.
- 16.4 Subject to Clauses 16.2, 16.3, and 16.5, each Party's total maximum aggregate liability to the other Party:
- (a) arising under or in connection with each individual Order in any Order Year, whether in contract, tort (including negligence) or otherwise shall subject to clause 16.4(b), not exceed one hundred percent (100%) of the total Charges paid or payable under the Order in that Order Year; and
  - (b) when aggregated under or in connection with this Agreement (as a total available liability sum regardless of the number of Orders and not individually for each Order) and whether in contract, tort (including negligence) or otherwise, shall not exceed two million pounds (£2,000,000).
- 16.5 Subject to clause 16.2 and 16.3, in no event shall either party be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with this Agreement or an Order for any:
- (a) loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings in each case whether direct or indirect; or
  - (b) indirect, special or consequential loss or damage, howsoever arising.
- 16.6 Unless specified otherwise in an Order, the Customer shall be responsible for taking all steps it requires to mitigate the risks or effects of data loss or corruption inherent in the provision of any particular Services (including encryption of Customer Equipment or data or any other devices provided to SCC in connection with the Services and backing up its or its Affiliate's or its customer's data in each case in accordance with standard industry practice and wherever required).

## **17. TERMINATION**

- 17.1 Either Party may immediately terminate this Agreement or an Order by giving notice in writing to the other Party:
- (a) in accordance with the provisions of clause 21.3 (Force Majeure);
  - (b) if the other Party is in material breach of the Order or the Agreement which is:
    - i. incapable of remedy; or
    - ii. capable of remedy, but the other Party has failed to remedy such breach within thirty (30) days of receipt of the written notice requiring it to do so.
- 17.2 SCC may immediately terminate an Order for the Customer's failure to pay the Charges if such payment is delayed in excess of seven (7) days after notice of the delay in writing from SCC.

## **18. CONSEQUENCES OF TERMINATION**

- 18.1 Termination of this Agreement shall not terminate any Order then in force, unless the Parties agree otherwise in writing at the relevant time.
- 18.2 On termination of this Agreement for any reason whatsoever:
- (a) no further Orders shall be entered into; and
  - (b) clause 1 (Definitions and Interpretation), clause 10 (Invoicing and Payment), clause 12 (Intellectual Property Rights), clause 13 (Indemnity), clause 16 (Liability), this clause 18 (Consequences of Termination), clause 19 (Confidentiality), clause 20 (Data Protection), clause 22 (General) and any other provision which expressly or by implication is intended to come into or remain in force on or after termination, shall continue in full force and effect.
- 18.3 Termination of an Order shall not affect any other Order or this Agreement.
- 18.4 On termination of an Order:
- (a) if a Party is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by clause 18.4(b), it shall notify the other Party in writing of such retention, giving details of the documents or materials that it must retain; and
  - (b) subject to clause 18.4(a), each of the Parties shall immediately return to the other Party (or, if the other Party so requests by notice in writing, destroy) all of the other Party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information; and
  - (c) the Customer shall return to SCC any equipment owned by or on behalf of SCC and kept at the Customer Site to deliver the Services. If the Customer does not promptly return such equipment to SCC, it shall permit SCC or any nominated representative of SCC to enter the Customer Site during any Business Day, upon reasonable notice, for the purpose of removing any such equipment.
- 18.5 Termination of this Agreement or an Order shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination of this Agreement or the Order (as applicable).

## **19. CONFIDENTIALITY**

- 19.1 Each Party (the "Recipient") shall keep and procure to be kept confidential all Confidential Information belonging to the other Party (the "Discloser") disclosed or obtained as a result of the relationship of the Parties under this Agreement or an Order. The Recipient shall not use nor disclose the Discloser's Confidential Information save for the purposes of the proper performance of this Agreement or an Order, with the prior written consent of the other Party, or as set out in clause 19.3.
- 19.2 The Recipient may only disclose the Discloser's Confidential Information to an employee, consultant, supplier, member of its Group, subcontractor or agent (each a "Permitted Recipient") to the extent necessary for the performance of this Agreement or an Order, provided such disclosure is subject to obligations equivalent to those set out in this clause 19. The Recipient shall procure that any such Permitted Recipient complies with such obligations and be responsible to the Discloser in respect of any disclosure or use of such Confidential Information by a Permitted Recipient.

- 19.3 A Party may disclose the other Party's Confidential Information to the maximum extent it is compelled to do so by a court or competent regulatory body, and in which case that Party shall give the other Party as prompt notice as possible of the relevant order of disclosure to the extent permitted by applicable law.

## **20. DATA PROTECTION**

- 20.1 In this clause 20, the terms "Controller", "Personal Data", "Process", "Processor", "Processing" and "Data Subject" have the meanings given to them in the Data Protection Legislation.
- 20.2 The provisions set out in this clause 20 shall apply in respect of any circumstances in which the Customer is a Controller and SCC is a Processor in relation to Personal Data processed by SCC for the Customer pursuant to this Agreement or an Order. The Parties acknowledge and agree that for the purposes of the Data Protection Legislation, where SCC processes any of the Customer's or its Affiliates' Personal Data on behalf of the Customer or its Affiliates in connection with any Services, this Agreement or any Order then the Customer shall be the Controller of such Personal Data and SCC shall be the Processor.
- 20.3 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 20.4 The Customer shall:
- (a) ensure it has all necessary authority to Process Personal Data and to disclose or make available such Personal Data to SCC and to allow SCC to conduct the relevant Processing activities required in order to provide the Services for the Customer in each case in accordance with all applicable Data Protection Legislation;
  - (b) be responsible for ensuring that appropriate technical and organisational measures are in place for all Personal Data Processed within the Customer's IT environment by the Customer and SCC. The Parties agree that it is not appropriate for SCC to be responsible for determining appropriate technical and organisational measures related to the Customer's IT environment wherever it may be located unless the implementation of such measures are within the scope of the Services to be provided by SCC.
- 20.5 SCC shall:
- (a) Process the Personal Data only on the documented instructions of the Customer as set out in this Agreement or an Order, in order to perform its obligations under this Agreement or an Order and shall ensure it takes all appropriate steps to ensure that its personnel only Process Personal Data on documented instructions from the Customer as set out in this Agreement or an Order, unless required to do otherwise by applicable law;
  - (b) ensure that its personnel who are authorised to Process Personal Data are under obligations of confidentiality that are enforceable by SCC;
  - (c) take all measures required pursuant to Article 32 of the EU GDPR (or the equivalent in the UK GDPR);
  - (d) on request, assist the Customer at the Customer's reasonable cost (such costs to be agreed in advance (in writing)), by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights under Chapter III of the EU GDPR (or the equivalent in the UK GDPR) through the use of appropriate technical and organisational measures;
  - (e) on request, reasonably assist the Customer in ensuring compliance with its obligations pursuant to Articles 32-36 of EU GDPR (or the equivalent in the UK GDPR) taking into account the nature of the Processing and the information available to SCC;
  - (f) at the written election of the Customer, either delete or return the Personal Data (including all copies of it) at any time upon request by the Customer or promptly upon termination or expiry of the applicable Order; and
  - (g) make available to the Customer all information necessary to demonstrate compliance with the obligations in Article 28 of the EU GDPR (or the equivalent in the UK GDPR) and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.
- 20.6 The Customer consents to the Processing of Personal Data by SCC's Affiliate companies:



- (a) SCC Services Romania SRL (registry number J22/823/2006 and fiscal code 18544528) whose registered office is at Niciman Street 2, 700521 Iasi, Jud, Iasi, Romania, for the purpose of assisting SCC with any Services sub-contracted by SCC to SCC Romania; and
  - (b) Specialist Computer Centres Vietnam Company Limited ("SCC Vietnam") for the purpose of providing out of hours support to SCC or for assisting SCC with other Services sub-contracted by SCC to SCC Vietnam, in each case, on the terms of (i) the EU SCC's and (ii) the UK Addendum located at: <https://www.scc.com/wp-content/uploads/2023/03/Data-Exporter-Agreement-SCC-Vietnam-2.docx> (the "Standard Contractual Clauses Exhibit"). The Standard Contractual Clauses Exhibit is incorporated into this Agreement by reference and the Parties shall comply with the Standard Contractual Clauses Exhibit. SCC is agreeing such Standard Contractual Clauses in its capacity as agent acting on behalf of SCC Vietnam.
  - (c) SCC shall not otherwise Process or transfer Personal Data outside of the area comprising the European Economic Area and the United Kingdom or to a country without a valid finding of adequacy under the Data Protection Legislation without the prior written consent of the Customer, (and where consent is given such consent will be set out in the applicable Order) and without putting in place an adequate level of protection and appropriate safeguards in relation to the transfer of the Personal Data to enable compliance by the Customer and SCC with their obligations under applicable Data Protection Legislation. Prior to any such further transfer or Processing of Personal Data outside of the area comprising the European Economic Area or the United Kingdom or to a country without a valid finding of adequacy under the Data Protection Legislation, the Customer and SCC shall ensure that appropriate safeguards are in place as required under the Data Protection Legislation and otherwise comply with the requirements of the Data Protection Legislation.
- 20.7 The Customer consents to the appointment by SCC of sub-Processors as necessary for SCC to provide the Services provided SCC and such sub-Processor comply with the Data Protection Legislation. SCC shall remain fully liable for all acts or omissions of any sub-Processor.
- 20.8 The Parties acknowledge and agree that where any amendments to this clause 20 are necessary to ensure that either Party is compliant with the Data Protection Legislation then the Parties shall promptly work together to make such amendments as are reasonably necessary and neither Party shall unreasonably withhold or delay its agreement to any such amendments.
- 21. FORCE MAJEURE**
- 21.1 A Party will not be deemed to be in breach of this Agreement or the affected Order nor liable for any failure or delay in performance of any of its obligations (except for those in relation to payment) under this Agreement or the affected Order (and the date for performance of the obligations, including in the case of SCC the obligation to provide the Services, affected by Force Majeure will be extended or suspended as appropriate) as a result of Force Majeure, provided that such Party complies with the obligations set out in this clause 21. Save as provided in clause 21.2, a Force Majeure event will not entitle either Party to terminate this Agreement or the affected Order.
- 21.2 The Party affected by Force Majeure shall:
- (a) as soon as reasonably practicable after becoming aware of the Force Majeure notify the other Party in writing of the matters constituting the Force Majeure, specifying the nature and extent of the Force Majeure;
  - (b) use its reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity (without being obliged to incur any expenditure); and
  - (c) keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure event continues.
- 21.3 If Force Majeure continues to affect a Party's performance of its obligations under this Agreement or an Order for longer than three (3) months, the other Party may, whilst the Force Majeure continues terminate this Agreement or the affected Order by giving notice (in writing) to the affected Party on a date to be specified in that notice and which must not be less than fifteen (15) calendar days after the date on which such notice is given.
- 22. GENERAL**
- 22.1 Entire Agreement: Regarding each particular Order, this Agreement and that Order and the documents referenced within this Agreement and that Order contain the entire agreement between the Parties in relation to the subject matter of that Order and supersede any prior arrangement, understanding written or oral agreements between the Parties in relation to such subject matter.

Neither this Agreement nor any Order has been entered into wholly or partly in reliance on, nor has either Party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Agreement and the relevant Order.

- 22.2 Exclusions: Except as otherwise specifically provided in this Agreement or an Order, each Party hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in this Agreement or an Order) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the other Party.
- 22.3 Save that SCC may assign the right to receive payment of the Charges without consent, neither Party may at any time otherwise assign, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement or an Order without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 22.4 SCC may subcontract any or all of its rights and obligations under an Order as SCC, in its absolute discretion, sees fit provided that such sub-contracting shall not relieve SCC from any liability or obligation under this Agreement or an Order and SCC shall be responsible for the acts, omissions, defaults or negligence of its sub-contractors, agents or servants as fully as if they were acts, omissions, defaults or negligence of itself.
- 22.5 Nothing in this Agreement or any Order is intended to, or will be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22.6 If any provision or part provision of this Agreement or an Order is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of this Agreement or any Order.
- 22.7 No failure or delay by a party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 22.8 No variation of this Agreement or an Order will be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.9 A person who is not a party to this Agreement or an Order will not have any rights to enforce its terms.
- 22.10 This Agreement and each Order (including non-contractual disputes or claims relating to the same) will be governed by the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or any Order (including non-contractual disputes or claims).
- 22.11 Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Agreement or an Order (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 22.12 Neither Party shall make any press release or public announcement concerning or referring to the other Party or the existence or subject matter of this Agreement without the prior written approval of the other Party.
- 22.13 The Customer shall not use any SCC or third party vendor trademark or name without the prior the written consent of SCC or third party vendor (as applicable) (on a case by case basis). SCC shall not use any trademark or name of the Customer or any of its Affiliates without the prior the written consent of the Customer (on a case by case basis).
- 22.14 This Agreement or any Order may be executed in any number of counterparts, each of which when executed shall constitute an original of this Agreement/Order (as applicable), but all the counterparts together constitute the same Agreement/Order (as applicable). No counterpart shall be effective until each Party has executed at least one counterpart.
- 22.15 All notices that are required to be given under this Agreement or an Order must be in writing in accordance with this clause 22.15. Notices may be served in the ways and to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the

purpose of service of notices under this Agreement and an Order and, the following table sets out the respective deemed time and proof of service:

#### SCC CONTACTS

SCC Account Manager	
Name:	
E-mail address:	
Telephone number:	

#### CUSTOMER CONTACTS

Customer Contract Manager:	
Name:	
E-mail address:	
Telephone number:	

Manner of Delivery	Deemed time of delivery	Proof of service
Personal delivery	9.00 AM on the following Business Day	Properly addressed and delivered
Prepaid first class domestic postal service	9.00 AM on the second Business Day after posting.	Properly addressed prepaid and posted
Email	At the time of transmission, or, if this time falls outside business hours, at 9.00 AM on the next Business Day after transmission.	Sent by email to the address specified above

#### 23. DISPUTE RESOLUTION PROCEDURE

- 23.1 All disputes, differences or questions arising in relation to this Agreement or an Order shall be referred in the first instance to the SCC Account Manager and the Customer Contract Manager who shall call a meeting and attempt to settle the dispute within twenty (20) Business Days.
- 23.2 If the persons in clause 23.1 are unable to resolve the dispute, the Parties shall refer the dispute to the Chief Revenue Officer of SCC and the equivalent senior manager of the Customer who shall call a meeting and attempt to settle the dispute within ten (10) Business Days.
- 23.3 If the persons in clause 23.2 are also unable to resolve the dispute within ten (10) Business Days, the Parties shall have no further obligation to follow this Dispute Resolution Procedure.
- 23.4 Neither Party may initiate any legal action until the procedure set out in Clauses 23.1, 23.2 and 23.3 has been completed except that in no event shall the provisions of this clause 23 operate to prevent a Party seeking interim relief in respect of any dispute or differences.

## Schedule 1 - Definitions and Interpretation

### Definitions

Term	Meaning
<b>Affiliate</b>	means any corporation, firm, partnership or other entity that directly or indirectly Controls, or is Controlled by, or is under common Control with the relevant Party;
<b>Billing Guide</b>	means SCC's standard billing and payment guide available at <a href="http://www.scc.com">www.scc.com</a> as may be updated by SCC and notified to Customer from time to time;
<b>Business Day</b>	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>Change Control Note or CCN</b>	means a change to the Agreement or an Order executed in accordance with clause 8 (Change Control Procedure) using the template set out in Schedule 3 below;
<b>Charges</b>	means the charges specified in the relevant Order payable by the Customer for the provision of the Services by SCC;
<b>Confidential Information</b>	means these Terms and each Order and all sums payable under it; and all information which is confidential to a Party or its Affiliates (including in respect of SCC, sub-contractors and third party vendors) or otherwise not publicly available (in both cases either in its entirety or in part), including know-how, trade secrets or business methods, technical, business, financial and product development plans, forecasts, customer lists, customer information, strategies or other matters connected with the Services, and any other information which a reasonable person would consider to be of a confidential nature (whether or not marked as confidential), but shall exclude the Excluded Information with effect from the date that it becomes Excluded Information;
<b>Control</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares or power, ability to appoint directors, by contract or otherwise) and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;
<b>Customer Contract Manager</b>	means the person duly authorised by the Customer to perform the obligations of the Customer under an Order and for liaising with SCC in respect of all matters concerning that Order;
<b>Customer Equipment</b>	means any Customer owned, leased, licensed and/or managed equipment;
<b>Customer Infrastructure</b>	has the meaning set out in clause 4 (Provision of Services);
<b>Customer Site</b>	means the address(es) for the delivery of the Services to the Customer as set out in the relevant Order;
<b>Data Protection Legislation</b>	means all applicable data protection and privacy legislation from time to time in force as applicable to a Party, including: (a) the EU GDPR; (b) the Data Protection Act 2018 and the UK GDPR (as defined in the Data Protection Act 2018) (and regulations made thereunder); (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and (d) any applicable laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
<b>Dependency Failure</b>	has the meaning set out in clause 6.1 (Dependency Failures and Relief);
<b>Dispute Resolution Procedure</b>	means the procedure for the resolution of disputes arising under this Agreement and each Order set out in clause 23 (Dispute Resolution Procedure);

Term	Meaning
<b>EU SCC</b>	means the standard contractual clauses contained in the annex to the European Commission's Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council published at: <a href="https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj">https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj</a> and any amendment or replacement pursuant to Article 46(5) of the GDPR;
<b>EU GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>Excluded Information</b>	means information which: <ul style="list-style-type: none"> <li>a) was or becomes publicly known through no default or breach of this Agreement or an Order by the receiving Party;</li> <li>b) was or becomes lawfully known to the receiving Party without restriction from a source other than the disclosing Party who itself obtained it without any confidentiality obligation;</li> <li>c) has been demonstrated by the receiving Party to the disclosing Party to have been independently developed by the receiving Party; or</li> <li>d) is approved for disclosure by the Party which has provided it without restriction in a document signed by an authorised representative of such Party;</li> </ul>
<b>Force Majeure</b>	means any cause preventing a Party from performing any or all of its obligations under this Agreement or an Order, which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party;
<b>Hours of Support</b>	means the hours of support for the relevant Services detailed in the applicable Order;
<b>Initial Services Term</b>	means the initial term for the provision of the Services, as specified in the relevant Order, which shall commence on the Service Commencement Date;
<b>Intellectual Property Rights</b>	means any copyright, moral right, patent, supplementary protection certificate, trademark, trade name, service mark, design right, database right, rights in goodwill, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world;
<b>Notice Period</b>	means the notice period for termination of an Order, following expiry of the Initial Services Term, as specified in the Order;
<b>Order</b>	means an order entered into by SCC and the Customer in accordance with clause 2 (Agreement Structure and Orders) that is in the form set out at Schedule 2 (Order Template) or (SoW Template) and which incorporates these Terms;
<b>Order Year</b>	means the twelve (12) month period commencing on the Service Commencement Date, as specified in the relevant Order;
<b>SCC Account Manager</b>	means the person duly authorised by SCC for liaising with the Customer in respect of all matters concerning an Order;
<b>Service Commencement Date</b>	means the date(s) for commencement of the provision of the applicable Services, as specified in the relevant Order;
<b>Service Description</b>	means the description of the applicable Service, as set out in the Order;
<b>Service Levels</b>	means any Service Levels set out in an Order;
<b>Service Request</b>	means a request from the Customer to provide a non-incident based activity, such as, but not limited to information, advice or professional services, or for a

Term	Meaning
	standard change (a pre-approved change that is low risk, relatively common and follows a procedure) or for access to an IT service.
<b>Services</b>	means the services that SCC shall provide to the Customer, as specified in the relevant Order;
<b>Statement of Work or SoW</b>	means a statement of works form for the procurement of professional Services in the form set out in Schedule 2 of this Agreement;
<b>Supported Equipment</b>	means any equipment or software detailed in an Order as “Supported Equipment”;
<b>Technical Specification</b>	means (where applicable to an Order) the quantities, maximum capacity, specification or rating for the Services specified in a Service Description;
<b>Transfer Regulations</b>	has the meaning set out in clause 14.1 (Employees); and
<b>UK Addendum</b>	means the UK international data Transfer addendum to the EU SCCs issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18. The current version of which is published on the ICO's website at: <a href="https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-data-transfer-agreement-and-guidance/">https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-data-transfer-agreement-and-guidance/</a> .

## Interpretation

- (a) The headings used in this Agreement or an Order are inserted for convenience only and shall not affect the interpretation or construction of this Agreement and an Order.
- (b) Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.
- (c) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- (d) References to any statute or statutory provision shall include:
  - i. any subordinate legislation made under it;
  - ii. any provision which it has modified or re-enacted (whether with or without modification); and
  - iii. any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the Agreement Effective Date.
- (e) References to “written”, “in writing” or any similar expression shall include email correspondence.

## Schedule 2 - Templates

### Order Form Template



MSA Order Form  
V1.0.docx

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### SoW Template



Fixed Price SoW  
Template.docx

## Schedule 3 - Change Control Note

Change Control Note (CCN)			
<p><b>This Change Control Note ("CCN") is made by and between:</b></p> <p>(1) <b>SPECIALIST COMPUTER CENTRES PLC</b> registered in England with number <b>1428210</b> whose registered office is at James House, Warwick Road, Birmingham B11 2LE ("<b>SCC</b>"); and</p> <p>(2) <b>[XXXX]</b> registered in England with number <b>[XXXXXXXX]</b> whose registered office is at <b>[XXXX]</b> (the "<b>Customer</b>").</p> <p>pursuant to, and subject to, the terms and conditions of the <b>[XXXX]</b> dated <b>[XXXX]</b> (the "<b>Agreement</b>") between the Parties. The terms of the Agreement shall apply to this CCN except to the extent expressly excluded or modified by the terms of this CCN.</p>			
CCN Reference Number		CCN Version Number	
Title of Change			
CCN Originator			
Date of Request		CCN Effective Date	
Reason for Change			
Full Details of Change			
Impact on Services or Service Levels			
Implementation Plan (if required)			
Amendments Required to the Terms and Conditions and/ or Schedules			
Amendments to Pricing			
Schedule of Payments			
Other Information			
Agreed for and on behalf of the Customer		Agreed for and on behalf of SCC	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	