



1E LIMITED SOFTWARE AND SERVICES AGREEMENT

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement including the Schedules the following words shall have the following meanings:

“Agreement”

means the Agreement in which each and every Schedule referred to in the Agreement including this Schedule is included;

“Business Day”

means any day other than Saturdays, Sundays or public holidays in England;

“Commencement Date”

means the date of this Agreement, as indicated in Schedule 1;

“Concurrent Users”

means the users who are permitted to have simultaneous use of the Software in accordance with the terms of this Agreement, the number of which is specified in Schedule 1;

“CPI-U”

means the Consumer Price Index for all urban consumers (or such other index as may be published from time to time by the United States Bureau of Labor Statistics);

“Force Majeure”

means the following:

Acts of God; outbreak of hostilities, riot, civil disturbance, acts of terrorism; an act of any government or authority (including refusal or revocation of any licence or consent); fire, explosion or flood; power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles, and any cause or circumstance whatsoever beyond the reasonable control of a Party; Force Majeure shall be in accordance with Section 10C of Appendix A, DIR Contract No. DIR-SDD-1601.

“Group”

means in respect of either Party, that Party and any direct subsidiary or holding company of such Party, and any subsidiary of any such holding company or any company in which a Party holds 50% or more of the shares;

“Initial Maintenance Term”

means the initial period during which 1E provides the Maintenance Services as specified in Schedule 1;

“Intellectual Property Rights”

means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered and including rights in semiconductor topographies), copyright, database rights, trade and service marks (both registered and unregistered) together with all applications for, right to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right

“Licensed Software Materials”

means the Software, the Software Documentation, the New Releases, any Updates and any fixes created during the provision of the Maintenance Services;

“Maintenance Services”

means the services to be provided by 1E in respect of the Software as specified in Schedule 3;

“Materials”

means any and all know how, works of authorship, materials, inventions, devices, processes and discoveries developed, written, modified and/or produced by or on behalf of 1E (including without limitation by any sub-contractors, consultants, employees and agents acting on 1E's behalf) in relation to or in the course of the performance of the Consultancy Services including without limitation any and all reports, studies, diagrams, computer programs, charts and specifications;

“New Releases”

means a release of a new version of the Software that improves its functionality and which is deemed by 1E to be of benefit to the Licensee;

“Party”

means each of the persons identified as parties to this Agreement and jointly “the Parties”;

“Program Error”

means a fault in the Software diagnosed and rectified by 1E;

“Software”

means the software programs in object code form identified by title and reference number in Schedule 1;

“Software Documentation”

means the instruction manuals, user guides and other information in respect of the Software to be made available by 1E at its discretion to the Licensee in either printed or machine readable form;

“Software Specifications”

means the technical specifications from time to time published by 1E in respect of the Software;

“Updates”

means an update to the Software provided pursuant to the Maintenance Services; and

“Use”

means the copying or transmission of the Software or (where in machine readable form) the Software Documentation for use in accordance with the instructions contained in the Software or (as the case may be) the Software Documentation.

1.2 In this Agreement unless the context requires otherwise:

1.2.1 the singular includes the plural and vice versa and any gender includes any other gender;

- 1.2.2 references to Clauses and Schedules are to clauses of, and schedules to, this Agreement;
 - 1.2.3 any reference to an enactment, order, regulation or other similar instrument includes a reference to that enactment, order, regulation or instrument as from time to time amended, extended or re-enacted; and
 - 1.2.4 references to persons include bodies corporate, unincorporated associations and partnerships, and any reference to the Parties include their respective successors, permitted assigns and personal representatives.
- 1.3 The headings of this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- 1.4 In the event of a conflict between any of the terms of this Agreement including its Schedules and appendices, the conflict shall be resolved according to the following order of priority:
- 1.4.1 the Schedules of this Agreement;
 - 1.4.2 the Clauses of this Agreement; and
 - 1.4.3 the Recitals.

2 GRANT OF LICENCE, ACCEPTANCE AND PROVISION OF MAINTENANCE SERVICES

- 2.1 1E in consideration of the payment by the Licensee of the License fee and from time to time the Maintenance fee hereby:
- 2.1.1 grants to the Licensee a non-exclusive, non-transferable, world-wide and (subject to Clause 14) perpetual licence to Use the Software (and where appropriate the Software Documentation, any New Releases and any Updates) and to possess and refer to the Software Documentation (the "Licence"); and
 - 2.1.2 agrees to provide the Maintenance Services,
 - in all cases in accordance with and subject to the terms and conditions of this Agreement.
- 2.2 1E may from time to time produce New Releases of the Software and offer such New Releases to the Licensee.
- 2.3 The Licensee acknowledges that it has already evaluated the Software and accordingly the Software shall be deemed to be accepted with effect from delivery of the Software to the Licensee.

3 TERM

- 3.1 This Agreement shall commence on the Commencement Date and shall continue:
- 3.1.1 in force in respect of the Licence unless or until terminated by either Party in accordance with the provisions of Clause 14; and
 - 3.1.2 in respect of the Maintenance Services for the Initial Maintenance Term unless or until terminated in accordance with Clause 14, provided that the Licensee shall have the option to extend the term of this Agreement in relation to the Maintenance Services, on the same terms and conditions as are contained herein, for additional periods of twelve (12) months upon payment of the Maintenance Fee to 1E, such payment to be made no less than thirty (30) days prior to the expiry of the Initial Maintenance Term or each anniversary thereof. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1601.

4 TECHNICAL SERVICES CHARGES

- 4.1 If 1E provides Technical Services then:
- 4.2 the Technical Service Charges shall be payable by the Licensee in accordance with Section 7C Payments of Appendix A, DIR Contract No. DIR-SDD-1601

- 4.3 the Licensee shall reimburse all reasonable expenses which have been approved by the Licensee and incurred by 1E in the provision of the Technical Service Services within thirty (30) days of receipt of an invoice plus supporting documentation; and
- 4.4 1E shall, upon ninety (90) days' written notice to the Licensee be entitled to vary the Technical Service Charges with the agreement of the Licensee.

5 MAINTENANCE SERVICES

- 5.1 With effect from the Commencement Date and subject to the Licensee paying any and all Maintenance Fees as they become due, 1E shall provide the Maintenance Services specified in Schedule 3 subject to the terms and conditions of this Agreement. Maintenance Services shall comprise support in accordance with the provisions of this Agreement and the release of Updates as 1E may deem necessary in order to remedy Program Errors or increase functionality.
- 5.2 1E shall not be liable to provide Maintenance Services:
- 5.2.1 in respect of Software that is not properly licensed pursuant to Clause 2.1 of this Agreement;
 - 5.2.2 if the Licensee is operating the Software on a Microsoft platform whereby the applicable version of 'Microsoft Windows' or 'Microsoft SMS' or 'Microsoft MOM' or 'Microsoft System Center' or any other relevant Microsoft platform is not, or ceases at any time to be, supported by Microsoft Corporation; or
 - 5.2.3 if the Licensee is not in conformity with the minimum technical requirements and prerequisites set out in the Software Specifications; or
 - 5.2.4 in the circumstances set out in clause 5.9.
- 5.3 Maintenance Services shall not include the diagnosis and rectification of any Program Error resulting from:
- 5.3.1 the improper use, operation or neglect of either the Software or the equipment upon which the Software is installed or used;
 - 5.3.2 the failure by the Licensee to implement recommendations in respect of or solutions to Program Errors previously advised by 1E;
 - 5.3.3 any repair, adjustment, alteration, merger or modification of the Software by any person other than 1E without 1E's prior consent;
 - 5.3.4 any breach by the Licensee of any of its obligations under any maintenance agreement in respect of the equipment upon which the Software is installed or used; or
 - 5.3.5 any failure, accident, neglect or misuse of equipment, software or media not supplied by 1E.
- 5.4 Subject to Clause 5.5, 1E may at its own discretion upon request by the Licensee provide Maintenance Services notwithstanding that the Program Error results from any of the circumstances described in Clause 5.3 above.
- 5.5 1E shall be entitled to levy Additional Charges, subject to the prior written request of Licensee for:
- 5.5.1 Maintenance Services provided pursuant to Clause 5.4;
 - 5.5.2 the provision of any other services by 1E not specified in this Agreement; or
 - 5.5.3 any Maintenance Services provided outside of the Maintenance Hours.
- 5.6 1E shall provide Maintenance Services for New Releases (if any). Updates shall be provided pursuant to the Maintenance Services.
- 5.7 The Licensee shall allow 1E all necessary access to the Licensee's premises where this is required to provide the Maintenance Services under this Agreement. The Licensee shall take all reasonable precautions to ensure the health and safety of 1E's employees or agents whilst on the Licensee's premises. 1E and its employees shall to the extent that they have been so advised by the Licensee observe and

comply with the Licensee's reasonable health and safety requirements applicable to such premises.

- 5.8 In the event of a disaster or catastrophe totally or partially disabling the Licensee's computing or telecommunications capability, whether due to natural or man-made causes, 1E shall, at the Licensee's expense, use reasonable endeavours to assist in the prompt restoration of such capability, including, but not limited to, the provision of emergency replacements of the Software, Maintenance Services and other technical assistance.
- 5.9 1E will provide maintenance services for the current version of Software, and the one preceding version of Software for up to twelve (12) months from the date of release of the current version of the Software.
- 5.10 1E may at its discretion cease to provide Maintenance Services in respect of any decommissioned Software ("Unsupported Software") on not less than six (6) months written notice to the Licensee.
- 5.11 If 1E ceases to provide Maintenance Services pursuant to clause 5.10, 1E shall use all reasonable endeavours to provide alternative software with the same or similar functionality as the Unsupported Software and such alternative software shall replace the Unsupported Software as the Software. If the provision of such alternative software results in an adjustment to the Licence Fee or Maintenance Fee 1E shall notify the Licensee of such adjustment. For the avoidance of doubt, no refunds or credits shall be payable by 1E if appropriate alternative software is provided.
- 5.12 If 1E is unable to provide alternative software or New Releases pursuant to clauses 5.11, no Maintenance Fee shall be payable by the Licensee during the six (6) months' notice period specified in clause 5.11, and any Maintenance Fees paid in advance by the Licensee for such Unsupported Software during the six (6) months' notice period shall be refunded to the Licensee on a pro rate basis.

6 PROPERTY AND CONFIDENTIALITY IN THE LICENSED SOFTWARE MATERIALS

- 6.1 All Intellectual Property Rights in the Licensed Software Materials are the exclusive property of or are licensed to 1E.
- 6.2 The Licensee shall not:
- 6.2.1 save as provided in Clause 7 below copy the whole or any part of the Licensed Software Materials;
- 6.2.2 save as required to be permitted by law modify, merge or combine the whole or any part of the Licensed Software Materials with any other software or documentation;
- 6.2.3 assign, license, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Software Materials nor use on behalf of or make available the same to any third party; or
- 6.2.4 save as required to be permitted by law reverse engineer or decompile the whole or any part of the Licensed Software Materials from object code into source code or make any derivative works from or based upon the Licensed Software Materials or any part thereof.
- 6.3 The Licensee shall:
- 6.3.1 reproduce on any copy of the Licensed Software Materials 1E's copyright and trade mark notices;
- 6.3.2 maintain an up-to-date record of the number of copies of the Licensed Software Materials and their location and upon request forthwith produce such record to 1E;
- 6.3.3 only use the Software in accordance with the number of copies licensed to the Licensee (and as set out in the order form); and
- 6.3.4 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the Confidential Information (as defined in Clause **Error! Reference source not found.** below) and Intellectual Property Rights of 1E in the Licensed Software Materials.
- 6.4 The Licensed Software Materials, and all technical information relating or preparatory thereto including without limitation modules, sub-modules, programs, samples, know-how, data, formulae, processes,

designs, drawings, specifications, inventions, and information concerning the functionality, features, compatibility, errors, performance, speed of execution, architecture and business logic of or connected therewith, shall be deemed to be Confidential Information (as defined in Clause **Error! Reference source not found.** below) of 1E.

- 6.5 If any part of the equipment on which the Software is installed becomes temporarily inoperable then the Licensee may use the Software on other equipment until the original equipment becomes operable.
- 6.6 1E and its nominated representatives shall have the right to audit all the Software provided or installed under this Agreement and all back-up copies of the Software to ensure that the use of the Software by the Licensee is in compliance with the terms of this Agreement. Such audit shall take place no more than once every twelve (12) months with effect from the Commencement Date, and on not less than twenty-eight (28) days' written notice to the Licensee. The Licensee shall provide all reasonable assistance to 1E as 1E may require in the performance of such audit.
- 6.7 Upon the request of the Licensee 1E shall enter into an agreement with NCC Escrow International of Oxford House, Oxford Road, Manchester, M1 7ED ("NCC") for the deposit of the source code of the Software. The terms of that agreement will be on the standard terms issued by NCC from time to time. The Licensee shall be responsible for any set up charges associated with establishing the escrow and for any subsequent charges necessary to maintain the escrow for the Licensee's benefit.
- 6.8 The Licensee shall not increase the number of Concurrent Users without 1E's prior written consent and subject to paying the applicable Licence Fee as 1E shall notify to the Licensee. The Licensee shall immediately notify 1E if the number of users of the Software exceeds the Concurrent Users.

7 COPYING OF THE LICENSED SOFTWARE MATERIALS

- 7.1 The Licensee shall be entitled to make a reasonable number of copies of the Licensed Software Materials. Any such copy shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Licensed Software Materials.

8 WARRANTY

- 8.1 Subject to the exceptions set out in this Clause 8 and the limitations upon its liability in Clause 11 below 1E warrants that:
- 8.1.1 it has the right, power and authority to license the Licensed Software Materials upon the terms and conditions of this Agreement;
- 8.1.2 the Software will for a period of ninety (90) days from the date it is delivered to the Licensee conform to the Software Specifications, and
- 8.1.3 it will perform the Maintenance Services with reasonable skill and care.
- 8.2 The Licensee shall give notice to 1E as soon as it is reasonably able upon becoming aware of a breach of warranty. If no such notice is given within 30 days of the Licensee becoming aware of a breach of warranty, 1E shall not be liable for such breach of warranty. The limited warranty given in Clause 8.1 shall apply only if: (i) Software is used and maintained as directed by all applicable documentation and instructions and the claim is unrelated to the negligence, accident or act of you or any third-party; (ii) you have paid 1E all sums due hereunder; (iii) Software has not in any way been modified; (iv) the claim is unrelated to the failure of the Software to function in accordance with Software Specifications, to normal wear and tear or to any products normally consumed in operation or that have a normal life inherently shorter than the applicable warranty period; (v) there has been operation of Software under conditions no more severe than those for which the Software was designed; (vi) the claim is unrelated to force majeure; and (vii) Software has not been used in combination with any software or other equipment which is not provided by 1E. Also, 1E shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in Clauses 5.2 and 5.3 above. In the event of any breach of the foregoing warranty, 1E's sole obligation and liability, and your sole and exclusive remedy shall be (1) 1E's exercise of commercially-reasonable efforts to replace software media or modify the Software so that the foregoing warranty is true, and (2) thereafter, 1E's delivery of any modified Software.
- 8.3 WITHOUT PREJUDICE TO THE FOREGOING 1E DOES NOT WARRANT THAT THE USE OF THE SOFTWARE WILL MEET THE

LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE (INCLUDING WHERE IN MACHINE-READABLE FORM THE SOFTWARE DOCUMENTATION) WILL BE UNINTERRUPTED OR ERROR FREE.

8.4 EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 8.1, 1E MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, MAINTENANCE SERVICES, CONSULTANCY SERVICES, OR ANY OTHER PRODUCT OR SERVICE, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, HIDDEN DEFECTS, DURABILITY, SUITABILITY, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, NONINFRINGEMENT OR OTHERWISE. EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 8.1, THE ABOVE ARE PROVIDED STRICTLY "AS IS" AND 1E MAKES NO ADDITIONAL SUCH WARRANTIES FOR SUCH PRODUCTS AND SERVICES. 1E DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE SHALL NOT MAKE OR PASS ON ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION ON BEHALF OF 1E OR ITS LICENSORS TO ANY END USER OR OTHER THIRD PARTY.

8.5 1E DOES NOT WARRANT THAT THE SOFTWARE WILL BE COMPATIBLE WITH THE LICENSEE'S SOFTWARE, HARDWARE OR OTHER EQUIPMENT AND SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED TO THE LICENSEE'S SOFTWARE, HARDWARE OR OTHER EQUIPMENT AS A RESULT OF USING THE SOFTWARE. THE LICENSEE IS SOLELY RESPONSIBLE FOR ENSURING THE SOFTWARE IS COMPATIBLE WITH THE LICENSEE'S SYSTEMS AND REQUIREMENTS AND ACCEPTS THAT THE SOFTWARE WAS NOT DESIGNED TO THE LICENSEE'S INDIVIDUAL REQUIREMENTS.

8.6 Licensee specifically agrees to comply with the requirements of all applicable US export laws including, but not limited to, the U.S. Export Administration Regulations. Unless permitted by U.S. regulation or Export Licence, Licensee will not export or re-export, directly or indirectly, any software or technology received from 1E, or allow the direct product of the same to be exported or re-exported.

9 INTELLECTUAL PROPERTY

9.1 **The scope of work performed by 1E services is limited exclusively to the implementation and configuration of our product. As such, the deliverables created by 1E are always specific to our product, 1E Software. Examples of common deliverables include training materials, event trigger scripts, and documentation of our configurations. 1E provides these deliverables to our customers as part of our technical services. Customers have full access to use and even modify these deliverables within their environment. Additionally, 1E often reuses the knowledge and intellectual property gained from previous customer deliverables to the benefit of other customers. 1E always maintains and requires full intellectual property ownership of all deliverables provided under a technical services agreement. In no way does this prevent any customer from fully exploiting the value of 1E software within their environment.**

10 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

10.1 1E shall indemnify the Licensee against and defend any claim by a third party that the Software or Materials infringes that third party's Intellectual Property Rights. The Licensee shall immediately notify 1E if it becomes aware of such a claim and provide such assistance to 1E as 1E may require in the defence or settlement of such claim at 1E's expense. 1E shall have the sole right to conduct the defence of any such claim and all negotiations for its settlement.

10.2 In the event that any claim referred to in Clause 10.1 is made or threatened, 1E may at its option and expense:

10.2.1 procure for the Licensee the right to continue using the Software or Materials or infringing part thereof; or

10.2.2 modify or amend the Software or Materials or infringing part thereof so that it becomes non-infringing; or

10.2.3 replace the Software or Materials or infringing thereof by other software of similar capability; or

10.2.4 terminate this Agreement on notice and refund a proportion of the charges paid by the Licensee under this Agreement, on a pro rata basis over sixty (60) months from the date of this Agreement.

10.3 The indemnity given under Clause 10.1 will not apply to the extent that any infringement has arisen directly from:

10.3.1 any modifications to the Software or Materials which are not contemplated by this Agreement and which are made by the Licensee without 1E's written consent or written authorisation; or

10.3.2 the use of the Software or Materials in combination with any other materials, software, equipment or systems not supplied or approved by 1E and in a manner not contemplated by this Agreement.

10.4 The Licensee shall be under an obligation to mitigate its losses, in respect of liabilities being indemnified and shall, if requested by 1E, provide evidence to 1E of all steps that it has taken to do so.

10.4.1 Acts or Omissions: Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY THIRD PARTY ACTIONS RESULTING IN LIABILITY, CLAIMS, DEMANDS, OR SUITES, AND ALL REASONABLE RELATED COSTS, ATTORNEY FEES, AND EXPENSES for injury to persons or damage to tangible property directly attributable to any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of Orders issued under the Contract, up to the limit set out in subparagraph 9.K (ii) in DIR Contract # DIR-SSD-1601. SUBJECT TO THE STATE OF TEXAS NOTIFYING THE VENDOR IMMEDIATELY IN THE EVENT OF ANY CLAIM OR ACTION. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEY FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR STATE AGENCIES AND BY CUSTOMERS LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

10.4.2 Infringement

10.4.2.a Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT, SUBJECT TO THE STATE OF TEXAS NOTIFYING THE VENDOR IMMEDIATELY IN THE EVENT OF ANY CLAIM OR ACTION. THE STATE OF TEXAS SHALL TAKE ALL REASONABLE STEPS TO MITIGATE ITS LOSSES AND UPON REQUEST SHALL PROVIDE SATISFACTORY EVIDENCE OF HAVING DONE SO. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

10.4.2.b If vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall) at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionality equivalent or superior product or service so that Customer's use is non-infringing.

10.4.2.c The indemnity given under this section will not apply to the extent that any infringement has arisen directly from (a) any modifications to Vendor's software or materials which are not contemplated by this Agreement and which are made by the Customer without Vendor's written consent or written authorization; or (b) the use of Vendor's software or materials in combination with any other materials, software, equipment or systems not supplied or approved by Vendor and in a manner contemplated by this Agreement.

11 LIMITATION OF LIABILITY

11.1 Limitation of Liability shall be in accordance with Section 9K of Appendix A, DIR Contract No. DIR-SDD-1601.

12 RISK IN THE LICENSED SOFTWARE MATERIALS

12.1 Risk in the Licensed Software Materials will pass to the Licensee upon the delivery of the Licensed Software Materials to the Licensee. If subsequently the Licensed Software Materials are (in whole or in part) destroyed, damaged or lost 1E will upon written request replace the same.

13 **CONFIDENTIALITY**

13.1 Confidentiality shall be in accordance with Section 9H of Appendix A, DIR Contract No. DIR-SDD-1601.

14 **TERMINATION**

14.1 Termination shall be in accordance with Section 10B of Appendix A, DIR Contract No. DIR-SDD-1601.

15 **FORCE MAJEURE**

15.1 Force Majeure shall be in accordance with Section 10 C of Appendix A, DIR Contract No. DIR-SDD-1601.

16 **WAIVER**

16.1 Any failure or delay on the part of either Party to exercise any power or right under this Agreement shall not operate as a waiver of it, nor shall any single or partial exercise of any such right or power preclude any other or further exercise of the right or power. Any of the rights and remedies of either Party under this Agreement may at any time be enforced separately or concurrently with any other rights and remedies, whether under this Agreement or arising by operation of law with the effect that the rights and remedies are cumulative and not exclusive of each other.

17 **NOTICES**

17.1 Any notices required to be given under this Agreement shall be in writing and delivered personally or by internationally-recognized overnight commercial courier or transmitted by facsimile to the Parties at the address specified in this Agreement.

17.2 Any notice served by:

17.2.1 personal delivery, shall be deemed served at the time of delivery;

17.2.2 courier, shall be deemed served at the start of the fifth business day after posting; and

17.2.3 facsimile, shall be deemed served on the day of transmission (or the next following business day if transmitted outside the Party's normal working hours) provided that the sender shall have received a transmission report indicating that all the pages of the notice have been transmitted to the correct facsimile number.

17.3 Any Party may change any details of its address or facsimile number by notice in the manner described above.

18 **SEVERABILITY**

18.1 If any term or provision of this Agreement or its application to any Party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of the term or provision to any other Party or circumstances, other than those as to which it is already invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties shall negotiate in good faith to replace any invalid or unenforceable provisions by substitute provisions.

19 **ENTIRE AGREEMENT**

19.1 DIR Contract No. DIR-SDD-1601 and this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes and invalidates all prior oral or written communications, understandings, representations or warranties relating to the subject matter hereof.

19.2 Each Party warrants to the other that it has not relied on any such communications, understandings, representations or warranties in entering into this Agreement.

19.3 Notwithstanding anything contained herein to the contrary, the provisions of Clauses 4, 6, 111, 13 and any other Clauses which are intended to survive expiration or termination shall survive the expiration or termination of the Agreement for any reason and shall continue in full force and effect thereafter.

20 **ASSIGNMENT/SUB-CONTRACTING/AGENCY**

20.1 Save as stated herein, neither Party shall be entitled to assign, sub-contract or otherwise transfer its rights or obligations under this Agreement whether in whole or in part without the other Party's prior written consent (not to be unreasonably withheld), save that 1E shall be entitled to assign its rights hereunder (in whole or in part) to any member of 1E's Group. 1E shall have the right to sub-contract its obligations under this Agreement provided that 1E shall remain primarily responsible to the Licensee for all the acts and omissions of the sub contractors as fully as if they were the acts and omissions of 1E.

21 **THIRD PARTY RIGHTS**

21.1 A person who is not a Party to this Agreement shall have no rights under this Agreement.

22 **PUBLICITY**

22.1 Subject to Clause 22.2, the Parties agree to keep confidential the terms of this Agreement, and neither Party shall make any announcement in relation to this Agreement or otherwise publicise its existence or its contents or use or refer to the name, trade mark or trade name of the other Party in any disclosure without the prior written consent of the other Party.

22.2 Each Party agrees the following:

22.2.1 to provide the publicity (if any) as specified in Schedule 1 (if applicable), and

22.2.2 not to unreasonably withhold its consent to the other party publicising this Agreement, either by reference, case study or other means.

22.3 1E shall be permitted to use the Licensee's name in its marketing and promotional materials, including but not limited to 1E's website.

23 **AMENDMENTS**

23.1 No amendment to this Agreement whether oral or written shall be binding on either Party unless in writing and signed on behalf of the Parties.

24 **GOVERNING LAW AND JURISDICTION**

24.1 The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

25 **SPECIAL CONDITIONS**

25.1 Where special conditions are included as part of this Agreement they shall apply equally with these, except that where there is any inconsistency between these conditions and the special conditions, the special conditions shall apply.

26 **STATUS**

26.1 Each party to this Agreement is an independent contractor. No provision of this Agreement or any act of the parties pursuant to this Agreement will be construed to express or imply a joint venture, partnership, or relationship other than vendor and purchaser of the Services. No employee, agent or other representative of either party will at any time be deemed to be under the control or authority of the other party, or under the joint control of both parties.

26.2 Neither party has the right to commit the other to any legally binding obligation or to hold the other party's personnel (whether such personnel are employees, sub-contractors, consultants or otherwise) out as its personnel.