

## 1. PARTIES AND INTRODUCTION

1.1 **Parties.** This Supply of Services Agreement (**Agreement**) is entered into between

**Matrix42 AG**

Incorporated and registered in Frankfurt, Germany  
with company number HRB 100049  
whose registered office is at Elbinger Strasse 7, 60487 Frankfurt, Germany

(**Matrix42**)

and

\_\_\_\_\_ [full legal name]

incorporated and registered in the State/Commonwealth of \_\_\_\_\_, United States  
whose principal office address is

(**Customer**).

1.2 **Introduction.** Matrix42 has licensed certain software products to the Customer under the terms of the License Agreement (defined below) and the Customer wishes to use Matrix42's support and maintenance services in its business operations. Matrix42 has agreed to provide and the Customer has agreed to take and pay for Matrix42's services subject to the terms and conditions of this Agreement.

## 2. INTERPRETATION

2.1 **Definitions.** The definitions in this clause apply in this Agreement:

**Business Day:** any day which is not a Saturday, Sunday or U.S. Federal public holiday;

**Confidential Information:** information that is proprietary or confidential, including trade secrets, and is either clearly labelled as such or which ought reasonably to be considered proprietary or confidential;

**Data Controller:** has the meaning given in the United States Federal Trade Commission's Fair Information Practice Principles (FIPPs);

**Data Processor:** has the meaning given in the Fair Information Practice Principles (FIPPs);

**Deliverables:** any documentation, software, know-how or other works created or supplied by Matrix42 in the course of providing the Services;

**Effective Date:** \_\_\_\_\_, 201\_\_, the effective date of this Agreement;

**Fees:** the fees payable under this Agreement as calculated in accordance with Schedule 2, as the same may be amended from time to time in accordance with the provisions herein together with such other expenses (including travel expenses) and charges as may be payable pursuant to this Agreement;

**Initial Term:** the period of 12 months starting on the Effective Date;

**Intellectual Property Rights:** means rights in and/or to any patents, trade secrets, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition;

**License Agreement:** the Software License Agreement of                    made between Matrix42 and Customer;

**Offer:** the offer made by Matrix42 to Customer in respect of the provision of the Services pursuant to this Agreement, which was dated on the date set out in Schedule 1;

**Personal Data:** has the meaning given in the Fair Information Practice Principles (FIPPs);

**Renewal Period:** has the meaning given in clause 16.1;

**Services:** the services to be provided by Matrix42 under this Agreement as set out in the Offer, together with the Training and any other services which Matrix42 agrees to provide to the Customer;

**Staff:** those individuals who are to perform Matrix42's obligations under this Agreement including, where applicable, any individuals set out in the Offer (unless such individuals cease to be employed by Matrix42 or are otherwise unavailable to provide the Services for reasons outside Matrix42's reasonable control);

**Standard Hours:** 8.00 am to 5.00 pm (United Kingdom time) Monday to Friday, except on days which are U.S. bank holidays; and

**Training:** the portion of the Services comprising training, as set out in the Offer.

**2.2 Interpretation.** The rules of interpretation in this clause apply in this Agreement:

- (a) clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- (b) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality), a limited liability company, a partnership, whether limited or otherwise, and its successors or permitted assigns;
- (c) a reference to a company shall include any company, corporation, a limited liability company, a partnership, whether limited or otherwise, or other body corporate, wherever and however incorporated or established;
- (d) words in the singular shall include the plural and vice versa;
- (e) a reference to one gender shall include a reference to the other genders;
- (f) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (g) a reference to writing or written includes faxes but not e-mail; and
- (h) 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.

**2.3 Schedules.** Each of the schedules shall have effect as if set out in this Agreement.

2.4 **Conflict.** In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the schedules, the provision in the body of this Agreement shall take precedence.

### 3. OFFER VALIDITY, SERVICES AND LICENSE

3.1 **Offer validity.** The Customer acknowledges and agrees that the Offer shall be valid for the period set out in the Offer or, if no such period is set out, for a period of four weeks starting on the date of the Offer.

3.2 **Services.** Matrix42 shall supply, and the Customer shall take and pay for, the Services.

3.3 **License.** Subject to the Customer paying the Fee in accordance with clause 7, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Matrix42 grants to the Customer a non-exclusive, non-transferable, worldwide perpetual and irrevocable (unless Matrix42 terminates this Agreement pursuant to clause 16.2 or the Customer uses the Deliverables in material breach of this Agreement, in which case it shall terminate with immediate effect) license to use the Deliverables, solely for the Customer's internal business purposes.

3.4 **License restrictions.** The Customer shall not, and shall ensure and warrant that users do not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

- (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Deliverables (as applicable) in any form or media or by any means; or
- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Deliverables; or

(b) use all or any part of the Services and Deliverables in order to build a product or service which competes in any manner with the Services and/or the Deliverables or any other services, software or products offered by Matrix42; or

(c) uses the Services and/or Deliverables to provide services to third parties; or

(d) subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Deliverables available to any third party except the users; or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Deliverables, other than as provided under this clause 3.

3.5 **Unauthorized access.** The Customer shall prevent any unauthorized access to, or use of, the Services and/or the Deliverables and, in the event of any such unauthorized access or use, promptly notify Matrix42 in writing.

3.6 **Responsibility for user's acts and omissions.** The Customer shall be responsible and vicariously liable for the negligence, acts and omissions of the users as if such negligence, acts or omissions were its own.

### 4. ADDITIONAL SERVICES

**4.1 Purchase of additional services.** If the Customer wishes to purchase services that are not covered under this Agreement, then the Customer shall notify Matrix42 in writing. Matrix42 shall evaluate such request and, if it agrees to the request, the parties shall document the purchase of such additional services through a written amendment to this Agreement.

## **5. MATRIX42'S OBLIGATIONS**

**5.1 Performance of the Services.** Matrix42 undertakes that the Services will be performed with reasonable skill and care.

If Matrix42 breaches this clause 5.1, Matrix42 will, at its expense, use commercially reasonable endeavors to correct any such breach promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of this clause 5.1. Notwithstanding the foregoing, Matrix42:

(a) DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL MEET THE CUSTOMER'S REQUIREMENTS;

(b) EXCEPT AS EXPRESSLY SET FORTH HEREIN, EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION OR ANY OTHER SERVICES HEREUNDER AND THE INTELLECTUAL PROPERTY INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO REPRESENTATIVE OF MATRIX42 IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY; and

(c) 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 and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**5.2 Excused breach.** Matrix42 shall be excused from, and not liable for, any breach of clause 5.1 to the extent that such breach is caused by use of the Services or Deliverables contrary to Matrix42's instructions or the terms of this Agreement, or modification or alteration of the Services or Deliverables by any party other than Matrix42 or Matrix42's duly authorized personnel, contractors or agents.

**5.3 Similar documentation, products and services.** This Agreement shall not prevent Matrix42 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.

**5.4 Compliance with Customer policies.** Matrix42 shall use commercially reasonable endeavors to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it in writing under clause 6.2 provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

## 6. CUSTOMER'S OBLIGATIONS

6.1 **Customer's Obligations.** The Customer shall:

(a) provide Matrix42 with:

- (i) all necessary co-operation in relation to this Agreement; and
- (ii) all necessary access to such information as may be required by Matrix42;

(b) 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, Matrix42 may adjust any agreed timetable or delivery schedule as reasonably necessary; and

(d) permit Matrix42 to access its records, systems and premises in order to audit its use of the Services to establish whether the terms of this Agreement are being complied with. Such audit may be conducted no more than once in any three month period, at Matrix42'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.

6.2 **Provision of access.** Without prejudice to clause 5.4 the Customer shall provide the Staff with full, safe and uninterrupted access (including remote access) to the Customer's premises, systems, facilities and software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or as agreed between the parties, to be within the Standard Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by Staff and take reasonable care to ensure their health and safety. Where Matrix42 is required to comply with Customer policies, Customer shall inform Matrix42 of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.

## 7. CHARGES AND PAYMENT

7.1 **Fees.** The Customer shall pay the Fees to Matrix42 in accordance with this clause 7.

7.2 **Reporting Process.** Matrix42 shall ensure that the Staff record the time spent on the Services on a time card at the end of each week (the **Time Card**) and that the Staff provide the Time Card to a representative of the Customer at the end of each week. The Customer shall ensure that its representative confirms its agreement to the time recorded on the Time Card by countersigning the Time Card as soon as possible following its receipt of the Time Card. The invoice issued to the Customer by Matrix42 will be based on the time recorded by the Staff as set out in the countersigned Time Card.

7.3 **Expenses.** The Customer shall reimburse Matrix42 for any travel or subsistence expenses incurred by Matrix42 where such expenses are incurred wholly and exclusively for the purpose of providing the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

7.4 **Travel time.** Travel time shall be charged for at Matrix42's standard rates as set out in Schedule 2 in accordance with this Agreement.

**7.5 Cancelled Training.** If the provision of any Training is terminated in accordance with clause 16.3, the Customer shall reimburse Matrix42 for any travel expenses incurred by Matrix42 and for a portion of the Fees, as determined in accordance with Schedule 2.

**7.6 Invoicing.** Matrix42 shall invoice the Customer:

- (a) on the Effective Date for the Fees payable in respect of the Initial Term; and
- (b) subject to clause 16.1, on the first day of each Renewal Period for the Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days of the date of such invoice.

**7.7 Interest.** Interest shall accrue on such due amounts at an annual rate equal to [5]% over the then current base lending rate of [Barclays Bank PLC] at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

**7.8 Non-payment.** If Matrix42 has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of Matrix42, Matrix42 may, without liability to the Customer, disable the Customer's access to the Services and Matrix42 shall be under no obligation to provide the Services or otherwise perform under this Agreement while the invoice(s) concerned remain unpaid.

**7.9 Amounts.** All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in United States Dollars (US \$);
- (b) are, subject to clause 15.4, non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to Matrix42's invoice(s) at the appropriate rate; and
- (d) are in addition to, and not in lieu of, any additional fees, assessments, levies or governmental charges assessed against the transactions contemplated herein. With the exception of taxes imposed on Matrix42's net income, ad valorem and sales tax as provided by applicable law, all such taxes shall be the Customer's responsibility. The Customer shall pay any such taxes, which Matrix42 may be required to collect and remit, upon invoice.

**7.10 Default.** If Customer is in default in respect of any payment due under this Agreement or if Matrix42 has reasonable doubts as to the solvency of the Customer, Matrix42 shall, without prejudice to any other rights granted under this Agreement, have the right to:

- (a) demand payment in advance for Services not yet performed;
- (b) revoke or reduce any payment periods granted; and
- (c) claim any sums owed by the Customer (as well as any associated collection costs) immediately,

and Matrix42's obligation to provide the Services or otherwise perform under this Agreement shall cease for as long as the Customer is in default.

**7.11 Set off.** Customer may set off or assert a right of retention over amounts owed by it to Matrix42 under this Agreement only if such claim is:

- (a) recognized by Matrix42 as being undisputed; or
- (b) legally established.

## 8. PROPRIETARY RIGHTS

8.1 **Intellectual Property Rights.** The Customer acknowledges and agrees that Matrix42 and/or its licensors own all Intellectual Property Rights in the Services and the Deliverables. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in any Intellectual Property Rights or any other rights or licenses in respect of the Services or the Deliverables. At Matrix42's expense, the Customer shall provide all reasonable assistance requested by Matrix42 in its protection of its Intellectual Property Rights.

## 9. NON-SOLICITATION

9.1 **Non Solicitation.** The Customer shall not, for the duration of this Agreement, and for a period of two (2) years following expiration or termination for any reason, directly or indirectly induce or attempt to induce any employee or independent contractor of Matrix42 who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this Agreement to leave the employment of or sever the contractor relationship with Matrix42.

## 10. RISK

10.1 **Risk.** Risk in any media bearing any Deliverables or other information that may from time to time be supplied by Matrix42 to the Customer shall pass to the Customer on delivery to the Customer.

## 11. CONFIDENTIALITY

11.1 **Confidential Information.** 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 breach of this Agreement by 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;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 **Confidentiality obligations.** Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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.

11.3 **Steps to ensure confidentiality.** 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.

11.4 **Matrix42 Confidential Information.** The Customer acknowledges that details of the Services and Deliverables, and the results of any performance tests of the Services and Deliverables, constitute Matrix42's Confidential Information.

11.5 **Relief.** Each party agrees that if a court of competent jurisdiction determines it has breached, or attempted or threatened to breach, any of its confidentiality obligations to the disclosing party or the disclosing party's proprietary rights, the disclosing party shall be entitled to obtain appropriate injunctive relief and other available measures restraining further, attempted or threatened breaches of such obligations.

11.6 **Survival.** This clause 11 shall survive termination or expiry of this Agreement, however arising.

## 12. DATA PROTECTION

12.1 **Data Protection.** The parties intend that the Customer shall be the Data Controller and Matrix42 shall be a Data Processor in respect of any Personal Data processed by Matrix42 on behalf of the Customer in connection with this Agreement and in any such case:

- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Matrix42 so that Matrix42 may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;
- (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by the Fair Information Practice Principles (FIPPs) and all other applicable data protection legislation;
- (c) Matrix42 shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
- (d) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

## 13. EXPORT

13.1 **Export.** Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

13.2 **Undertakings.** Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 14. INDEMNITY

14.1 **Customer indemnity.** The Customer shall defend, indemnify and hold harmless Matrix42, and its officers, directors, shareholders, employees, agents, heirs and sub-contractors, 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 any third party claim resulting from (i) the Customer's use of the Services and/or Deliverables other than in accordance with this



Agreement, (ii) death, bodily injury, damage to tangible personal property caused by the Customer in connection with this Agreement and (iii) the violation of any third-party's Intellectual Property Rights arising in connection with this Agreement where such violation arises from Matrix42's reliance on, or use of, tools, instructions, specifications, or other materials provided by the Customer, or where the Customer modifies, adds to, or combines with any technology or data, any such intellectual property or (iv) any failure to obtain Intellectual Property Rights or export licenses necessary to permit Matrix42 to perform hereunder, provided that:

- (a) the Customer is given prompt notice of any relevant third party claim;
- (b) Matrix42 does not make any admission of liability, agreement or compromise in relation to any relevant third party claim without the prior written consent of Customer;
- (c) Matrix42 provides reasonable co-operation to the Customer in the defense and settlement of any relevant third party claim, at the Customer's expense; and
- (d) the Customer is given sole authority to defend or settle the claim.

**14.2 Matrix42 indemnity.** Matrix42 shall defend the Customer against any claim that the Customer's receipt or use of the Services or Deliverables in strict accordance with this Agreement infringes any Intellectual Property Rights (**Third Party IPR Claim**) and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or agreed in settlement of a Third Party IPR Claim, provided that:

- (a) Matrix42 is given prompt notice of a Third Party IPR Claim;
- (b) the Customer does not make any admission of liability, agreement or compromise in relation to a Third Party IPR Claim without the prior written consent of Matrix42;
- (c) the Customer provides reasonable co-operation to Matrix42 in the defense and settlement of a Third Party IPR Claim, at Matrix42's expense; and
- (d) Matrix42 is given sole authority to defend or settle the Third Party IPR Claim.

**14.3 Other remedies and termination.** In the defense or settlement of any Third Party IPR Claim, Matrix42 may procure the right for the Customer to continue using the Services or Deliverables, replace or modify the Services or Deliverables so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on not less than 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

**14.4 Limitation on liability.** In no event shall Matrix42, its directors, officers, employees, agents and sub-contractors be liable to the Customer to the extent that the Third Party IPR Claim is based on:

- (a) a modification of the Services or Deliverables by anyone other than Matrix42; or
- (b) the Customer's use of the Services or Deliverables in a manner contrary to the instructions given to the Customer by Matrix42 or otherwise contrary to any term of this Agreement; or
- (c) the Customer's use of the Services or Deliverables after notice of the alleged or actual infringement from Matrix42 or any appropriate authority.

**14.5 Sole and exclusive remedies.** The foregoing states the Customer's sole and exclusive rights and remedies, and Matrix42's (including Matrix42's directors, officers, employees', agents' and sub-contractors') entire obligations and liability, for any Third Party IPR Claim.

## **15. LIMITATION OF LIABILITY**

**15.1 Scope of limitations and exclusions of liability.** This clause 15 sets out the entire financial liability of Matrix42 (including any liability for the acts or omissions of its directors, officers, employees, agents and subcontractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services and Deliverables or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

**15.2 Financial Liability.** Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Deliverables by the Customer, and for conclusions drawn from such use. Matrix42 shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Matrix42 by the Customer in connection with the Services or Deliverables, or any actions taken by Matrix42 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 THE SERVICES AND THE DELIVERABLES ARE PROVIDED TO THE CUSTOMER ON AN "AS IS" BASIS.**

**15.3 Carve out from limitation of liability.** Nothing in this Agreement excludes or limits the liability of Matrix42 for:

- (a) death or personal injury caused by Matrix42's gross negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability that cannot, by law, be excluded or limited.

**15.4 Exclusions of liability and liability cap.** Subject to clause 15.2 and clause 15.3:

**(a) MATRIX42 SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, WASTED EXPENDITURE AND/OR SIMILAR LOSSES OR LOSS OR CORRUPTION OF DATA OR INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL LOSS HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;**

**(b) SUBJECT TO CLAUSE 15.4(C) MATRIX42'S TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL FEES PAID; and**

**(c) MATRIX42'S TOTAL AGGREGATE LIABILITY PURSUANT TO CLAUSE 14.2 SHALL BE LIMITED TO US \$1 MILLION.**

**15.5 Time limit.** Subject to clause 15.3, the Customer may only bring a claim against Matrix42 (whether in contract, tort (including any type of negligence) or otherwise) within 12 months of the date upon which the relevant cause of action arose.

## **16. TERM AND TERMINATION**

16.1 **Term.** This Agreement shall, unless it expires or is otherwise terminated as provided in this Agreement, 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 either party notifies the other party of termination, in writing, at least three (3) months 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 and the effective term of this Agreement shall constitute the **Term**.

16.2 **Termination.** Without prejudice to any rights that have accrued under this Agreement or any of the right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party, which notice shall specify the exact date of termination, 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 14 days after being notified in writing to make such payment;

(b) the other party commits a material breach of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) 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 (being a company) is deemed unable to pay its debts within the meaning of Title 11 of the United States Code, the Bankruptcy Reform Act of 1978, or the bankruptcy laws of any other nation;

(d) 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 (where a company) 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;

(e) 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 (being a company) 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) 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 (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) 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;

(i) the other party (being an individual) is the subject of a bankruptcy petition or order;

(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 30 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 16.2(c) to clause 16.2(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.

**16.3 Termination of Training for convenience.** The Customer may terminate some or all of the Training by giving written notice to Matrix42. If the Customer terminates some or all of the Training in accordance with this clause 16.3 it shall pay the Fees in connection with that termination under clause 7.5.

**16.4 Accrued Rights.** Termination by either party in accordance with the rights contained in this clause 16 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

**16.5 Consequences of termination.** Subject to clause 16.6, on termination of this Agreement for any reason:

- (a) all rights granted to the Customer under this Agreement shall cease;
- (b) the Customer shall cease all activities authorized by this Agreement;
- (c) the Customer shall immediately pay to Matrix42 any sums due to Matrix42 under this Agreement; and
- (d) the Customer shall immediately destroy or return to Matrix42 (at Matrix42's option) all copies of the Deliverables and any Matrix42 Confidential Information then in its possession, custody or control and, in the case of destruction, certify to Matrix42 in writing that it has done so.

**16.6 Survival.** Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including, but not limited to, clauses 2, 3.3, 11 and clauses 14 - 27 inclusive shall remain in full force and effect.

## **17. WAIVER**

**17.1 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 preclude 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.

## **18. REMEDIES**

**18.1 Remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and representatives.

## **19. ENTIRE AGREEMENT**

**19.1 Entire Agreement.** This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes and extinguishes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

**19.2 Non-reliance.** Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (**Representation**) other than as expressly set out in this Agreement.

**19.3 Rights and remedies.** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

**19.4 Liability for fraud.** Nothing in this clause 19 shall limit or exclude any liability for fraud.

**19.5 Section headings.** All section and clause headings are inserted only for convenience of reference and are not to be considered in the interpretation or construction of any provision of this Agreement.

**19.6 Interpretation.** In the event any claim is made by any party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or that party's counsel.

## **20. VARIATION**

**20.1 Variation.** No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

## **21. SEVERANCE**

**21.1 Severance.** If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, unenforceable or illegal, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of this Agreement shall not be affected.

**21.2 Modification.** If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some part of it were deleted, the parties shall negotiate in good faith to amend

such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **22. COUNTERPARTS**

**22.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the one agreement.

## **23. NO THIRD-PARTY RIGHTS**

**23.1 No third party rights.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any person or entity not a party hereto.

## **24. ASSIGNMENT**

**24.1 Assignment by Customer.** The Customer shall not, without the prior written consent of Matrix42,

assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Any assignment without such written consent shall be void.

**24.2 Assignment by Matrix42.** Matrix42 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.

## **25. NO PARTNERSHIP OR AGENCY**

**25.1 No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, employer-employee relationship or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

## **26. FORCE MAJEURE**

**26.1 Force Majeure.** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months or more, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

## **27. NOTICES**

**27.1 Notices.** Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class U.S. mail or recorded delivery or by commercial courier or nationally-recognized overnight carrier, to each party required to receive the notice as set out below:

(a) Matrix42 AG – Contact Address: Global Service, Elbinger Strasse 7, 60487 Frankfurt, Germany

(b) Customer – Contact Address:

or as otherwise specified by the relevant party by notice in writing to the other party.

**27.2 Receipt of notices.** Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause;

(b) if sent by pre-paid first-class U.S. mail or recorded delivery, at 9.00 am on the second Business Day; or

(c) if delivered by commercial courier or overnight carrier, on the date and at the time that the courier's delivery receipt is signed.

**27.3 E-mail.** A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

**27.4 Exclusion.** The provisions of this clause 27 shall not apply to the service of any proceedings or other documents in any legal action.

## **28. GOVERNING LAW AND JURISDICTION**

28.1 **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 laws of the United States and the U.S. State/Commonwealth of Georgia, without regard to any conflicts of laws provisions.

28.2 **Jurisdiction.** The parties irrevocably agree that the state and federal courts sitting in or encompassing Fulton County, State of Georgia shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

28.3 **Attorneys' fees.** In the event that any dispute between the parties should result in litigation, mediation, arbitration or any other legal or resolution proceedings, the prevailing party in that dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

This Agreement has been entered into on the date stated at the beginning of it.

## Schedule 1 Offer

1. Offer Date:
2. Please find detailed offer under the Offer number:



## Schedule 2 Fees

1. **Charging basis.** Subject to paragraphs 2 and 3 of this schedule, the Fees payable for the Services shall be calculated in accordance with the Offer or, where no Fee details are included in the Offer, Matrix42's standard fee rates, as amended from time to time.

2. **Applicability of standard fee rates.** Matrix42's fee rates (whether such fee rates are standard or set out in the Offer) are calculated on the basis that work will be carried out during the Standard Hours.

3. **Overtime.** Matrix42 shall be entitled to charge an overtime rate (in addition to its fee rates) of:

- a. 50% of the normal fee rate on a pro-rata basis for any time worked if the Services are performed at the Customer's request on weekdays outside of the Standard Hours or on a Saturday; and
- b. 100% of the normal fee rate on a pro-rata basis for any time worked if the Services are performed at the Customer's request on a Sunday or a public holiday.

4. **Cancellation Fees:**

- a. If Training is conducted exclusively for one Customer and is cancelled by the Customer:
  - i. 28 days or more prior to the Training commencement date, the Customer shall be required to pay (unless the Customer and Matrix42 agree to a rescheduled date within six months of the date of cancellation):
    1. such expenses as are incurred wholly and exclusively for the purpose of providing the Training, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts; and
    2. 20% of the Fee due in respect of the cancelled Services.
  - ii. less than 28 days prior to the Training commencement date, the Customer shall pay:
    1. such expenses as are incurred wholly and exclusively for the purpose of providing the Training, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts; and
    2. 50% of the Fee due in respect of the cancelled Services.
- b. If Training is conducted for several customers and Customer cancels its attendance:
  - i. 14 days prior to the Training commencement date, Customer shall be required to pay a processing fee of US \$150 per participant;
  - ii. 8 to 13 days prior to the Training commencement date, Customer shall be required to pay 50% of the Fee due in respect of the cancelled Services.
  - iii. less than 7 days prior to the Training commencement day, Customer shall be required to pay 100% of the Fee due in respect of the cancelled Services.

**MATRIX42:**

MATRIX42 AG, Elbinger Strasse 7, 60487 Frankfurt, Germany

**CUSTOMER:**

<b>Name (in block capitals):</b>	
<b>Role/title:</b>	
<b>Place, date:</b>	
<b>Signature:</b>	

<b>Name (in block capitals):</b>	
<b>Role/title:</b>	
<b>Place, date:</b>	
<b>Signature:</b>	

**MATRIX42 AG**

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