



MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT GOVERNS CUSTOMER'S RIGHT OF ACCESS AND USE OF FRY SERVICES. CAPITALISED TERMS HAVE THE DEFINITION SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY: (I) CLICKING A BOX INDICATING ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; OR (II) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE FRY SERVICES.

The FRY Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

FRY's direct competitors are prohibited from accessing the FRY Services, except with Fry's prior written consent.

This Agreement was last updated on 10th May 2021. It is effective, between Customer and FRY, as of the date of Customer's acceptance of this Agreement and applies to all Order Forms, unless specifically stated.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, or is controlled by, or is under common control with the subject entity. "Control", for the purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

"Content" means any electronic files, materials, data, text, audio, videos, images or other content transmitted, stored, retrieved or processed by Customer using the FRY Services.

"Customer" means an individual accepting this Agreement on behalf of a customer or other legal entity, for which such individual is accepting this Agreement, and Affiliates of that Customer or entity (for so long as they remain Affiliates) which have entered into an Order Form.

"Documentation" means the applicable operating manuals, technical literature and all other related materials, as updated from time to time, supplied by FRY in relation to the FRY Services.

"Fees" means the subscription fees as specified in the Order Form payable by Customer in accordance with Section 7 herein, and any other fees, such as expenses.

"FRY" means the FRY entity described in section 13 below.

"FRY Services" means the services that are ordered by Customer under an Order Form or made available online by FRY as described in the Documentation. "FRY Services" exclude Content and Non-FRY Applications.

"FRY Software" means software that allows customer to use certain functionality in connection with the FRY Services.

"Malware" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros.



“Non-FRY Applications” means a web-based, mobile, offline or other software application functionality that interoperates with the FRY Service, that is procured by the Customer or by FRY on behalf of the Customer or by a third party.

“Order Form” means the ordering document or online order specifying the FRY Services to be provided here under that is entered into between Customer and FRY or any of their Affiliates, including any addendum and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Subscription Period” means the period(s) as set forth in the Order Form.

“User” means an individual authorised by Customer to access and use the FRY Services in accordance with the specific user type definition as specified in the Order Form, for whom Customer has purchased a subscription for.

2. FRY RESPONSIBILITIES

- I. Subject to the terms of this Agreement, including payment of the Fees in accordance with Section 7 below, FRY will: a) make the FRY Services available to Customer pursuant to this Agreement, and the applicable Order Form and Documentation; b) provide applicable FRY standard support for the FRY Services to Customer at no additional charge; c) use commercially reasonable efforts to make the FRY Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (for which FRY shall give advance electronic notice as soon as reasonably practicable); (ii) any unavailability caused by events beyond FRY’s reasonable control, including, for example, an act of God, an act of Government, flood, fire, earthquake, civil unrest, act of terror, strike, internet service provider, failure or delay, Non-FRY Applications or denial of service attack; and d) provide the FRY Services in accordance with laws and government regulations applicable to FRY’s provision of the FRY Services to its customers generally (i.e., without regard for Customers particular use of the FRY Services) and subject to Customers compliance with the terms of this Agreement.
- II. FRY may suspend Customers access and use of the FRY services and/or remove any Content that FRY reasonably and in good faith believes is in violation of this Agreement. FRY agrees to provide Customer with reasonable notice in advance of any suspension or disablement before its implementation unless such suspension or disablement is necessary to comply with applicable laws or prevent imminent harm to the FRY Services or any third party, in which case, FRY agrees to notify Customer to the extent allowed by applicable law of such suspension or disablement as soon as practicably possible.
- III. FRY will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with FRY’s obligations under this Agreement, except as otherwise specified.

3. USE OF SERVICES

- I. **Subscriptions.** Unless otherwise provided in the applicable Order Form the FRY Services are purchased as Subscription Periods for the term as stated in the applicable Order Form, subscriptions for additional FRY Services may be added during a subscription term at the same pricing as the underlying subscription pricing prorated for the portion of that subscription term remaining at the time the subscriptions are added, and any subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its procurement of FRY Services are not contingent on the delivery of any future functionality or features or dependant on any oral or written public comments made by FRY regarding future functionality or features.
- II. **Usage Limits.** The FRY Services are subject to the usage limits as specified in the Order Form. If Customer exceeds the contractual usage limit, the Customer agrees to work with FRY in order to either: a) reduce Customer’s usage so that it conforms to such limit; or b) execute an additional Order Form for such additional Users of the applicable FRY Services promptly and pay for excess and/or additional usage pursuant to Section 7 below.
- III. **Future Functionality.** Customer hereby acknowledges that it has not entered into this Agreement on the basis of any future service or functionality that FRY may offer in the future. FRY agrees to provide any such future service or functionality, if and when it is made generally available by FRY and Customer hereby accepts that this is not a commitment on the part of FRY to deliver any other service or functionality. Furthermore, nothing in this Agreement shall restrict FRY from using in the design, development, or implementation of its services any anonymised data, information or techniques that it learns from services provided hereunder that are of general applicability to the marketplace.



4. CUSTOMER RESPONSIBILITIES

- I. The Customer will be responsible for: a) its Users compliance with this Agreement and Documentation; b) for the accuracy, quality and legality of Content; c) the means by which Customer acquired Content and Customer's use of Content with the Fry Services and the inter-operation of any Non-Fry Applications with which Customer uses the Services and Content; d) using commercially reasonable efforts to prevent unauthorised access to or use of the Services and Content; and notify FRY promptly of any unauthorised access or use.
- II. The Customer will not: (a) make the FRY Service or Content available to anyone other than Customer, Affiliates or Users, or use the FRY Service or Content for the benefit of anyone other than Customer or its Affiliates unless expressly stated otherwise in an Order Form; unless permitted by applicable law; (b) directly or indirectly: reverse engineer, decompile, disassemble the FRY Services, FRY Software or any other software, documentation or data related to access and use of the FRY Services; (c) sell, resell, license, sublicense, distribute, make available, rent or lease any FRY Service, or include any FRY Service in a service bureau or outsourcing offering; (d) use the FRY Services or Non-FRY Applications to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights; (e) use the Fry Services or Non-FRY Applications to store or transmit any Malware; (f) interfere with or disrupt the integrity or performance of any FRY Services or third party data contained therein; (g) attempt to gain any unauthorised access to the FRY Services or its related systems and/or networks; (h) modify, translate, or create derivative works based on the FRY Services or any FRY Software (except to the extent expressly permitted by FRY in an Order Form); (i) remove any proprietary notices or labels. With respect to any FRY Software that is distributed or provided to the Customer for use on the Customer premises or devices, FRY hereby grants the Customer a non-exclusive, non-transferable, non-sublicensable license to use such FRY Software only in connection with the FRY Services and this Agreement.
- III. The Customer represents, covenants, and warrants that the Customer, Affiliates and Users will use the FRY Services only in compliance with this Agreement. In the event Customer is required to remove, modify and/or disable any Content or Non-Fry Applications, in order to avoid violating applicable laws and regulations, Customer agrees to promptly do so. Although FRY has no obligation to monitor the Customer's use of the FRY Services, FRY may do so and may prohibit or suspend any use of the FRY Services it believes may be (or alleged to be) in violation of the foregoing.
- IV. The Customer understands and accepts that FRY makes no warranties of any kind and assumes no liability for Customer's use of any Non-Fry Applications and the associated license by the respective provider.



5. PROFESSIONAL SERVICES

- I. **General Terms.** Customer may wish to receive certain professional, educational, operational or technical services (collectively “PS”) as described in a mutually agreed upon Statement of Work (“SOW”) accompanying the applicable Order Form. FRY and Customer may, from time to time, execute additional SOW’s that specify any further PS to be provided to Customer. Each SOW will at minimum, include: (a) a description of the PS and any work product or other tangible and all training materials to be developed and or provided to Customer (each a “Deliverable”); (b) the scope of PS; and (c) the applicable Fees and payment terms for such PS unless specified in the corresponding Order Form. To the extent payment terms are not specified in the SOW the payment terms in this Agreement shall apply.
- II. **Deliverables, Ownership.**
 - a. **Deliverables.** Unless otherwise set forth in the applicable SOW, FRY shall own all rights, title and interest in and to the Deliverables (excluding any Customer Property, defined below) and related intellectual property rights. Subject to terms and conditions of this Agreement and during a Subscription Period, FRY hereby provides Customer with a limited, non-exclusive, non-transferable and terminable license to use the Deliverables solely for Customers internal operations in connection with its authorised use of the FRY Services.
 - b. **FRY Tools.** Nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know how, techniques and expertise (“FRY Tools”) used by FRY to develop the Deliverables and to the extent that such FRY Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer on the same terms as the Deliverables.
 - c. **Customer Property.** Customer shall own all rights title and interest in and to any Customer Property. “Customer Property” means any technology, Customer specific business processes, or deliverables, specifically as such materials are designated as Customer-owned property in a SOW. FRY shall have the right to use any Customer Property solely for the purpose of providing the PS to Customer hereunder and as set forth in the applicable SOW.
- III. **PS Warranty.** In regards to PS only, FRY warrants that: (a) it and each of its employees, consultants and subcontractors (if any), that it uses to provide and perform PS has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the PS in accordance with the SOW; and (b) the PS will be performed for and delivered to Customer in a professional and workmanlike manner in accordance with the laws and governmental regulations applicable to the performance of such PS. Customer acknowledges that FRY’s ability to successfully perform PS is dependent upon Customers provision of timely information, access to resources and participation. If through no fault or delay of Customer the PS do not conform to this foregoing warranty, and Customer notifies FRY within seven (7) days of FRY’s delivery of the PS, FRY will re-perform the non-conforming portions of the PS at no cost to Customer.

6. CONFIDENTIALITY AND PROPRIETARY RIGHTS

- I. **“Confidential Information”** means all information disclosed by a party (“Disclosing Party”) to the other (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of FRY includes the FRY Services and Content, and the terms and conditions of this Agreement including all Order Forms (including pricing). Confidential Information of the Customer includes non-public data provided by the Customer to FRY to enable the provision of the FRY Services (“**Customer Data**”). The Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs and business processes disclosed by such party. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party, without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; (d) was independently developed by the Receiving Party; or (e) is required to be disclosed by law provided that to the extent legally and reasonably



permissible the Receiving Party gives the Disclosing Party prior notice of such disclosure and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party seeks to contest such disclosure.

- II. **Proprietary Rights.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party agrees to take precautions to protect such Confidential Information in a manner no less stringent than it would protect its own Confidential Information to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (b) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information of the disclosing party to those of its Affiliates, employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party, containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its; Affiliates, legal counsel and accountants without the other party's prior written consent provided that a party that makes any such disclosure to its Affiliates, legal counsel or accountants will remain responsible for such Affiliates, legal counsels or accountant's compliance with this confidentiality section. Notwithstanding the foregoing, Fry may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-FRY Application provider, to the extent necessary to perform its obligations under this Agreement and always under the terms of confidentiality materially as protective as set forth herein.
- III. The Customer shall own all right, title and interest in and to the Customer Data. FRY shall own and retain all right, title and interest in and to (a) the FRY Services and FRY Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the FRY Services, and (c) all intellectual property rights related to any of the foregoing. No title to or ownership of any intellectual property rights related to the Service is transferred to Customer pursuant to this Agreement. FRY reserves all rights not explicitly granted to Customer.
- IV. The Customer hereby grants FRY a worldwide, perpetual, irrevocable, royalty free licence to use and incorporate into its services any suggestions, improvements, modifications or other feedback provided by Customer that FRY may adopt for any of its services.

7. FEES

- I. In consideration of the supply of the FRY Services, the Customer will pay FRY the then applicable Fees described in the Order Form in accordance with the terms herein. Payment obligations are non-cancellable, and Fees paid are non-refundable, and usage limits cannot be decreased during a Subscription Period.
- II. Unless otherwise specified in the Order Form, the Customer agrees to pay all Fees annually in advance and within thirty (30) days of the date of the applicable invoice. Unpaid amounts are subject to a late fee of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate suspension or termination of the FRY Services.
- III. Upon expiration of the Customer's initial subscription period, FRY reserves the right to increase its Fees in line with the Consumer Price Index (CPI) for any and all subsequent subscription period(s).
- IV. Unless otherwise stated, all Fees are exclusive of all applicable taxes (including local sales tax and VAT), levies or duties imposed by taxing authorities, including without limitation value-added and withholding taxes, and Customer shall be responsible for payment of all such taxes, levies or duties, excluding any taxes based on FRY's income.

8. TERM & TERMINATION

- I. **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or been terminated in accordance with this Section 8.III below.
- II. **Term of Subscriptions.** The term of each subscription period shall be as specified in the applicable Order Form. Unless otherwise stated in the Order Form, subscriptions will automatically renew for additional periods equal to the expiring Subscription Period or one year (whichever is shorter) unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant Subscription Period. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at FRY's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary any renewal in which User volume or subscription



length for any FRY Services has decreased from the prior term will result in re- pricing at renewal without regard to the prior terms pricing.

- III. **Termination for Cause.** Either party may terminate this Agreement for cause, upon thirty (30) days' written notice in the event of a material breach and such breach remains uncured at the expiration of such period or if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- IV. **Obligations Upon Termination.** If the Agreement is terminated due to a breach by FRY, the Customer will be entitled to a refund of the balance of the Fee already paid covering the remaining in the number of days in the relevant subscription term following the effective date of termination. In the event this Agreement is terminated due to a breach by Customer, all Fees due will become payable immediately. In no event will termination relieve Customer of its obligation to pay the Fees due to FRY for the period prior to the date of termination. Furthermore, upon termination or expiration for any reason of this Agreement, the Customer rights to use the FRY Services shall cease. FRY will make available all the Customer Data to the Customer for electronic retrieval for a period of thirty (30) days following the date of termination or expiration of this Agreement, but thereafter FRY shall delete stored Customer Data in accordance with FRY's Retention Policy, available upon request. The Customer may request in writing that any stored Customer Data be deleted, and FRY will comply and provide written confirmation of such Customer Data deletion within thirty (30) days. All sections of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.
- V. **Expiration of Users.** Customer understands that as each User leaves the Customer and such User ceases to be a paid User under the terms of this Agreement, the Customer rights to use the FRY Services shall cease and the Customer shall have a period of two (2) years from the date that such User becomes a non-User, to either retrieve or destroy said User's data otherwise such User's data shall be deleted in accordance with FRY's Retention Policy.

9. DATA PROTECTION

- I. FRY agrees to implement and maintain appropriate administrative, physical and technical safeguards designed to secure the FRY Services and Customer Data against accidental or unlawful loss, access or disclosure while in the possession or under the control of FRY. The terms of the of the data processing addendum at <https://fry-it.com/agreements-and-terms/> ("DPA") are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA under which both parties agree to comply with the terms of the DPA. Where the Customer specifically directs FRY to act as a Processor (as defined in the DPA) for the benefit of Customer, FRY warrants that it shall comply at all times with the provisions of the DPA applicable to FRY's obligations as a Processor of Personal Data and shall further process all Personal Data (as defined in the DPA) on behalf of the Customer in accordance with the DPA. To the extent Personal Data from the EU, EEA, the UK, Switzerland are processed by FRY, the Standard Contractual Clauses shall apply, as set forth in the DPA.

10. WARRANTIES AND DISCLAIMER

- I. **Mutual Warranty.** Each party warrants that it has the necessary rights to enter into this Agreement.
- II. **Fry Warranty.** FRY warrants that while the corresponding Fees are paid: (a) it shall use all reasonable efforts consistent with prevailing industry standards to maintain and provide the FRY Services with the functions specified in the Documentation when used in a manner that conforms to the terms and conditions of this Agreement and Documentation; (b) to provide the FRY Services in a reliable and professional manner; and (c) it is in compliance with, and will perform the FRY Services in compliance with all applicable law and regulations. Subject to section 8.III, Termination for Cause, Customer's sole and exclusive remedy and FRY's entire liability for a breach of the warranty above, shall be for FRY to use commercially reasonable efforts to modify the FRY Services to substantially achieve in all respects the functionality described in the Documentation and if FRY is unable to restore such functionality, Customer shall be entitled to terminate the applicable Order Form and received a pro-rated refund of the Fees pre-paid to FRY for the corresponding unused portion of the Subscription Period. The warranties set forth herein are made to and for the benefit of Customer only.
- III. **Customer Warranty.** The Customer warrants that it has all rights, title and interest in the Customer Data.
- IV. **Disclaimer.** Except as provided in this section 10, and to the maximum extent permitted by applicable law, FRY does not warrant that the FRY Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the FRY Services. Except as expressly set



forth in this section, the FRY Services are provided 'as is' and FRY disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

11. INDEMNITY

- I. **Indemnification by FRY.** FRY will defend the Customer against any alleging third party claim that the FRY Services infringes a third party intellectual property right, including but not limited to any United Kingdom patent, copyright or misappropriation of any trade secret, and will indemnify the Customer for the resulting costs and damages finally awarded against the Customer to such third party by a court of competent jurisdiction or agreed to in settlement, provided the Customer promptly notifies FRY of any and all threats, claims and proceedings related thereto and the Customer gives sole control to FRY over the defence and settlement. The foregoing obligations do not apply with respect to any portions or components of the Services: (i) not supplied by FRY; (ii) made in whole or in part in accordance with the Customer specifications; (iii) that are modified after delivery by FRY; (iv) combined with other products, processes or materials where the alleged infringement relates to such combination; (v) where the Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (vi) where the Customer's use of the Services is not strictly in accordance with terms of this Agreement. If, due to a claim of infringement against the Customer pursuant to this Section 11.I, FRY may at its option and expense: (i) replace or modify the Services to be non-infringing; (ii) obtain for the Customer a license to continue using the Services; or (iii) if neither of the foregoing is commercially feasible, terminate this Agreement and the Customer's rights hereunder and provide the Customer a refund of any prepaid, unused Fees for the Services.
- II. **Indemnification by Customer.** The Customer will defend FRY against any alleging third party claim that the Customer's use of the FRY Services is in breach of this Agreement, infringes a third party intellectual property right, including but not limited to, any United Kingdom patent, copyright or misappropriation of any trade secret, provided the Customer is promptly notified of any and all threats, claims and proceedings related thereto and given sole control over the defence and settlement. The Customer will indemnify FRY for the resulting costs and damages finally awarded against FRY to such third party by a court of competent jurisdiction or agreed to in settlement.
- III. This section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section.

12. LIMITATION OF LIABILITY

- I. Notwithstanding anything to the contrary, except for death or bodily injury of a person caused by its negligence, neither party shall be responsible or liable with respect to any subject matter of this Agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory to the other:
 - a. for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business;
 - b. for any indirect, exemplary, incidental, special or consequential damages;
 - c. for any matter beyond each party's reasonable control; or
 - d. for any amounts that, together with amounts associated with all other claims, exceed the Fees paid by the Customer to FRY for the FRY Services under this Agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not the party has been advised of the possibility of such damages.
- II. Neither party shall be liable to the other for loss of profits (or loss of anticipated profits), loss of or damage to data, records, cost of procuring substitute goods, services or technology, nor for any special, indirect, incidental or consequential damages.

13. FRY CONTRACTING ENTITY, NOTICES, GOVERNING LAW AND VENUE.

- I. The FRY entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute arising out of or in connection with this Agreement, and the courts that have jurisdiction over such dispute shall depend on where the Customer is domiciled.



Customer domiciled in:	FRY entity entering into this Agreement:	Notices should be addressed to:	Governing Law is:	Courts with exclusive jurisdiction are:
Australia/New Zealand	FRY-IT PTY LTD	FRY-IT PTY LTD, Level 29, 66 Goulburn Street, Sydney, 2000, New South Wales, Australia Attn: Chief Operating Officer	Australia	Australia, NSW
Rest of World	FRY-IT LTD	FRY-IT LTD, 71-75 Shelton Street, London, England, WC2H 9JQ Attn: Chief Operating Officer	England	London, England

14. MISCELLANEOUS

- I. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force, effect and enforceable.
- II. This Agreement is not assignable, transferable or sub licensable by the Customer except with FRY's prior written consent. This Agreement, together with any Order Form(s) and any Annexes, which are incorporated and included into this Agreement, constitutes the entire agreement between the parties and supersedes any and all prior agreements or communications between the parties with regard to the subject matter hereof. Each party acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein. In the event of a conflict between terms of this Agreement and an Order Form, the terms of the Order Form shall prevail.
- III. No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Customer does not have any authority of any kind to bind FRY in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.
- IV. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested, and sent to the applicable address specified in section 13 above.
- V. Each party agrees to the applicable governing law as set out in section 13 above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.
- VI. The parties shall work together in good faith to issue at least one mutually agreed upon press release within six (6) months of the effective date of this Agreement, and the Customer agrees to reasonably cooperate with FRY to serve as a reference account upon request. FRY agrees that use of the Customer's logo shall be subject to the written consent of the Customer and in accordance with the Customer's logo use guidelines as provided to FRY.
- VII. The FRY Services, any other FRY technology and derivatives thereof may be subject to export laws and regulations of the United Kingdom and other jurisdictions. Customer shall not permit access or use of any of the FRY Services in an embargoed country or in breach of any UK export law or regulation.
- VIII. Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the



reasonable control of the party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, internet service provider failures or delays, denial of service attacks, or other similar causes) the affected party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected party (a) provides the other party with prompt notice of the nature and expected duration of the event, (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provides periodic notice of relevant developments, and (d) provides prompt notice of the end of such event.