

Appendix 2

Terms and Conditions of Contract

Scala Application Development Services

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**THIS AGREEMENT** is made on [Date]

**BETWEEN:**

1. PassivSystems Limited, a company registered in England and Wales and having its registered office at First Floor, Benyon House, Newbury Business Park, London Road, Newbury, Berkshire, England, RG14 2PZ, with registered company number 06692246 (“**PSL**”);
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company registered in \_\_\_\_\_\_\_\_\_\_ and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with registered company number \_\_\_\_\_\_\_\_ (the “**Service Provider**”).

**WHEREAS:**

PSL has requested and the Service Provider has agreed to provide Scala Application Development Services to PSL subject to the terms and conditions of this agreement.

# APPOINTMENT

## PSL appoints the Service Provider, and the Service Provider accepts such appointment, to provide Scala Application Development Services as described in Annex A – Service Delivery Requirements (the “Services”).

## The Services will be provided at PSL’s location or such other location as the parties may agree.

## The Service Provider will perform its obligations hereunder with reasonable skill and care and to the best of its ability, demonstrating the skills and expertise, knowledge and understanding as evidenced in Annex B – Service Delivery Methods.

## Nothing in this agreement shall be deemed to constitute the Service Provider as the agent of PSL or authorise the Service Provider to incur any expenses on behalf of PSL, to enter into any engagement or make any representation or warranty on behalf of PSL or otherwise bind or commit PSL in any way whatsoever including with respect to third parties without in each case obtaining PSL’s prior written consent. The Service Provider will make this position clear in all dealings with third parties.

## Throughout the term of this agreement, PSL shall afford the Service Provider such access to its premises and any information records and other material relevant to the Services as the Service Provider may require to provide the same, provided always that PSL shall be obligated to afford such access during its normal business hours. Further PSL shall:

## advise the Service Provider of the rules and regulations which are then in force for the conduct of personnel whilst working in PSL’s premises;

## make available such working space and facilities within the premises as the Service Provider may reasonably require;

## make available appropriate personnel to liaise with the Service Provider, and

## use its reasonable endeavours to secure and otherwise keep safe all and any property of the Service Provider whilst that property is in the premises and has been left under the care of PSL.

# DURATION

## The Services will be provided for a maximum of 6 months from [start date] (the “Delivery Period”). The Delivery Period may be terminated at any time by either party giving 1 months’ notice, or pursuant to clause 10. The Delivery Period may be extended by written agreement between the parties.

# CHARGES, EXPENSES AND PAYMENT

## In consideration of the provision of the Services, PSL shall pay the [daily rate] for each full day worked.

## Expenses incurred by the Service Provider with the authority of PSL on PSL’s business, including travel expenses, shall be paid in accordance with PSL’s own expenses policy. All expenses must be authorised by PSL in advance. PSL require expense claims to be supported by receipts or other written evidence. Expenses shall be reimbursed up to 30 days upon submission of a Service Provider’s invoice.

## Invoices will be rendered by the Service Provider to PSL at the end of each month and will be payable within 7 days of receipt by PSL. PSL may request invoices to be supported by timesheets which have been previously verified and signed by PSL. PSL may, in writing on a timesheet, give notice of any dispute over a period of time claimed on that timesheet. The period of time in dispute will not be due for payment until the dispute is resolved.

# CONFIDENTIALITY AND INFORMATION

## The Service Provider shall not (except in the proper performance of its obligations hereunder) during or after the termination of its engagement disclose to any person whatsoever any information relating to PSL, any parent, subsidiary or associated company or any supplier, customer or client of PSL, its technology, technical processes, business affairs or finances, or trade secrets of which it has or shall hereafter become possessed.

## Throughout the term of this agreement, the Service Provider is required to give PSL (or such other person or persons as PSL may direct) written or oral advice or information regarding the Services as it may reasonably require.

# BRIBERY AND CORRUPTION

## The Service Provider hereby warrants and represents to PSL that, at the date hereof, neither it nor its sub-contractors, agents, employees, officers or any third parties on their behalf, has:

## offered, given, demanded, requested, accepted or agreed to any undue financial or other advantage of any kind (or implied or inferred that they will or might do any such thing at any time in the future) in any way connected with this agreement or any other contract between the parties (or any related parties); or

## without prejudice to the generality of clause 5.1.1 above, taken any action in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of money, or anything else of value, to any government official (including any officer or employee of a government or government-controlled entity, or of a public international organisation, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or official thereof, or candidate for political office, all of the foregoing being referred to as “Government Officials”) or to any other person while knowing that all or some portion of the money or value was or will be offered, given or promised to a Government Official for the purposes of obtaining or retaining business or securing any improper advantage in the conduct of business; or

## offered or made the payment of a sum of money to a public official (or other person) as a way of ensuring that they perform their duty, either more promptly or at all.

## The Service Provider undertakes to PSL that it will not, during the Delivery Period, do or permit to be done any of the matters set out in clause 5.1 above.

## The Service Provider agrees at all times to comply with PSL’s anti-bribery and corruption policies and procedures, and shall ensure that its sub-contractors, agents, employees and officers do not act in a way which is inconsistent with these policies and procedures. The Service Provider shall also ensure that it, its sub-contractors, agents, employees and officers comply fully with all applicable anti-bribery or corruption legislation and with the UK Bribery Act 2010 (the “Act”). PSL shall have the right, from time to time and on written notice to the Service Provider, to audit the Service Provider’s compliance with PSL’s policies and procedures, the Act and any local legislation.

## A breach of this clause 5 by the Service Provider shall entitle PSL to terminate this agreement pursuant to clause 10.1.3.

# MODERN SLAVERY

## The Service Provider confirms that it will comply with the Modern Slavery Act 2015 (the “Act”) and that neither it nor any of its officers, employees, agents or subcontractors has committed an offence under the Act (an “MSA Offence”) or is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Act. PSL may terminate this agreement immediately on written notice and without liability to the Service Provider in the event that the Service Provider is in breach of the confirmations given in this clause.

# INTELLECTUAL PROPERTY RIGHTS

## All intellectual property rights created by the provision of the Services shall vest in PSL upon payment by PSL for the Services out of which such intellectual property rights arose. The Service Provider will take such steps as may reasonably be requested by PSL to ensure that the intellectual property rights vest in PSL.

## The Service Provider warrants and represents that any work originated, made or developed will not infringe any intellectual property right of which a third party is the proprietor. The Service Provider agrees to indemnify PSL against any and all liability, loss, damage, cost and expenses which PSL may incur or suffer, whether direct or consequential, as a result of any dispute or claims or proceedings brought against PSL by a third party alleging infringement of its intellectual property rights by reason of the use or exploitation of any work conceived, originated, made or developed by the Service Provider.

# LIMITATION OF LIABILITY

## Notwithstanding anything else contained in this agreement neither party shall be liable to the other for any indirect or consequential loss (including, without limitation, loss of profits, loss of revenue, failure to realise expected savings and/or loss of goodwill), or for any special, indirect, exemplary, incidental, consequential or punitive damages howsoever arising.

# STATUS AND TAX LIABILITIES

## The Service Provider shall be responsible for all income tax liabilities and national insurance or similar contributions arising out of the fees payable hereunder. The Service Provider hereby indemnifies PSL from and against any claims that may be made by the relevant authorities against PSL in respect of income tax or national insurance or similar contributions howsoever arising relating to the Services provided by the Service Provider hereunder.

# TERMINATION

## PSL may, at any time by written notice to the Service Provider, immediately terminate this agreement if the Service Provider:

## is incompetent, guilty of gross misconduct and/or any serious or persistent negligence in the provision of the Services;

## fails or refuses after written instruction to provide the Services reasonably and properly required of him under this agreement; or

## is in breach of clause 5 of this agreement or otherwise conducts himself in any manner which, in the reasonable opinion of PSL, brings or is likely to bring PSL into disrepute by association.

## Notwithstanding anything else contained herein either party may terminate this agreement immediately upon written notice to the other if the other:

## commits any material breach of any term of this agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

## convenes a meeting with its creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a Trustee, Receiver or Administrator or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented (and such petition results in a winding up order or is not restrained, withdrawn or discharged within 30 days of presentation) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction) or any analogous action is taken; or

## ceases to carry on business.

## Any termination of this agreement shall be without prejudice to any other rights or remedies a party might be entitled to under the agreement or at law and shall not affect any accrued rights or liabilities of either party, nor shall it affect the rights or obligations of either party which are intended to survive termination.

## In the event of expiration or earlier termination of the Delivery Period, the Service Provider shall immediately deliver up to PSL all correspondence, documents, specifications, data, media, paper and property belonging to PSL which may be in its possession or under its control, and in the event such items are not delivered or not delivered in a satisfactory condition the Service Provider shall reimburse PSL the replacement value for the replacement of such items, and shall meet with all such reasonable requests as may be made by PSL upon such expiration or termination.

# NO PARTNERSHIP

## Nothing in this agreement shall be read so as to create a partnership between PSL and the Service Provider, and the Service Provider shall not have any authority to bind PSL, save as provided by clause 1.4.

# NOTICES

## Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery, registered post, or by electronic mail, and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by electronic mail to the correct electronic mail address.

# ENTIRE AGREEMENT

## This agreement constitutes the entire understanding and agreement between the parties in relation to its subject matter and no representations, warranties or undertakings, express or implied, statutory or otherwise, made by or on behalf of either of the parties hereto and which are not contained in this agreement shall give rise to any liability on the part of the maker thereof.

## No amendment, waiver or variation of this agreement shall be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or behalf of each party.

# ASSIGNMENT

## The Service Provider may not assign this agreement without PSL’s prior written consent.

# WAIVER

## No delay by either party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of its rights prevent the subsequent enforcement of that term and shall not operate as a waiver of any subsequent breach.

# THIRD PARTIES

## Nothing in this agreement is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce any term contained in this agreement.

# SEVERABILITY

## In the event that any or part of any term, condition or provision contained in this agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

# LAW AND JURISDICTION

## This agreement shall be construed and governed in accordance with English law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their authorised representatives on the date set out above.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| For and on behalf of | |  | For and on behalf of | |
| **PassivSystems Limited** | |  | **[Service Provider Company Name]** | |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# ANNEX A

# SERVICE DELIVERY REQUIREMENTS

# KEY REQUIREMENTS

## PSL require the specialist skills of the Service Provider to help their in‑house team deliver a scalable backend services platform, by:

### Focusing on agile software development and being able to use it effectively;

### Analysing, designing and coding core elements of the system to an exemplary standard;

### Taking technical ownership of key areas of functionality; and

### Working with PSL’s customers and partners to ensure smooth integration with their services.

# SKILLS AND EXPERTISE

## The Service Provider is required to have the following skills and expertise:

### Very high quality OO design and development skills;

### Strong experience in Scala development in large complex systems;

### Experience in Java development;

### Experience in relational database development on Oracle;

### Experience in developing framework for test automation;

### Excellent communication skills;

### Good knowledge of enterprise architecture;

### Server-side development experience on Linux with good knowledge of how to get effective use out of open source toolsets and frameworks;

### Experience of working in small highly effective teams to successfully over-deliver on expectations;

### Experience in connected home platforms; and

### Experience in energy management applications.

# KNOWLEDGE AND UNDERSTANDING

## The Service Provider is required to have the following knowledge and understanding:

### Typesafe/Lightbend stack (e.g. Play, Akka);

### Spring/OSGi;

### Relational and NoSQL databases;

### Web UI and App development (e.g. Bootstrap, Cordova);

### Cloud deployment architectures;

### Secure and Scalable Microservices; and

### IoT.

# ANNEX B

# SERVICE DELIVERY METHODS

# EVIDENCE OF KEY REQUIREMENTS

## [The Service Provider’s response to this Service Delivery Requirement as set out in their completed Bidder Response Form]

# EVIDENCE OF SKILLS AND EXPERTISE

## [The Service Provider’s response to this Service Delivery Requirement as set out in their completed Bidder Response Form]

# EVIDENCE OF KNOWLEDGE AND UNDERSTANDING

## [The Service Provider’s response to this Service Delivery Requirement as set out in their completed Bidder Response Form]