

Standard Terms and Conditions

Provided by

IT Support Business Ltd

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SCHEDULES TO THE MASTER SERVICES AGREEMENT

DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

“Applicable Laws”	means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which generally apply to the Supplier’s business in the provision of the Services;
“Agreement”	means this Master Services Agreement (“MSA”) and the Schedules to the Master Service Agreement signed by authorised representatives of the Parties;
“Background IPR”	means any and all Intellectual Property Rights in pre-existing material that are used by the Supplier in relation to the Deliverables and/or the Services, or delivered to the Customer in relation to the Deliverables and/or the Services and which is not Developed IPR;
“Business Hours”	means 09.00 – 17.30 on Monday to Friday excluding bank holidays
“Change Control Procedure”	means the procedure set out in Clause 7;
“Charges”	means the charges for the Services and Deliverables as specified in this Agreement and set out in the appropriate Schedule;
“Confidential Information”	means all information or data (in whatever medium including in written, oral, visual or electronic form) disclosed by or on behalf of a Party to the other or otherwise received by the other in the negotiation, entering into and performance of this Agreement, which is expressly marked as confidential or which concerns the technology, know how, methodology of supply, business, developments and finances of that Party and any of its Affiliates or of the suppliers, customers or clients of that Party;
“Data Controller”	has the meaning set out in the Data Protection Legislation;

“Data Processor”	has the meaning set out in the Data Protection Legislation;
“Data Protection Legislation”	means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;
“Data Subject”	has the meaning set out in the Data Protection Legislation;
“Dispute Resolution Procedure”	means the procedure set out in Clause 16;
“Force Majeure”	means any cause beyond the reasonable control of a Party which affects the performance by a Party of its obligations under this Agreement, including (insofar as beyond such reasonable control) acts of God, war, riots, insurrection, embargoes, strikes outside a Party’s direct control fire, floods, epidemics, tempest or terrorism but excluding any failure of a Party’s or its sub-contractors’ supply chain;
“Intellectual Property Rights”	means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered), copyright, database rights and rights in trade and service marks (both registered and unregistered), together with all applications for, rights to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right;
“Losses”	means losses, liabilities, penalties, fines, costs, expenses (including reasonable legal costs) and damages suffered or incurred by a Party or any of its Affiliates under this Agreement as a result of the other Party’s breach of this Agreement, negligence or breach of statutory duty, but excluding for the avoidance of doubt any losses, liabilities, penalties, fines, costs, expenses and damages incurred as a result of a third party or as a result of the negligence, breach of statutory duty or breach of Agreement by the Party suffering the Losses or by any Affiliate, agent, employee or contractor of such Party or such Affiliate;
“Personal Data”	has the meaning set out in Data Protection Legislation;
“Purchase Order”	means a commercial document and an official acceptance by the Customer of a Quotation issued by the Supplier, indicating types, quantities, and agreed prices for products or Services, or an official offer issued by the Customer to the Supplier, indicating types, quantities, and agreed prices for products or Services, which the Customer requires from the Supplier;

“Quotation”	means a commercial document and an official offer issued by the Supplier to the Customer, indicating types, quantities, and agreed prices for products or Services, which the Customer offers to deliver to the Customer;
“Rate Card”	means the agreed costs of Additional Services or Deliverables relating to parts, materials, personnel, software, services and the like and as provided in the relevant Schedule;
“Schedule”	means a schedule to this Master Services Agreement specifying a Service provided by the Supplier to the Customer, that has been agreed and signed by both Parties pursuant to Clause 3 and shall include any annex to such a Schedule, such as a Purchase Order issued by the Customer, in the form specified by the Supplier following acceptance of a Quotation, or in such form as may be otherwise agreed between the Parties
“Security Policy”	means a document provided by the Supplier to the Customer that describes the Suppliers security policies and procedures. Including how the Supplier adheres to Payment Card Industry (PCI) data standards;
“Services”	means the services to be provided to the Customer, including the provision of Hardware, Software and Professional Services, as described in the relevant Schedule;
“Service Levels”	means any service levels set out in the relevant Schedule;
“Service Review”	means the mutually agreed upon review of the Services at chosen intervals, either monthly or quarterly, attended by senior representatives of both the Supplier and the Customer and as described in a Schedule;
“Software”	means the Supplier’s software and Third Party Software as specified in the relevant Schedule;
“Software Documentation”	means all documents and other written material describing, explaining or assisting in the use of the relevant Software, including all user manuals;
“Specifications”	means the specifications for the relevant Services and Deliverables to be provided to the Customer as set out in the relevant Schedule;
“Subcontractor”	means an approved subcontractor of the Supplier as specified in the relevant Schedule or otherwise agreed between the Parties;

- 1.2 In this Agreement, unless otherwise specified or the context otherwise requires:
- 1.2.1 words importing the singular only shall include the plural and vice versa; words importing the whole shall be treated as including a reference to any part thereof;
 - 1.2.2 reference to a “person” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);
 - 1.2.3 references to “written” or “in writing” include faxes, email and any non-transitory form of visible reproduction of words but not text messaging via mobile phone;
 - 1.2.4 references to this Agreement or to any other document is a reference to this Agreement or that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
 - 1.2.5 references to Clauses and Sub-clauses are to the clauses and sub-clauses in this MSA;
 - 1.2.6 references to Schedules are to the schedules to this MSA; and
 - 1.2.7 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - 1.2.8 reference to the word “include” or “including” (or similar term) are not to be construed as implying any limitation and general words introduced by the word “other” (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;
 - 1.2.9 headings used in this MSA and any relevant Schedule are for convenience only and shall not affect its construction or interpretation; and
 - 1.2.10 in the event of any inconsistency between the main body of this MSA and any Schedule, the MSA shall prevail.

COMMENCEMENT AND DURATION

This Agreement shall be deemed to have commenced on the Commencement Date and subject to earlier termination in accordance with Clause 12, shall continue in force for the Initial Term until terminated by either Party giving the other Party no less than ninety (90) days' notice before the expiry of the Initial Term. At the end of the Initial Term, if not terminated, the Agreement shall renew for subsequent terms with each Renewal Term of twelve (12) months. Any termination of this Agreement shall not take effect until all Schedules to this MSA have also been terminated in accordance with the termination provisions specified in each Schedule.

SCHEDULE PROCESS

- 3.1 This Agreement governs the overall relationship of the Parties in relation to the Services and Deliverables provided by the Supplier to the Customer. The Customer may from time to time invite the Supplier to tender for or request certain services. If the Supplier is able to provide the requested services, the Supplier shall complete a draft proposed quotation and shall submit the quotation to the Customer for written approval. If approved, the terms and conditions attached to the quotation shall form a Schedule or Schedules, incorporating the necessary definitions of those services.
- 3.1.1 A Schedule shall not enter into force, be legally binding or have any other effect unless the Schedule:
- 3.1.2 has been signed by the authorised representatives of both Parties to it; and
- 3.1.3 as at the date the Schedule is signed, the MSA has not terminated.
- 3.2 Any amendment to the MSA agreed by the Customer and the Supplier in accordance with Clause 24.1 shall have effect in respect of all Schedules.

THE SERVICES

- 4.1 The Supplier shall provide the Services as set out in the relevant Schedule with reasonable skill and care and in accordance with Applicable Laws and Best Industry Practice. Best Industry Practice means in relation to any undertaking the exercise of the level of skill, care, planning, supervision, diligence, prudence, control, foresight and judgement as can reasonably be expected from a skilled and experienced person engaged in the same or similar type of undertaking under the same or similar circumstances.
- 4.2 The Supplier is not authorised to carry out work for the Customer which is not the subject of a properly executed Schedule. However, if the Supplier carries out any work at the Customer's express request in writing which is not the subject of a Schedule the provisions of this Agreement will apply to the work undertaken unless otherwise agreed in writing. All charges with respect to such work must be agreed in advance between the Parties in writing.

- 4.3 The Services are provided at the Customer's request and the Customer accepts that it is responsible for verifying that the requirements set out in the Schedules for the Services are suitable for its own needs.
- 4.3.1 the Supplier accepts that it has a duty of care to advise the Customer of any requirements, risks or potential issues in the performance of the Services as specified by the Customer, and to recommend mitigating actions or resolutions to those issues. If the Supplier perceives there are gaps in the Services as requested by the Customer, the Supplier is responsible for making the Customer aware of these gaps.
 - 4.3.2 a key component of the Services provided is the Supplier's expertise in the provision of the Services. The Supplier is responsible for verifying that the agreed Services will meet the requirements set out in the Schedules.
- 4.4 Unless otherwise specified in a Schedule, time shall not be of the essence for the performance of the Services but the Supplier will use all reasonable endeavours to adhere to any timescales agreed between the Parties.
- 4.5 In the event of there being any deficiency or failure in the supply by the Supplier of any Services the Customer will allow the Supplier a reasonable time period within which the Supplier must correct such deficiency or failure at the Supplier's cost.
- 4.6 In performing its obligations under this Agreement, the Supplier and its personnel shall:
- 4.6.1 comply with all applicable anti-bribery and anti-corruption laws and regulations (which shall include (without limitation) the UK Bribery Act 2010) (collectively, the "Anti-bribery Laws");
 - 4.6.2 not offer any bribe or facilitate payment to any public official or other person; and
 - 4.6.3 not do anything that may cause the Customer, or any of its Affiliates to breach an Anti-Bribery Law.

SUPPLIER AND CUSTOMER OBLIGATIONS

5.1 The Supplier shall:

- (a) provide the Services in accordance with the description and specifications and the terms and conditions of this Agreement;
- (b) provide the Services in accordance with all applicable laws regulations guidelines and to such professional standards as are customary in the Supplier's industry;
- (c) undertake the Services in an efficient and effective manner in order to complete the activities as set out in the relevant Schedule;
- (d) ensure that its personnel comply with the Customer's policies should they be at any Customer's premises.
- (e) take all necessary and prudent steps to ensure that the performance of the Services will not:
 - (a) endanger the health or safety of any person; or
 - (b) damage any property, plant, equipment and facilities belonging to the Customer and/or its Affiliates or employees, and
 - (f) notify the Customer as soon as it becomes aware of any such health and safety hazards or issues which arise in relation to the Services; and
 - (g) co-operate with the Customer in all matters relating to the Services and keep the Customer informed of the progress of the Services on a regular basis and in a timely manner as specified in the relevant Schedule.

5.2 The Supplier shall bear exclusive responsibility for the payment of any employment related taxation liability, including National Insurance, arising out of remuneration for work performed by any personnel of the Supplier under this Agreement.

5.3 The Customer shall:

- 5.3.1 co-operate with and consult fully with the Supplier, at its reasonable request, to enable Supplier to fulfil its obligations under this Agreement and shall promptly provide all information relevant to the Services to the Supplier;
- 5.3.2 if the Customer or its Affiliate or any of its or their officers, agents, employees or contractors shall fail to perform its or their obligations under this Agreement, the Supplier shall be deemed not to be in breach of the Agreement to

the extent that the Customer's failure (or that of any of its Affiliates, or the Customer's or Affiliates' employees, officers or contractors) contributed to any breach by the Supplier and the Supplier shall be entitled to additional time to perform those obligations which were so delayed taking into account the amount of any delay caused by the Customer or its Affiliates or its or their employees, officers or contractors;

- 5.3.3 the Customer shall on reasonable notice provide the personnel of the Supplier access to the Customer's premises during business hours or as is reasonably requested or as may reasonably be required in order for the personnel of the Supplier to provide the Services set out in the relevant Schedule;
- 5.3.4 provide the Supplier with any information, data, documentation and/or information (including Confidential Information), which:
- (a) the Customer determines shall be reasonably required for the efficient and effective provision of the Services; or
 - (b) the Supplier may reasonably request and the Customer considers reasonably necessary in order to carry out the Services in a timely manner;
- 5.3.5 ensure that the information which the Customer furnishes to the Supplier is accurate, complete, non-infringing and in compliance with any information, disclosure or requirements which are imposed upon the Customer as a result of any applicable law, regulation, directive or guideline; and
- 5.3.6 inform the Supplier and its personnel of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.

5.4 Each Party shall be responsible for the acts and omissions of its Affiliates and contractors.

5.5 Each Party shall co-operate fully with the other in undertaking any Service Review arranged and agreed to by the Parties.

CONTRACT MANAGEMENT

6.1 The representatives of each Party shall meet at intervals agreed under the relevant Schedule at such time and location as may be agreed, to discuss the progress of delivery of Services set out in that Schedule by the Supplier.

6.2 At such meetings, the representatives shall discuss any issues which may arise relating to the performance of either Party's obligations under the Schedule including any commercial and financial issues arising from the progress of the delivery of Services within that Schedule. The

issues arising in each meeting shall be documented in a brief report and circulated to both Parties. Such reports shall be deemed to be Confidential Information.

CHANGE CONTROL

- 7.1 Any requirement for any change to this Agreement (“Change”) shall be subject to the Change Control Procedure set out in 7.2 below. Changes will be classified as high, medium or low priority, such classification to be agreed between the Parties.
- 7.2 Change Control Procedure.

The Parties shall conduct discussions relating to any proposed Changes in good faith. Subject to the Party required to make a Change not being out of pocket, neither Party shall unreasonably withhold its consent to any Change. Until such time as a change control note (“CCN”) has been signed by the Parties, the Supplier shall, unless otherwise expressly agreed in writing, continue to adhere to the Agreement in accordance with the terms of the Agreement. Subject to the Customer’s written confirmation to be obtained prior to commencement, any work undertaken in connection with any proposed Change by the Parties prior to written agreement of a CCN, shall be charged on a time and materials basis calculated in accordance with the applicable Rate Card as set out in Schedule 1.

- 7.3 In the event that the Parties are unable to agree either the classification of a Change or to the actual sought Change, then the Supplier shall have final determination.

CHARGES AND PAYMENTS

- 8.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this Clause 8 and Schedule 1. The Charges shall be paid in GBP, unless otherwise specified in Schedule 1.
- 8.2 Unless otherwise agreed the Supplier shall invoice the Charges to the Customer at the intervals specified in Schedule 1 or in accordance with the agreed wording in the Change Control Note.
- 8.3 All payments shall be made by the Customer by an electronic transfer of funds to the bank account of the Supplier, to be notified in writing to the Customer from time to time.
- 8.4 All amounts payable under Schedule 1 are stated exclusive of value added tax, which shall be payable (subject to the receipt of a valid VAT invoice) in addition to the principal amount at the rate and in the manner for the time being prescribed by law.
- 8.5 If the Customer terminates a Schedule in accordance with the provisions of that Schedule, then the Customer shall reimburse the Supplier for any reasonable costs incurred by the Supplier evidenced in writing by the Supplier and shall pay the Supplier on a pro-rated basis for any Services rendered to the date of termination.

8.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay to the Supplier bona fide undisputed sums on the due date, the Supplier may:

- 8.6.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of Lloyds Bank plc until payment is made, whether before or after judgment; and/or
- 8.6.2 give written notice to the Customer that the Customer has failed to pay an undisputed sum due to the Supplier and if the Customer does not pay the undisputed sum within fourteen (14) days of the written notice then the Supplier may suspend all Services until payment has been made in full; and/or
- 8.6.3 terminate this Agreement, after serving thirty (30) days' notice of breach.

INTELLECTUAL PROPERTY

- 9.1 The Intellectual Property Rights and all other rights in the Background IPR shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge on a non-transferable, non-sub licensable, irrevocable (except for breach), non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make use of the Deliverables and the Services during the Term. If this Agreement is terminated, all licences will automatically terminate, and if a particular Schedule is terminated, the licences relevant to that Schedule will automatically terminate.
- 9.2 The Intellectual Property Rights in any specific deployment produced for the Customer under this Agreement shall be owned by the Supplier and the Supplier grants to the Customer a non-exclusive, royalty-free and worldwide licence to use such Developed Intellectual Property Rights in its business for the duration of this Agreement. For the avoidance of doubt the Customer shall not own any Intellectual Property Rights in the general design of the deployed solution.
- 9.3 All Intellectual Property Rights in Data, content, works, databases, materials, software and deliverables made available to the Supplier by or on behalf of Customer in relation to the Services and any modifications to such Intellectual Property Rights made by the Supplier pursuant to the Services (the "Customer Intellectual Property") shall, as between the Parties, belong to the Customer.

WARRANTIES AND INDEMNITY

10.1 Each Party warrants and represents that, as at the date of this Master Services Agreement and at the date that each Schedule is executed:

- 10.1.1 it has full capacity and authority to enter into and to perform as required under this Master Services Agreement and each Schedule;

- 10.1.2 this Master Services Agreement and Schedules are executed by a duly authorised representative of that Party; and
 - 10.1.3 once duly executed the Master Services Agreement and Schedules will constitute its legal, valid and binding obligations.
- 10.2 The Supplier warrants on an ongoing basis that:
- 10.2.1 its obligations under this Agreement shall be performed by appropriate experienced, qualified, skilled, competent, trained and efficient personnel, including its subcontractor's personnel, using reasonable skill and care and in accordance with Best Industry Practice and in compliance with all the statutory requirements and regulations relating to the performance of the Service; and
 - 10.2.2 all sub-contractors and the Supplier's employees shall be adequately supervised; and
 - 10.2.3 it is an independent contractor and as such will be responsible for making appropriate PAYE deductions for tax and national contributions for remuneration it pays its staff.
- 10.3 Except to the extent caused by any default, negligence, delay or breach of statutory duty by the Customer, its Affiliates, its or their contractors, officers or employees, the Supplier will fully indemnify and hold the Customer and its Affiliates harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against Customer and/or its Affiliates as a result of or in connection with:
- 10.3.1 any breach by the Supplier of Clause 0 (Confidentiality);
 - 10.3.2 any breach by the Supplier of Clause **Error! Reference source not found.** (Data);
 - 10.3.3 any breach by the Supplier of Clause 20 (Security); and
 - 10.3.4 any claim that use of the Deliverables and/or Services in accordance with this Agreement (in each case to the extent they do not comprise Customer Intellectual Property) infringes the Intellectual Property Rights or other rights of any third party.
- 10.4 Except to the extent caused by any default, negligence, delay or breach of statutory duty by the Supplier, its Affiliates, its, or their contractors, officers or employees, the Customer will fully indemnify and hold the Supplier and its Affiliates harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against the Supplier and/or its Affiliates as a result of or in connection with:

- 10.4.1 any breach by the Customer of Clause 0 (Confidentiality);
- 10.4.2 any breach by the Customer of Clause **Error! Reference source not found.** (Data);
- 10.4.3 and breach by the Customer of Clause 20 (Security); and
- 10.4.4 any claim that use of the Customer Intellectual Property in accordance with this Agreement infringes the Intellectual Property Rights or other rights of any third party.

LIMITATION OF LIABILITY

- 11.1 Notwithstanding the provisions of any other Clause in this Agreement (including those provisions set out in Schedule 1), this Clause prevails over all other Clauses and sets out the entire liability of each Party and its Affiliates to the other Party and its Affiliates, under or in connection with this Agreement (including any liabilities on termination of this Agreement), whether in contract, tort (including negligence), misrepresentation or otherwise. All references to a Party in this Clause 12 shall be deemed to include all its Affiliates.
- 11.2 Neither Party excludes or limits any liability to the other Party for:
 - 11.2.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of itself, its employees, agents or subcontractors;
 - 11.2.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 11.2.3 any deliberate or wilful act intended to cause harm to the other;
 - 11.2.4 fraudulent misrepresentation or criminal act or omission;
 - 11.2.5 the indemnities in Clause 10.
- 11.3 Without prejudice to Clause 11.2, the total liability of the Supplier (including the paying of any levied service credit) for any loss of or damage to the Customer's tangible property (including real property) shall not exceed the annual contract value of this Agreement in any year of this Agreement. Without prejudice to Clause 11.2 the total and aggregate liability of the Parties for any loss or damage in respect of the provision of the Services under or in respect of this Agreement, shall not exceed the amounts payable by the Customer in the year of this Agreement to which the act complained of relates, regardless of whether such action arose in breach of contract, tort (including negligence), breach of statutory duty or otherwise.

11.4 Subject to Clause 11.2, neither Party shall under any circumstances whatever be liable for loss of profits, loss of business, loss of actual or anticipated savings, depletion of goodwill, loss of goods, loss of contract, or for any special, indirect, consequential or pure economic loss, costs, damages charges or expenses.

11.5 Except for the warranties at Clause 10 and in any Schedule, all warranties not expressly provided in this Agreement are expressly excluded to the fullest extent permitted by law.

11.6 If the Customer or its Affiliate or any of its or their officers, agents, employees or contractors shall fail to perform its or their obligations under this Agreement or an Appendix, the Supplier shall be deemed not to be in breach of this Agreement to the extent that the Customer's failure (or that of any of its Affiliates, or the Customer's or Affiliates' employees, officers or contractors) contributed to any breach by the Supplier and the Supplier shall be entitled to additional time to perform those obligations which were so delayed taking into account the amount of any delay caused by the Customer or its Affiliates or its or their employees, officers or contractors.

11.7 Mitigation and Reduced Amounts

Each Party has a duty to mitigate the Losses that would otherwise be recoverable from the other Party pursuant to this Agreement (including under any indemnity) by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

11.8 Each Party's liability under this Agreement shall be reduced, in all circumstances by:

11.8.1 any amounts previously paid (as at the date of satisfaction of such liability) by a Party (or any of its Affiliates) to the other Party (or any of its Affiliates) in satisfaction of any liability under this Agreement; and

11.8.2 the amount to which the other Party (or its Affiliates, agents, officers, employees or contractors) has contributed to the default, negligence, liability or losses complained of.

TERMINATION

12.1 This Agreement and/or any Schedule may be terminated by either Party on notice to the other Party, if the other Party is in material breach of an obligation under this Agreement or a Schedule. The termination shall be effective thirty (30) days after receipt of a written notice of termination unless during the relevant period of thirty (30) days, the defaulting Party has cured the default or is diligently proceeding to cure the default by taking effective and continuing steps to do so and the default is in fact cured within a reasonable period of time after the receipt of the relevant notice.

12.2 This Agreement and/or any Appendix may be terminated immediately by either Party on written notice to the other Party:

- 12.2.1 if the other Party is dissolved or struck off the register of companies maintained by Companies House or a winding up order is made against the other Party or a meeting is convened, resolution passed or any step taken by the other Party with a view to the winding-up of the other Party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
- 12.2.2 if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the other Party;
- 12.2.3 if the other Party enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other Party;
- 12.2.4 if notice of intention to appoint an administrator is given by any person (including the other Party's directors, the other Party or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the other Party into administration as defined by the Insolvency Act 1986; or
- 12.2.5 if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above Sub-clauses in relation to the other Party.

12.3 Either Party may terminate a Schedule (without prejudice to its other rights and remedies) by written notice to the other Party, if the relevant Party:

- 12.3.1 is to cease to carry on all or a material part of its business at any time or is to dispose of all its assets or a substantial part of its assets;

12.3.2 any of its personnel performing Services or meeting obligations set out in a particular Schedule commits any fraud, dishonesty or gross misconduct in relation to that Schedule or offers or gives or agrees to give to any person any gift, consideration, inducement or reward of any kind for doing or not doing anything in connection with obligations set out in that Schedule.

12.4 In addition, the Supplier may terminate a Schedule (without prejudice to its other rights and remedies) by written notice to the Customer, if the Supplier seeks to consolidate its service provision for any reason, including but not limited to, economies of scale or profitability.

CONSEQUENCES OF TERMINATION

13.1 Termination of a Schedule shall not affect any other Schedule except Schedule 1 or the Master Services Agreement.

13.2 At the time of the handover of the Services:

13.2.1 subject to all Charges due for payment being paid in full, the Supplier shall co-operate fully with the Customer in order to achieve an effective transfer without disruption to the provision of the Services;

13.2.2 the Supplier shall allow the Customer or any party nominated by the Customer full access to all documents, reports, summaries and any other information necessary for the transfer except to the extent that such information is commercially sensitive;

13.2.3 subject to all Charges due for payment being paid in full, the Supplier shall transfer to the Customer, or any party nominated by the Customer all computerised filing, recording, documentation, planning and drawing held by the Supplier and utilised in the provision of the Services, including historical and technical data and helpdesk logs in respect of the Services.

13.3 On termination of a Schedule for any reason, the Customer shall pay within thirty (30) days of the date of termination of that Schedule any outstanding unpaid and undisputed invoices and any interest due to the Supplier. The Supplier may after termination of a Schedule submit invoices for any Services that it has supplied, but not invoiced. The Customer shall pay these invoices in accordance with Clause 8.

13.4 On termination of this Master Services Agreement or any Schedule, the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination; and Clauses which expressly or by implication have effect after termination.

- 13.5 On termination of this Master Services Agreement or a Schedule, any Intellectual Property Rights licensed by the Supplier to the Customer pursuant to Clause 9.1 or the relevant Appendix shall automatically terminate, and the Customer shall cease to use, either directly or indirectly such Intellectual Property Rights.
- 13.6 On termination of this Master Services Agreement or a Schedule, any Customer Intellectual Property made available to the Supplier by or on behalf of Customer in relation to the Services pursuant to Clause 9.3 shall automatically terminate and the Supplier shall cease to use, either directly or indirectly such Customer Intellectual Property.
- 13.7 On termination of this Master Services Agreement or a Schedule, the Customer shall grant the Supplier such access to the Site/s as the Supplier may reasonably require to remove the Supplier's Equipment.
- 13.8 On termination of this Master Services Agreement or a Schedule, the receiving Party shall on the written request of the disclosing Party destroy or return to the disclosing party all Confidential Information received during the Term together with all partial or complete copies of the same.

CONFIDENTIALITY

14.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with this Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, companies and other representatives who need to know it) or use such confidential information for purposes other than the Services without the other Party's prior written consent. The obligations under this Clause will not extend to information which:

- 14.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it;
- 14.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this Clause);
- 14.1.3 is independently developed by the recipient Party without access to or use of such information;
- 14.1.4 is required to be disclosed by law or by any court of competent jurisdiction or any competent judicial, governmental or regulatory body, PROVIDED THAT the disclosing Party shall prior to such disclosure and, to the extent permitted by law, use its reasonable endeavours to inform the other Party of the full circumstances of disclosure and the Confidential Information that will be disclosed and take all such

steps as may be reasonable and practical in the circumstances to agree the contents of such disclosure with the affected Party before making the disclosure and shall further only disclose that part of the Confidential Information requiring disclosure. If the disclosing Party is unable to inform the affected Party before the Confidential Information is disclosed pursuant to this Clause it shall (to the extent permitted by law) inform the affected Party, immediately after the disclosure, of the full circumstances of the disclosure and the Confidential Information which has been disclosed.

- 14.2 Any tender, proposal or submission disclosed by the Customer and subsequent proposal submitted by the Supplier pursuant to this Agreement which never becomes an Appendix of this Agreement shall be deemed Confidential Information.
- 14.3 Each Party will ensure that all persons to whom it discloses any Confidential Information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party.
- 14.4 Each Party will establish and maintain adequate security measures to safeguard information and data of the other Party in its possession from unauthorised access use or copying.
- 14.5 This Clause 14 shall continue in force after the termination of this Agreement without limit in point of time.

NON-SOLICITATION

15.1 Except as otherwise expressly agreed between the Parties in writing, neither Party during the Term or for a period of 6 months after completion of Services pursuant to a particular Schedule may directly or indirectly, by or through itself, its Affiliates, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

- 15.1.1 solicit or induce, or endeavour to solicit or induce a Restricted Employee (as defined below) of the other Party; or
- 15.1.2 employ or engage or offer to employ or engage a Restricted Employee of the other Party without the written consent of the other Party save that either Party may employ or engage any Restricted Employee of the other Party who has responded directly to a bona fide recruitment drive, either through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other Party.

For the purpose of this Clause “solicit” or “induce” means the soliciting or inducing of such Restricted Employee with a view to engaging such Restricted Employee as an employee,

director, sub-contractor or independent contractor, but shall exclude any bona fide advertisement campaign generally seeking employees, directors, subcontractors or contractors with specific skills. “Restricted Employee” means a person employed or engaged on behalf of either Party for a continuous period of 6 months or more who was employed or engaged in the provision or receipt of the Services under this Agreement.

15.2 In the event of any breach by either Party of the provisions of Clause 15.1 resulting the employment or engagement any Restricted Employee then the Parties agree that:

15.2.1 the said Restricted Employee shall not commence his employment until a period of not less than 60 days have elapsed since the date the Party employing the Restricted Employee first advised the other Party in writing; and

15.2.2 the Party employing the Restricted Employee shall pay on demand a fee equal to 40% of that Restricted Employee’s total annual remuneration (including for the avoidance of doubt – salary, bonus, commission and the monetary equivalent of any employee benefits) within 14 days of receipt of invoice, or in the alternative acknowledges the other Party shall have the right to seek damages for breach.

15.2.3 the sums referred to in this Clause are a fair and genuine estimate of the loss and damages the Parties would suffer if a Party breaches Clause 15.1.

DISPUTE RESOLUTION

16.1 Without prejudice to the termination provisions in Clause 12, if a Party believes in good faith that the other Party has breached any material term of this Agreement, that Party shall notify the other Party, in writing setting forth in reasonable detail the nature of the alleged breach (“Notice of Breach”). If the other Party does not dispute the validity of the Notice of Breach, it must promptly undertake to cure and remedy the breach set out in the Notice of Breach. If the other Party disputes the validity of the Notice of Breach, then the Parties must comply with the following provisions.

16.2 Any dispute to be resolved under this Clause 16 must first be submitted for resolution to the representatives of each Party then charged with the administration of this Agreement. If such representatives are unable to resolve the dispute within 5 (five) Business Days after the date on which the Notice of Breach is received by the other Party, then the dispute must be submitted to the directors (or persons of comparable authority) of each Party for resolution. If such directors are unable to resolve the dispute within 10 (ten) Business Days after the date on which the Notice of Breach is received by the other Party, then each Party is free to pursue whatever remedies that may be available to it in respect of the subject matter of the dispute.

16.3 The cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution under this Clause will be suspended during dispute resolution procedures set out in this Clause 16 and commence to run on the day after the dispute has been resolved in favour of the aggrieved Party or the dispute resolution procedures have been exhausted, whichever is applicable.

16.4 Before resorting to legal proceedings the Parties may (but will not be obliged to) attempt to settle by negotiations between them in good faith all disputes or differences between them out of or in connection with this Agreement. The Parties further agree that (provided that both Parties consider that such negotiations will be assisted thereby), they will appoint a mediator by mutual agreement, or failing mutual agreement each Party will appoint a mediator of their choice and the two appointed mediators will appoint a third mediator to assist them and the Parties in such negotiations. Mediation will take place in London or such other place as the Parties mutually agree. Both Parties agree to co-operate fully with the appointed mediator (or mediators), provide such assistance as necessary to enable the mediators to discharge their duties, and to bear equally between them the fees and expenses of the mediators, but otherwise each Party shall bear their own costs. Unless the Parties otherwise agree in writing, if mediation is unable to resolve the dispute within thirty (30) days from the Notice of Breach above then either Party may seek to have the dispute determined by the courts of England and Wales.

NOTICES

17.1 Any notice or communication required to be given under this Agreement by either of the Parties shall be in writing and to the address detailed at the head of this Agreement marked for the attention of the signatory or as otherwise specified in a Schedule or agreed between the Parties.

17.2 Any notice, request, instruction or other document to be given shall be delivered or sent by first class recorded delivery post or by facsimile transmission or email transmission (to be confirmed by letter sent by first class recorded delivery post posted within twelve (12) hours) to the address or number set out in Clause 17.1 (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery, (if sent by post) forty eight (48) hours after posting and (if sent by facsimile or email transmission) twelve (12) hours after despatch.

DATA PROTECTION AND DATA PROCESSING

18.1 Each Party warrants that it is properly registered under the Data Protection Act 1998 to the extent required for the processing and treatment of Personal Data required in the performance of the Services.

- 18.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause **Error! Reference source not found.** is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 18.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. The Parties shall document the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 18.4 Without prejudice to the generality of Clause 18.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Agreement.
- 18.5 Without prejudice to the generality of Clause 18.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Agreement:
- 18.5.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Data Processing Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Supplier from so notifying the Customer;
- 18.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, anonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 18.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- 18.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- a) the Customer or Supplier has provided appropriate safeguards in relation to the transfer;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d) Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 18.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 18.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- 18.5.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 18.
- 18.6 The Customer consents to Supplier appointing third-party Data Processors of Personal Data under this Agreement. Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 18. As between the Customer and Supplier, Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 18.
- 18.7 Either Party may, at any time on not less than thirty (30) days' notice, revise this Clause 18 by replacing it with any applicable Data Controller to Data Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

SECURITY

- 19.1 The Supplier shall maintain the security of Data, Services and Deliverables in accordance with the specific security requirements of the Customer as defined in the Security Policy, any relevant Schedule and in accordance with Best Industry Practice.
- 19.2 If the Supplier wishes to make any change to its systems or hardware used for this Agreement or which will have a material impact on the Services or Deliverables of this Agreement, the Supplier shall notify the Customer and request approval in accordance with the Change Control Procedure.
- 19.3 Without limitation to Clause 19.1 the Supplier shall at all times ensure that the level of security employed by the Supplier in conjunction with the Customer is appropriate throughout the Term to prevent:
- 19.3.1 loss of integrity or availability of the Data stored and processed by or on behalf of the Supplier under this Agreement
 - 19.3.2 loss of confidentiality of any confidential data or part thereof on any Data, Services or Deliverables;
 - 19.3.3 unauthorised access to, use of, or interference with the Data, Services or the Deliverables; and
 - 19.3.4 unauthorised access to networks, premises or systems used by the Supplier or any sub-contractor of Supplier in performing the relevant Services.
- 19.4 The Supplier shall document security policies and procedures within the Security Policy document. The Supplier shall provide a Security Policy to the Customer at least annually. Any agreed changes to the Security Policy will be actioned by the Supplier within 10 Business Days of such agreement and the Supplier shall issue an updated version of the Security Policy to the Customer.
- 19.5 The Supplier shall not at any time knowingly introduce any computer virus or other contamination onto any of the Customer's systems or the Supplier's systems and the Customer shall not at any time knowingly introduce any computer virus or other contamination onto any of the Supplier's systems or any Customer systems managed by the Supplier as part of the Services. The Supplier shall ensure that it complies with Best Industry Practice in the prevention and removal of any computer virus on the Supplier's systems

TUPE

The Customer and the Supplier believe that the commencement and provision of the Services will not constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of

Employment) 2006 as amended or replaced from time to time (“TUPE”). Consequently, no employee will transfer to the Supplier on commencement of the Services under this Agreement.

INSURANCE

21.1 The Supplier shall at its own expense for as long as the Supplier supplies Services under this Agreement:

21.1.1 maintain a policy of Public Liability Insurance with a limit of indemnity not less than one million pounds sterling (£1,000,000) for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance, unless otherwise specified in a Schedule; and

21.1.2 maintain a policy of Professional Indemnity Insurance with a limit of indemnity of not less than one million pounds sterling (£1,000,000) for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance, unless otherwise specified in a Schedule.

21.2 The Supplier shall, as soon as reasonably practical after a request from the Customer, supply The Customer with copies of all insurance policies and evidence that the relevant premiums have been paid.

FORCE MAJEURE

22.1 Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by Force Majeure. Such delay or failure shall not constitute a breach of this Master Services Agreement or a Schedule and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, provided that if such delay or failure persists for thirty (30) Business Days or more, either Party may, at its option, terminate an Appendix immediately by giving written notice of such termination to the defaulting Party.

22.2 Any Party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the Force Majeure event has finished and shall so notify the other Party.

MISCELLANEOUS PROVISIONS

23.1 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the Parties.

- 23.2 This Agreement, together with any confidentiality agreement and all other documents referred to in it constitute the entire agreement between the Parties with respect to its subject matter; and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.
- 23.3 Each Party acknowledges to the other that it has not been induced to enter into this Agreement by any oral or written statements, collateral or other warranties, assurances, or undertakings by or on behalf of the other Party or any other person (together “**Statements**”) save for those contained in this Agreement.
- 23.4 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to Statements.
- 23.5 Nothing in this Agreement shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.
- 23.6 For the avoidance of doubt, this Agreement shall:
- 23.6.1 prevail over and take the place of any other items or conditions stipulated, incorporated, referred to or contained in any document or communication from either Party in the course of negotiations; and
 - 23.6.2 apply to the exclusion of any other terms or conditions on which any quotation, tender or proposal have been requested by the Customer or given by the Supplier. Without prejudice to the preceding sentence, no other agreement, representation or promise of any kind shall form part of, alter, vary supersede or operate as a waiver of any or all of the provisions of this Agreement, unless such waiver is expressly made, references this Agreement or the relevant Schedule and made and accepted by a duly authorised representative of the Parties in writing.
- 23.7 The Supplier may not make any announcement in relation to this Agreement or otherwise publicise its existence or its contents, nor use or refer to the Customer’s trademarks or name in any disclosure, without the Customer’s prior written consent.
- 23.8 Nothing in this Agreement shall be construed as or shall operate to create a partnership or joint venture of any kind, an agreement of employment or a relationship of principal and agent between the Customer and the Supplier, 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 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).

- 23.9 No waiver, forbearance or failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver or relinquishment of that Party's rights to future performance of such provision nor shall any single or partial exercise of any right or remedy preclude the taking of any further or other right or remedy and the other Party's obligations in respect of such future performance shall continue in full force and effect. The rights and remedies provided in this Agreement are cumulative and are not exclusive to any rights or remedies provided by law.
- 23.10 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 23.11 A Party that waives a right or remedy provided under this Agreement or by law in relation to the other Party, or takes or fails to take any action against that Party, does not affect its rights in relation to the other Party.
- 23.12 If any part or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be rendered void, invalid or unenforceable, this shall not affect the other provisions of this Agreement which shall remain in full force and effect and the Parties shall use all reasonable endeavours to replace the relevant provision with one that is enforceable and which is closest to the commercial intent of that provision
- 23.13 This Agreement may be executed by the Parties on separate counterparts, however it shall not be effective until each Party has signed at least one counterpart. Each counterpart when executed shall be treated as an original and all the counterparts together shall constitute one and the same instrument.
- 23.14 The Supplier shall be entitled to enforce this Agreement against each Affiliate of the Customer without prejudice to the fact that the Customer shall be responsible for the acts and omissions of its Affiliate. Subject to the aforesaid, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 23.15 Neither Party may assign, transfer, charge or put into trust this Agreement or any of its rights, benefits or obligations under it, to any other person, firm or company or otherwise deal with all or any part of this Agreement without the prior written consent of the other, such consent to not be unreasonably withheld or delayed. This Agreement shall be binding upon and continue for the benefit of the Supplier's and the Customer's permitted assigns and successors.
- 23.16 Notwithstanding Clause 23.15, the Supplier shall be entitled to subcontract all or any part of the Services set out in a Schedule with the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

23.17 The law which is to apply to this Agreement and under which this Agreement is to be governed and construed is English law. Subject to the Dispute Resolution Procedure, the Courts of England and Wales shall without limitation, inclusive of any question regarding its existence, validity or termination have exclusive jurisdiction in relation to any matter arising in relation to this Agreement.