

Confidential

**RM6100 TECHNOLOGY SERVICES 3
COLLABORATION AGREEMENT**

CONFIDENTIAL AND SUBJECT TO CONTRACT

[insert date]

Confidential

TABLE OF CONTENTS

[Guidance: See the section called “Additional Clause C3 (Collaboration Agreement)” in the Order Form which sets out the position on the Collaboration Agreement as at the Commencement Date.]

No	Heading	Page
	Clauses	
1.	DEFINITIONS AND INTERPRETATION	1
2.	TERM OF THE AGREEMENT	3
3.	PROVISION OF THE COLLABORATION PLAN	3
4.	COLLABORATION ACTIVITIES	4
5.	INVOICING	5
6.	CONFIDENTIALITY	5
7.	WARRANTIES	6
8.	LIMITATION OF LIABILITY	7
9.	DISPUTE RESOLUTION PROCEDURE	8
10.	TERMINATION AND CONSEQUENCES OF TERMINATION	9
11.	GENERAL PROVISIONS	10

Confidential

THIS AGREEMENT IS MADE ON

20[]

BETWEEN:

- (1) [] of []
(the “**Buyer**”);
- (2) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (3) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (4) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (5) [] a company incorporated in [] under registration number [], whose registered office is at [];
- (6) [] a company incorporated in [] under registration number [], whose registered office is at []0;

together (the “**Collaboration Suppliers**” and each of them a “**Collaboration Supplier**”).

WHEREAS:

- A) the Buyer and the Collaboration Suppliers have entered into the Call Off Contracts (defined below) for the provision of various IT and telecommunications (ICT) services; and
- B) the Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Call Off Contract to the Buyer.

In consideration of the mutual covenants contained in the Call Off Contracts and this Agreement and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 As used in this Agreement, the capitalised expressions shall have the following meanings unless the context requires otherwise:

“**Agreement**” means this collaboration agreement, comprised of the Clauses and Schedules;

Confidential

“Call Off Contract” means each contract that is let by the Buyer to one of the Collaboration Suppliers;

“Confidential Information” has the meaning set out in the relevant Call Off Contract;;

“Collaboration Activities” means the activities set out in this Agreement;

“Default” means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties;

“Detailed Collaboration Plan” has the meaning given to it in Clause 3.2;

“Dispute Resolution Procedure” means the procedure described in Clause 9;

“Effective Date” means [DATE];

“Force Majeure Event” has the meaning given to it in Clause 11.1.1;

“Mediator” has the meaning given to it in Clause 9.3.1;

“Outline Collaboration Plan” has the meaning given to it in Clause 3.1;

“Term” has the meaning given to it in Clause 2.1; and

“Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 General

1.2.1 As used in this Agreement:

1.2.1.1 the masculine includes the feminine and the neuter; and

1.2.1.2 the singular includes the plural and vice versa.

1.2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any

Confidential

subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.2.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.2.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.2.5 Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

1.2.6 The party receiving the benefit of an indemnity under this Agreement shall use its reasonable endeavours to mitigate its loss covered by the indemnity.

2. TERM OF THE AGREEMENT

2.1 This Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 10, shall expire six (6) months after the expiry or termination (however arising) of the exit period of the last [contract] [Call Off Contract] (the “**Term**”).

2.2 A Collaboration Supplier’s duty to perform the Collaboration Activities shall continue until the end of the exit period of its last relevant [contract] [Call Off Contract].

3. PROVISION OF THE COLLABORATION PLAN

3.1 [The Collaboration Suppliers shall, within two (2) weeks (or such longer period as notified by the Buyer in writing) of the Effective Date, provide to the Buyer detailed proposals for the Collaboration Activities they require from each other (the “**Outline Collaboration Plan**”).]

3.2 Within ten (10) Working Days (or such other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer shall prepare a plan for the Collaboration Activities (the “**Detailed Collaboration Plan**”). The Detailed Collaboration

Confidential

Plan shall include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier's respective [contract] [Call Off Contract], by the Buyer. The Detailed Collaboration Plan shall be based on the Outline Collaboration Plan and shall be submitted to the Collaboration Suppliers for approval.

- 3.3 The Collaboration Suppliers shall provide such assistance as is required by the Buyer in the preparation of the Detailed Collaboration Plan.
- 3.4 The Collaboration Suppliers shall, within ten (10) Working Days of receipt of the Detailed Collaboration Plan, either:
 - 3.4.1 approve the Detailed Collaboration Plan; or
 - 3.4.2 reject the Detailed Collaboration Plan, giving reasons for such rejection.
- 3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan pursuant to Clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.
- 3.6 If the parties fail to agree the Detailed Collaboration Plan in accordance with Clause 3.4, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4. COLLABORATION ACTIVITIES

- 4.1 The Collaboration Suppliers shall perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
- 4.2 The Collaboration Suppliers shall provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the [contract] [Call Off Contract].
- 4.3 The Collaboration Suppliers shall procure that their respective sub-contractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.

Confidential

5. INVOICING

- 5.1 In the event that any sums are due under this Agreement, the Collaboration Supplier responsible for paying such sum shall pay within thirty (30) Working Days of receipt of a valid invoice.
- 5.2 Interest shall be payable on any late payments under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

6. CONFIDENTIALITY

- 6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 6.2 Each Collaboration Supplier warrants that:
- 6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;
 - 6.2.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other party;
 - 6.2.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or sub-contractors; and
 - 6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, shall use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise.
- 6.3 The provisions of Clauses 6.1 and 6.2 shall not apply to any information which:

Confidential

- 6.3.1 is or becomes public knowledge other than by breach of this Clause 6; or
 - 6.3.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - 6.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 6.3.4 is independently developed without access to the Confidential Information; or
 - 6.3.5 is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.
- 6.4 The Buyer's right, obligations and liabilities in relation to using and disclosing any Collaboration Supplier's Confidential Information provided under this Agreement and the Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Buyer's Confidential Information provided under this Agreement, shall be as set out in the [relevant contract] [Call Off Contract].

7. WARRANTIES

- 7.1 Each Collaboration Supplier warrant and represent that:
- 7.1.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Collaboration Supplier; and
 - 7.1.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 7) in accordance with its own established internal procedures.
- 7.2 Except as expressly stated in this Agreement, all warranties and conditions,

Confidential

whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

8. LIMITATION OF LIABILITY

8.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

8.2 Nothing in this Agreement shall exclude or limit the liability of any party in respect of fraud or fraudulent misrepresentation.

8.3 Subject always to Clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which shall be subject to the limitations of liability set out in the [relevant contract] [Call Off Contract]) shall be limited to [(£ ,000)].

8.4 Subject always to Clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to [Buyer to specify].

8.5 Subject always to Clauses 8.1, 8.2 and 8.6 and except in respect of liability under Clause 6 (excluding Clause 6.4, which shall be subject to the limitations of liability set out in the [relevant contract] [Call Off Contract]), in no event shall any party be liable to any other for:

8.5.1 indirect loss or damage;

8.5.2 special loss or damage;

8.5.3 consequential loss or damage;

8.5.4 loss of profits (whether direct or indirect);

8.5.5 loss of turnover (whether direct or indirect);

Confidential

8.5.6 loss of business opportunities (whether direct or indirect); and/or

8.5.7 damage to goodwill (whether direct or indirect).

8.6 Subject always to Clauses 8.1 and 8.2, the provisions of Clause 8.5 shall not be taken as limiting the right of the Buyer to amongst other things, recover as a direct loss any:

8.6.1 additional operational and/or administrative costs and expenses arising from a Collaboration Supplier's Default; and/or

8.6.2 wasted expenditure or charges rendered unnecessary and/or incurred by the Buyer arising from a Collaboration Supplier's Default.

9. DISPUTE RESOLUTION PROCEDURE

9.1 All disputes between any of the parties arising out of or relating to this Agreement shall be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

9.2 If the dispute cannot be resolved by the parties' representatives nominated under Clause 9.1 within a maximum of five (5) Working Days (or such other time as otherwise agreed in writing by the parties) after it has been referred to them under Clause 9.1, then except where a party seeks urgent injunctive relief, the parties shall refer it to mediation pursuant to the procedure set out in Clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

9.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

9.3.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the parties that he is unable

Confidential

or unwilling to act, apply to the Chairman of the Law Society to appoint a Mediator;

9.3.2 the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;

9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties; and

9.3.6 if the parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

9.4 The parties must continue to perform their respective obligations under this Agreement and under their respective [contract(s)] Call Off Contract(s) pending the resolution of a dispute.

10. TERMINATION AND CONSEQUENCES OF TERMINATION

10.1 Termination

10.1.1 The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier's [respective contract] [Call Off Contract].

Confidential

10.1.2 Failure by any of the Collaboration Suppliers to comply with their obligations under this Agreement shall constitute a Default under their [relevant contract] [Call Off Contract]. In this case, the Buyer also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Agreement and sever its name from the list of Collaboration Suppliers, so that this Agreement will continue to operate between the Buyer and the remaining Collaboration Suppliers.

10.2 Consequences of Termination

10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer shall continue to comply with their respective obligations under the [contracts] [Call Off Contracts] following the termination (however arising) of this Agreement.

10.2.2 Except as expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement.

11. GENERAL PROVISIONS

11.1 Force Majeure

11.1.1 For the purposes of this Agreement, the expression “**Force Majeure Event**” shall mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a sub-contractor.

11.1.2 Subject to the remaining provisions of this Clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

11.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to such event is attributable to its wilful act, neglect or

Confidential

failure to take reasonable precautions against the relevant Force Majeure Event.

11.1.4 The affected party shall immediately give the other parties written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.

11.1.5 The affected party shall notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise in writing by the parties.

11.2 Assignment and Subcontracting

11.2.1 Subject to Clause 11.2.2, the Collaboration Suppliers shall not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the Buyer first being obtained in writing.

11.2.2 Any sub-contractors identified in the Detailed Collaboration Plan are permitted to perform those elements identified in the Detailed Collaboration Plan to be performed by such sub-contractors.

11.3 Notices

11.3.1 Any notices given under or in relation to this Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

Confidential

11.3.2 For the purposes of Clause 11.3.1, the address of each of the parties shall be those specified in the Detailed Collaboration Plan.

11.4 Entire Agreement

11.4.1 This Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties in relation to such matters.

11.4.2 Each of the parties acknowledges and agrees that in entering into this Agreement and the documents and agreements referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to each party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

11.4.3 Nothing in this Clause 11.4 shall operate to exclude any liability for fraud.

11.5 Rights of Third Parties

11.5.1 Nothing in this Agreement shall be deemed to grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision hereof and the parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.6 Severability

11.6.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any

Confidential

extent to be invalid, the parties shall immediately commence good faith negotiations to remedy that invalidity.

11.7 Variations

11.7.1 No purported amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is made in writing by the parties.

11.8 No waiver

11.8.1 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

11.9 Governing Law and Jurisdiction

11.9.1 This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTED AND DELIVERED as an agreement by the parties or their duly authorised attorneys the day and year first above written.

FOR AND ON BEHALF OF THE BUYER

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF OF** []

Confidential

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF []

Signed by:

Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF []

Confidential

Signed by:

Full name (capitals):

.....

Position:

.....

.....

Date:

FOR AND ON **BEHALF** OF []

Signed by:

Full name (capitals):

.....

.....

Position:

.....

Date:

Confidential

SCHEDULE 1

LIST OF CONTRACTS

COLLABORATION SUPPLIER	NAME/REFERENCE OF CONTRACT	EFFECTIVE DATE OF CONTRACT

Confidential

**[SCHEDULE 2
OUTLINE COLLABORATION PLAN]**