



SERVICES AGREEMENT TERMS AND CONDITIONS ("the Terms and Conditions")

- (A) Plexus provides a solution to customers that supports condition monitoring, energy measurement and control activity on a remote access basis via their GUARDIAN® technology. GUARDIAN® is for use as part of the Customer's systems and procedures for the control of its environmental obligations.
- (B) The Customer wishes to purchase and use GUARDIAN® in its business operations.
- (C) Plexus has agreed to provide, and the Customer has agreed to take and pay for GUARDIAN® on a Subscription Fee basis, subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement (including in the background recitals to it):

Affiliates: as regards each Party, its ultimate holding company and each of its ultimate holding company's other subsidiaries from time to time (with the expressions **holding company** and **subsidiary** having the meaning given to them at section 1159 of the Companies Act 2006;

Applicable Law: all applicable laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice, including the Healthy Water Guidance;

Available: means that either: (a) the Services can be accessed in a normal manner; or (b) the Services are not available due to Permitted Downtime; or (c) the Services are otherwise available, but cannot be accessed by the Customer due to an Excluded Cause (and **Availability** shall be construed accordingly);

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;

Back-Up Policy: means Plexus' standard back-up policy from time to time, as available at www.Plexus.co.uk and as such policy may be amended by Plexus in its sole discretion from time to time;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Change in Law: any change in any Applicable Law which impacts on the use of the Hardware and/or performance of the Services and which comes into force after the Effective Date;

Confidential Information: as defined in clause 10.1.1, subject to clause 10.2;

Customer: means the customer named in the Term Sheet;

Customer Data: the data inputted into the information fields by the Customer, Authorised Users, or Plexus or Plexus's service provider on the Customer's behalf and the data collected from the Hardware;

Data Protection Law: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party;

Default: any negligence or other default of either Party in complying with its obligations under this agreement.

Delivery Address: means the address stated in the Term Sheet to which the Hardware will be delivered;

Delivery Date: without prejudice to clause 3.2, the date for delivery of the Hardware set out in the Term Sheet;

Documentation: the document made available to the Customer by Plexus online via <https://www.plexus-innovation.com/> or such other web address notified by Plexus to the Customer from time to time which sets out a description of the Services and the user instructions for the Services including the [Quick Start Guide];

Effective Date: the date of this agreement;

Excluded Cause: means any one or more of the following causes which result in the Services not being Available: (a) any improper use, misuse or unauthorised alteration by, or on behalf of, or in accordance with the instructions of, the Customer of any Software; (b) any use of the Software by, or on behalf of, or in accordance with the instructions of, the Customer in a manner inconsistent with the then-current Documents; (c) the use by the Customer of any hardware or software not provided by Plexus or approved by Plexus in the Documentation for use by the Customer in connection with the Software; (d) the use of a non-current version or release of the Software; (e) failure by the Customer to follow any reasonable instructions provided to the Customer by or on behalf of Plexus in relation to the Software; (f) any outages, disruptions, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet; (g) any outages, disruptions, delivery failures, or any other loss or damage resulting from the act or omission of a third party which is not under the direction or control of Plexus (including any which arise as a result of a DDOS (denial-of-service) or similar attack); (h) any period of unavailability caused by a Force Majeure Event.

Fees: means the Subscription Fee payable by the Customer to Plexus, together with any other fees or charges which may be due from the Customer to Plexus from time to time in accordance with this agreement;

Fee Payment Option: means the option setting out the payment terms for the Fee, as indicated on the Term Sheet;

Force Majeure Event: any cause affecting, preventing or hindering the performance by a Plexus of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including, without limitation, failure of a utility service or transport or telecommunications network (including the Network Provider), malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, acts of God, fire, flood, storm or default of suppliers or sub-contractors, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, and any pandemic or epidemic (and any act of government or other competent authority in relation to them);

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as could reasonably be expected from a reputable company providing services which are the same as, or similar to, the Services.

Hardware: means the sensor and transmittal devices that transmit the measured data via the Network Provider to provide the Services under this agreement in the quantity set out in the Term Sheet, as more particularly described in Schedule 1;

Hardware Specification: means the specification set out in Schedule 1 describing the functionality of the Hardware;

Hardware Warranty Period: means the warranty period for the Hardware, being the Term;

Healthy Water: means the water systems conform with the Healthy Water Guidance;

Healthy Water Guidance: means the HSE's Approved Code of Practice and guidance on regulations Legionnaires disease: the control of legionella bacteria in water systems (L8 (fourth edition)) dated 2013, as updated from time to time;

HSE: means the Health and Safety Executive, which is an executive non-departmental public body in the United Kingdom and Britain's national regulator for workplace health and safety;

Network Provider: means the provider of the network connectivity to enable the Hardware to perform its function as set out in Schedule 1;

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day;

Party: means a party to this agreement;

Permitted Downtime: means either: (a) planned maintenance, which shall be carried out outside Normal Business Days; or (b) emergency maintenance, which Plexus may carry out at any time; or (c) unscheduled maintenance, which Plexus shall only carry out outside of Normal Business Hours and on not less than least 2 days' advance notice to the Customer;

Personal Data: has the meaning given to it at the relevant time in accordance with Data Protection Law;

Plexus: means Plexus Innovation Limited incorporated and registered in England and Wales with company number 11105009 whose registered address is at Portland House, Belmont Business Park, Durham, United Kingdom, DH1 1TW;

[Quick Start Guide: means the guide provided to the Customer which provides instructions for the Customer to follow on how to install the Hardware];

Services: the subscription services provided by Plexus to the Customer under this agreement which uses the Hardware and third party software applications to provide measurement on a remote basis and provide data to the Customer, in the quantities listed in the Term Sheet and as more particularly described in the Services Specification in Schedule 1;

Services Specification: means the specification set out in Schedule 1 setting out the functionality of the Services;

Set-Up Obligations: means the actions and steps that the Customer needs to take in accordance with the Quick Start Guide to order to set up the Hardware to enable Plexus to deliver the Services and for the Customer to receive the Services;

Software: means any software supplied by Plexus or its licensors to the Customer under or in connection with this agreement;

Subscription Fee: means the fee payable for use of the Services as set out in Schedule 1 and the Term Sheet (which, unless otherwise indicated in the Term Sheet, shall be a monthly fee);

Support Services Policy: Plexus's policy for providing support in relation to the Services as made available from time to time at <https://www.plexus-innovation.com/> or such other website address as may be notified to the Customer from time to time;

Term: means the period of this agreement as set out on the Term Sheet;

Term Sheet: means the contract terms to which these Terms and Conditions are attached;

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices;

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.1 In this agreement, unless otherwise specified, a reference to:

- 1.1.1 the **singular** includes the plural and vice versa and any gender includes the others;
- 1.1.2 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).;
- 1.1.3 **clause** or **Schedule** is to a clause of, or schedule to, this agreement;
- 1.1.4 **this agreement** means the agreement between Plexus and the Customer for the supply of Documentation and/or Hardware and/or Services, incorporating the Terms and Conditions and (subject to clause 16) the terms of the Term Sheet, as varied from time to time in accordance with clause 17.1;
- 1.1.5 **legislation** or Applicable Law is to that legislation or Applicable Law as amended, extended or re-enacted from time to time, including, as a result of the United Kingdom's withdrawal from the European Union by virtue of Article 50 of the Treaty of the European Union;
- 1.1.6 **including, include, in particular** or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;
- 1.1.7 **months** are to **calendar months**; and
- 1.1.8 **writing** or **written** includes email but not faxes.
- 1.2 An obligation of any Party to indemnify any person against a liability is to be construed as including an obligation to indemnify and hold harmless and keep that person indemnified on demand and in full from and against each liability incurred as a result of suffering, defending and settling a claim alleging that liability.
- 1.3 Headings are for convenience only and shall not affect the interpretation of this agreement.
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules and the Term Sheet.
- 1.5 If there is any conflict between the clauses, the Schedules and the Terms Sheet, the clauses shall take precedence.
- 1.6 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.7 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.8 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 23:00 on 31 January 2020.

2. SERVICES

- 2.1 Plexus hereby grants to the Customer during the Term a non-exclusive, non-transferable right, without the right to grant sub licences, to permit the Authorised Users to use the Hardware, Services and the Documentation during the Term solely for the Customer's internal business operations.
- 2.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Hardware and/or Services that:
- 2.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.2.2 facilitates illegal activity;
 - 2.2.3 depicts sexually explicit images;
 - 2.2.4 promotes unlawful violence;
 - 2.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.2.6 is otherwise illegal or causes damage or injury to any person or property,
- and Plexus reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 2.2.
- 2.3 The Customer shall not:
- 2.3.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of any Hardware or software licensed as part of the Services in any form or media or by any means; or
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the any Hardware or software licensed as part of the Services; or
 - 2.3.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services, Hardware and/or the Documentation; or
 - 2.3.3 use the Services, Hardware, and/or Documentation to provide services to third parties; or
 - 2.3.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Hardware and/or Documentation available to any third party except the Authorised Users;
 - 2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Hardware and/or Documentation, other than as provided under this clause 2; or

- 2.3.6 introduce or permit the introduction of, any Virus or Vulnerability into Plexus' network and information systems.
- 2.4 The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Services, Hardware and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Plexus.
- 2.5 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.6 Plexus reserves to itself all rights not expressly granted to the Customer under this agreement.

3. **HARDWARE**

- 3.1 Subject to clause 16.1, the Customer has requested the quantity of Hardware set out in Schedule 1 and/or the Term Sheet.
- 3.2 Plexus shall deliver the Hardware to the Delivery Address on the Delivery Date. Delivery is completed when the Hardware arrives at the Delivery Address. The Delivery Date is approximate only and the time of delivery is not of the essence. Plexus shall not be liable for any delay in delivery of the Hardware that is caused by either: (a) a Force Majeure Event; and/or (b) the Customer's failure to provide it with adequate delivery instructions; and/or (c) any other Default by the Customer.
- 3.3 If the Customer fails to accept delivery of the Hardware, delivery shall be deemed to have been completed at 9 am on the second Business Day after Plexus attempted to make delivery of the Hardware.
- 3.4 The risk in the Hardware shall pass to the Customer on completion of delivery.
- 3.5 Title to the Hardware shall not pass to the Customer. The Customer shall store the Hardware in such a way that it remains readily identifiable as Plexus's property, not remove or deface or obscure any identifying mark on the Hardware, maintain the Hardware in satisfactory condition and keep it insured against all risks as set out in clause 7.1.7.5 (insurance). In the event of termination of this agreement Plexus may require the Customer to deliver up the Hardware and if it does not, Plexus may enter the premises of the Customer in order to recover them, at the cost of the Customer.
- 3.6 Without prejudice to clause 11.1, the Customer shall otherwise be responsible for and shall indemnify Plexus against all other loss or damage to the Hardware, save to the extent that such loss or damage is caused by the negligence or wilful misconduct of Plexus and/or anyone under its direction or control.

4. **SERVICES**

- 4.1 Subject to the Customer having completed the Set-Up Obligations, Plexus shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement. In the event that the Set-Up Obligations are not

carried out by the Customer then Plexus shall have no liability to the Customer under the terms of this agreement to provide the Services.

- 4.2 Plexus shall use commercially reasonable endeavours to provide the Availability levels as set out at Schedule 1.
- 4.3 Plexus will, as part of the Services and at no additional cost to the Customer, provide the Customer with Plexus's standard customer support services during Normal Business Hours in accordance with Plexus's Support Services Policy in effect at the time that the Services are provided. Plexus may amend the Support Services Policy in its sole and absolute discretion from time to time.

5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer hereby grants to Plexus an irrevocable, perpetual, royalty free, non-exclusive licence to store, process, modify and use the Customer Data for the purposes of providing the Services and business analytic services (which may also be provided to other 3rd parties). Further, to use Customer Data that does not comprise Personal Data on an anonymised and aggregated basis for its own business purposes and, such licence to include the right to sub-licence to any third party performing any part of the Services for or on behalf of Plexus.
- 5.2 Plexus shall follow its archiving procedures for Customer Data as set out in the Back-Up Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Plexus to use its reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Plexus in accordance with the archiving procedure described in the Back-Up Policy. Plexus shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, unless such third party is acting on behalf of, or in accordance with the instructions of, Plexus.
- 5.3 Plexus shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at www.Plexus.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Plexus in its sole discretion.
- 5.4 To the extent that Plexus collects Personal Data (as defined in Data Protection Law), when performing its obligations under this agreement, the parties record their intention that Plexus shall be the Data Controller of such Personal Data.
- 5.5 Both Plexus and the Customer hereby undertake to comply with their respective obligations under the Data Protection Law as Data Controllers of any such Personal Data.
- 5.6 The Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Plexus for the duration and purposes of this agreement so that Plexus may lawfully use, process and transfer the Personal Data in

accordance with this agreement, including the transfer to and processing by, sub processors appointed by Plexus, as required by Data Protection Law.

- 5.7 The Customer confirms and agrees that Plexus shall be permitted to delete all such Personal Data held by it promptly on termination of this agreement.

6. PLEXUS'S OBLIGATIONS

- 6.1 Plexus warrants that the Services will be performed substantially in accordance with the Services Specification provided that no obligation is assumed in relation to compliance with changes to the codes of practice applicable to the Services made after the Effective Date.
- 6.2 The warranty at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Plexus's instructions, or modification or alteration of the Services by any Party other than Plexus or Plexus's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, Plexus will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Plexus:
- 6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Hardware, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 6.2.2 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 services provided by the Network Provider, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 Plexus warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 6.4 In the event of a Change in Law which may or will from time to time have a material impact upon Plexus' provision of any hardware and/or services to the Customer (including Hardware and the Services), Plexus may at its sole election either:
- 6.4.1 give the Customer not less than thirty (30) days prior written notice to increase the Fees (**Fee Increase Notice Period**) to take into account any increase in the cost to Plexus of continuing the supply the relevant hardware and/or services to or on behalf of the Customer as a result of the relevant Change in Law. Subject to clause 6.5, such increased Fees shall be deemed to have superseded the previous Fees, with effect from the Fee Increase Notice Period and shall be payable in accordance with clause 8; or
- 6.4.2 without affecting any other right or remedy available to it, terminate this agreement on not less than thirty (30) days' prior written notice to the Customer.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 provide Plexus with:

- (a) all necessary co-operation in relation to this agreement;; and
- (b) all necessary access to such persons, systems and other information as Plexus may reasonably request from time to time in order to exercise its rights and/or carry out its obligations pursuant to this agreement

7.1.2 comply with all Applicable Laws with respect to its activities under this agreement;

7.1.3 carry out the Set-Up Obligations and carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner;

7.1.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Plexus, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

7.1.5 ensure that its network and systems comply with the relevant specifications provided by Plexus from time to time; and

7.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Plexus's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet

7.1.7 At all times:

7.1.7.1 hold the Hardware as Plexus's bailee;

7.1.7.2 so far as is practicable store the Hardware (at no cost to Plexus) in such a way that they remain readily identifiable as Plexus's property;

7.1.7.3 not destroy, deface or obscure any identifying mark on the Hardware; and

7.1.7.4 maintain the Hardware in satisfactory condition (subject to reasonable allowances for normal wear and tear) and keep it insured on Plexus's behalf for their full price against all risks to the reasonable satisfaction of Plexus;

7.1.7.5 have in place and maintain adequate insurance, as agreed with Plexus, covering the Hardware which shall include but not be limited to:

- employers' liability insurance for a minimum of £2,000,000 (two million pounds) per claim (or where lower, the minimum required by Applicable Laws);
- public liability insurance (including product liability) for a minimum of £5,000,000 (five million pounds) for each occurrence;

- professional indemnity insurance for a minimum of £1,000,000 (one million pounds) for each occurrence (such insurance to include cyber risks); and
- such other insurances as Plexus deems appropriate in order to protect Hardware supplied under or in connection with this agreement, or as is otherwise required by Applicable Law.

7.2 The Customer acknowledges and accepts that it is fully responsible for monitoring its own compliance with Applicable Law (including all Applicable Law relating to health and safety at work) (**Compliance Obligations**) and that the Hardware and the Services provided by Plexus are provided to the Customer solely as a tool to assist the Customer in assessing its own compliance with its Compliance Obligations and is to be used alongside the Customer's own risk assessment procedures. Accordingly, subject to clause 13.2, Plexus shall have no liability to the Customer and/or its Affiliates for any outbreak of illness, virus, or a failure to adequately identify an outbreak of the disease, including any outbreak of Legionnaires' disease. For clarity, Plexus and its licensors give no warranties and make no representations whatsoever about any results to be obtained from using the Documentation, the Hardware and/or any of the Services.

8. FEES AND PAYMENT

8.1 The Fees payable by the Customer for the provision of the Services are set out in Schedule 1 and/or the Term Sheet and shall be payable in advance in accordance with this clause 8.

8.2 The Customer shall pay each invoice by no later than thirty (30) days from the date of the relevant invoice.

8.3 If Plexus has not received payment in accordance with clause 8.2, and without prejudice to any other rights and remedies of Plexus:

8.3.1 Plexus may, without liability to the Customer, suspend the Customer's access to all or part of the Services and Plexus shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

8.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4 (Four) % over the then current base rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this agreement:

8.4.1 shall be payable in pounds sterling;

8.4.2 are non-cancellable and non-refundable;

8.4.3 are exclusive of value added tax, which shall be added to Plexus's invoice(s) at the appropriate rate.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that Plexus and/or its licensors own all intellectual property rights in the Services, Hardware and the Documentation. Except as expressly stated

herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, Hardware or the Documentation.

- 9.2 Plexus confirms that it has all the rights in relation to the Services, Hardware and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY

- 10.1 In this agreement:

- 10.1.1 subject to clause 10.2, **Confidential Information** means all information relating to or connected with this agreement or relating to a Party or its Affiliates (**Disclosing Party**) or its or their activities, in each case which is from time to time, or has been (whether before or after the Commencement Date) received or obtained by, or made available to, the other Party or any of its Related Persons (**the Recipient Party**) (whether in writing, in disk or electronic form or any other form or medium in which such information may be recorded or kept, orally, pursuant to visits to premises or which can be obtained by examination, testing, visual inspection or analysis of any hardware or other item or component part) including information of whatever nature concerning the business, goods, products, know-how or Personal Data of a Party or its Affiliates, analyses and other material prepared by the Recipient Party which contain, reflect or are otherwise generated from the information described in this clause 10.1.1 and any information which is expressly indicated to be confidential, is imparted to the Recipient Party in circumstances importing an obligation of confidence or which could reasonably be regarded as confidential; and
- 10.1.2 **Related Persons** means a Party's Affiliates, employees, officers, shareholders, representatives, agents, consultants, suppliers and advisers.
- 10.2 The Disclosing Party's Confidential Information shall not be deemed to include information that:
- 10.2.1 is or becomes publicly known other than through any act or omission of the Recipient Party;
- 10.2.2 was in the Recipient Party's lawful possession before the disclosure;
- 10.2.3 is lawfully disclosed to the Recipient Party by a third party without restriction on disclosure; or
- 10.2.4 is independently developed by the Recipient Party, which independent development can be shown by written evidence.
- 10.3 Subject to clause 10.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than to carry out its obligations and/or to exercise its rights pursuant to this agreement.

- 10.4 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.
- 10.5 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.6 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, save to the extent that such third party is acting or on behalf of, or in accordance with the instructions of, the relevant Party.
- 10.7 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Plexus's Confidential Information.
- 10.8 Neither Party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by Applicable Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination or expiry of this agreement, however arising.

11. WARRANTIES

- 11.1 Subject to clauses 11.2, 11.3, 11.4 and 13.2, in relation to the Hardware, excluding any consumables supplied with the Hardware including any batteries (for which no warranty is given by Plexus), Plexus warrants that during the Hardware Warranty Period:
- 11.1.1 the Hardware will function materially in conformance with the Documentation applicable to such Hardware at the relevant time; and
- 11.1.2 as far as it is able, Plexus will pass on to the Customer the benefits of any warranties given by any third-party manufacturer in relation to the Hardware.
- 11.2 Subject always to clause 11.3, if the Customer gives notice in writing to Plexus during the Hardware Warranty Period that the Hardware does not comply with the warranties provided at clause 11.1, and returns the Hardware to Plexus in accordance with Plexus's returns policy notified to the Customer from time to time, Plexus shall repair or replace the Hardware at its sole discretion and deliver such replacement Hardware to the Customer to enable the Customer to carry out its Set-Up Obligations, such repair or replacement to constitute the Customer's sole and exclusive remedy for any such non-compliance.
- 11.3 The warranty provided pursuant to clause 11.1 shall not apply to the extent that any non-conformance of the Hardware with the Documentation is attributable to:

- 11.3.1 the Customer making any further use of the Hardware after giving notice to Plexus under clause 11.2;
- 11.3.2 a defect arising because the Customer has failed to follow Plexus's Quick Start Guide or any other oral or written instructions from Plexus as to the commissioning, installation, use or maintenance of the Hardware;
- 11.3.3 any repair, maintenance, alteration, modification or adjustment performed by any person other than Plexus and/or a person acting on behalf of, or in accordance with the instructions of, Plexus;
- 11.3.4 the Customer or a third party moving the Hardware other than in accordance with Plexus' prior written consent;
- 11.3.4 the use of the Hardware in breach of any of the provisions of this agreement;
- 11.3.5 a failure, interruption or surge in the electrical power or its related infrastructure connected to the Hardware;
- 11.3.6 a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Hardware, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- 11.3.7 fair wear and tear, neglect, wilful damage, misuse or abnormal working conditions in relation to the Hardware.
- 11.4 If any replacement Hardware is supplied to the Customer in accordance with clause 11.3 above, the warranty given by Plexus in clause 11.1 shall apply for the balance of the Hardware Warranty Period only in relation to such replacement Hardware.
- 11.5 In relation to the Services, Plexus undertakes that they will be performed in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice, save that this undertaking shall not apply to the extent of any non-conformance which is caused by a Customer Default, use of the Services contrary to Plexus' instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Plexus will, at its expense correct any such non-conformance promptly and this shall constitute the Customer's sole and exclusive remedy for breach by Plexus of this clause 11.5.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless Plexus against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and legal fees) arising out of or in connection with the Customer's use of the Services, Hardware and/or Documentation, provided that:
 - 12.1.1 the Customer is given prompt notice of any such claim;
 - 12.1.2 Plexus provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 Plexus shall defend the Customer against any claim that the Customer's use of the Services, the Hardware or the Documentation in accordance with this agreement and the Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgement or settlement of such claims provided that:
- 12.2.1 Plexus is given prompt notice in writing of any such claim (actual or threatened);
- 12.2.2 the Customer does not make any admission as to the liability or compromise or agree to any settlement of any claim without the prior written consent of Plexus;
- 12.2.3 the Customer provides reasonable co-operation to Plexus in the defence and settlement of such claim, at Plexus's expense; and
- 12.2.4 Plexus is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, Plexus may procure the right for the Customer to continue using the Documentation, Hardware or Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 (two) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall Plexus, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1 a modification of the Documentation, Hardware or Services by anyone other than Plexus or a party under its direction or control; or
- 12.4.2 the Customer's use of the Documentation, Hardware or Services in a manner contrary to the instructions given to the Customer by Plexus; or
- 12.4.3 the Customer's use of the Documentation, Hardware or Services after notice of the alleged or actual infringement from Plexus or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Plexus's (including Plexus's employees', agents', sub-contractors' and Affiliates') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality arising under or in connection with this agreement or its subject matter.

13. LIMITATION OF LIABILITY

- 13.1 Except as expressly and specifically provided in this agreement:
- 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services, Hardware and the Documentation by the Customer, and for conclusions drawn from such use. Plexus shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Plexus by the Customer in connection with the Services, or any actions taken by Plexus at the Customer's direction;

- 13.1.2 save as expressly provided pursuant to clause 11, 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
- 13.1.3 the Documentation, Services and Hardware are provided to the Customer on an “as is” basis.
- 13.2 Nothing in this agreement excludes the liability of either Party:
 - 13.2.1 for death or personal injury caused by its negligence; or
 - 13.2.2 for fraud or fraudulent misrepresentation;
 - 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 13.2.4 any matter in respect of which it would be unlawful for either Party to exclude or restrict.
- 13.3 Subject to clauses 13.1, 13.2 and 13.4, neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of turnover, loss of business or opportunity, depletion of goodwill and/or any similar losses, or for loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under or in connection with this agreement.
- 13.4 Plexus’ total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to:
 - 13.4.1 in respect of the supply of any documentation or hardware to the Customer (including the Documentation and the Hardware), to the amount paid by the Customer to Plexus for the relevant documentation and/or hardware; and
 - 13.4.2 in respect of any services provided to the Customer (including the Services), to the sum of the amount paid by the Customer to Plexus for the relevant services (the “**Affected Services**”) during the preceding 12 (twelve) months immediately prior to the act or omission giving rise to the loss (or if the event giving rise to the loss occurs during the first twelve (12) months of the Term, to the amount paid by the Customer for the Affected Services during that period).

14. TERM AND TERMINATION

- 14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Term.
- 14.2 Without affecting any other right or remedy available to it, either Party may terminate this agreement with immediate effect by giving written notice to the other Party if:
 - 14.2.1 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 7 days after being notified in writing to make such payment;

- 14.2.2 the other Party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 14.2.3 the other Party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
- 14.2.4 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3 On termination of this agreement for any reason:
 - 14.3.1 all licences granted by Plexus under or in connection with this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or Hardware and/or Documentation (as applicable);
 - 14.3.2 each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
 - 14.3.3 Plexus may destroy or otherwise dispose of any of the Customer Data in its possession unless Plexus receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Plexus shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Plexus in returning or disposing of Customer Data; and
 - 14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. FORCE MAJEURE

- 15.1 Plexus shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by a Force Majeure Event, provided that the Customer is notified of such an event and its expected duration. If the Force Majeure Event continues for a period of more than 1 (one) month then Plexus may terminate this agreement without any liability to the Customer.

16. CONFLICT

- 16.1 If there is an inconsistency between any of the provisions in the:
 - 16.1.1 main body of this agreement and the Schedules, then the provisions of the main body of this agreement shall prevail over any contradictory or conflicting provisions in the Schedules; and

- 16.1.2 Schedules and the Term Sheet, then the provisions in the Term Sheet shall prevail over any contradictory or conflicting provisions in the Schedules.

17. VARIATION

- 17.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

- 18.1 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 prevent 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.

19. RIGHTS AND REMEDIES

- 19.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

- 20.1 If any provision (or part of a provision) of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each Party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. ASSIGNMENT

- 22.1 The Customer shall not, without the prior written consent of Plexus, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2 Plexus 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.

23. NO PARTNERSHIP OR AGENCY

- 23.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. THIRD PARTY RIGHTS

- 24.1 This agreement does not confer any rights on any person or Party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. NOTICES

- 25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or email to the other Party at its address set out in the Term Sheet, or to such other address as may have been notified by one Party to the other for such purposes in accordance with this clause 25.
- 25.2 A notice delivered by hand or recorded delivery shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the next Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery shall be deemed delivered at 9 am on the third Business day after the date of posting. A notice sent by email shall be deemed to have been received 1 Business Day after the time of transmission of the relevant email, unless the sender receives prior to the time of deemed delivery a system-generated automatic notification that the email has not been successfully delivered (in which case the relevant notice shall be deemed not to have been received).

26. GOVERNING LAW

- 26.1 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 law of England and Wales.

27. JURISDICTION

- 27.1 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Specifications

1. HARDWARE
2. HARDWARE SPECIFICATION
3. SERVICES
4. AVAILABILITY LEVELS

