

**PARTIES:**

1. AlgoSpan Limited, a company incorporated in England of The Quay, Channel Way, Ocean Village, Southampton, S014 3TG (“**AlgoSpan**”) Company Registration Number: 4251737; and
2. the Party set out on the Service Order Form (as defined below) (“**Customer**”),  
  
(each a “**Party**” and together the “**Parties**”).

**RECITALS:**

- (A) AlgoSpan provides high speed telecommunications connectivity and equipment co-location solutions and other technical and consultancy services to customers; and
- (B) The Customer wishes to appoint AlgoSpan, and AlgoSpan wishes to accept its appointment by the Customer, to provide Services (as defined below) in connection with Customer's business, and with such other matters and business as may be agreed between the Parties from time to time, subject to the terms and conditions of this Agreement (“**Master Services Agreement**”).

**TERMS AGREED:****1. Definitions and Interpretation**

- 1.1 In this Agreement the capitalised terms listed in this Clause 1 shall have the meanings below:

“**Acceptance Date**” means the date on which the Customer notifies AlgoSpan of its acceptance to the terms of the Completion Certificate or where deemed acceptance of the Service takes place;

“**Acceptance Period**” means the period of five (5) Business Days from the date of the applicable Completion Certificate;

“**Affiliates**” means, in relation to either Party, any entity which directly or indirectly owns or controls or is directly or indirectly owned or controlled by or in common ownership or control with that Party to the extent of holding more than 50% of the shares or stock having the power to vote at a general meeting or equivalent;

“**Agreement**” means, collectively, this Master Services Agreement, any Service Level Agreement and the Service Order Form for that Service;

“**AlgoSpan**” means the AlgoSpan entity identified in the Master Services Agreement and the associated Service Order Form;

“**AlgoSpan Network**” means the fibre optic communications network operated by either AlgoSpan, its Affiliates or its Sub-contractors;

“**Business Day**” means any Monday to Friday excluding public, bank or statutory holidays in the United Kingdom;

“**Completion Certificate**” means the certificate provided by AlgoSpan to the Customer when AlgoSpan has determined that the Service with respect to a Service Order Form is operating substantially in conformity with the Service Levels contained in the applicable Service Level Agreement;

“**Confidential Information**” means the terms, conditions and subject matter of this Master Services Agreement and all information in any form disclosed by one Party to the other (including, the application programming interface and associated documentation, the Service Level Agreement and Service Order Forms) or otherwise received by the other in the negotiation, entering into or performance of this Master

Services Agreement, which relates directly or indirectly to the disclosing Party or any third party with which it has or proposes to have business dealings and its or their officers, employees, agents, suppliers or contractors including the Services and any information which the receiving Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential;

**“Customer Site”** means the location(s) owned or occupied by the Customer or its end-users to which the Service will be delivered by AlgoSpan;

**“Event of Insolvency”** shall mean in relation to a Party:

- (a) a liquidator, provisional liquidator, receiver, administrative receiver, administrator or similar officer is appointed over any of the assets or business of that Party;
- (b) that Party enters into a scheme of arrangement or composition with or for the benefit of its creditors generally;
- (c) any reorganisation, moratorium or other administration with or for the benefit of that Party's creditors generally or any class of its creditors;
- (d) that Party adopts a resolution or proposes to adopt a resolution to wind itself up or becomes unable to pay its debts as and when they fall due or become deemed to become unable to pay its debts as and when they fall due within the meaning of section 123 of the Insolvency Act 1986; or
- (e) any similar or analogous event happens under the national, state or local laws of any other country;

**“Fees”** means the MRC and NRC set out on the Service Order Form for the applicable Services;

**“Force Majeure Event”** means any cause that is beyond the reasonable control of the affected Party including acts of God or nature; insurrection or civil disorder; war; fires, flood or other catastrophic events; terrorism; strikes, power outages or interruptions to or of other utility services;

**“Indirect Taxes”** means any sales, use or excise tax, Value Added Tax, or any other tax imposed by any governmental (national, regional or local) but not taxes imposed by law and payable by AlgoSpan relating to its net income;

**“Interest Rate”** means the lower of (i) the highest rate permitted by law, or (ii) one and one-half per cent (1.5%) per month;

**“Master Services Agreement”** means the written master services agreement executed by the Customer and accepted by AlgoSpan;

**“MRC”** means the monthly recurring Fees;

**“Notice Address”** means the address specified for notice in the Service Order Form or such other address as may have been notified to the other Party in writing in accordance with Clause 13.1;

**“NRC”** means the non-recurring Fees;

**“Person”** means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organisation, government or any agency or political subdivision thereof or any other entity;

**“Scheduled Outage Window”** means the time period set out on the Service Level Agreement;

**“Security Deposit”** means a cash deposit, letter of credit drawn on a bank acceptable to AlgoSpan or such other security as AlgoSpan may require;

**“Service”** means a service provided by AlgoSpan pursuant to an accepted Service Order Form, this Master Services Agreement and any Service Level Agreement;

**“Service Credit”** means a credit provided to the Customer by AlgoSpan in the event that the Services do not meet those Service Levels set out in the Service Level Agreement;

**“Service Level”** means the service levels which AlgoSpan are to meet or exceed as set out in the Service Level Agreement;

**“Service Level Agreement”** means the schedule(s) attached hereto (if any) that contain additional terms and conditions for the provision of the Service(s) ordered by the Customer;

**“Service Order Form”** means a written request by Customer for a Service on an AlgoSpan approved service order form;

**“Service Term”** means the term with respect to each Service that shall begin on the Acceptance Date and shall extend for a period thereafter as set out on the applicable Service Order Form;

**“Sub-contractors”** means a contractor appointed by AlgoSpan to perform or assist with the provision of all or part of the Services;

**“Target Ready for Service Date”** means the date by which the Customer requests the Service(s) to be available as set out on the Service Order Form; and

**“Term”** means the term of the Master Agreement which shall take effect upon the execution of the first Service Order Form between the Parties and shall remain in effect until the expiration of the last effective Service Term.

- 1.2 The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement or as amplifying or limiting any of its content.
- 1.3 Words in the Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.
- 1.4 References to a statutory provision include a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances.
- 1.5 Unless expressly defined herein, words having well known technical or trade meaning shall be so construed.
- 1.6 All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- 1.7 Except as set forth to the contrary in the Agreement, a Party's right or remedy shall be cumulative and without prejudice to any other right or remedy, whether contained therein or not.
- 1.8 If there is any conflict or inconsistency between a provision of this Master Services Agreement, a provision in any applicable Service Level Agreement, and the applicable Service Order Form, then the Service Order Form shall take priority, followed by the Service Level Agreement, then followed by this Master Services Agreement to the extent of the conflict or inconsistency.

## **2. Services, Service Availability & Acceptance, Service Credits**

- 2.1 This Master Services Agreement together with the applicable Service Level Agreement (if any) sets forth the terms and conditions pursuant to which the Customer agrees to purchase and AlgoSpan agrees to provide the Service(s) specified in the applicable Service Order Form.
- 2.2 The Customer shall complete a Service Order Form and provide such Service Order Form to AlgoSpan for its consideration. If AlgoSpan is willing to provide the services set out on the Service Order Form provided by the Customer then it shall countersign the Service Order Form and a binding Agreement shall be formed. Submission of a completed Service Order Form by the Customer to AlgoSpan does not oblige

AlgoSpan to provide the stated services unless it accepts and counter-signs the Service Order Form provided by the Customer.

- 2.3 AlgoSpan shall use commercially reasonable efforts to meet the Target Ready for Service Date agreed by the Parties in the Service Order Form.
- 2.4 AlgoSpan shall provide a Completion Certificate to the Customer and each Completion Certificate shall set forth the date upon which AlgoSpan intends to commence delivery of the Service to the Customer with respect to each Service Order Form.
- 2.5 During the Acceptance Period the Customer shall test the Service and provide AlgoSpan a written notice either accepting or rejecting the Service. If the Customer determines during the Acceptance Period that the Service is not operating in conformity with the applicable Service Level Agreement, the Customer shall immediately notify AlgoSpan (specifying, in reasonable detail, the defect or failure in the Service). Any use of the Service for purposes other than testing shall constitute automatic acceptance of the Service from the date of the Completion Certificate. If the Customer fails to notify AlgoSpan of its acceptance or rejection of the Completion Certificate within the Acceptance Period, the Customer shall be deemed to have accepted such Service.
- 2.6 In the event of a good faith rejection by the Customer under Clause 2.5, AlgoSpan shall take such action as it deems reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure and repeat the completion certificate process described in Clause 2.4.
- 2.7 Notwithstanding anything to the contrary contained in the Agreement, AlgoSpan may procure any portion of a Service or infrastructure necessary to provide a Service from third parties (whether under a lease, sublease or otherwise) and deliver the same or a portion thereof to the Customer.
- 2.8 If the Services do not meet the Service Levels, AlgoSpan will provide the Customer with Service Credits in accordance with the Service Level Agreement unless such failure is caused by a Force Majeure Event or by the Customer or its Affiliates, agents or invitees. Notwithstanding anything to the contrary contained in the Agreement, such Service Credits shall be the Customer's sole and exclusive remedy with respect to the failure or non-performance of a Service. The Customer shall not be entitled to any Service Credits during any period during which it owes Fees to AlgoSpan. If AlgoSpan does not receive Customer's written request for any applicable Service Credit within thirty (30) calendar days of the event triggering the Service Credit, Customer shall be deemed to have waived its right to the Service Credit for that particular event. Customer acknowledges and agrees that the Service Credits represent a genuine and reasonable pre-estimate of the Customer's loss arising from AlgoSpan's failure to achieve the Service Levels.

### **3. Customer Site Access & Interconnection**

- 3.1 The Customer shall grant AlgoSpan, its Affiliates or Sub-contractors (as the case may be) access to, and use of, the Customer's facilities at each Customer Site to the extent reasonably necessary for the installation, connection, removal and maintenance of equipment, facilities and systems relating to a Service. The Customer warrants that it has obtained or will obtain, on a timely basis, all permissions, wayleaves and consents from third parties necessary to allow AlgoSpan, its Affiliates or Sub-contractors (as the case may be) such access, including permission to cross real property to access the Customer's facilities. The Customer shall be responsible for providing and maintaining, at its own expense, the level of power, humidity, heating and air conditioning necessary to maintain a proper environment for the equipment in each Customer Site. In the event that the Customer fails to meet its obligations regarding access and facilities maintenance hereunder and, as a result, AlgoSpan is unable to install or continue the delivery of a Service by the Target Ready for Service Date, the Service shall be deemed to have been automatically accepted and fees due to AlgoSpan will be payable in accordance with Clause 8. AlgoSpan, its Affiliates or Sub-contractors (as the case may be) shall comply with all applicable security and health & safety policies provided by the Customer in connection with AlgoSpan's, its Affiliates or Sub-contractors (as the case may be) access to the Customer Site.
- 3.2 AlgoSpan shall, at the Customer's request, interconnect or cross connect the Customer's communications system with the Service within AlgoSpan's facilities or structures along the applicable route as designated in the Service Order Form, all in conformity with AlgoSpan standard interconnection or cross connect

procedures. AlgoSpan shall not be liable to the Customer for any failure to or delays in interconnecting or cross connecting with any equipment not provided by AlgoSpan. Nothing contained in this Agreement shall obligate AlgoSpan to extend the AlgoSpan Network.

#### **4. Maintenance**

From and after each Acceptance Date, the relevant Service shall be provided by AlgoSpan to the Customer in accordance with the Service Levels set out in the Service Level Agreement. AlgoSpan shall use commercially reasonable efforts to perform all scheduled maintenance (which may include, without limitation, substituting, changing, converting and reconfiguring equipment and facilities with respect to a Service) during a Scheduled Outage Window. In the event AlgoSpan determines that it is necessary to interrupt a Service for the performance of scheduled maintenance, AlgoSpan will use commercially reasonable efforts to notify the Customer at least seven days prior to such interruption. AlgoSpan shall have full and complete control of the configuration, design, regrooming, rearrangement or consolidation of channels or circuits and any related functions of the AlgoSpan Network. AlgoSpan also reserves the right, from time to time, to upgrade the capacity of and make enhancements to, the AlgoSpan Network. AlgoSpan shall attempt to minimise interruption to, or impairment of, a Service arising from the implementation of any such enhancement or upgrade. In no event shall interruption for enhancements, upgrades or maintenance constitute a failure of performance by AlgoSpan of a Service in any manner.

#### **5. Service Use**

The Customer represents, warrants and covenants that during the Term and/or each Service Term that:

- (a) it shall use each Service in compliance with, and subject to, all applicable government codes, ordinances, laws, rules and regulations and will require its customers to do the same;
- (b) it shall secure, prior to the Acceptance Date with respect to each Service, and maintain in full force and effect during the applicable Service Term, any and all necessary approvals, consents, rights of way, permits, franchises, licences or similar approvals from all governmental and other authorities which are necessary or required to be obtained by the Customer;
- (c) it shall not use its systems or any Service in a way that interferes in any way with, or adversely affects, the use of the AlgoSpan Network or any other Person using the AlgoSpan Network or any communications and/or data services thereon, and it shall not physically access in any manner the AlgoSpan Network or any components thereof;
- (d) it is certified to the extent required by the proper regulatory agencies to provide services in those jurisdictions where such services are to be provided by the Customer; and
- (e) the content it or its customers make available through the Service will not include any:
  - (i) indecent, offensive or obscene material;
  - (ii) constitute a defamation or libel of AlgoSpan or any third party; or
  - (iii) result in any liability to AlgoSpan of any kind.

#### **6. Representations and Warranties**

Each Party represents and warrants to the other that:

- (a) it has full right and authority to enter in to the Agreement and that by entering into the Agreement, it is not in violation of its charter or bylaws, or any law, regulation or agreement by which it is bound or to which it is subject;
- (b) its execution, delivery and performance of the Agreement has been duly authorised by all requisite corporate action;

- (c) that the persons signing the Agreement on its behalf are authorised to do so;
- (d) it is a business entity duly organised, validly existing and in good standing under the laws of its jurisdiction of organisation or incorporation; and
- (e) there are no actions, suits or proceedings pending or threatened against it before any court or administrative agency that would materially impair its performance under the Agreement.

## **7. Indemnification**

7.1 The Customer agrees to defend, indemnify and hold harmless AlgoSpan, its Affiliates, agents and sub-contractors from any and all claims, liabilities, costs, fines, losses, damages and expenses (including reasonable legal fees), arising out of, or relating to:

- (a) the use of a Service by the Customer or its customers; and
- (b) claims of third parties seeking damages for any loss or misuse of data by the Customer or its customers.

7.2 AlgoSpan shall have no liability to any third party in relation to any Service and the Customer shall indemnify AlgoSpan for any and all claims, liabilities, costs, fines, losses, damages and expenses (including reasonable legal fees) arising out of, or relating to, any claim brought by a third party. This Clause 7.2 shall not affect the Customer's right to bring a claim under this Agreement against AlgoSpan.

## **8. Payment & Taxes**

8.1 In consideration of the provision of the Service to the Customer, the Customer agrees to pay AlgoSpan the Fees. All invoices under the Agreement shall be in the currency as set out on the Service Order Form. Except as otherwise expressly provided in the Service Order Form, the Fees and any additional nonrecurring fees shall be due and payable by the Customer within thirty (30) days from the date of the invoice.

8.2 All payments made by the Customer under the Agreement shall be made in the currency set out on the Service Order Form by wire transfer of immediately available funds to the account designated by AlgoSpan in its invoices. Such payments shall reference the invoice number, as provided in the invoice rendered. Except as otherwise provided in the Agreement, all payments made by the Customer shall be non-refundable.

8.3 If the Customer fails to pay any undisputed amounts under the Agreement when due, then, in addition to such sum and without prejudice to any other rights and remedies that AlgoSpan may have, the Customer shall pay interest on such unpaid amount at the Interest Rate until such sum is paid in full and interest shall accrue both before and after judgment.

8.4 The Customer may, acting in good faith, dispute any portion of an invoice provided the Customer:

- (a) pays the full undisputed portion of the invoice by its due date;
- (b) provides AlgoSpan with a written statement and supporting documentation regarding the dispute within thirty (30) days from the date of the relevant invoice; and
- (c) negotiates with AlgoSpan to resolve the dispute. If the dispute is not resolved within forty-five (45) days from AlgoSpan's receipt of the Customer's written statement, either Party may pursue its available rights or remedies.

No interest shall accrue on any payment that is disputed in good faith by the Customer whilst such dispute is pending. Notwithstanding the foregoing, if such dispute is later resolved in favour of AlgoSpan, such amount shall bear interest, at the Interest Rate, from the date originally due until payment in full has been received by AlgoSpan.

- 8.5 AlgoSpan's obligation to provide Services to the Customer pursuant to the Agreement is subject to approval by AlgoSpan of the applicable Service Order Form and the Customer's credit status. AlgoSpan may require the Customer to provide a Security Deposit. Each such Security Deposit shall be maintained as security for the Customer's performance of its obligations pursuant to the Agreement. The Customer shall provide the Security Deposit within five (5) Business Days of the signing of the Service Order Form and AlgoSpan shall not be required to deliver or continue to deliver the Service until such Security Deposit has been received. In its sole discretion, AlgoSpan may offset any amounts due from the Customer to AlgoSpan against the Security Deposit without waiving any additional rights or remedies or making an election of remedies, in which case, the Customer shall be required to replenish the Security Deposit, within three (3) Business Days, to its level prior to the offset or to such other level as AlgoSpan shall require. AlgoSpan shall return the balance of the Security Deposit to the Customer within thirty (30) days of the Customer's fulfillment of all of its obligations under the Agreement.
- 8.6 All payments made by the Customer under the Agreement shall be made without any deduction, or withholding for or on account of any Indirect Tax, with the Customer being solely responsible to pay all such Indirect Taxes. In the event and to the extent the Customer believes that it is exempt under applicable law from any Indirect Tax, the Customer shall provide AlgoSpan with the appropriate tax exemption certificates, in a form acceptable to AlgoSpan and to the relevant jurisdiction, demonstrating that it maintains tax-exempt status from collection of all or part of these types of Indirect Taxes. If the Customer has not provided such certificates, AlgoSpan shall be entitled to include on any invoice, and the Customer shall pay, any lawfully imposed Indirect Tax. The Customer shall indemnify, defend and hold AlgoSpan and its Affiliates harmless for the payment of such Indirect Taxes, including, but not limited to, any Indirect Taxes that AlgoSpan does not collect or remit in reliance upon the Customer's exemption certificate. If the Customer makes any deduction or withholding for any Indirect Tax from any payment due to AlgoSpan or if AlgoSpan is required to pay an Indirect Tax, then, notwithstanding anything to the contrary contained in the Agreement, the gross amount payable by the Customer to AlgoSpan shall be increased so that after any such deduction or withholding for such Indirect Taxes or any additional deduction or withholding on account of any Indirect Tax caused by such additional gross amount payable or any payments of an Indirect Tax by AlgoSpan, the net amount received by AlgoSpan will not be less than the sum AlgoSpan would have received had no deduction or withholding been required.
- 8.7 The Customer's obligation to pay any Fees or other amounts due under the Agreement shall not be subject to any rights of set-off, counterclaim, deduction, defence or other right which the Customer may have against AlgoSpan or any other Person.
- 8.8 For the avoidance of doubt, the Customer shall be responsible for the payment of business rates for any circuit or circuits which are lit and controlled by the Customer.
- 8.9 If the cost to AlgoSpan of performing the Services increases as a result of any change to the law or any other reason beyond AlgoSpan's reasonable control, such increase shall be added to the Fees payable in respect of the Services hereunder. AlgoSpan shall give the Customer at least thirty (30) days' prior written notice of such increase.
- 8.10 If, as a consequence of any breach of this Agreement by the Customer, or the supply of incorrect or inadequate information by the Customer, the cost to AlgoSpan of performing the Services is increased, AlgoSpan reserves the right to charge for any additional services.

## **9. Limitation of Liability & Disclaimer of Warranties**

- 9.1 Neither Party limits or excludes its liability for fraud or deceit, personal injury or death arising from their negligence or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 9.2 Subject to Clause 9.1, neither Party shall be liable to the other Party or its Affiliates, whether in contract, tort (including negligence) or otherwise howsoever arising, for:
- (a) loss of revenue;
  - (b) loss of profit;

- (c) loss of goodwill or reputation;
- (d) loss of business;
- (e) loss of anticipated savings;
- (f) loss of or corruption to data;
- (g) customer payments;
- (h) other pure economic loss; or
- (i) any special, incidental, indirect, or consequential losses, costs, liabilities or damages,

whether foreseeable or not, arising out of, or in connection with, the performance or non-performance of any obligations under or otherwise related to, this Agreement.

- 9.3 Subject to Clause 9.1, AlgoSpan's maximum cumulative liability to the Customer (if any) whether in contract, tort (including negligence) or otherwise howsoever arising under or in connection with the Agreement shall be limited, in the aggregate, to the amount of Fees that have been paid by the Customer to AlgoSpan with respect to the particular Service to which the claim relates in the twelve (12) months prior to the claim.
- 9.4 Except as expressly stated in the applicable Service Level Agreement, the Service and all equipment is provided on an "as is" and "as available" basis. AlgoSpan makes no warranty, representation or indemnity of any kind, whether express or implied, with respect to the delivery or performance of any Service, the AlgoSpan Network, or any work to be performed under the applicable Agreement for a Service, including any and all warranties, representations, conditions and terms of merchantability, fitness for a particular purpose or use, satisfactory quality or non-infringement, or arising from a course of dealing, usage, or trade, and all such warranties are hereby expressly disclaimed. AlgoSpan also specifically disclaims any representation, warranty, conditions or terms that the Service (including any software or equipment) will be error free, secure or uninterrupted. The warranties, terms and conditions set out on the applicable Service Level Agreement (if any) constitute the only warranties made by AlgoSpan to the Customer with respect to the Service (including any software or equipment) and are made in lieu of all other warranties, written or oral, statutory, express or implied.
- 9.5 The Customer agrees that it may not claim for losses or damages whatsoever in connection with the applicable Agreement more than one (1) year after the date that the event giving rise to such claim is known or reasonably should have been known to the Customer making such claim.

## **10. Term & Termination**

- 10.1 This Master Services Agreement shall continue for the Term, unless terminated earlier by either Party in accordance with this Master Services Agreement.
- 10.2 The Services shall continue for the Service Term and unless the Customer has provided AlgoSpan with written notice of its intention to terminate the Service at least sixty (60) days prior to the expiration of the Service Term, at the expiration of such Service Term, AlgoSpan may, at its option, continue to provide the Customer the Service set out on the applicable Service Order Form. If AlgoSpan continues to provide the Service then the Service Term will automatically renew and be extended for successive one (1) year periods (the "**Extended Term**"). Any such renewal shall be on the terms of the original Service Order Form, subject to any increase in price notified to the Customer with not less than forty-five (45) days written notice. During any Extended Term, either Party shall have the right to terminate the Service at the end of the Extended Term by giving the other Party not less than sixty (60) days prior written notice of termination. Upon final termination of the Service, the Customer's right to use such Service shall immediately cease.
- 10.3 All or part of this Master Services Agreement and any Agreement may be terminated or the provision of the Services suspended where:



- (a) the Customer fails to pay such amount within five (5) Business Days after notice specifying such breach;
  - (b) there is any other material breach of the Agreement which is either not remediable or where remediable a Party fails to rectify such breach within thirty (20) Business Days (a default shall not have occurred so long as the relevant Party has commenced to rectify within said time period and thereafter diligently pursues such rectification to completion);
  - (c) the Customer makes a material misrepresentation in any submission to AlgoSpan; and
  - (d) an Event of Insolvency occurs with regard to a Party.
- 10.4 In the event the Customer is in violation of any applicable laws, statutes, ordinances, codes or other legal requirements with respect to a Service, or if the Customer's use of a Service interferes with, or impairs, the AlgoSpan Network, AlgoSpan may block the Customer's signals or suspend the Service. AlgoSpan will immediately notify the Customer when blockage or suspension occurs and the Parties shall work diligently towards restoration of the affected Service. Such blockage or suspension shall not be included in any Service Level calculation set out on the applicable Service Level Agreement.
- 10.5 Upon termination of this Master Services Agreement or any Service Order Form for any reason, each Party shall immediately deliver to or otherwise dispose of as directed by the other Party or its duly authorised representative any and all relevant materials and property belonging or relating to the other Party, its Affiliates and/or clients, including all Confidential Information of the other Party, and all copies of the same, then in its possession, custody or control, and shall certify in writing to the other Party that the same has been done, save that the Customer may retain such copies to the extent required to fulfil its legal and regulatory obligations.
- 10.6 The termination of this Master Services Agreement and/or a Services Order Form in accordance with its terms shall not give either Party the right to claim any compensation, indemnity or reimbursement whatsoever from the other by reason of such termination, but termination shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either Party at the effective date of termination.
- 10.7 Without prejudice any order for or payment of damages, in the event of termination of this Master Services Agreement and/or a Services Order Form for any reason, AlgoSpan shall have no obligation to refund Fees to Customer and termination does not relieve Customer of Customer obligations to pay Fees that are due and payable for Services performed.
- 10.8 The terms and conditions of Clauses 1, 3.1, 7, 8, 9, 10, 11 and 13 shall survive any termination, cancellation or expiration of the Agreement.

## **11. Confidentiality**

- 11.1 Neither Party shall divulge or otherwise disclose the Confidential Information to any third party without the prior written consent of the other Party, except that either Party may make disclosure on a need-to-know basis to those employees required for the implementation or performance of the Agreement. In addition, either Party may make disclosure as required by a court order or as otherwise required by law or in the performance of a Party's obligations (or those of its Affiliates) as a public company.
- 11.2 Clause 11.1 shall not apply to information that:
- (a) is publicly available other than through a breach of the Agreement;
  - (b) is lawfully in the possession of the recipient before disclosure by the other Party and is not otherwise subject to a confidentiality undertaking;
  - (c) is obtained through a third party that is free to disclose it; and

- (d) is required by law to be disclosed (and then, to the extent legally permissible, only after reasonable advance notice to the disclosing Party).
- 11.3 Upon expiration of the Term or, if earlier, upon a written request of a Party, the other Party shall either return to the other Party or destroy all Confidential Information, and any copies of the same.
- 11.4 Nothing herein shall be construed as granting any right or licence under any copyrights, trademarks, service marks, trade names, inventions, or patents now or hereafter owned or controlled by either Party.
- 11.5 Either Party may issue any press release or public statement relating to this Agreement and may use the logo or logos of the other Party. Neither Party may publish any financial information concerning this Agreement or make any negative or derogatory comments relating to the other Party. Either Party may list the other as a customer or supplier (as appropriate) and include the logo or logos of the other.

## 12. Force Majeure Events

- 12.1 Neither party shall be in default under the applicable Agreement (other than in relation to the obligation to pay the Fees) if, and to the extent that, any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event, and such Party's performance of such obligation or obligations shall be excused and extended for and during the entire duration of any such Force Majeure Event. Failure to pay any amount due by the Customer shall not be considered a Force Majeure Event. The Party claiming relief under this Clause 12 shall notify the other Party in writing of the existence of the event relied on and the cessation or termination of said event, and the Party claiming relief shall exercise reasonable commercial efforts to minimise the time of any such delay.

## 13. General

- 13.1 **Notices:** All notices and other communications required or permitted under the Agreement shall be in writing and shall be deemed to have been delivered to the other Party's Notice Address:
  - (a) on the delivery date, if delivered by hand;
  - (b) the next Business Day after being deposited for delivery with an industry recognised overnight courier;
  - (c) on the date received if sent by facsimile with evidence of successful completion; or
  - (d) three Business Days after deposit in the mail. Either Party may, by similar notice given, change the Notice Address to which future notices or other communications shall be sent.
- 13.2 **Assignment & Transfer Restrictions:** The Customer may not transfer or assign all or any part of its interest under an Agreement, or delegate any duties, burdens, or obligations arising thereunder. A transfer or assignment by Customer in violation of this Clause 13.2 shall constitute a material breach of the Agreement and shall be null and void from its inception. AlgoSpan may assign, transfer or sub-contract any of its rights or obligations set out in an Agreement, in whole or in part, to any Affiliate or Sub-contractor, without the consent of the Customer. Nothing contained in an Agreement shall preclude the Customer from leasing or providing any capacity or other services derived from a Service to third parties provided the Customer obtains AlgoSpan's prior written consent and that any use of such Services shall be subject to terms and conditions of such Agreement.
- 13.3 **Governing Law & Jurisdiction:** The Agreement (and any non-contractual obligations arising under or in connection with this Agreement) shall be governed by the laws of England and Wales. In relation to all other disputes arising under or in connection with this Agreement, the Parties hereby irrevocably consent to the exclusive jurisdiction of the courts of England and Wales.
- 13.4 **Waiver:** Except as otherwise stated in this Agreement, the failure of either Party at any time to enforce any right or remedy available to it under the applicable Agreement, or otherwise, with respect to a breach or failure of the other Party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other Party.

- 13.5 **Amendments:** The Agreement may only be amended, modified or supplemented by an instrument in writing executed by an authorised representative of each Party and specifically stating that the Parties intend to modify, amend or supplement the Agreement.
- 13.6 **No Third Party Beneficiaries:** No provision of an Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.7 **No Personal Liability & Immunity:** Each action or claim against a Party arising under or relation to the Agreement shall be made only against such Party as a business entity, and any liability relating thereto shall be enforceable only against the assets of such Party. The Parties acknowledge that the Agreement is commercial in nature, and expressly and irrevocably waives any claim or right it may have to immunity (whether sovereign immunity, act of state or otherwise) for itself or with respect to any of its assets in connection with any proceeding to enforce the Agreement.
- 13.8 **Relationship of the Parties:** The Parties shall perform all of their duties under the Agreement as independent contractors or independent parties and shall discharge their contractual obligations at their own risk, subject, however, to the terms and conditions thereof. The relationship between the Parties shall not be deemed to be that of an agent and principal, partners, or joint venturers, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, tax purposes. The Parties understand and agree that, except as specifically provided in the Agreement, neither Party grants the other Party the power or authority to make any commitments on behalf of the other Party.
- 13.9 **Network Infrastructure & Equipment:** The Agreement shall not in any way convey title or any interest in the network infrastructure, systems, equipment, facilities or other property of AlgoSpan (or its Affiliates) utilised in connection with the provision of the Service. The Customer also acknowledges that:
- (a) it shall not, and shall not permit others to, move, rearrange, disconnect, remove, repair, or otherwise tamper with any equipment supplied by AlgoSpan, without its prior written consent;
  - (b) any equipment provided by AlgoSpan shall be used solely for the purpose for which it is provided by AlgoSpan;
  - (c) it shall take such actions as are reasonably directed by AlgoSpan to protect its interest in any equipment provided by it and shall keep such equipment free and clear from all liens, claims and encumbrances;
  - (d) it bears the entire risk of loss, theft, destruction or damage to the equipment placed on Customer Sites by AlgoSpan (except for damage caused by AlgoSpan) and shall promptly notify AlgoSpan of any such loss, theft, destruction or damage;
  - (e) in no event will AlgoSpan be liable to the Customer or any other person for interruption of Service or for any other loss, cost or damage caused by, or related to, improper use or maintenance of the equipment provided by AlgoSpan by the Customer or its agents;
  - (f) if the equipment so provided by AlgoSpan was manufactured by a third party, then any manufacturer warranties with respect to the equipment will be passed on to the Customer by AlgoSpan and any rights or remedies the Customer may have regarding the performance or compliance of the equipment are limited to those rights provided by the manufacturer of the equipment;
  - (g) AlgoSpan shall not be responsible for any changes to the Service that cause the equipment to become obsolete or require modification or alteration;
  - (h) it shall permit AlgoSpan to periodically inspect the equipment during the Service Term and remove the equipment from any Customer Site after termination or expiration of the Agreement or the Service provided hereunder in relation to which the equipment was provided; and

- (j) it shall be solely responsible for the installation, operation, maintenance, use, compatibility of any equipment or software not provided by AlgoSpan and AlgoSpan shall have no responsibility or liability in connection therewith.
- 13.10 **Expenses:** All costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, and stamp and capital duties and taxes incurred in connection with the Agreement and the Services contemplated thereby shall be paid by the Party incurring such costs and expenses.
- 13.11 **Performance:** The Customer expressly agrees and acknowledges that, notwithstanding that AlgoSpan shall be liable for all of the obligations ascribed to it under the Agreement, any Affiliates or Sub-contractors of AlgoSpan may perform such obligations.
- 13.12 **Severability:** If any term, clause, provision, covenant or condition contained in the Agreement is adjudicated to be illegal or unenforceable, all other terms, clauses, provisions, covenants or conditions of the Agreement shall remain in force, and the term, clause, provision, covenant or condition held illegal or unenforceable shall remain in effect as far as possible in accordance with the intention of the Parties.
- 13.13 **Counterparts:** The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 13.14 **Entire Agreement:** Agreements contain all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to an Agreement except as expressly stated in an Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into the Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other Party's ability to perform its obligations under the Agreement) and that Party's only remedies shall be for breach of contract as provided in the Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Master Services Agreement to be signed by their duly authorised representatives:

**AlgoSpan Limited**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_