

## SERVICES AGREEMENT

between

**[INSERT FULL NAME OF LEGAL ENTITY]**

and

**[INSERT FULL NAME OF LEGAL ENTITY]**

This **Services Agreement** (the **Agreement**) is entered into on [Date],

**BETWEEN:**

1. [Name of legal entity], a [type of legal entity] incorporated under the laws of the [jurisdiction], with its registered offices at [address] (**Service Provider**); and
2. [Name of legal entity], a [type of legal entity] incorporated under the laws of the [jurisdiction], with its registered offices at [address] (**Customer**).

Both parties are collectively referred to as the **Parties** and individually also as a **Party**.

**WHEREAS:**

- (A) Customer desires to commission certain services, consisting of certain Milestones (capitalised terms are defined in Article 1), resulting in the Work.
- (B) Service Provider has the relevant experience for providing such services and is willing to complete the Milestones and the Work, in accordance with the Statement of Work.

**NOW THEREFORE**, the Parties agree as follows:

**1. INTERPRETATION**

**1.1 Definitions.** In this Agreement:

**Affiliate** means, in relation to a person, any company or other entity, whether or not a legal person, which directly or indirectly controls, is controlled by or is under joint control with that person. For this purpose, a person is deemed to **control** a company or entity if it (a) owns, directly or indirectly, more than 50 percent of the capital of the other company, or (b) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such company or entity.

**Background IPR** means, by reference to a Party, all Intellectual Property Rights, excluding Foreground IPR, (a) owned by such Party or any of its Affiliates, or (b) licensed or made available by a third party to such Party and under which such Party is authorized to grant licenses.

**Change Impact Notice** has the meaning ascribed to it in Section 3.2.

**Confidential Information** means any information of a confidential or proprietary nature, whether of commercial, financial or technical nature, customer, supplier, product or production-related or otherwise, including samples, information relating to specifications, software, process designs, process models, materials and ideas. Such information may be disclosed in any form, provided that it is disclosed reasonably in connection with this Agreement.

**Customer Change Request** has the meaning ascribed to it in Section 3.2.

**Force Majeure** means all circumstances beyond the reasonable control of the Party concerned, including acts of God, earthquake, flood, storm, lightning, fire, explosion, war, terrorism, riot, civil disturbance, sabotage, strike, lockout, slowdown, labour disturbances, accident, epidemic, difficulties to obtain required raw materials or labour, lack of or failing transportation, breakdown of plant or essential machinery, emergency repair or

maintenance, breakdown of public utilities, changes of law, statutes, regulations or any other legislative measures, acts of governments, supranational organizations or other administrative or public agencies, orders or decrees of any court, acts of third parties, delay in delivery or defects in goods or materials supplied by suppliers or subcontractors or an inability to obtain or retain necessary authorizations, permits, easements or rights of ways.

**Foreground IPR** means all Intellectual Property Rights that arise as a result of or in the context of any activity pursuant to this Agreement.

**Intellectual Property Rights** means unpatented inventions, Patents, trademarks, service marks, trade names, domain names, copyrights (including rights in software), moral rights, rights in designs, Know How, database rights, topography rights, mask work rights, utility models and all other intellectual property rights and forms of protection of a similar nature, licences to such rights, in each case whether registered or pending registration, and rights to apply for any such rights.

**Key Employee** means any director, officer or senior employee in a key capacity of a Party or an Affiliate of it and any of their employees in a key position in view of the performance of the Services, at any time until completion (and acceptance) of the Services.

**Know How** means all knowledge, drawings, specifications, samples, models, instructions, algorithms, working methods, ideas, concepts, technology, applied development engineering data, reports, notes and all other technical or commercial information, data and documents of any kind.

**Milestone** means any deliverable or milestone as defined in the Statement of Work.

**Open License Terms** means terms in any license that require as a condition of use, modification or distribution of a Work: (a) to make available any source code or other materials to be used for modification, (b) to permit creating derivative works, or (c) to grant a royalty-free license to any party under Intellectual Property Rights, regarding any part of the Work or any work that contains, is combined with, requires or otherwise is based on any part of the Work.

**Open Source Software** means any software that is licensed under Open License Terms.

**Patents** means all patents and patent applications in any jurisdiction in the world, including any divisional, continuation, continuation-in-part, reissue, renewal, re-examination or extension thereof.

**Service Provider Change Request** has the meaning ascribed to it in Section 3.3.

**Services** means [insert the definition], in accordance with the Specifications and the Statement of Work, resulting in the Work.

**Specifications** means the specifications, quality requirements, properties, features, functionalities, attributes of the Work and, failing such specifications, in any event the customary standards commonly adopted in the industry in respect of quality, safety, suitability and workmanship.

**Statement of Work** has the meaning ascribed to it in Section 2.1.

**Steering Committee** has the meaning ascribed to it in Section 4.1.

**Work** has the meaning ascribed to it in the relevant Statement of Work.

**Working Group** has the meaning ascribed to it in Section 4.5.

1.2 **Interpretation.** Except as otherwise defined, in this Agreement:

- (a) references to a communication **in writing** shall include e-mail and electronic messages accessible and printable by commonly used software applications;
- (b) references to Articles, Sections, Schedules and Annexes are references to articles and sections of and schedules and annexes to this Agreement.

1.3 **Schedules and priority.** The Schedules and Annexes are an integral part of this Agreement and references to this Agreement include its Schedules and Annexes. In the event of any ambiguity or inconsistency between the provisions of a Schedule or an Annex and in the body of this Agreement, the latter shall prevail.

## 2. SCOPE OF THE AGREEMENT

2.1 **General Scope.** Subject to the provisions of this Agreement, Service Provider hereby undertakes with Customer to conduct and complete each of the Milestones and the Work as set forth in **Annex 1** (the **Statement of Work**). All services provided by Service Provider to Customer, whether pursuant to an order for services, a project description (failing a project description, such project description shall be deemed to be a Statement of Work) or upon ad hoc requests for support, shall be subject to this Agreement.

2.2 **Provision of the Services.** In providing the Services and performing its obligations under this Agreement, Service Provider shall ensure that its required employees make reasonable efforts and perform their duties and obligations with appropriate care, in a professional and ethical manner and in accordance with guidelines agreed by the Parties from time to time. Service Provider shall be entitled to engage subcontractors for any part of the Services, as it may deem necessary or desirable.

2.3 **Specifications and timing.** Insofar as is reasonably practicable, Service Provider shall provide the Services in accordance with the Specifications and the time schedule in the Statement of Work and, failing such time schedule, at such times and in such timely fashion as Service Provider may decide.

2.4 **Commencement of the Services.** Service Provider shall not be required to commence performance of the Services before receipt of the agreed (number of) materials, data and other information. In case of a delay in delivery, Service Provider shall be entitled to postpone the delivery date by the duration of such delay or to such later date as necessitated by Service Provider's planning capabilities.

2.5 **Cooperation.** Customer shall afford to Service Provider all co-operation in all matters required for the performance of Service Provider's obligations under the Agreement. Customer shall:

- (a) promptly and fully respond to all communications of Service Provider relating to the provision of the Services and liaise with Service Provider on matters relevant to the provision of the Services;
- (b) afford Service Provider such access to Customer's information, records and other materials as Service Provider may require in connection with or to provide the Services; and

- (c) assume responsibility for complying with all laws and regulations in connection with the Services.

The Parties undertake to contact each other regularly to discuss the progress of the Milestones or Work and any results of or problems related to the Milestones or Work. After each of the Milestones, representatives of each Party shall meet to discuss the results achieved at any of such Milestones.

- 2.6 **Dangerous materials.** If any materials provided by Customer are toxic or potentially dangerous, Customer shall clearly and appropriately designate such materials, strictly in accordance with the applicable statutory requirements, and accompany the materials with instructions for storage and use.
- 2.7 **Incoterm.** The delivery of the Milestones and the Work by Service Provider shall be made Ex Works at the 'location of the relevant Service Provider branch', in accordance with the Incoterms in force on the date of this Agreement.

### 3. WORK CHANGES

- 3.1 **Detailing of the Specifications.** Customer shall be entitled to further specify or detail the Specifications in writing, as it deems appropriate or desirable, provided that it does not affect the agreed service fees or the agreed time schedule. Service Provider shall implement all such further specifications and detailing, except that if the specification or detailing results in a modification of work already completed by Service Provider in accordance with its internal planning, the costs of such modification shall be for the account of Customer. To the extent that such further specification or detailing affects the agreed time schedule, Service Provider shall be entitled to postpone the delivery date to such later date as necessitated by its planning capabilities.
- 3.2 **Change of Specifications.** Customer shall be entitled to amend the Specifications prior to delivery of the Milestones or Work to which such amendment pertains, provided that such an amendment is specific as regards the impact on the Specifications (a **Customer Change Request**). After receipt of a Customer Change Request, Service Provider shall inform Customer of the anticipated impact on the agreed time schedule and the estimated extra costs of the Customer Change Request (a **Change Impact Notice**). To the extent that the Customer Change Request is not specific about the impact on the Specifications, Service Provider shall be free to interpret the Customer Change Request as it deems appropriate (and Customer shall not be entitled to withhold acceptance of the Milestones or Work on the basis of such failing specification).
- 3.3 **Changes proposed by Service Provider.** Service Provider may propose to modify the Specifications to Customer (a **Service Provider Change Request**). A Service Provider Change Request shall indicate as much as reasonably possible the consequences regarding form, fit, function and use, the implementation and any related cost effects.
- 3.4 **Subsequent action.** After receipt of the Change Impact Report or a Service Provider Change Request, Customer shall notify Service Provider as soon as practicable whether it approves the Change Impact Notice or Service Provider Change Request respectively. Upon Customer's approval, the Specifications and the time schedule shall be deemed to be amended according to the Change Impact Notice or the Service Provider Change Request, as the case may be. A Customer Change Request shall not be implemented prior to Customer's written approval.

- 3.5 **Dispute settlement.** If the Parties disagree (a) whether a further specification or detailing of the Specification constitutes a modification of the Specifications, or (b) about the consequences of a Customer Change Request, a Change Impact Report or a Service Provider Change Request, the Parties shall first attempt to achieve an amicable solution. Failing a satisfactory solution, each Party shall be entitled to submit the matter to administered expertise proceedings in accordance with the *Rules for Expertise* of the International Chamber of Commerce. The findings of the expert shall be binding upon the Parties.
- 3.6 **Intermediate remedy.** Service Provider shall be entitled, at its discretion, to (i) continue the Services without taking into account the modifications or amendments, (ii) implement the Service Provider Change Request, or (iii) postpone the delivery date for implementing or to such later date as necessitated by its planning capabilities, in each case as it deems necessary or helpful pending agreement on any Customer Change Request or Service Provider Change Request.

#### 4. STEERING COMMITTEE

- 4.1 **Establishment.** Each Party may at any stage request the other Party to establish a steering committee composed of representatives of each Party for conducting an overall supervision of each Party's performance and the direction of the activities pursuant to this Agreement, as well as any matters that the Parties have delegated to such committee from time to time for their decision (the **Steering Committee**). Except to the extent the Parties agree otherwise, the terms for the Steering Committee shall be as provided in this Article 4.
- 4.2 **Organisation.** Each Party shall appoint one representative and one alternate representative to serve on the Steering Committee. Each Party may change its representative or its alternate representative at any time by giving prior notice to the other Parties.
- 4.3 **Power of Attorney.** The representative of each Party and the alternate representative shall be authorised to represent and bind that Party with respect to any matter within the powers of the Steering Committee. Each representative shall have one vote. In the event of a deadlock, the vote of the Service Provider representative (or alternate representative) shall be decisive and binding.
- 4.4 **Responsibilities.** The Steering Committee shall be responsible for:
- (a) the overall supervision and evaluations of the activities pursuant to this Agreement;
  - (b) deciding or approving on important matters related to [a modification of the scope of the Project, [\_\_\_\_\_], the scope and contents of any work package; and the initiation, suspension or termination of any work package];
  - (c) evaluation of each Party's and each Party's employees' performance under this Agreement; and
  - (d) the facilitation of the completion of milestones and delivery of deliverables in accordance with this Agreement.
- 4.5 **Working groups.** The activities pursuant to this Agreement shall be conducted through one or more working groups consisting of employees of each Party (each, a **Working Group**). Each Working Group shall be responsible for completing a work package and

delivering the deliverables, milestones and results defined in connection with such work package. The Steering Committee shall determine:

- (a) the precise contents and scope of each work package;
- (b) the time schedule for completing a work package and delivering the deliverables, milestones and results, in any event in accordance with the agreed time schedule.

The replacement of a Party's member of a Working Group by another employee requires the prior notification in writing to the other Party's representative within the Steering Committee. The Working Groups shall be responsible for carrying out only the activities for which they are made responsible and shall report to the Steering Committee on the progress of their work on a regular basis and as requested by the Steering Committee.

## 5. DELIVERY AND ACCEPTANCE TESTING

- 5.1 **Acceptance required.** Except if otherwise agreed, each of the Milestones as well as the completion of the Work is subject to acceptance (or deemed acceptance) by Customer in accordance with this Article 5.
- 5.2 **Incoming inspection and tests.** Upon delivery, Customer shall inspect and test the Milestones or Work, as the case may be, exercising such care as is customary or appropriate in the circumstances and satisfy itself that the Milestones or Work, as the case may be, meet the Specifications.
- 5.3 **Acceptance.** Complaints about the Milestones or Work shall be made in writing and must be received by Service Provider not later than five working days from the date of delivery in respect of any defect, non-conformity or shortage that would be apparent from a quick scan inspection, or [30 days] after the date of delivery in respect of all other defects or non-conformities to the Specifications. Except to the extent required for testing purposes, the use or processing of the Milestones or Work shall be deemed to be an unconditional acceptance of the Milestones or Work and a waiver of all claims in respect of such Milestones or Work. If no notice of defects or non-conformity to the Specifications has been received by Service Provider within the above period of time, the Milestones or Work shall be deemed to be accepted by Customer.
- 5.4 **Method of testing and analysis.** Failing any specified method of testing in the Statement of Work, the determination whether a Milestone or the Work conforms to the Specifications shall be done solely by analysing the samples or records provided by Service Provider and taken from the batches or production runs in which the Milestones or Work was produced in accordance with the methods of analysis applied by Service Provider.
- 5.5 **Insignificant non-conformity.** A defect or non-conformity in parts of the Milestones or Work does not entitle Customer to reject the delivery of the Milestones or Work entirely.
- 5.6 **Remedial suspensions.** Upon receipt of a notice of defect or non-conformity, Service Provider is entitled to suspend subsequent deliveries until the complaints are established to be unfounded or refuted or until the defect or non-conformity has been remedied adequately. Such notice, if any, shall not affect Customer's obligation to pay the invoice for the Milestones or Work timely.

## 6. PAYMENT

- 6.1 **Service fees.** The compensation for the Services in relation to the Statement of Work shall be as set forth in the Statement of Work.
- 6.2 **Out of pocket expenses.** Customer shall reimburse all reasonable out-of-pocket expenses incurred by Service Provider in relation to the Services.
- 6.3 **Extra work.** Customer shall reimburse Service Provider for all costs incurred as a result of Customer's instructions or lack of instructions or the inaccuracy of any materials, data and other information provided by Customer.
- 6.4 **Variation of service fees.** Service Provider shall be entitled to vary its standard rates from time to time by giving not less than 30 days written notice to Customer.
- 6.5 **Payment term.** Service Provider shall invoice Customer [30 percent] of the amount referred to in Section 6.1 before commencement of the Services, [60 percent] upon delivery of the Milestones or Work, as the case may be and the remaining amount upon acceptance (or deemed acceptance) of the Milestones or Work, as the case may be. Payments shall be made on the basis of net cash, to be received by Service Provider within [30 days] following the date of invoice by means of transfer into the bank account indicated on the invoice.
- 6.6 **Right of suspension.** Service Provider shall not be obliged to provide the Services unless all advance payments in relation to the Services and all due and payable fees and disbursements by Customer are actually received.
- 6.7 **Security of payment.** If, in the opinion of Service Provider, the financial position of Customer at any time does not justify delivery on the agreed payment terms, Service Provider may demand full or partial payment in advance or such security or payment conditions as Service Provider may consider adequate to ensure due and timely payment by Customer. Service Provider may suspend, postpone or cancel the Services until Customer's financial position is corrected in a manner acceptable to Service Provider.
- 6.8 **Interest.** If payment has not been made on the due date then, without prejudice to Service Provider's other rights, the amounts then due and payable shall be increased by the higher of the statutory interest and [the quarterly Euribor plus 200 basis points compounded monthly] over the period from the date of invoice to the date of payment in full, without prior notice being required. In addition, all amounts due by Customer to Service Provider, for any reason, shall become payable at once.
- 6.9 **Taxes.**
- (a) All gross amounts. All amounts in this Agreement are gross amounts but exclusive of any value added tax (VAT), sales tax, income tax, consumption tax or any other similar tax, duty, fee, levy or other governmental charge, customs duties and other levies (**Taxes**), except as specified otherwise.
  - (b) Taxes charged. If any payment pursuant to this Agreement is subject to any Taxes, Service Provider shall be entitled to charge such Taxes to Customer, which shall be paid by Customer in addition to the payments pursuant to this Article 6.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 **IP ownership.** The rights under Intellectual Property Rights related to a Milestone or Work, including any Background IPR, Foreground IPR and entitlement to all development data, reports and other technical information relating to the Milestone or Work, shall be owned and licensed as follows:

- (a) Each Party shall retain the ownership of its Background IPR.
- (b) All Foreground IPR shall be owned exclusively by Service Provider.

Customer shall assist Service Provider, at Service Provider's expense, in obtaining, registering, perfecting and enforcing all Patents, trademarks or copyrights necessary to protect Service Provider's interest in the Intellectual Property Rights established pursuant to this Section 7.1.

7.2 **Modifications.** Every modification of the Work or to any part of the Work is subject to prior approval by Service Provider and shall be owned by Service Provider. Customer shall promptly notify Service Provider of any such modifications made by any of its employees or subcontractors.

7.3 **Project license.** Each Party hereby grants to the other Party (and, accordingly, such other Party hereby accepts) a worldwide, non-exclusive, royalty-free license, with the right to sublicense, under its Background IPR to make, have made, use, import, analyse, test, prepare derivative works of, reproduce, have reproduced such Background IPR for the purpose of performing its obligations in connection with the Services only.

7.4 **Third party rights excluded.** This Agreement does not:

- (a) grant any license or right under any Intellectual Property Right of a third party, including in respect of the Intellectual Property Rights of which Service Provider has notified Customer that they may be subject to separate license conditions; or
- (b) impose on Service Provider any obligation to provide any technical or manufacturing information other than expressly required under this Agreement; or
- (c) grant any license, right or immunity to Customer under any of Service Provider's Intellectual Property Rights or under any other intellectual property in the Work:
  - (i) for the combination of such Work with one or more other goods even if such goods have no substantial use other than as part of the combination; (ii) covering a standard or technology, whether proprietary or open.

[The Statement of Work contains a non-exhaustive list of such third party rights.]

7.5 **Standards excluded.** Customer undertakes vis-à-vis Service Provider to obtain adequate licenses in respect of (a) the parts of the Work which use or require the application of certain industry standards or other technologies, and (b) the use or distribution of the Intellectual Property Rights in connection with such standards or technologies. [The Statement of Work contains a non-exhaustive list of such third party rights.]

7.6 **Open source license terms.** To the extent the Work consists of any software, Customer shall not perform any actions in respect of the Work that would require the Work or any modification thereof to be licensed under Open Source License Terms. Such actions may include: (a) combining the Work or a modification with Open Source Software, by means of incorporation or linking or otherwise, and (b) using Open Source Software to create a modification of the Work. Customer shall defend and indemnify Service

Provider, its Affiliates and their subcontractors against any losses, damage and costs arising from or in connection with any breach of this Section 7.6.

- 7.7 **No infringement.** Customer warrants that any Customer material and its use by Service Provider in relation to Service Provider performing its obligations under this Agreement shall not infringe the Intellectual Property Rights of any third party. Customer shall indemnify Service Provider against any losses, damages and expenses arising from any such infringement.

## 8. NON-SOLICITATION

No Party shall, until [two years] after the date of this Agreement, directly or indirectly, solicit or endeavour to entice away, any of the other Party's Key Employee with whom such Party (or an employee of such Party) has come into contact during the provision of the Services; provided, however, that a Party shall not be precluded or otherwise restricted from hiring or employing, or from having employment or hiring discussions with, any such person (a) who is not then employed by that other Party, (b) who contacts it without any solicitation by it, or (c) who responds to a general solicitation for employment placed by it or its agents in newspapers, journals, the internet, through recruiters or any media; and furthermore that any such generic solicitation shall not constitute a breach of this Agreement.

## 9. WARRANTY AND DISCLAIMER

- 9.1 **Warranty.** Service Provider warrants that, on the date of delivery of the Milestones or Work, and for a period of at least [30 days] after each such delivery, the Milestones or Work shall:

- (a) conform to the Specifications as of such date; and
- (b) be provided in a professional and workmanlike manner.

The warranties shall extend to Customer and not to Customer's customers, agents or representatives.

- 9.2 **Failing specifications.** If no grade or quality was specified in respect of the Milestones or Work, the Milestones or Work shall in any case be of good quality and at least satisfy the customary standards commonly adopted in the industry.
- 9.3 **Disclaimer.** Except for the warranties expressly given in this Agreement, the Milestones and the Work are provided "AS IS" without any further warranties as to the quality of the substance or the manufacture thereof. Service Provider disclaims (a) any warranty that the Milestones and the Work (i) shall be merchantable, (ii) are fit for any particular purpose, or (iii) do not infringe the intellectual property rights of third parties; (b) any other warranties with respect to Milestones and the Work, express or implied, except as expressly stated in this Agreement; and (c) any warranties in respect of the formulation, composition, use or distribution of the Milestones and the Work or in respect of the marketing or sale of the Milestones and the Work to third parties.

## 10. LIMITATIONS OF LIABILITY

- 10.1 **Indirect damages.** In no event shall either Party be liable in connection with this Agreement for incidental, indirect, special, consequential or punitive damages, including any damages based on loss of profits or lost revenues, business interruption or loss of

information, production failure, impairment of other goods or otherwise, even if it has been advised of the possibility of such damages.

- 10.2 **General limitation.** Without prejudice to any other provision of this Agreement, if the Milestones or Work fail to meet the Specifications, Customer's rights and Service Provider's liability shall be limited to replacement of such Milestones or Work or reimbursement of the price, at the discretion of Service Provider. Service Provider's obligation to repair or replace shall be contingent upon receipt by Service Provider of timely written notice of any alleged non-conformity of the Milestones or Work and the return of the Milestones or Work if so requested by Service Provider.
- 10.3 **Exclusion.** Service Provider shall have no obligations for breach of warranty if an alleged non-conformity is (partly) the result of misuse, neglect, improper installation or accident, improper use, modification, environmental testing, combination, storage, transportation, further processing or improper handling.
- 10.4 **Location restrictions.** If Service Provider or any of its subcontractors are present on Customer's or third party's premises, neither Service Provider nor any of its subcontractors shall be bound by any restrictions in any location-safety or security notices to the extent it attempts to limit Customer's or third party's liability pursuant to this Agreement, except for non-compliance with safety or security measures of which Service Provider and its subcontractor have been duly and adequately informed. Customer shall not invoke any other limitations of liability against Service Provider or its subcontractors, except as expressly permitted in this Agreement.

## 11. CONFIDENTIALITY

- 11.1 **Limited use.** A Receiving Party shall not use Confidential Information for purposes other than in direct relation with this Agreement. The Receiving Party shall treat the Disclosing Party's Confidential Information with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event a reasonable level of care. In particular, the Receiving Party shall not disclose, publish, disseminate or make accessible the Disclosing Party's Confidential Information, in whole or in part, in any way or form, to third parties other than to its employees or employees of Affiliates who have a need-to-know in connection with the performance of the Receiving Party's obligations under this Agreement.
- 11.2 **Exemptions.** The restrictions and obligations in this Article 11 shall not apply to the Disclosing Party's Confidential Information, which:
- (a) is or has become generally available to the public other than as a result of a disclosure by the Receiving Party (or its representatives);
  - (b) was received by the Receiving Party from a third party and not indirectly from the Disclosing Party in violation of any obligation of secrecy or non-use;
  - (c) was in the possession of the Receiving Party prior to disclosure or is developed independent from such Confidential Information, as is shown by competent evidence.
- 11.3 **Court orders.** In case Confidential Information is required to be disclosed by the Receiving Party by virtue of a court order or statutory duty, the Receiving Party shall be allowed to do so, provided that it shall without delay inform the Disclosing Party in writing of receipt of such order or duty and enable the Disclosing Party reasonably to seek protection against such order or duty.

11.4 **Return or destroy.** Upon the first request of a Disclosing Party, the Receiving Party shall without delay (a) return all their copies, samples and extracts of, and all other physical media containing, the Disclosing Party's Confidential Information, and (b) delete or destroy (and have deleted or destroyed) all automated data containing the Disclosing Party's Confidential Information.

## 12. FORCE MAJEURE

12.1 **Notification of Force Majeure.** A Party unable to fulfil its obligations duly and timely because of an event of Force Majeure shall inform the other Party promptly, both orally and in writing, specifying the cause of Force Majeure and how it may affect its performance, including a good faith best estimate of the likely scope and duration of interference with its obligations, and shall make best efforts to terminate or avoid as soon as practicable the Force Majeure circumstances. The Parties shall consult with each other in order to minimize all damages, costs and possible other negative effects.

12.2 **Effects.** The Party prevented to fulfil its obligations shall not be required to remove any cause of Force Majeure or to replace or provide any alternative to the affected source of supply or the affected facility if that would require additional expenses or a departure from its normal practices, or to make up for any quantities not supplied. If an event of Force Majeure has occurred, the Party prevented to fulfil its obligations is entitled to allocate, in a manner it considers reasonable, the available resources amongst its customers and its own requirement.

## 13. TERM AND TERMINATION

13.1 **Term.** This Agreement shall be effective as of [date] for a period of [five years]. Thereafter, this term shall automatically be extended, each time for a period of [one year]. A Party may terminate this Agreement with effect from the end of the then current term by giving the other Party a written notice of no less than [three months] before its expiry.

13.2 **Material breach.** A Party may terminate this Agreement at any time for a material or persistent breach by the other Party. Where such breach is capable of being remedied, a Party may only terminate if the breaching Party has not remedied such breach within [120 days] after giving a written notice of such breach.

13.3 **Immediate termination.** A Party may terminate this Agreement with immediate effect by written notice, if the other Party:

- (a) shall be dissolved or liquidated, is declared bankrupt or otherwise the subject of suspension of payment or other insolvency proceedings, or if it must reasonably be expected to be unable to meet its obligations under this Agreement;
- (b) fails to comply with the laws and regulations to which it is subject;
- (c) [or any of its employees, agents or subcontractors, gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission of other thing of value, as an inducement or reward (i) for doing or forbearing to do any action in relation to this Agreement, or (ii) for showing or forbearing to show favour or disfavour to any person in relation to this Agreement, in each case except for lawful inducements and rewards to Supplier's employees or, by a subcontractor, such subcontractor's employees; or]

- (d) is subject to a change of control or if the management of the other Party is changed and such change is in the reasonable opinion of the terminating Party (potentially) detrimental to its business interests.

13.4 **Existing obligations.** Notwithstanding the expiry or termination of this Agreement, each Party shall procure the due and timely performance of all obligations assumed by it prior to such expiry or termination. Except in the event that this Agreement is terminated for breach of contract, no Party shall be required to make any payment for termination or expiration of this Agreement. Provisions which, by their very nature, are intended to continue notwithstanding an expiry or termination of this Agreement, shall continue in full force and effect.

## 14. MISCELLANEOUS

14.1 **Amendments.** No amendment of this Agreement shall be binding upon either Party, unless it is in writing and duly signed by both Parties.

14.2 **Assignment.** No Party may assign rights or obligations of this Agreement without the consent of the other Party, which consent shall not unreasonably be withheld or delayed; except that Service Provider may, without such consent, on written notice to the other Party, assign any of its rights or obligations under this Agreement to its Affiliates. Notwithstanding the previous sentence, each Party may assign this Agreement without the prior consent of the other Party, to a purchaser of all or substantially all of the assets or a business of such Party, provided that such assignment shall not be to a competitor of the other Party in the subject field of this Agreement.

14.3 **Independent contractors.** The Parties are independent contractors. No Party shall have any power or authority to assume on behalf of or in the name of the other Party any obligations or duties or to bind the other Party to any agreement, obligation or other commitment vis-à-vis any third party.

14.4 **Export or import control obligations.** The Parties undertake with each other to comply strictly with all applicable laws and regulations pertaining to EU export controls and the *U.S. Export Administration* or export or import restrictions of other applicable jurisdictions. If the performance or a delivery by one Party is subject to an export or import license being granted by a governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, such Party shall notify the other Party of such fact as soon as they become aware of such requirement.

## 15. APPLICABLE LAW AND DISPUTE RESOLUTION

15.1 **Applicable law.** This Agreement is governed by the laws of the [jurisdiction].

15.2 **Mediation.** If any dispute arises in connection with this Agreement, the Parties shall attempt to settle it by mediation in accordance with the [insert the document]. Unless otherwise agreed between the Parties, the mediator will be nominated by [insert mediation organization]. The mediation will take place in [city, country] and the language of the mediation will be [English].

15.3 **Arbitration.** If the dispute is not settled by mediation within [45 days] of commencement of the mediation or within such further period as the Parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration.

THUS, this Agreement was executed in two copies.

**[Name of Legal Entity]**

**[Name of Legal Entity]**

\_\_\_\_\_  
By: [●]

\_\_\_\_\_  
By: [●]

## **Annex 1. Statement of Work**

### **PROJECT [INSERT NAME]**

#### 1.1 Scope and background

- (a) Explain level of innovation or discipline
- (b) [Commercial (applications ...)]
- (c) Identify know how and expertise expected to be already available at each of the Parties (or each Party's appropriateness to provide certain know how or expertise)

#### 1.2 Objectives and deliverables

- (a) Technical specifications or requirements to be met:
  - (i) ...
  - (ii) ...
- (b) [Deliverables by individual parties (separate from joint deliverables)]
- (c) Work breakdown (WBS)
- (d) Test plan
- (e) Acceptance tests

#### 1.3 Project timing (including criteria for each phase)

- (a) Starting date
- (b) Define phases (incl. specific time schedule), as applicable:
  - (i) Further definition of the project scope, and preliminary design
  - (ii) Design approval (go, no-go)
  - (iii) Prototype development
  - (iv) Establish qualification requirements (go, no-go)
  - (v) Development milestones
  - (vi) Acceptance tests and validation of the Work
  - (vii) Upscaling
- (c) Dates of work consultations and interim reporting
- (d) Planning: starting dates of subprojects, dates of meetings and interim reporting dates
- (e) Evaluation and results reporting

#### 1.4 Milestones and payment schedule

1.5 Organisation

- (a) People, roles and responsibilities
- (b) Resources (*i.e.*, number of FTE and available budgets)
- (c) Reporting structure

1.6 Approved subcontractors, third party involvement and required/permitted OEM products

1.7 List of all standards and third party rights used in any part of the Work

