

Terms and Conditions

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions.

Admin Access: has the meaning attributed to it in clause 5.1(i).

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

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

Business Hours: the period from 9.00 am to 5.30 pm on any Business Day.

Change Order: has the meaning given in clause 7.1.

Charges: the sums payable for the Services, as set out in the Quotation.

Commencement Date: the date specified in the Quotation.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer's Equipment: any equipment, including without limitation any firewall hardware, managing devices, tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the Quotation, where relevant.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(d).

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and

all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in the Quotation and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

Initial Term: means 12 months from the Commencement Date unless otherwise stated in the Quotation.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Milestones: a date by which a part of the Services is to be completed, as set out in Quotation, where relevant.

Quotation: means the quotation confirming details of deliverables and Services, as emailed to the Customer on a case by case basis.

Services: means the services stated in the relevant Quotation.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in the Quotation, where relevant, but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

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

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| | updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (<i>SI 2003/2426</i>) as amended. | | enacted or otherwise given effect on or after 11pm on 31 January 2020. |
| | VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere. | 1.12 | A reference to writing or written email. |
| 1.2 | Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement. | 1.13 | Any obligation on a party not to do something includes an obligation not to allow that thing to be done. |
| 1.3 | A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). | 1.14 | A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time. |
| 1.4 | The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules. | 1.15 | References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule. |
| 1.5 | A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. | 1.16 | Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. |
| 1.6 | Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. | | |
| 1.7 | Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. | 2. | Commencement and duration |
| 1.8 | This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns. | 2.1 | This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 14 (Termination) for the Initial Term and thereafter on a rolling annual basis (each a " Successive Period "), (the " Term "). |
| 1.9 | A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. | 3. | TUPE |
| 1.10 | A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision. | | The provisions of Schedule 1 relating to TUPE shall apply when this agreement commences. |
| 1.11 | Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re- | 4. | Supplier's responsibilities |
| | | 4.1 | The Supplier shall use reasonable endeavours to supply the Services in accordance with this agreement in all material respects. |
| | | 4.2 | The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation, where relevant, but any such dates shall be estimates only and time for |

performance by the Supplier shall not be of the essence of this agreement.

4.3 The Supplier shall appoint a sales representative in respect of the Services. The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 The Supplier shall use reasonable endeavours to observe health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) appoint a manager for the Services who shall be the main point of contact. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in the Quotation, where relevant;
- (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required in the Quotation, where relevant, or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (e) inform the Supplier of all reasonable and appropriate health and safety and security requirements that apply at any of the Customer's premises. If the Customer wishes to make a change to those requirements which will materially affect provision of the

Services, it can only do so via the change control procedure set out in clause 7 (Change control);

(f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements or otherwise as specified by the Supplier;

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;

(h) keep, maintain and insure the Supplier's Equipment in good condition or otherwise in accordance with the Supplier's instructions from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and

(i) where (at the Supplier's sole discretion and strictly as authorised by the Supplier in writing in advance) the Supplier permits the Customer to have administrative access to any Customer Equipment ("**Admin Access**"), operate the same at its own risk via suitably trained IT personnel, using at all times all necessary care and good practice required to operate such Customer Equipment in an appropriate, safe and secure way and shall safeguard the same and the Customer's and where relevant that Supplier's IT systems from possible adverse consequences (including without limitation any cyber or other threat); and

(j) where operating a manual backup rotation, ensure that drives/tapes are rotated on a regular basis and that daily backups are kept in a secure location offsite.

5.2

If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time

- to perform its obligations equal to the delay caused by the Customer.
- 5.3 The Customer shall indemnify the Supplier against any loss, damage or costs arising from the Customer using or permitting to be used any Admin Access.
- 6. Non-solicitation**
- 6.1 Except in respect of any transfer of employees of the Supplier to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), the Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the termination or expiry of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- 6.2 Any consent given by the Supplier in accordance with clause 6.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 30% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 30% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.
- 7. Change control**
- 7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
 - (b) the Supplier's existing charges;
 - (c) the timetable of the Services; and
 - (d) any of the terms of this agreement,
- provided always that the Supplier may make such changes to the Services as it may choose where, in the reasonable opinion of the Supplier, such are necessary to protect the Supplier's or Customer's legitimate business interests.
- 7.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 7.3 If the Customer wishes to make a change to the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Customer.
- 7.4 If the parties agree to a Change Order, they shall sign it and that Change Order shall amend this agreement.
- 7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at the Supplier's daily rates specified in the Quotation or otherwise.
- 8. Charges and payment**
- 8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.
- 8.2 Where the Charges are calculated on a time and materials basis:
- (a) the Supplier's daily fee rates for each individual person as set out in the Quotation are, unless otherwise provided, calculated on the basis of a 7.5 hour day, worked during Business Hours; and
 - (b) the Supplier shall be entitled to charge an overtime rate specified in Quotation which shall be, unless otherwise provided, calculated on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours.
- 8.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of any ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services.
- 8.4 Subject to other provisions in the Quotation, the Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 8.5 The Supplier shall invoice the Customer for the Charges at the intervals specified in the Quotation. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 8.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- (b) the Supplier may suspend all or part of the Services until payment has been made in full.
- 8.8 All sums payable to the Supplier under this agreement:
- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. Intellectual property rights**
- 9.1 In relation to the Deliverables:
- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of a non-exclusive, licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.1(b).
- 9.2 In relation to the Customer Materials, the Customer:
- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.
- 9.3 The Supplier:
- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 13 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis)

and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

- (c) shall not be in breach of the warranty at clause 9.3(a), and the Customer shall have no claim under the indemnity at clause 9.3(b), to the extent the infringement arises from:
 - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
 - (ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions.

9.4 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in

the performance of this agreement of the Customer Materials.

9.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 9, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.3(b) or clause 9.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10. Compliance with laws and policies

10.1 In performing its obligations under this agreement, each party shall comply with the Applicable Laws.

10.2 Changes to the Services required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 7 (Change control).

11. Data protection

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 (Data protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under

the Data Protection Legislation. In the event that the parties have entered into a separate data protection agreement ("DPA") or similar, the provisions of this agreement shall take precedence in the event of any conflict.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, and in the context of processing of any personal data under this agreement, the Customer is the data controller and the Supplier is the data processor. The Quotation, or where relevant the DPA, sets out 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.

11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it:

- (a) collects all of the personal data fairly and transparently; and
- (b) has all necessary rights, permissions, consents and notices in place to enable the lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

11.4 The Customer shall indemnify and hold harmless the Supplier, its affiliates, officers, directors and employees in full against any and all losses incurred by it (or any of its Affiliates) arising out of or in connection with the Customer's breach of clause 11.3.

11.5 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Law to otherwise process that Personal Data. Where the Supplier is relying on the 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 Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed

and approved by the Customer, 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, pseudonymising 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);

- (c) without prejudice to clause 12 (Confidentiality), ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;
- (e) not transfer any personal data outside of the European Economic Area or United Kingdom unless adequate safeguards are in place ;
- (f) 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;
- (g) notify the Customer without undue delay on becoming aware of a personal data breach;
- (h) without prejudice to clause 15.1(c), 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 Law to retain the Personal Data, in which case the Supplier

- shall inform the Customer of such legal requirement; and
- (i) allow for audits by the Customer or the Customer's designated auditor in respect of the Supplier's data processing activities under this agreement, no more than once per calendar year and only in circumstances where the Customer has suspicions of a breach of this agreement.
- 11.6 The Supplier may, from time to time, appoint third party sub-processors, to process the Personal Data, provided that:
- (a) the Supplier shall impose on any such sub-processor obligations equivalent to those set out under this agreement;
- (b) the Supplier will remain liable (subject to the terms of the agreement) for any acts or omissions of any such sub-processor.
- 11.7 A list of the Supplier's sub-processors is as notified to the Customer or as otherwise set out on the Supplier's website or where relevant the DPA, as updated from time to time (the "**Relevant Sub-Processors**"). For the avoidance of doubt, the Customer hereby gives its approval to the Supplier appointing the Relevant Sub-Processors in relation to the Supplier's obligations under the agreement.
- 11.8 The Supplier may notify the Customer from time to time regarding any proposed changes to the list of Relevant Sub-Processors, offering the Customer the opportunity to object to such changes. Any objection to an amendment to the list of Relevant Sub-Processors may be escalated for discussion within 10 days after receipt of a notification of any change. If the parties are (acting reasonably) unable to resolve the objection and the Supplier informs the Customer that it nevertheless intends to appoint the Relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate this agreement upon written notice within one month of raising the objection.
- 11.9 In the event of any loss of, or damage to, any Customer Data, the Supplier shall use its reasonable endeavours to restore the lost or damaged Customer Data from the latest backup version of the Customer Data available to it. If the loss or damage was caused by the Supplier then it shall undertake such restoration at its own cost and expense, and in any other circumstances it shall be entitled to charge the Customer in respect of any time spent at its then standard rates.
- 11.10 The Supplier may, at any time on not less than 30 days' notice, revise this clause 11 (Data Protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 12. Confidentiality**
- 12.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 13. Limitation of liability**
- 13.1 **Background to the limits and exclusions on the Supplier's liability.** The Supplier has obtained professional indemnity insurance

- cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss, including any cyber insurance or other insurance which may be prudent for the Customer to obtain.
- 13.2 **Scope of this clause.** References to liability in this clause 13 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 **No limitations in respect of deliberate default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4 **No limitation of the Customer's payment obligations.** Nothing in this this clause 13 shall limit the Customer's payment obligations under this agreement.
- 13.5 **Liability under identified clauses.** Nothing in this agreement shall limit the Customer's liability under the following clauses:
- (a) clause 9.4 (IPR indemnities);
 - (b) paragraph 2.4 of Schedule 1 (TUPE indemnity); and
 - (c) clause 5.3 (Admin Access indemnity).
- 13.6 **Liabilities which cannot legally be limited.** Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.7 **Cap on the Supplier's liability.** Subject to clause 13.3 (No limitations in respect of deliberate default), clause 13.4 (No limitation on the customer's payment obligations), clause 13.5 (liability under identified clauses) and clause 13.6 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer:
- (a) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 11 (Data protection) shall not exceed £100,000; and
 - (b) for all other loss or damage which does not fall within subclause (a) shall not exceed 100% of the Charges paid.
- 13.8 **Specific heads of excluded loss.** Subject to clause 13.3 (No limitations in respect of deliberate default), clause 13.4 (No limitation on the customer's payment obligations), clause 13.5 (liability under identified clauses) and clause 13.6 (Liabilities which cannot legally be limited), this clause 13.8 specifies the types of losses that are excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 13.9 **Exclusion of statutory implied term.** The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 13.10 **No liability for claims not notified within 3 months.** Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14. Termination

14.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company,

partnership or limited liability partnership);

- (g) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(c) to clause 14.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer:
 - (i) fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (ii) does or causes to be done or omits to do something which causes or might reasonably be anticipated to cause:
 - (A) a security breach or increased risk of breach for the Customer or Supplier (including in respect of data processed under clause 11);

- (B) a change in the scope of Services which the Supplier has not agreed to in writing or any unexpected costs; or
- (b) there is a change of Control of the Customer.
- 14.3 Either party may terminate this agreement by 90 days written notice to the other prior to the end of the Initial Term or each Successive Period.
- 15. Obligations on termination and survival**
- 15.1 **Obligations on termination or expiry**
- On termination or expiry of this agreement:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services.
- 15.2 **Survival**
- (a) On termination or expiry of this agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 9 (Intellectual property rights), clause 12 (Confidentiality), clause 13 (Limitation of liability), clause 15 (Consequences of termination), clause 19 (Waiver), clause 21 (Severance), clause 23 (Conflict), clause 28 (Governing law) and clause 29 (Jurisdiction).
- (b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 16. Force majeure**
- 16.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, cyber attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.
- 16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for

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| | performance of such obligations shall be extended accordingly. | 19. | Waiver |
| 16.3 | The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. | 19.1 | A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. |
| 16.4 | The Affected Party shall: <ul style="list-style-type: none"> (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. | 19.2 | A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. |
| | | 19.3 | A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party. |
| 16.5 | If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party. | 20. | Rights and remedies |
| | | | The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law. |
| 17. | Assignment and other dealings | 21. | Severance |
| 17.1 | This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement. | 21.1 | If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. |
| 17.2 | The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement. | 21.2 | If any provision or part-provision of this agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision. |
| 18. | Variation | 22. | Entire agreement |
| | Subject to clause 7 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). | 22.1 | This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. |

- 22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- (b) sent by email to sales@ncitech.co.uk.
23. **Conflict**
- If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.
24. **No partnership or agency**
- 24.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
25. **Third party rights**
- 25.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 25.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
26. **Notices**
- 26.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) if delivered by hand, at the time the notice is left at the proper address;
- (c) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email to the email address set out in clause 26.1(b) and the Customer has received a response thereto from the Supplier with a ticket number. If this occurs outside business hours receipt will occur thereafter when business hours resume. In this clause 26.2(c), business hours means 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 26.2 Any notice or communication shall be deemed to have been received:
- 26.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
27. **Counterparts**
- 27.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
28. **Governing law**
- This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
29. **Jurisdiction**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Schedule 1 Employees

1. Employees

1.1 In this Schedule 1 the following definitions apply:

Effective Date: the date of this agreement.

Employees: those employees whose contract of employment transfer to the Supplier from the Customer as at the Effective Date, being those employees who are in the Employee List.

Employee Liability Information: in respect of each of the Employees:

a) the identity and age of the Employee;

b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;

c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;

d) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and

e) information about any collective agreement which will have effect after the Effective Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

Final Staff List: the list of individuals who are employed by the Supplier or a Supplier sub-contractor and are wholly or mainly assigned to the provision of the Services at the date of provision of the list (and for the avoidance of

doubt each of the individuals on this list is expected to transfer under the Employment Regulations to the Customer or a Replacement Supplier at the Service Transfer Date).

Inbound Employees: those employees whose names appear in the employee list (each of whom is, at the date of this agreement, employed by the Customer or an Outgoing Supplier and wholly or mainly assigned to services which will be replaced by the Services) other than those who object to the transfer of their employment to the Supplier or a Supplier sub-contractor or who are reassigned or redeployed before the Effective Date such that they are no longer wholly or mainly assigned to services which will be replaced by the Services.

Outgoing Supplier: means any supplier engaged by the Customer before the Effective Date to provide services which will be replaced by the Services.

Provisional Staff List: means a list prepared and updated by the Supplier of all of employees of the Supplier or Supplier sub-contractor (as the case may be) wholly or mainly assigned to the provision of the Services or any part of the Services at the date of preparation of the list.

Replacement Services: means any services which are identical or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Customer internally or by any Replacement Supplier.

Replacement Supplier: means any third party supplier of Replacement Services appointed by the Customer from time to time.

Service Transfer Date: means any date on which the Services (or any part of the Services) for whatever reason cease to be provided by Supplier and Replacement Services are instead provided by a Replacement Supplier.

Transferring Employee: means those employees whose names appear on the Final Staff List and whose contract of employment transfers to the Customer or a Replacement Supplier pursuant to the Employment Regulations on expiry or termination of this agreement or on termination in whole or part of any of the Services.

2. Employment Commencement Provisions

2.1 The parties do not believe that at the Effective Date the Employment Regulations apply. Notwithstanding the above, if the Employment

Regulations apply the provisions in paragraphs 2.2 to 2.5 shall apply, and the list of the Inbound Employees shall be appended as an Appendix (“**Employee List**”) to this agreement.

2.2 If the Employment Regulations apply, at the Effective Date, the Supplier will become the employer of the Inbound Employees.

2.3 The Customer represents, warrants and undertakes to the Supplier that:

- (a) as at the date of this agreement no persons are employed or engaged in the provision of the Services other than the employees listed in the Employee List;
- (b) it has provided the Supplier with full particulars of the terms of employment of all the employees listed in the Employee List (including all remuneration, incentives, bonuses, notice entitlements, pension entitlements, expenses and other payments and benefits whatsoever to which they may be entitled by virtue of their employment);
- (c) the employer of the employees listed in the Employee List has complied with its obligations to inform and consult representatives of the employees listed in the Employee List under the Employment Regulations;
- (d) the employer of the employees listed in the Employee List has not entered into any recognition agreement with a trade union, or done any act which may be construed as recognition, in relation to them;
- (e) there is no agreement, arrangement, scheme or obligation for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disability for the benefit of any of the employees listed in the Employee List or for the benefit of their dependants;
- (f) no amounts due to or in respect of any of the employees listed in the Employee List are in arrears or unpaid;
- (g) the employer has provided the Employee Liability Information to the Supplier regarding each of the employees listed in the Employee List;

(h) the Employee Liability Information contains information as at a specified date not more than fourteen days before the date on which the information was provided to the Supplier; and

(i) the Customer will notify the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided.

2.4 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier or Supplier sub-contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination of employment on or before the Effective Date of any of the employees listed in the Employee List;
- (b) anything done or omitted to be done on or before the Effective Date in respect of any of the Inbound Employees which is deemed to have been done or omitted to be done by the Supplier or a Supplier sub-contractor by virtue of the Employment Regulations; and
- (c) any assertion or claim by or on behalf of any person other than an Inbound Employee that they have become employed by (or a liability in connection with their employment has transferred to) the Supplier or a Supplier sub-contractor as a result of the application of the Employment Regulations on commencement of any of the Services;

provided that such costs, expenses and liabilities do not arise as a result of any act or omission of the Supplier or a Supplier sub-contractor.

2.5 All emoluments and outgoings (including without limitation salary, wages, bonuses, PAYE, National Insurance contributions, pensions and contributions to retirement benefit schemes) relating to the Inbound Employees shall be borne by the Customer to the extent that they relate to the period up to and including the Effective Date and by the Supplier to the extent that they relate to the period after the Effective Date and before the Service Transfer Date. However, there shall be no apportionment between the parties of accrued untaken holiday or holiday taken in excess of that which has accrued as at the Effective Date.

3. Employment Exit Provisions

3.1 If the Employment Regulations will apply on termination or expiry of this agreement or on termination in whole or part of any of the Services (a "**Service Transfer**"), then paragraphs 3.2 to 3.6 shall apply.

3.2 The Supplier agrees that, subject to compliance with the Data Protection Legislation:

- (a) within twenty days of the earliest of:
 - (i) receipt of notice of early termination of this agreement or of any of the Services or part thereof; or
 - (ii) the date which is three months before the expiry of the Term,

it shall provide to the Customer the Provisional Staff List and such information about the employees identified on that list as the Customer may reasonably require for the purpose of a tender process for a Replacement Supplier or, at the direction of the Customer, to a Replacement Supplier and it shall provide the Customers with updates to the Provisional Staff List and that information when reasonably requested by the Customer; and

- (b) at least twenty-eight days before the Service Transfer Date, it shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Supplier, the Final Staff List, and Employee Liability Information in respect of each of the individuals on the list.

3.3 In respect of each Service Transfer, from the date that notice is given to terminate this agreement or any of the Services or part thereof, or from the date which is three months before expiry of the Term (as applicable), the Supplier agrees that it shall not without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):

- (a) assign any person to the provision of the Services (or the relevant part) which is the subject of the Service Transfer who is not listed in its Provisional Staff List such that they may become wholly or mainly assigned to the Services;
- (b) make, propose or permit any changes to the terms and conditions

of employment of any employees listed on its Provisional Staff List;

- (c) redeploy anyone listed in the Provisional Staff List such that they cease to be wholly or mainly assigned to the provision of the Services;
- (d) terminate or give notice to terminate the employment (other than for gross misconduct) of anyone listed in the Provisional Staff List.

3.4 In connection with a Service Transfer which gives rise to a relevant transfer under the Employment Regulations, the parties agree that:

- (a) the Supplier shall indemnify the Customer in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Customer or Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - (i) the termination of employment on or before the Service Transfer Date of any of the employees listed in the Final Staff List;
 - (ii) anything done or omitted to be done by the Supplier or a Supplier sub-contractor on or before the Service Transfer Date in respect of any of the Transferring Employees which is deemed to have been done or omitted to be done by the Customer or a Replacement Supplier by virtue of the application of the Employment Regulations on the Service Transfer Date; and
 - (iii) any assertion or claim by or on behalf of any person other than a Transferring Employee that they have become employed by (or a liability in connection with their employment has transferred to) the Customer or a Replacement Supplier as a result of the application of the Employment Regulations on a Service Transfer Date;

provided that such costs, expenses and liabilities do not arise as a result of any act or

omission of the Customer or a Replacement Supplier.

- 3.5 Subject to paragraphs 2.4 and 2.5, all emoluments and outgoings (including without limitation salary, wages, bonuses, PAYE, National Insurance contributions and contributions to retirement benefit schemes) relating to the Transferring Employees shall be borne by the Supplier to the extent that they relate to the period up to but not including the Service Transfer Date and by the Customer to the extent that they relate to the period on and after the Service Transfer Date. However, there shall be no apportionment between the parties of accrued untaken holiday or holiday taken in excess of that which has accrued as at the Service Transfer Date.
- 3.6 The parties shall comply with their respective obligations to inform and consult with employee representatives under the Employment Regulations in connection with a Service Transfer.