

## TERMS & CONDITIONS

These Terms and Conditions shall apply to the license of the Application(s) and the provision of the Services by Mobile Rocket to the Customer.

## BACKGROUND

- (A) Mobile Rocket has developed the Mobile Rocket and Rocket Sign software applications and platforms which it makes available to the Customer.
- (B) The Customer wishes to use Mobile Rocket's service in its business operations.
- (C) Mobile Rocket has agreed to provide and the Customer has agreed to take and pay for Mobile Rocket's services subject to the terms and conditions of this agreement.

## Agreed terms

### 1. Interpretation

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

**Agreement Particulars:** the variable particulars of the agreement set out at the commencement of this agreement.

**Application:** the application(s) as detailed in the Agreement Particulars. to be provided by Mobile Rocket to the Customer as part of the Services, designed to run on certain mobile device operating systems and computer web browsers as set out online via [www.mobilerocket.co.uk/operatingsystems](http://www.mobilerocket.co.uk/operatingsystems) or such other web address notified by Mobile Rocket to the Customer from time to time,

**ASP Infrastructure:** Mobile Rocket's computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Application by the Customer.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in clause 2.2(b).

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the fees payable by the Customer to Mobile Rocket for the use of the Services, as set out in the Agreement Particulars, including the User Subscriptions, any additional User Subscription Fees, the Hosting Fee, the Bespoke Development Charges and the excess storage fees.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.5 or clause 9.6.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Customer Data:** the data inputted by the Customer, Authorised Users, or Mobile Rocket on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Bespoke Development:** the bespoke development work and customisation work to be undertaken by Mobile Rocket to the Applications, including any integration or data migration, and as set out in a proposal.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party].

**Effective Date:** the date of this agreement.

**End User:** a customer or candidate of the Customer using the Application.

**End user License:** Mobile Rocket's End user License for of the Application as amended from time to time, and as set out online via [www.mobilerocket.co.uk/enduserterms](http://www.mobilerocket.co.uk/enduserterms) or such other web address notified by Mobile Rocket to the Customer from time to time.

**Hosting Fee:** means the monthly fees payable by the Customer to Mobile Rocket for the hosting of the Hosting Services, as set out in the Agreement Particulars,

**Hosting Services:** the provision of the hosting of the Rocket Sign Application

**Initial Term:** 12 calendar months, such period to commence from the Effective Date.

**Normal Business Hours:** 9.00 am to 4.30 pm local UK time, each Business Day.

**Proposal:** means the documents setting out details of the bespoke Development Services to be provided by MobileRocket.

**Renewal Period:** the period described in clause 12.1.

**Services:** means, collectively, the Application, ASP Infrastructure, Hosting Services, Bespoke Development Services, and support services provided by Mobile Rocket to the Customer;

**Specification:** the system specification for Mobile Rocket and Rocket Sign Applications, as amended from time to time, and as set out online via [www.mobilerocket.co.uk/specification](http://www.mobilerocket.co.uk/specification) or such other web address notified by MobileRocket to the Customer from time to time

**Subscription Fees:** the subscription fees payable by the Customer to Mobile Rocket for the User Subscriptions, as set out in the Agreement Particulars.

**Support Services Policy:** Mobile Rocket's policy for providing support in relation to the Services from time to time.



**Term:** has the meaning given in clause 12.1 (being the Initial Term together with any subsequent Renewal Periods).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**User:** an Authorised User and or an End User.

**User Subscriptions:** the number of subscriptions purchased by the Customer pursuant to clause 7.1 which entitle Authorised Users to access and use the Services in accordance with this agreement, the number of which are set out in the Agreement Particulars.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.



1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. License**

2.1 Subject to the terms and conditions of this agreement, Mobile Rocket hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit:

- (a) the Authorised Users to use the Services; and
- (b) the End Users to use the Application

during the Term solely for the Customer's business operations.

2.2 In relation to the Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the Maximum Number of User Subscriptions it has purchased from time to time;
- (b) each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
- (c) it will not allow or suffer any Authorised User account to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Mobile Rocket within 5 Business Days of Mobile Rocket's written request at any time or times;
- (e) it shall permit Mobile Rocket or Mobile Rocket's designated auditor to audit the Customer's use of the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at Mobile Rocket's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Mobile Rocket's other rights, the Customer shall promptly disable such passwords and Mobile Rocket shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Fees to Mobile Rocket, then without prejudice to Mobile Rocket's other rights, the Customer shall pay to Mobile Rocket an amount equal to such underpayment as calculated in accordance with Mobile Rocket's standard



charges within 10 Business Days of the date of the relevant audit or permit Mobile Rocket to take payment in accordance with clause 7.2; and

(h) all Users use of the Application shall be subject to the End user License.

2.3 The Customer and its Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Mobile Rocket reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Application or the Services; or
- (c) use the Services to provide services to third parties; or
- (d) subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users and End Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus into Mobile Rocket's network and information systems.



- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Mobile Rocket.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.7 The Customer may, from time to time during any Term, purchase additional User Subscriptions in excess of the number set out in the Agreement Particulars and Mobile Rocket shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this agreement.
- 2.8 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Mobile Rocket in writing. Mobile Rocket shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where Mobile Rocket approves the request, Mobile Rocket shall activate the additional User Subscriptions within 5 business days of its approval of the Customer's request.
- 2.9 If Mobile Rocket approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Mobile Rocket's invoice, pay to Mobile Rocket the relevant fees for such additional Additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Mobile Rocket for the remainder of the Initial Term or then current Renewal Period (as applicable).

### **3. Services**

- 3.1 Mobile Rocket shall, during the Term, provide the Services to the Customer on and subject to the terms of this agreement.
- 3.2 If agreed in the Agreement Particulars, Mobile Rocket shall also provide:
- (a) the Hosting Services and or
  - (b) the Bespoke Development Services to the Customer
- with effect from the Effective Date.
- 3.3 Mobile Rocket shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Mobile Rocket has used reasonable endeavours to give the Customer at least 3 Normal Business Hours' notice in advance.



3.4 Mobile Rocket will, as part of the Services and at no additional cost to the Customer, provide the Customer with Mobile Rocket's standard customer support services during Normal Business Hours in accordance with Mobile Rocket's Support Services Policy in effect at the time that the Services are provided. Mobile Rocket may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Mobile Rocket's then current rates.

#### **4. Customer data**

4.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

4.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Mobile Rocket shall be for Mobile Rocket to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Mobile Rocket. Mobile Rocket shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

4.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

4.4 The parties acknowledge that:

- (a) if Mobile Rocket processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and Mobile Rocket is the processor for the purposes of the Data Protection Legislation.
- (b) Schedule 4 sets out the scope, nature and purpose of processing by Mobile Rocket, the duration of the processing and the types of personal data and categories of data subject.
- (c) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Mobile Rocket's other obligations under this agreement.

4.5 Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Mobile Rocket for the duration and purposes of this agreement so that Mobile Rocket may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.



4.6 Without prejudice to the generality of clause 4.3, Mobile Rocket shall, in relation to any personal data processed in connection with the performance by Mobile Rocket of its obligations under this agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless Mobile Rocket is required by the laws of any member of the European Union or by the laws of the European Union applicable to Mobile Rocket and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Mobile Rocket is relying on Applicable Laws as the basis for processing personal data, Mobile Rocket shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Mobile Rocket from so notifying the Customer;
- (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
  - (i) the Customer or Mobile Rocket has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Mobile Rocket complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) Mobile Rocket complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and immediately inform the Customer if, in the opinion of Mobile Rocket, an instruction infringes the Data Protection Legislation.

4.7 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may





include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 4.8 Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **5. Mobile Rocket's obligations**

- 5.1 Mobile Rocket undertakes that the Services will be performed with reasonable skill and care.

- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Mobile Rocket's instructions, or modification or alteration of the Services by any party other than Mobile Rocket or Mobile Rocket's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Mobile Rocket will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.

- 5.3 Mobile Rocket:

(a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free;
- (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- (iii) the Application will comply with any Heightened Cybersecurity Requirements.

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

- 5.4 This agreement shall not prevent Mobile Rocket from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.



5.5 Mobile Rocket warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## 6. Customer's obligations

The Customer shall:

- (a) provide Mobile Rocket with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by Mobile Rocket;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Mobile Rocket may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) ensure that any End User use the Services in compliance with the terms and conditions of the End user License made available to the Customer and End User by Mobile Rocket online via [www.mobilerocket.co.uk/enduserterms](http://www.mobilerocket.co.uk/enduserterms) or such other web address notified by Mobile Rocket to the Customer from time to time;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for Mobile Rocket, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by Mobile Rocket from time to time; and
- (h) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Mobile Rocket's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.



## 7. Charges and payment

### 7.1 The Customer shall pay to Mobile Rocket:

- (a) If the Customer is to pay the Subscription Fees and/or the Hosting Fees annually:
  - (i) the Customer shall pay the Subscription Fees (including any additional Subscription Fees) within 7 days of the date of this Agreement of this Agreement and then within 7 days of the start of and each Renewal Period;
  - (ii) if agreed in the Agreement Particulars, the Hosting Fee for the Hosting Services on within 7 days of the date of this Agreement of this Agreement and then within 7 days of the start of and each Renewal Period,
- (b) if the Customer is to the Subscription Fees and/or the Hosting Fees monthly then:
  - (i) the Customer shall pay the Subscription Fees (including any additional Subscription Fees) within 7 days of the date of this agreement and then monthly thereafter for the duration of the Initial Term and any Renewal Period;
  - (ii) if agreed in the Agreement Particulars, the Hosting Fee for the Hosting Services within 7 days of the date of this agreement and then monthly thereafter for the duration of the Initial Term and any Renewal Period;
- (c) any excess data storage fees pursuant to clause 7.5 on the first day of each calendar month throughout the Initial Term and each Renewal Period,
- (d) if agreed in the Agreement Particulars, the Bespoke Development Fee for the Bespoke Development Services on the Effective Date.

in accordance with this clause 7.

### 7.2 The Customer shall on the Effective Date provide to Mobile Rocket valid, up-to-date and complete direct debit or credit card details or approved purchase order information acceptable to Mobile Rocket and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its direct debit details to Mobile Rocket, the Customer hereby authorises Mobile Rocket to debit such account for the sums set out in clause 7.1 at the frequency set out therein;
- (b) its credit card details to Mobile Rocket, the Customer hereby authorises Mobile Rocket to bill such credit card for the sums set out in clause 7.1 at the frequency set out therein;
- (c) its approved purchase order information to Mobile Rocket, Mobile Rocket shall invoice the Customer for the sums set out in clause 7.1 at the frequency



set out therein and the Customer shall pay each invoice within 7 days after the date of such invoice.

- 7.3 If Mobile Rocket has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Mobile Rocket:
- (a) Mobile Rocket may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and Mobile Rocket shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 11.3(b), non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to Mobile Rocket's invoice(s) at the appropriate rate.
- 7.5 If, at any time whilst using the Services, the Customer exceeds the Inclusive Data as set out in the Agreement Particulars, Mobile Rocket shall charge the Customer, and the Customer shall pay, Mobile Rocket's then current excess data storage fees.
- 7.6 Mobile Rocket shall be entitled to increase the Fees, the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 2.9, the Hosting Fees and/or the excess storage fees payable pursuant to clause 7.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer.

## **8. Proprietary rights**

- 8.1 The Customer acknowledges and agrees that Mobile Rocket and/or its licensors own all intellectual property rights in the Services, including in any deliverables developed as part of the Bespoke Development Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), rights in codes or coding, or any other rights or licences in respect of the Services.
- 8.2 Mobile Rocket confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.



## 9. Confidentiality

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 9.2 Subject to clause 9.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 9.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Mobile Rocket's Confidential Information.
- 9.6 Mobile Rocket acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.8 The above provisions of this clause 9 shall survive termination of this agreement, however arising.



## 10. Indemnity

- 10.1 The Customer shall defend, indemnify and hold harmless Mobile Rocket against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's or any End User's use of the Services, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) Mobile Rocket provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 10.2 Mobile Rocket shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Mobile Rocket is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to Mobile Rocket in the defence and settlement of such claim, at Mobile Rocket's expense; and
  - (c) Mobile Rocket is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim, Mobile Rocket may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall Mobile Rocket, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than Mobile Rocket; or
  - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Mobile Rocket; or
  - (c) the Customer's use of the Services after notice of the alleged or actual infringement from Mobile Rocket or any appropriate authority.
- 10.5 The foregoing and clause 11.3(b) states the Customer's sole and exclusive rights and remedies, and Mobile Rocket's (including Mobile Rocket's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.



## 11. Limitation of liability

11.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Mobile Rocket shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Mobile Rocket by the Customer in connection with the Services, or any actions taken by Mobile Rocket at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

11.2 Nothing in this agreement excludes the liability of Mobile Rocket:

- (a) for death or personal injury caused by Mobile Rocket's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.3 Subject to clause 11.1 and clause 11.2:

- (a) Mobile Rocket shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) Mobile Rocket's total aggregate liability in contract (including in respect of the indemnity at clause 10.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

## 12. Term and termination

12.1 This agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement.



12.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(d) to clause 12.2(j) (inclusive); or





- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer and its End Users shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) Mobile Rocket may destroy or otherwise dispose of any of the Customer Data in its possession, unless Mobile Rocket receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Mobile Rocket shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Mobile Rocket in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

12.4 The following provisions of this clause 12.4 shall apply in the event that a after the Effective Date the Customer terminates this Agreement in breach of contract prior to the expiry of the Initial Term or the Renewal Terms as the case may be:

- (a) In this clause 12.4 Remainder of the Term means (where the Customer terminates or is deemed to have terminated this Agreement in breach of contract) the period that the Agreement would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract.
- (b) In the event that the Customer is in breach of contract by terminating this Agreement otherwise than in accordance with clause 12.1 the Customer shall pay to Mobile Rocket as liquidated damages an amount equal to the lost gross profits of the sum that the Customer would have been liable to pay to Mobile Rocket for the Remainder of the Term pursuant to this Agreement (calculated at the rate which applied at the time of termination).

**13. Force majeure**

Mobile Rocket shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes



(whether involving the workforce of Mobile Rocket or any other party), failure of a utility service or transport or telecommunications network, act of God, pandemic, epidemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Mobile Rockets or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

#### **14. Conflict**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

#### **15. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **16. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **17. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **18. Severance**

18.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

18.2 If any provision or part-provision of this agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **19. Entire agreement**

19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties,



representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that in entering into this agreement it does not rely on[, and shall have no remedies in respect of,] any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **20. Assignment**

20.1 The Customer shall not, without the prior written consent of Mobile Rocket, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20.2 Mobile Rocket may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **21. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. Third party rights**

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

## **23. Notices**

23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post



shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

**24. Governing law**

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

**25. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

