

FLEXITOOL SERVICES AGREEMENT – ORDER FORM

BETWEEN:	SPIRIT CIRCUITS LIMITED whose registered address is at 51 The Stream, Ditton, Aylesford, Kent ME20 6AG with Company number 04679779. (“Spirit Circuits”)
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AND

CUSTOMER DETAILS

Name of Customer:	
Customer Company No:	
Customer Address:	
Customer Contact Tel:	
Customer Email Address:	

SERVICES

Items	The Service includes:	Cost
1.	All tooling provided for part numbers within our technology range and manufactured by Spirit Circuits or an authorised contractor	
2.	Full check of CAM data to ensure that it is fit for manufacture	
3.	Production of Step and Repeat data for PCB and stencil manufacture	
4.	Production of all necessary artworks, text files, drill and rout files needed to produce your PCB's	

PAYMENTS

1.	Monthly payments payable in advance	£100 + VAT per month
2.	State currency in which payments must be made:	

PLEASE NOTE:

The following items are NOT included as part of the Flexitool service:

<ul style="list-style-type: none"> • Bare board test fixtures; • Press tool manufacture; • Production of PCBs (these costs will be charged in addition); 	<ul style="list-style-type: none"> • Scanning of film works; • Any form of reverse engineering; • Delivery.
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DURATION OF AGREEMENT

Date of Commencement of Services*	
<small>*Please see clause 2.6 regarding cancellation of Services prior to the Commencement Date</small>	
Duration of Service provision (“initial Term”)	12 months
Date of Termination of Services:	Twelve months written notice following expiry of Initial Term

KEY INFORMATION REQUIRED

Data Format:	Gerber 274 X	DPF	Autocad	MDA
	ODB++	HPGL	GWK	

Financial Referees (for new customers only):

Name:	Name:
Address:	Address:
<small>Orders are accepted subject to trade and financial references being satisfactory, (any costs incurred in obtaining these references are to be borne by the Customer) otherwise Spirit Circuits reserves the right to issue a pro forma invoice.</small>	

NOTES:

Authorised Signature for and on behalf of the Customer

Customer Details
Your Name(s) (Please Print)
Your Job Title (Please Print)

Authorised Signature for and on behalf of Spirit Circuits Limited

Instructions to your Bank or Building Society to pay Direct Debits



Name(s) of account holder(s)

Reference Number

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Branch Sort Code

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Originator's Identification Number

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Bank/Building Society

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Instructions to your Bank/Building Society
Please pay the Originator Direct Debits from the account detailed on the instruction subject to the safeguards assured by The Direct Debit Guarantee. I understand that this Instruction may remain with the Originator and, if so, details will be passed electronically to my Bank/Building Society.

Name and full address of your Bank/Building Society

Signature(s)

Date

Note: Banks and Building Societies may not accept direct debit instructions on some types of account.

Spirit Circuits Limited terms of business for Flexitool and other Services

AGREED TERMS

- 1 Interpretation**
1.1 The definitions and rules of interpretation in this clause apply in this agreement.
- Agreement** means this agreement for the provision of Flexitool Services by Spirit Circuits.
- Commencement Date** means the commencement date for the provision of Flexitool Services as set out in the Order Form.
- Goods** means any goods provided by Spirit Circuits to the Customer as part of the Services.
- Intellectual Property Rights** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, semiconductor topography rights moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Order Form** means the Spirit Circuits order form for the provision of Services which forms part of this Agreement.
- RPI** means the General Index of Retail Prices for all items which is published in the United Kingdom in the Monthly Digest of Statistics by the Office for National Statistics or any replacement of it.
- Services** The goods and services to be provided by Spirit Circuits under this agreement as set out in the Order Form together with any other services which Spirit Circuits provides or agrees to provide to the Customer from time to time.
- Term** means the term for duration of provision of Services set out on the Order Form.
- VAT** value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 Any ancillary documents referred to, 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 ancillary documents referred to.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.7 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to clauses and schedules are to the clauses of this Agreement.
- 2 Commencement and Duration**
- 2.1 All orders are accepted and all Services are supplied by Spirit Circuits only subject to these terms.
- 2.2 No other conditions (including any written terms and conditions of the Customer) will apply unless they are confirmed in writing by Spirit Circuits.
- 2.3 No variations of these terms shall be effective unless a Director of Spirit Circuits or nominee confirms it in writing on behalf of Spirit Circuits.
- 2.4 The Flexitool Service may not be used in conjunction with other services or offers from Spirit Circuits unless agreed in writing.
- 2.5 Spirit Circuits shall provide the Services to the Customer on the terms and conditions of this agreement. In the event that Spirit Circuits determines that for either technical or commercial reasons it is unable to provide or continue providing the Flexitool Services it shall be entitled to reject the placement of any Order and or to cancel this Agreement without prejudice to the accrued rights of either party up to the date of cancellation.
- 2.6 Spirit Circuits shall provide the Services to the Customer from the Commencement Date. The Services supplied under this agreement shall continue to be supplied for the duration of the Initial Term and, after that, shall continue to be supplied unless this agreement is terminated by one of the parties giving to the other not less than 12 months' written notice, such notice to expire on the date coinciding with the expiry of the Initial Term or at any time after that date, unless this agreement is terminated in accordance with clause 2.
- 2.7 As all units supplied to the Customer under this Agreement are bespoke to the Customer, in the event that the Customer cancels the order between the date the order is placed and the date of commencement of services then the Customer shall

- indemnify Spirit Circuits and keep Spirit Circuits indemnified in respect of any loss, and or expense suffered or incurred by Spirit Circuits as a result.
- 2.8 The parties acknowledge that this Agreement is intended to be for a minimum period of 12 months and that Spirit Circuits have invested in equipment and resources to meet the Customer's needs accordingly and that therefore in the event the Agreement is terminated by the Customer prior to that Initial Term, then Spirit Circuits will be entitled to charge the Customer the balance between the sums paid by the Customer up to the date of termination and Spirit Circuits standard rate charges that would have been applicable to all the work carried out from the date of commencement of the Agreement up to the date of termination which sum shall be immediately payable by the Customer to Spirit Circuits.
- 3 Spirit Circuits' Obligations**
- 3.1 Spirit Circuits shall use reasonable endeavours to provide the Services, to the Customer, in all material respects.
- 3.2 Packing will be in accordance with Spirit Circuits's standard packing, unless otherwise specified in writing.
- 4 Customer's Obligations**
- 4.1 The Customer shall:
- 4.1.1 co-operate with Spirit Circuits in all matters relating to the Services and comply with Spirit Circuits' instructions in relation to the Services;
- 4.1.2 provide, in a timely manner, such assistance and information as Spirit Circuits may require, and ensure that it is accurate in all respects;
- 4.2 If Spirit Circuits' performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Spirit Circuits shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to Spirit Circuits, on demand, all reasonable costs, charges or losses sustained or incurred by Spirit Circuits (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Spirit Circuits confirming such costs, charges and losses to the Customer in writing.
- 4.4 It is the Customer's responsibility to ensure that any drawings, specifications and tooling supplied to Spirit Circuits are correct.
- 4.5 Spirit Circuits accepts no responsibility for any such drawings, designs or specifications and offers no warranty, guarantee, representation or opinion as to the practicability of construction, or the efficacy, safety or otherwise of materials to be supplied, or work to be executed by Spirit Circuits in accordance therewith; and the costs of any additional work caused by defects in any such drawings, designs or specifications shall be chargeable to the Customer at Spirit Circuits standard rates from time to time.
- 4.6 Drawing and artworks are held on Spirit Circuits' premises at the risk of the Customer, Spirit Circuits will store and hold in good workable condition. In the case of a drawing or artwork not being used for a period of two years Spirit Circuits reserves the right to dispose of the said artworks and tooling.
- 4.7 Artworks and tooling provided by the Customer will be returned on request provided that all costs for the return are borne by the Customer; such artworks and tooling will only be retained for a maximum of 12 months if not used, after which time they may be disposed of without further notice. Tooling provided by Spirit Circuits will remain the property of Spirit Circuits at all times.
- 4.8 When the issue level of an artwork is raised Spirit Circuits policy is to dispose of the old issue unless specifically requested in writing not to do so by the Customer.
- 5 DELIVERY**
- 5.1 Spirit Circuits reserves the right to deliver the Goods in part loads.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence unless previously agreed in writing by Spirit Circuits. The Goods may be delivered by Spirit Circuits in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 5.3 Delivery notes bearing the signature of the Customer, its employee, officer, agent or representative, shall be conclusive evidence of receipt of Goods described thereon, unless claims for investigation are made in writing to Spirit Circuits as from the delivery date, as set out below in clause 5.4.
- 5.4 Any claim by the Customer which is based on defect in quantity of the Goods shall be notified to Spirit Circuits within 7 days from the date of delivery. If the Customer does not notify Spirit Circuits accordingly, Spirit Circuits shall have no liability for such failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Agreement and the Customer shall not be entitled to reject the Goods so delivered and shall accept the Goods delivered as part performance of the Agreement.
- 5.5 The Goods shall be delivered to the Customer at such place as may be agreed in writing by the Customer and Spirit Circuits but in the absence of such agreement delivery of the Goods shall be made by the Customer collecting the Goods at Spirit Circuits' premises at any time after Spirit Circuits has notified the Customer that the Goods are ready for collection. Where the Goods are not delivered by Spirit Circuits or collected by the Customer, but are delivered by an independent carrier, delivery of the Goods to the carrier shall be deemed to be delivery to the Customer.
- 5.6 If the Customer fails to take delivery on the agreed date, or Spirit Circuits is unable to ship due to an outstanding payment being overdue Spirit Circuits shall be entitled to issue an invoice to the Customer for such Goods and to store and insure them, and to charge the Customer the reasonable costs of so doing.
- 5.7 The costs of carriage shall in all cases be reimbursed by the Customer to Spirit Circuits and shall be due on the date for payment of the supply of the Goods.
- 6 RISK AND TITLE**
- 6.1 Risk of loss or damage to the Goods shall pass to the Customer:
- 6.1.1 in the case of Goods to be delivered at Spirit Circuits' premises, at the time when Spirit Circuits notifies the Customer that the Goods are available for collection;
- 6.1.2 in the case of Goods delivered otherwise than at Spirit Circuits' premises by Spirit Circuits, at the time of delivery, or if the Customer wrongfully fails to take delivery of the Goods, at the time when Spirit Circuits has tendered delivery of the Goods; or
- 6.1.3 in the case of Goods to be delivered otherwise than at Spirit Circuits' premises by an independent third party, when the Goods are consigned to that carrier.
- 6.2 The property and title in the Goods shall not pass to the Customer until all amounts due from the Customer to Spirit Circuits in respect of Goods delivered to it have been paid for in full but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business. Until such time as the property in the Goods passes to the Customer:
- 6.2.1 the Customer shall hold the Goods as Spirit Circuits' fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Spirit Circuits' property; and
- 6.2.2 Spirit Circuits shall be entitled at any time to require the Customer to deliver up the Goods to Spirit Circuits and, if the Customer fails to do so forthwith, to enter upon the premises of the Customer or any third party where the Goods are stored and repossess the Goods; and
- 6.2.3 if the Customer fails to make any payment for the Goods to Spirit Circuits when due, or becomes insolvent, or bankrupt or goes into liquidation, or makes any arrangements with its creditors, or has a Receiver appointed over any of its property or undertaking then the right to deal with the Goods under clause 7(2) shall automatically cease, and Spirit Circuits shall be thereupon entitled to enter upon the premises of the Customer or any third party and re-claim the Goods.
- 6.2.4 The Customer shall be wholly responsible for the Goods when they are delivered and shall ensure they are stored in the original packaging and in a temperature and humidity controlled environment. The Customer can obtain guidelines as to storage from Spirit Circuits' technical department on request.
- 6.2.5 Stock rotation is also the Customer's responsibility once the Goods are delivered. All Goods supplied will be marked with a date code stating the week of manufacture.
- 7 WARRANTIES**
- 7.1 Spirit Circuits warrants the solderability of Goods supplied according to the finish required (please ask for details), up to a maximum period of six months from the date of manufacture. Any Goods used after the warranty period are used at the customer's risk. Spirit Circuits makes no warranty and disclaims all liability in relation to the inherent integrity of the PCB designs submitted by a Customer and or the safety of using such PCB design by the Customer.
- 7.2 Subject to the Customer's compliance with its obligations under this Agreement, which shall be a condition precedent to Spirit Circuits' liability, Spirit Circuits will repair or replace (at its option) any components manufactured by Spirit Circuits which are found to be defective due to faulty materials or workmanship. This warranty does not extend to parts, materials or equipment not manufactured by Spirit Circuits, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Spirit Circuits.
- 7.3 In clause 7.2 "defective" means not in accordance with contractual specification. Spirit Circuits will accept that Goods are defective only after it has been given the opportunity to verify that the allegedly defective Goods do not meet the contractual specification.
- 7.4 The warranties stated in this Agreement will not apply to the extent that a claim arises due to the Customer's failure to store the Goods in accordance with proper commercial practice and the guidelines of Spirit Circuits.
- 7.5 The warranties and conditions stated in this Agreement are in lieu of all other warranties, conditions or other terms, whether express or implied, statutory or otherwise, all of which are expressly excluded, including, without limitation, any implied warranties or conditions as to satisfactory quality, fitness for a particular purpose or as to the proper use of reasonable skill and care.
- 8 Change Control**
- 8.1 If either party requests a change to the scope or execution of the Services, Spirit Circuits shall, within a reasonable time, provide a written estimate to the Customer of:
- 8.1.1 the likely time required to implement the change;
- 8.1.2 any necessary variations to Spirit Circuits' charges arising from the change; and
- 8.1.3 any other impact of the change on this agreement.
- 8.2 If the Customer wishes Spirit Circuits to proceed with the change, Spirit Circuits has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 16.
- 8.3 Notwithstanding clause 8.2, Spirit Circuits may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, or scope of the Services. Spirit Circuits may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least one month's notice of any change.
- 8.4 Spirit Circuits may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 9.
- 9 Charges and Payment**
- 9.1.1 In consideration of the provision of the Services by Spirit Circuits, the Customer shall pay the charges as set out on the Order Form, (the "Service Charge").
- 9.2 The total price for these Services shall be the amount set out on the Order Form as amended from time to time in accordance with clause 9.3. The Customer shall pay the total price to Spirit Circuits (without deduction or set-off) in instalments, as set out on the Order Form. Spirit Circuits shall invoice the Customer for the charges that are then payable, together with expenses, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by Spirit Circuits for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Spirit Circuits; and VAT, which Spirit Circuits shall add to its invoices at the appropriate rate.
- 9.3 The parties agree that Spirit Circuits may review and increase the charges set out in the Order Form, in line with any increase in RPI, provided that such charges cannot be increased more than once in any 12 month period. Spirit Circuits shall give the Customer written notice of any such increase 3 months before the proposed date of that increase.
- 9.4 The Customer shall pay each invoice submitted to it by Spirit Circuits, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Spirit Circuits.
- 9.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Spirit Circuits on the due date, Spirit Circuits may:
- 9.5.1 charge interest on such sum from the due date for payment at the annual rate of 6% above the base lending rate from time to time of HSBC Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and Spirit Circuits may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and
- 9.5.2 suspend all Services until payment has been made in full.
- 9.6 Time for payment shall be of the essence of this agreement. All payments by the Customer to Spirit Circuits shall be by direct debit. In the event that the direct debit mandate is cancelled or fails at any time, Spirit Circuits shall be entitled to charge an additional administration fee of 2% of the invoice value on each invoice.
- 9.7 All sums payable to Spirit Circuits under this agreement shall become due immediately on its termination, despite any other provision. This clause 9.7 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 9.8 Spirit Circuits may, without prejudice to any other rights it may have, set off any liability of the Customer to Spirit Circuits against any liability of Spirit Circuits to the Customer.
- 9.9 The Customer shall pay strictly net thirty days from the date of the invoice unless otherwise agreed in writing. Time of payment of the price of the Goods and Services shall be of the essence. If the Customer fails to pay within this time, then it shall lose the benefit of the agreed discount under this Agreement and Spirit Circuits shall be entitled to charge the Customer for all work carried out under this Agreement at its standard rates in force from time to time.
- 9.10 The Customer shall pay all accounts in full and not exercise any rights of set off or counter-claim against invoices submitted.
- 9.11 Payment is to be made in the currency stated by Spirit Circuits in the Order Form.
- 9.12 If the Goods are delivered in instalments to the Customer Spirit Circuits shall be entitled to render an invoice to the Customer in respect of the Goods delivered.
- 9.13 If the Customer fails to make any payment in respect of any invoice rendered by Spirit Circuits (whether or not all of the Goods have been delivered to the Customer) on the due date then, without prejudice to any other right or remedy available to Spirit Circuits, Spirit Circuits shall be entitled to:
- 9.13.1 appropriate any payment made by the Customer to such of the Goods (or any other Goods supplied under any other contract between Spirit Circuits and the Customer) as Spirit Circuits may think fit.
- 10 Intellectual Property Rights**
- 10.1 As between the Customer and Spirit Circuits, all Intellectual Property Rights and all other rights relating to the provision of the Services shall be owned by Spirit Circuits.
- 10.2 The Customer shall indemnify Spirit Circuits fully against all losses, liabilities, costs and expenses which Spirit Circuits may incur as a result of work done in accordance with any order, design or specification of the Customer which results in the infringement of any Intellectual Property Right.
- 11 Confidentiality and Spirit Circuits' Property**
- 11.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Spirit Circuits, its employees, agents,

consultants or subcontractors and any other confidential information concerning Spirit Circuits' business or its products which the Customer may obtain.

11.2 The Customer may disclose such information:

11.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and

11.2.2 as may be required by law, court order or any governmental or regulatory authority.

11.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 11.

11.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.

11.5 All materials, equipment and tools, drawings, specifications and data supplied by Spirit Circuits to the Customer (including Spirit Circuits' Equipment) shall, at all times, be and remain as between Spirit Circuits and the Customer the exclusive property of Spirit Circuits

12 Limitation of Liability

12.1 The parties agree that having regard to all the circumstances that this clause 12 sets out the entire financial liability of Spirit Circuits (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

12.1.1 any breach of this agreement;

12.1.2 any use made by the Customer of the Services or any part of them; and

12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

12.3 Nothing in this agreement limits or excludes the liability of Spirit Circuits:

12.3.1 for death or personal injury resulting from negligence; or

12.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Spirit Circuits.

12.4 Subject to clause 12.2 and clause 12.3:

12.4.1 Spirit Circuits shall not be liable for:

12.4.1.1 loss of profits (whether actual or anticipated); or

12.4.1.2 loss of business; or

12.4.1.3 depletion of goodwill and/or similar losses; or

12.4.1.4 loss of anticipated savings; or

12.4.1.5 loss of goods; or

12.4.1.6 loss of contract; or

12.4.1.7 loss of use; or

12.4.1.8 loss of corruption of data or information; or

12.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

12.4.2 Spirit Circuits' total 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 the price paid for the Services.

12.5 The Customer acknowledges that where Spirit Circuits is not the manufacturer of the Goods it shall not hold Spirit Circuits liable for any failure of the Goods. Spirit Circuits shall provide all reasonable assistance to the Customer in dealing with the manufacturer of the Goods in the event of such failure.

12.6 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to Spirit Circuits within 7 days from the date of delivery and the allegedly defective goods are thereafter returned to Spirit Circuits and carriage paid. If delivery is not refused, and the Buyer does not notify Spirit Circuits accordingly, the Customer shall not be entitled to reject the Goods and Spirit Circuits shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Agreement.

13 Data Protection

13.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Spirit Circuits in connection with the Services.

14 Termination

14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other immediately on giving notice to the other if:

14.1.1 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 14 days after being notified in writing to make such payment; or

14.1.2 the other party commits a material breach of any of the material terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.1.3 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

14.1.4 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

14.1.5 the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or

14.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or

14.1.7 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or

14.1.8 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or

14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or

14.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

14.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.4 to clause 14.1.10 (inclusive); or

14.1.12 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

14.2 On expiry or termination of this agreement for any reason:

14.2.1 the Customer shall immediately pay to Spirit Circuits all of Spirit Circuits' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice

has been submitted, Spirit Circuits may submit an invoice, which shall be payable immediately on receipt;

14.2.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14.3 On termination of this agreement (however arising) the following clauses shall survive and continue in full force and effect: clauses 10, 11, 12, 14 and 24.

15 Force Majeure

15.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

15.2 Notwithstanding any other provision of the Agreement, neither party shall be deemed to be in breach of the Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for more than 28 days the Agreement shall terminate forthwith.

16 Variation

16.1 Subject to clause 4, no variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of a director of Spirit Circuits and an authorised signatory of the Customer.

17 Waiver

17.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

17.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

17.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

17.4 A party that waives a right or remedy provided under this agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

17.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

18 Severance

18.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.

18.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19 Entire Agreement

19.1 This agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

19.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement or those documents. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this agreement.

19.3 Nothing in this clause shall limit or exclude any liability for fraud.

20 Assignment

20.1 The Customer shall not, without the prior written consent of Spirit Circuits, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.

20.2 Spirit Circuits may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.

20.3 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

21 No Partnership or Agency

21.1 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22 Rights of Third Parties

22.1 A person who is not a party to this agreement shall not have any rights under or in connection with it.

23 Notices

23.1 A notice or other communication given to a party under or in connection with this agreement:

23.1.1 shall be in writing in English (or accompanied by a properly prepared translation into English);

23.1.2 shall be signed by or on behalf of the party giving it;

23.1.3 shall be sent for the attention of the person, at the address or fax number specified in this clause (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this clause); and

23.1.4 shall be; delivered personally, or sent by commercial courier, or sent by fax, or sent by pre-paid first-class post or recorded delivery.

23.2 The addresses for service of a notice or other communication are as set out for each party on the Order Form.

23.3 The provisions of this clause 23 shall not apply to the service of any process in any legal action or proceedings.

23.4 A notice or other communication required to be given under or in connection with this agreement shall not be validly served if sent by e-mail.

24 Governing Law and Jurisdiction

24.1 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.

24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).