

## GENERAL TERMS AND CONDITIONS

### BETWEEN:

- (1) **the customer**, a company registered in England (the “**Company**”); and
- (2) **Xicon Limited**, a BCN Group company (the “**Supplier**”).

### IT IS AGREED as follows:

#### 1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation shall apply in this Agreement:

- a) all defined terms used in this Agreement formed under it shall have the meaning given to them in Schedule 1;
- b) unless the context otherwise requires, any gender includes all genders; the singular includes the plural and vice versa; and a reference to a person includes firms, partnerships, LLPs, associations, corporations, and bodies corporate;
- c) a reference to a party shall include its permitted successors and assigns;
- d) a reference to any enactment, order, regulation, code, standard, policy or other instrument shall be construed as a reference to the same as amended, replaced, consolidated or re-enacted from time to time;
- e) a reference to this Agreement includes all Statement of Works, Service Schedules, Service Operating Manuals and Orders made under this Agreement;
- f) a reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document;
- g) a reference to any clause, schedule, appendix or paragraph is a reference to such Clause, Schedule, Appendix or paragraph to or of this Agreement;
- h) headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- i) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- j) any words following the terms including, include, for example (or similar) shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms, and so that any examples that are given are not to be exclusive or limiting examples of the matter in question; and
- k) if there is any conflict between any document incorporated by reference to this Agreement, then such conflict will be resolved by giving precedence to such different parts of this Agreement in the following order of precedence:
  - (i) the provisions contained in the Order;
  - (ii) the Statement of Works including all documents specifically referred to therein;

- (iii) the Services Schedules including all documents specifically referred to therein;
- (iv) this Agreement including all documents specifically referred to therein; and
- (v) the Service Operating Manual.

## **2. BASIS OF THIS AGREEMENT**

- 2.1 This Agreement governs the overall relationship of the parties in relation to the Services provided by the Supplier to the Company.
- 2.2 The Supplier shall provide the Services to the Company on and subject to the terms and conditions of this Agreement.
- 2.3 The Services supplied by the Supplier to the Company may be subject to service specific terms and conditions from time to time in relation to the Company's access and/or use of the Services due to the nature of the Services or because the Supplier provides the Services as a reseller for a Related Service Provider. Such service specific terms shall be set out in the Statement of Work and/or Service Schedule.
- 2.4 Any Order signed by both parties constitutes an offer by the Company to purchase the Services in accordance with the terms of this Agreement.
- 2.5 Each Order and Statement of Work shall form a separate contract made between the Company and the Supplier. The Service Operating Manual shall be a reference document only.
- 2.6 The Company acknowledges that certain Services may be provided by Related Service Providers as part of a multi-supplier environment where the Supplier acts as a reseller of the Services. Accordingly, the Company will co-operate with and assist each such Related Service Provider.
- 2.7 The terms and conditions set out in this Agreement apply to the exclusion of any other terms that the either party seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.8 No addition to, variation of or exclusion of any term of this Agreement shall be binding on either party unless in writing and signed by a duly authorised representative of each party or is processed through the Supplier's online ordering system.

## **3 AGREEMENT TERM AND RENEWAL**

- 3.1 Subject to Clause 3.3, this Agreement shall commence on the Effective Date and unless terminated earlier in accordance with its terms, shall continue until the Expiry Date ("**Initial Term**"). The Term of this Agreement shall automatically be extended for 1 year ("**Renewal Term**") at the end of the Initial Term and at the end of each Renewal Term unless the Company has provided at least 3 months' prior written notice of its intention to terminate this Agreement, such notice to expire no later than the expiry of the Initial Term or the Renewal Term, as appropriate.

- 3.2 The Expiry Date is calculated as follows:
- a) for the Initial Term: the Expiry Date is the Initial Term Start Date plus the number of months specified in the Order form or Statement of Work as applicable; and
  - b) for the Renewal Term: the Expiry Date is the Renewal Term Start Date plus either:
    - (i) 12 months if the Initial Term or Renewal Term is automatically renewed, as defined in Clause 3.1; or
    - (ii) the number of months specified in the Order form or Statement of Work for the Services being renewed.
- 3.3 If applicable, each Statement of Work shall commence on its Statement of Work Commencement Date and shall continue, unless previously terminated or renewed according to the terms of the Statement of Work, until the expiry date stated in the Statement of Work.

#### **4 SERVICES AND SUPPLIER OBLIGATIONS**

- 4.1 The Services shall be provided from the Service Live Date or in accordance with any Project Plan referred to in the Statement of Work.
- 4.2 In supplying the Services, the Supplier shall:
- a) perform the Services in accordance with Good Industry Practice;
  - b) perform the Services in all material respects in accordance with the Service Levels;
  - c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
  - d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Agreement; and
  - e) comply with all applicable Laws.
- 4.3 Save as expressly provided in this Agreement, all conditions, warranties and other terms express or implied are strictly excluded to the fullest extent permitted by law. In particular the Supplier does not give any warranties, guarantees or assurances regarding the performance of the Services (including Equipment provided as part of the Services) when used with, or run in conjunction with, any particular operating systems and/or software of the Company or any third parties.

#### **5 EQUIPMENT**

- 5.1 Where the Services include the sale of Equipment by the Seller as set out in the applicable Order or Statement of Work, risk in the Equipment will pass on delivery, from which date Charges will apply, but title and property in the Equipment shall not pass until the Charges have been paid in full by the Company.

- 5.2 Until title and property to the Equipment has passed to the Company, the Company shall:
- a) not remove, deface or obscure any identifying mark on or relating to the Equipment;
  - b) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
- 5.3 The Supplier may make, and the Company will accept, partial delivery of the Equipment. Each delivery shall be considered to be the subject of a separate contract and failure by the Supplier to make one or more deliveries in accordance with such contract shall not entitle the Company to treat this Agreement as a whole as repudiated.
- 5.4 The Company will be deemed to have accepted the Equipment provided by the Supplier once provided or delivered, unless within 3 days of provision or delivery, the Company notifies the Supplier in writing of specific deficiencies, shortages or discrepancies in the Equipment delivered.
- 5.5 The Company acknowledges that the Supplier has not manufactured the Equipment and the Company shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer of the Equipment.

## **6 COMPANY OBLIGATIONS**

- 6.1 The Company shall:
- a) use reasonable endeavours to co-operate with the Supplier in all matters relating to the Services and comply timeously with its obligations under this Agreement;
  - b) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Company's premises, and provide any additional related information as requested by the Supplier; and
  - c) comply with all applicable Laws.

## **7 COMPANY DEPENDENCIES**

- 7.1 The Company acknowledges that the Supplier is dependent upon the Company fulfilling the Company Dependencies in order for the Supplier to deliver the Services and satisfy its obligations under this Agreement.
- 7.2 The Company shall:
- a) provide the Supplier with access to appropriate members of staff and nominated third parties;
  - b) provide such Documentation, data and/or other information that the Supplier requests that is necessary to perform its obligations in a timely manner;
  - c) promptly notify the Supplier of any proposed change to the agreed requirements set out in this Agreement, such change to be agreed in writing between the parties;

- d) provide any consents, instructions or approvals promptly;
- e) where the Company does not give its written approval, sign off, authority to proceed or similar, provide the Supplier with its reasons for not doing so; and
- f) procure for the Supplier such access and use of the Company's premises and facilities, systems, software, licences and computing environment.
- g) provide such information as the Supplier may reasonably request in order to carry out the Services in a timely manner and ensure such information is complete and accurate in all material respects;
- h) ensure that Company Materials are properly maintained and operating and are free from any defects;

7.3 Further Company Dependencies which are specific to the Services shall be set out in the Order, Statement of Work and/or Service Schedule as applicable.

7.4 In the event the Company fails to meet a Company Dependency then:

- a) the parties shall work together to mitigate the impact of such failure and if necessary shall agree a change to this Agreement to deal with the impact of such failure, including revising any Project Plan, timescales and Charges;
- b) the Supplier may charge for such additional costs incurred;
- c) the Supplier may raise an interim invoice for any work already completed; and
- d) the Supplier shall not be liable for any delay, failure to comply with the terms of this Agreement, failure to deliver a Deliverable, failure to meet any Service Levels or any Losses incurred by the Company or any third party as a result of the Company's failure to meet the Company Dependency and the Company shall not be entitled to exercise any rights as a result of such failure.

## **8 LICENCES**

8.1 Subject to the terms and conditions of this Agreement, the Supplier grants to the Company and each Group Company a non-exclusive, non-transferable irrevocable, non-transferable and royalty-free licence to use the Services (including the Supplier Application and Documentation specified in a Statement of Work) for the purpose of carrying out the business of the Company or any Group Company (as applicable).

8.2 If the Supplier has agreed to install, patch or otherwise manage software for the Company in reliance on the Company's licence with a software vendor (other than the Supplier's licence with such software vendor), then the Company represents and warrants that it has a written licence agreement with the software vendor that permits the Supplier to perform these activities. On the Supplier's request the Company must immediately certify in writing that it is in compliance with the requirements of this Clause 8 and any other software licence.

8.3 If the Company fails to provide the required evidence of licensing, the Supplier may, at its option:

- a) charge the Company the standard fee for the use of the software in reliance on the Supplier's licensing agreement with the vendor until such time as the required evidence is provided;
- b) carry out a chargeable audit into the licensing arrangements of the Company on providing the Company with reasonable prior notice; or
- c) suspend or terminate this Agreement.

8.4 In the event of termination or expiry of this Agreement, the licence granted pursuant to Clause 8.1 shall terminate automatically on the date of such termination or expiry and the Company shall immediately cease all use of any Supplier Intellectual Property Rights and if so required by the Supplier, return or destroy documents and materials that contain any of the Supplier Intellectual Property Rights.

## **9 DISPUTE RESOLUTION**

9.1 In the event that a Dispute arises between the parties, either Representative may, on reasonable notice to the other, call a meeting of the Representatives in order to seek a resolution of the issue in question.

9.2 If the Representatives, acting in good faith, have not reached a resolution of the issue in question within 10 Business Days of the calling of the meeting referred to in Clause 9.1 (or earlier if both Representatives agree) the issue in question shall be referred, on the application of either party, to the senior management of the Company and the Supplier.

## **10 AUDIT AND INSPECTION**

10.1 Without prejudice to the Supplier's rights pursuant to Clause 8.3b), for the purpose of ensuring the Supplier's and Company's compliance with this Agreement, each party shall permit Auditors to conduct an audit during the Term provided the party requesting the audit has given at least 2 weeks' prior written notice.

10.2 Audits will be conducted during normal business hours on a Business Day and the Auditors shall at all times comply with the safety and security rules and regulations of the party subject to the audit.

10.3 The party requesting the audit agrees to reimburse the party being audited for all costs reasonably incurred in complying with any audit request.

10.4 Audits may not be conducted more frequently than once in any 12 month period unless required by Law.

10.5 The party requesting the audit shall procure that the Auditors shall, when conducting an audit, minimise any disruption to the business of the party being audited and that the Auditors will operate under a duty of confidence in relation to information disclosed for the purposes of such audit.

## **11 ACCEPTANCE TESTING**

- 11.1 Where the Statement of Work states that Services and/or Deliverables shall be subject to acceptance testing, then this Clause 11 (and the applicable terms of the relevant Statement of Work) shall apply.
- 11.2 The acceptance criteria and test data which are required to show that the Deliverables comply with any pre agreed specifications in the Order or Statement of Work for the Acceptance Tests shall be agreed by both parties in writing (“**Acceptance Criteria**”).
- 11.3 The Supplier shall carry out the agreed Acceptance Tests for the Deliverables as soon as reasonably possible.
- 11.4 If any part of the Deliverables fails to pass the Acceptance Tests, the Company will, within 48 hours from the completion of the Acceptance Tests, provide a written notice to the Supplier giving details of such failure(s). The Supplier will use reasonable endeavours to remedy the failures and the relevant Acceptance Tests will be repeated within a reasonable time.
- 11.5 If any part of the Deliverable fails in a material respect to pass the Acceptance Criteria, then the Company may either:
- a) accept the Deliverable subject to such change of Acceptance Criteria; or
  - b) reject the Deliverable as not being in conformity with this Agreement, and the parties will review and revise the Deliverables and Project Plan where appropriate.

## **12 CHARGES AND PAYMENT**

- 12.1 In consideration of the Supplier performing its obligations under this Agreement the Company shall pay the Charges for the Services.
- 12.2 The Supplier may invoice the Company in advance for the Charges in accordance with the payment dates referred to in a Statement of Work, Service Schedule or the Order. If not specified the Charges shall be invoiced on the following basis:
- a) Equipment shall be invoiced on dispatch;
  - b) Statement of Works shall be invoiced either:
    - (i) for Development projects, 50% of the total project Charges as set out in the Statement of Works on Order signature, with the remaining balance paid either:
      - (A) on completion of Milestones on either a fixed cost or time incurred basis, as set out in the Statement of Work; or
      - (B) if there are no applicable Milestones, on a time and materials basis, and monthly in arrears based on time incurred.
    - (ii) on completion of Milestones on either a fixed cost or time incurred basis, as set out in the Statement of Work; or
    - (iii) if there are no applicable Milestones, on a time and materials basis, and monthly in arrears based on time incurred.

- c) Services shall be invoiced monthly in advance, unless stated otherwise in the Order;
- d) third party software licences invoiced on the later of the date of purchase or charge incurred by the Supplier from the Related Service Provider; and
- e) third party network services invoiced on the date of activation.
- f) Expenses incurred will be invoiced in arrears as incurred at cost.

12.3 Where a Statement of Work Commencement Date has been agreed and the Company;

- a) requests to change Statement of Work Commencement Date, or
- b) requests to cancel the work, or
- c) is unable to meet the Company Dependencies as set out in this Agreement, which would therefore require the Company to request a change in the Statement of Work Commencement Date,

and where the Supplier is unable to reasonable redeploy the resources that have been allocated to carry out the work, the Supplier will, in its sole discretion, reject the request. Should the Company not allow the work to be carried on the originally agreed Statement of Work Commencement Date the Supplier will be entitled to invoice the Company for the relevant work as follows

- a) notice of 4 weeks or more – 0% payable;
- b) notice of 7 Business Days but less than 4 weeks' notice – 50% payable;
- c) notice of 4 Business Days to 6 Business Days – 75% payable;
- d) notice of less than 1 Business Day to 3 Business Days – 100% payable.

12.4 Invoices issued by the Supplier will:

- a) be valid tax invoices for the purposes of VAT legislation and be invoiced in pounds sterling;
- b) identify the parties, specify the Services to which the invoice relates and include the purchase order number or other reference number that may have been provided by the Company to the Supplier in connection with this Agreement and/or Statement of Work; and
- c) be sent to the address as may be notified to the Supplier from time to time.

12.5 The Company shall pay Charges for the Services by direct debit and within 30 days following receipt of a valid invoice from the Supplier, provided that day is a Business Day, otherwise the next Business Day after such date, unless different payment terms are agreed by the parties in the Statement of Work or the Order.

12.6 The Customer must maintain a valid direct debit mandate for the Term.

12.7 The Supplier reserves the right to charge an additional sum of 10% of the Charges in the event the Customer fails to maintain a valid direct debit mandate and thereafter fails to reinstate the direct debit mandate within 14 days of receipt of notice from the Supplier.



- 12.8 If any undisputed sum payable under this Agreement is not paid when due then the Supplier may claim interest from the due date until payment is made in full both before and after any judgment, at 5% per annum over the Bank of England Bank Rate from time to time but at 5% a year for any period where the Bank Rate is below 0%.
- 12.9 Any sum payable is exclusive of VAT which shall be payable in addition to that sum, and all payments by the Company shall be made without deduction or set off of any amount.
- 12.10 The Supplier shall be entitled to increase the Charges in respect of:
- a) any increase in the consumer price index which impacts the Suppliers costs in delivering the Services (excluding any increases defined in paragraph 12.10b) whereby the Charges may be increased by the same percentage as the increase in the consumer price index, such change would be applied annually on the anniversary of this Agreement;
  - b) any increase in price by a Related Service Provider including a third party licence or third party software provider, network provider, or any third party supplier of Equipment (for the avoidance of doubt any Equipment quoted for will remain at the price quoted for so long as the Order remains valid), in all cases which is used solely for the provision of the Services; and
  - c) any increase in the volume of the Services, licences or support being provided by the Supplier.

### **13 INSURANCE**

The parties shall for the duration of the Term each maintain adequate insurance cover against all risks which would normally be insured against by a prudent business, its property, directors and employees. Evidence of such insurance shall be provided on request by the other party.

### **14 TERMINATION**

- 14.1 Either party may by written notice (of such period as shall be set out in that written notice) served on the other party terminate this Agreement if:
- a) the other party is the subject of an Insolvency Event;
  - b) the other party materially breaches its obligations under this Agreement (which shall include non-payment, as defined in Clause 12, of any Charges due under this Agreement and failure to maintain a valid direct debit mandate) and does not fix such breach within 30 days of receiving written notice to do so.
- 14.2 The Company will be entitled to terminate this Agreement where there are more than 4 Business Critical Service Failures in any rolling 12 month period. The Company must give notice in writing of its intent to terminate this Agreement stating clearly that this Clause and the relevant business critical service failures, and must do so within 30 days of the last business critical service failure. Where such notice is not provided the Company acknowledges that it will no longer be entitled to terminate this Agreement

under this Clause for the stated business critical service failures. In all circumstances the Supplier must be given the opportunity to remedy the failures and that the Company reasonably accepts these remedies in lieu of termination.

14.3 If a Statement of Work or Service Schedule survives the expiry or termination of this Agreement, the terms of this Agreement will continue in force for the purpose of that Statement of Work, notwithstanding their expiry or termination for other purposes.

## **15 EFFECT OF TERMINATION OF THIS AGREEMENT**

15.1 In the event of termination or expiry of this Agreement:

a) with effect from the Expiry Date, the Supplier shall cease to use the Company Materials, Company Data and the Company's Confidential Information and shall destroy all copies of the Company Data. Where requested in writing the Supplier will retain the Company Data for a maximum of 2 weeks beyond the Expiry Date. If the Company has requested in writing, and the Supplier has agreed to retain the Company Data beyond the 2 weeks, the Supplier will do so for such agreed period after termination provided that:

- (i) the Company has signed a new Order for the retention of the Company Data;
- (ii) the Company pays the Supplier for the retention of the Company Data at the Supplier's then prevailing rates;
- (iii) the Supplier shall be entitled to invoice in advance for such retention that it considers reasonable, the Order will state such provision;

b) this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination, in particular in respect of Statements of Work that may be continuing or any retention of Company Data pursuant to Clause 15.1a) above; and

c) the rights of either party accrued on or prior to termination or expiry shall remain unaffected.

15.2 Upon termination of this Agreement by the Company for any reason other than those under Clause 14.1, 14.2 and 17, the Company shall pay any Charges remaining unpaid for Services in accordance with this Agreement up to the end of the Term.

15.3 Upon early termination of this Agreement as a result of any of the termination events occurring under Clause 14.1, 14.2 and 17, the Company shall pay any Charges remaining unpaid for Services in accordance with this Agreement up to the termination date. Where the Supplier is committed to pay licensing, network and connectivity charges with third party suppliers beyond the date of termination, then the Company will continue to pay such charges until those commitments come to an end. The Supplier will use reasonable endeavours to mitigate these commitments, or transfer the commitments to the Company.

## **16 HANDOVER / EXIT**

16.1 If the Company has requested in writing in accordance with Clause 28, for the Supplier to provide assistance in relation to transitioning the terminated Services, the Supplier will use reasonable efforts to provide the assistance requested for such agreed period after termination provided that:

- a) the Company pays the Supplier for its assistance at the Supplier's then prevailing time and materials rates;
- b) the Supplier shall be entitled to invoice in advance for such part of the anticipated assistance that it considers reasonable; and
- c) where the transition is to an alternative provider that provider shall have entered into with the Supplier confidentiality undertakings in form and substance reasonably acceptable to the Supplier
- d) the Supplier will not be obliged under this Agreement to provide any assistance where in the Suppliers reasonable opinion providing such assistance would impact the Suppliers competitive position;
- e) the Supplier will not be obliged to make available any Supplier intellectual property or confidential information to the Company or any alternative provider as part of the transitioning of the terminated services. If the Supplier reasonably believes it would disclose such information in delivering such assistance the Supplier will have the right to decline to provide such assistance.

## **17 FORCE MAJEURE**

17.1 Neither party shall be in breach of this Agreement or otherwise liable to the other party for any failure to perform or delay in performing its obligations under this Agreement and either party reserves the right to defer the date of provision of the Services if either party is prevented from or delayed in performing its obligations under this Agreement due to a Force Majeure Event.

17.2 If the Force Majeure Event in question continues for a continuous period in excess of 30 days, either party shall be entitled to terminate this Agreement (or such part of this Agreement affected by such event) immediately by giving notice in writing to the other party.

## **18 WARRANTIES AND REPRESENTATIONS**

18.1 Each party represents and warrants to the other that:

- a) it has full power and capacity to execute, deliver, and perform its obligations under this Agreement;
- b) it has entered into this Agreement in reliance upon its own enquiries, investigations and other due diligence;
- c) it has, and will maintain, all licenses and consents that it requires in order to perform its obligations under this Agreement; and

- d) at the Effective Date there are no actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against it before any court or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under this Agreement.

## **19 INDEMNITIES**

19.1 Each party shall indemnify the other against all liability arising in relation to any infringement of any Intellectual Property Rights of any third party in connection with any software or materials provided by the other party in the performance of the Services. This indemnity will not apply where such software or materials are used:

- a) in combination with other materials not previously approved in writing by the other party; and/or
- b) otherwise than in accordance with this Agreement.

19.2 In relation to the indemnities at Clauses 19.1, the party being indemnified (the “**Indemnitee**”) must notify the other party (the “**Indemnitor**”) promptly of the claim and provide the Indemnitor with all information relating to it. The Indemnitor shall have exclusive control over all negotiations and litigation and the Indemnitee will grant all reasonable assistance to the Indemnitor in the defence of such claim.

19.3 The parties acknowledge that the indemnities provided in this Clause 19 are in addition to the indemnities provided in Clause 33.

## **20 LIABILITY**

20.1 Neither party excludes nor limits its liability (if any) to the other:

- a) for personal injury or death caused by its negligence;
- b) for breach of Clause 24; or
- c) for fraud or fraudulent misrepresentation.

20.2 Subject to Clause 20.1, the Suppliers maximum aggregate liability arising out of or in connection with this Agreement, whether in contract (including in respect of any indemnities contained in this Agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of an individual Service will be limited to a sum equal to 100% of the Charges paid by the Company for that individual Service under this Agreement during the Agreement Year immediately preceding the date on which the claim arose.

20.3 Subject to Clause 20.1, neither party shall have any liability to the other party for:

- a) any damages for lost profits, lost revenues, loss of data, anticipated savings, in each case whether direct or indirect (and regardless of whether either party has been advised of the possibility of such losses or damages); or
- b) any special, indirect or consequential loss however arising under this Agreement.

## **21 INTELLECTUAL PROPERTY**

- 21.1 The Company shall not acquire any right, title or interest in the Intellectual Property Rights of the Supplier or its licensors which shall be the exclusive property of and shall vest in the Supplier or its licensors (as appropriate).
- 21.2 All rights, title and interest (including all Intellectual Property Rights) in and to the Company Materials shall be the exclusive property of and shall vest in the Company.
- 21.3 The Company hereby authorises the Supplier to use any Intellectual Property Rights in materials provided to the Supplier by the Company for the purposes only of performing its obligations under this Agreement. The Supplier will have no other rights in respect of the Intellectual Property Rights of the Company or the Intellectual Property Rights in any materials provided to the Supplier by the Company.
- 21.4 All Intellectual Property Rights in the Developed Software (including all Intellectual Property Rights in all source code of that Developed Software), Deliverables or works otherwise created as part of and arising from the provision of the Services are owned and shall remain owned by the Supplier but the Company is hereby granted a non-exclusive, non-transferable licence to copy and use such Developed Software and Deliverables for its own internal purposes. The Developed Software and Deliverables may only be disclosed to third parties with the Supplier's prior written consent.
- 21.5 The Company shall be responsible for all third party software provided to or licensed to the Supplier as part of the Company software, being any software which is owned or licensed by the Company (other than pursuant to this Agreement) which is used or will be used by the Supplier in providing the Services.
- 21.6 The parties agree that all source code in respect of any Developed Software shall be held in a source management system to be agreed by the Company and that within 14 days of a request by the Company, the Supplier shall:
- a) deliver a copy of the source code of the Developed Software and such other material and Documentation as is necessary (including any technical information, password/encryption details required to access the Developed Software, updates and upgrades thereto and new versions thereof) ("**Source Code**") to the Company; and
  - b) deliver a further copy of the Source Code to the Company each time that there is a change to the Developed Software.

## **22 DATA PROTECTION**

- 22.1 In respect of any Personal Data Processed by the Supplier on behalf of the Company in the performance of the Services, the parties acknowledge and agree that the Company shall be the Controller and the Supplier shall be the Processor.
- 22.2 In respect of such Processing, the Supplier undertakes that it will:

- a) Process the Personal Data solely on the Company's lawful, documented instructions (as set out in this Agreement) and for the purpose of performing the Services;
- b) take appropriate technical and organisational measures to prevent unauthorised or unlawful Processing or, accidental loss or destruction of or damage to such Personal Data including all such measures required by Article 32 of the UK GDPR;
- c) take reasonable steps to ensure the reliability of the Supplier Personnel who may have access to the Personal Data, and ensure those Supplier Personnel are subject to binding obligations of confidentiality;
- d) promptly any in any event within 5 Business Days of receipt, notify the Company of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from the Information Commissioner's Office) of which the Supplier is aware, relating to either Party's obligations under the Data Protection Laws in respect of the Personal Data;
- e) notify the Company without undue delay upon becoming aware of a Personal Data Breach;
- f) provide reasonable assistance to the Company on request in relation to:
  - (i) any communication received under Clause 22.2d); and
  - (ii) any Personal Data Breach,including by implementing appropriate technical and organisational measures;
- g) cease Processing of the Personal Data upon expiry or earlier termination of this Agreement and upon the Company's request, either return to the Company or securely delete the Personal Data; and
- h) permit the Company or its Representatives (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and subcontractors) and comply with all reasonable requests or directions by the Company to enable it to verify that the Supplier is in full compliance with its obligations under this Clause 22.

22.3 The Company acknowledges and agrees that:

- a) the Supplier shall be generally authorised to appoint third parties to Process the Personal Data ("**Sub-Processor**") subject to the Supplier notifying the Company of its intended appointment and/or replacement of Sub-Processors and otherwise meeting the conditions set out in Article 28(2) and (4) of the UK GDPR; and
- b) the Personal Data may be transferred or stored outside the United Kingdom in order to carry out the Services and the Supplier's other obligations under this Agreement. The Supplier will take such steps as are necessary to ensure this Processing is in accordance with Data Protection Laws.

- 22.4 The Company shall comply at all times with its obligations under the Data Protection Laws in connection with this Agreement.
- 22.5 Without prejudice to Clause 22.4, the Company shall ensure that:
- a) it is entitled to transfer the relevant Personal Data to the Supplier so that the Supplier may use, Process and transfer the Personal Data in accordance with this Agreement, on the Company's behalf; and
  - b) all relevant Data Subjects have been informed of, and, where required, have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Laws.
- 22.6 Unless otherwise specified within the relevant Service Schedule and/or Statement of Work, the subject matter, and nature and purpose of the Processing of Personal Data by the Supplier shall be limited to such Processing as is necessary to deliver the relevant Services, and the categories of Data Subject and Personal Data types will be determined by the nature of the Company's use of the relevant Services but may include the name and other personal identifiers of current and former employees, customers and suppliers of the Company.
- 22.7 The provisions of this Clause 22 shall continue in force notwithstanding the termination or expiration of this Agreement.

## **23 COMPANY DATA**

- 23.1 Without prejudice to Clause 22, the Supplier shall not (and shall procure that the Supplier Personnel do not) store, copy, disclose, or use the Company Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise provided for by this Agreement.
- 23.2 Upon receipt or creation by the Supplier of any Company Data and during any collection, processing, storage and transmission by the Supplier of any Company Data, the Supplier shall take all precautions necessary to preserve the integrity of the Company Data and to prevent any corruption or loss of the Company Data.

## **24 CONFIDENTIALITY**

- 24.1 During the Term of this Agreement, the Company and the Supplier will need to disclose to the other Confidential Information. The Confidential Information is being provided for the sole purpose of the Supplier performing its obligations under this Agreement and is not to be used for any other purpose. For the purposes of this Clause 24, the term "**Disclosing Party**" shall mean a Party which discloses or makes available its Confidential Information and "**Recipient**" shall mean the Party which receives the Confidential Information.
- 24.2 Confidential Information does not include any information that:
- a) is or becomes publicly available (other than as a result of its disclosure by the Recipient in breach of this Agreement);

- b) was lawfully in the Recipient's possession free of any duty of confidentiality before the information was disclosed to it;
  - c) is independently developed by the Recipient without reference to Confidential Information of the Disclosing Party; or
  - d) the parties agree in writing is not confidential or may be disclosed.
- 24.3 The Recipient will keep the Confidential Information confidential and will not without the prior written consent of the Disclosing Party, disclose (directly or indirectly) or reveal the Confidential Information or any part of it to any person other than its Representatives which need to see such Confidential Information and the Recipient shall not use the Confidential Information for any purpose other than the proper performance of this Agreement. In addition, the Recipient agrees to reveal the Confidential Information only to those of its Representatives who need to know the Confidential Information for the purposes of this Agreement and who are informed by the Recipient of the confidential nature of the Confidential Information.
- 24.4 The Recipient agrees to use, and to cause its Representatives to use, the same degree of care that it uses to protect its own confidential and proprietary information to prevent unauthorised, use, disclosure, publication or dissemination of the Confidential Information, but in no event less than a reasonable degree of care.
- 24.5 The Recipient shall be liable under this Agreement for the acts and/or omissions of its employees, officers, agents and sub-contractors as if they were the acts and/or omissions of the Recipient.
- 24.6 If the Recipient or anyone to whom it is entitled to transmit the Confidential Information becomes required by Law to disclose any of the Confidential Information, the Recipient shall, if legally permitted, provide prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Clause.
- 24.7 The Recipient will not make, keep or reproduce any document or part of a document comprised in the Confidential Information without the prior written consent of the Disclosing Party, provided that the Recipient will be entitled to reproduce the Confidential Information without consent strictly to the extent necessary for its proper performance of this Agreement and provided it is kept securely. Further, at the request of the Disclosing Party, the Recipient will promptly return to the Disclosing Party all Confidential Information and any documents and materials containing, reflecting, or based on the Confidential Information and/or will erase on request all Confidential Information from its computer systems, except for Confidential Information stored on disaster recovery archives (or similar platforms). The Recipient will be entitled to retain copies of the Confidential Information to the extent required by Law.
- 24.8 Without the prior written consent of the Disclosing Party, neither the Recipient nor its Representatives shall disclose to any person the fact that the Confidential Information



has been made available, that discussions or negotiations are taking place or have taken place concerning a transaction between the parties or any of the terms, conditions or other facts with respect to any such transaction, including the status of any such transaction.

- 24.9 The Disclosing Party reserves all rights in the Confidential Information. The Disclosing Party does not make any express or implied warranty or representation concerning the Confidential Information, or the accuracy or completeness of the Confidential Information and the Disclosing Party expressly disclaims any and all liability that may be based on the Confidential Information or any errors therein or omissions therefrom.

## **25 INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies the Company may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, the Company shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## **26 ASSIGNMENT**

- 26.1 Neither party may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the other party, neither party to unreasonable withhold consent..

## **27 VARIATION**

A variation of this Agreement shall only be effective if it is in writing and signed by both parties (or their Representatives).

## **28 NOTICES**

- 28.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier.
- 28.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 28.1 if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 28.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

## **29 SEVERANCE**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.

**30 WAIVER**

A waiver of any right or remedy under this Agreement or Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or Default. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**31 NO PARTNERSHIP AND AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**32 THIRD PARTIES**

A person who is not a party to this Agreement shall not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

**33 TUPE**

33.1 The parties acknowledge that TUPE is not intended to apply to the commencement of the Services (or any Services) by the Supplier.

33.2 Notwithstanding Clause 33.1, if there is deemed or alleged to be a relevant transfer for the purposes of TUPE upon the commencement of the Services (or any Services) under the Agreement (whether from the Company or a Group Company or a previous supplier as the case may be) such that the employment or engagement or any liability regarding the employment or engagement of any person is found or alleged to transfer to the Supplier or any Related Service Provider or Subcontractor:

- a) The Supplier will notify the Company of the transfer or alleged transfer and thereafter may terminate, give notice to terminate or procure the termination of the employment or engagement of such person at any time within 28 days of becoming aware of the transfer or alleged transfer;
- b) The Company shall indemnify and keep the Supplier (for itself and on behalf of any relevant Related Service Provider or Subcontractor) indemnified for and

against all and any Losses and Employment Costs suffered or incurred by the Supplier (directly or through an indemnity given to a Subcontractor or Related Service Provider), Related Service Provider or Subcontractor arising out of or in connection with:

- (i) the employment or engagement and/or termination of employment or engagement of such person in respect of any period prior to the date of the actual or alleged transfer;
  - (ii) any failure by the Company or previous supplier to comply with its obligations under Regulation 13, 14 or otherwise of TUPE;
  - (iii) the termination of such person's employment or engagement in accordance with Clause 33.2 a); and
  - (iv) the Employment Costs in relation to such person in respect of the period from the date of such actual or alleged transfer to the date of termination of such person's employment or engagement in accordance with Clause 33.2 a);
- c) In the event that the Supplier (or relevant Related Service Provider or Subcontractor) does not exercise its right under Clause 33.2 a) and the actual Employment Costs relating to such person are or will be greater than those anticipated by the Supplier at the point the Charges for the relevant Services were agreed (whether as a result of the transfer of the person or relevant information not having been disclosed to the Supplier at the relevant time and/or an omission, error or change in relevant information) then there shall be a corresponding increase to the relevant Charges to ensure that the Supplier (or relevant Related Service Provider or Subcontractor) is reimbursed for the relevant Employment Costs or difference in them. The Supplier shall provide the Company with such information as the Company may reasonably request to demonstrate the difference in anticipated and actual Employment Costs for the purpose of this clause.

33.3 Where TUPE applies (or will apply) on termination or expiry of this Agreement, the Services (or any of the Services) to transfer the employment or any liability regarding the employment of any person employed by the Supplier, Related Service Provider or Subcontractor in connection with the relevant Services prior to the date of the relevant transfer ("**Transferring Supplier Personnel**");

- a) The Supplier shall (and shall procure that any relevant Related Service Provider or Subcontractor shall) comply with its obligations under Regulation 11 of TUPE in respect of the provision of information regarding Transferring Supplier Personnel;

- b) The Supplier shall indemnify and keep indemnified the Company for and against all and any Losses suffered or incurred by the Company (directly or through an indemnity given in like terms to a new supplier) arising out of or in connection with:
- (i) subject to Clause 33.2b) above and 33.3c)(iii) below, the employment and/or termination of employment of any Transferring Supplier Personnel by the Supplier, Related Service Provider and/or Subcontractor in respect of the period up to the relevant transfer; and
  - (ii) any failure by the Supplier, Related Service Provider or Subcontractor to comply with its obligations under Regulations 13 and 14 of TUPE in respect of any Transferring Supplier Personnel.
- c) The Company shall indemnify and keep the Supplier (for itself and on behalf of any relevant Related Service Provider or Subcontractor) indemnified for and against all and any Losses suffered or incurred by the Supplier (directly or through an indemnity given to a Subcontractor or Related Service Provider), Related Service Provider or Subcontractor arising out of or in connection with:
- (i) any failure by the Company or new supplier to comply with its obligations under TUPE including under Regulation 13(4) of TUPE;
  - (ii) the employment and/or termination of employment of any Transferring Supplier Personnel by the Company or new supplier in respect of any period on or after the relevant transfer;
  - (iii) any claim for constructive dismissal and/or under Regulation 4(9) and/or 4(11) of TUPE by any Transferring Supplier Personnel or any person who would be a member of the Transferring Supplier Personnel but for an objection to transferring under Regulation 4(7) of TUPE in any case as a result of any actual or anticipatory breach of contract or detrimental change to working conditions in relation to such person by the Company or new supplier.

#### **34 NON-SOLICITATION**

For the term of this Agreement and for the period of 12 months thereafter, without the prior written consent of the other party, neither party, or its affiliates, shall either directly or indirectly solicit or entice away, or seek or attempt to entice away, from the employment of the other party any person employed, or any person who has been so employed in the preceding 6 months, by such other party in the provision or receipt of the Services.

#### **35 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

**36 GOVERNING LAW AND JURISDICTION**

This Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed at all times in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

**37 MODERN SLAVERY**

The Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015, and have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance.

**38 ANTI-FACILITATION OF TAX EVASION**

The Supplier will not knowingly engage in any activity or conduct which would constitute or facilitate tax evasion (or any offence) whether in the UK or in any other jurisdictions, under the Criminal Finances Act 2017, and have and maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with this Clause 38.

**39 ANTI-BRIBERY AND ANTI-CORRUPTION**

The Supplier shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Relevant Requirements”), and have and maintain throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements.

## SCHEDULE 1 - DEFINITIONS

In this Agreement, the following definitions have the following meanings:

**Acceptance Criteria** has the meaning set out in Clause 11.2;

**Acceptance Tests** means the acceptance tests (if any) set out in a Statement of Work to test that the Deliverables operate in accordance with the requirements of the Application Specification, agreed configuration, Services description or any other requirement as specified in the relevant Statement of Work;

**Agreement** means the contract between the Supplier and the Company which consists of these general terms and conditions, the relevant Service Schedule, the relevant Statement of Work, the Order, the Service Operating Manual and any other documents expressly incorporated by reference;

**Agreement Year** means the period of 12 months from the Effective Date and each period of 12 months thereafter;

**Application Specification** means the specification of the Supplier Application as set out in the Statement of Work;

**Authorised Users** means those employees, agents and independent contractors of the Company who are authorised by the Company to use the Supplier Application and Documentation and other Services;

**Auditor** means any of the following who is exercising a party's rights under Clause 10: (a) the Company or the Supplier (as applicable); (b) a Regulatory Authority which has responsibility for the regulation or governance of any of the activities of the Company or any other Group Company or the Supplier or any other member of the Supplier Group; and (c) the agents and Representatives of the Company or the Supplier or such Regulatory Authority;

**Business Critical Service Failure** means a failure as defined in the relevant service schedule;

**Business Day** means any day other than a Saturday, Sunday or a day that is a public or bank holiday in England;

**Charges** means the charges for the Services included within the Order and/or any Statement of Work, excluding any Expenses incurred by the Supplier;

**Company Data** means all data relating to the Group Company or the customers of any of them which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of the Supplier, any Subcontractor or any Supplier Personnel including Company Personal Data;

**Company Dependency** means the obligations of the Company on which the Supplier is dependent to be able to fulfil its obligations under this Agreement as set out in Clause 7.2 and including the Company Dependencies specifically detailed in any Order, Statement of Work and/or Service Schedule;

**Company Material** means all materials, equipment and tools, drawings, specifications and Company Data supplied by the Company to the Supplier;

**Company Personal Data** means Personal Data relating to employees, directors or customers of a Group Company and any other Personal Data for which the Group Company is a Data Controller;

**Confidential Information** means all information of a confidential or proprietary nature relating to the business, prospects or activities of the party in question which is given to, generated by, or otherwise comes into the possession of the other party in the course of the negotiation or performance of this Agreement or any Statement of Work;

**Controller** has the meaning set out in the Data Protection Laws;

**Data Protection Laws** means the EU General Data Protection Regulation (EU) 2016/679 as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (“**UK GDPR**”) the Data Protection Act 2018 and all other laws relating to data protection and privacy to the extent applicable to the Services;

**Data Subject** has the meaning set out in the Data Protection Laws;

**Default** means a breach of any term of this Agreement or any tortious act or statement, breach of statutory duty, or misrepresentation that gives rise to liability under any Laws;

**Deliverable** means a document, plan, program or other product which is included in the Services or the Supplier is obliged to provide to the Company in the course of providing Services and/or the Supplier Application including the Developed Software and includes all drafts and working papers created for the purpose of producing the same;

**Developed Software** means any bespoke software to be developed specifically for the Company pursuant to any Statement of Work;

**Dispute** means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services;

**Documentation** means the operating manuals, user instruction manuals, technical literature, specifications and other documentation relating to the Supplier Application;

**Employment Costs** means all costs associated with employment (including worker status) including all wages, taxes, national insurance, pension contributions, benefits, holiday and other paid leave entitlements, incentives and other costs related to the same;

**Effective Date** means the date on which the Order is signed by the Company;

**Equipment** means all network, dedicated server, hardware, devices, managed router, firewall devices, software managed devices, load balancers, VPN whether being used by the Supplier to provide the Services, or by the Company to receive them;

**Expiry Date** means the date this Agreement expires in accordance with Clause 3.2;

**Expenses** means any travel and accommodation costs incurred by the Supplier in delivering any non-recurring Services where the delivery location is more than 25 miles from the Suppliers service location;

**Force Majeure Event** means circumstances beyond the Supplier's reasonable control including any act of God; governmental actions; war or national emergency; acts of threat of terrorism; protests; riot; civil commotion; fire; explosion; flood; epidemic or pandemic; lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce); restraints or delays affecting carriers; inability or delay in obtaining supplies of adequate or suitable materials; inability to access premises; breakdown or failure of technology or machinery; changes in Law which result in the provision of Services as set out in this Agreement being or becoming illegal; theft or malicious damage to the Supplier's property (whether physical or intangible); and/or failure of a utility service or transport or telecommunications network;

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight that one would reasonably and ordinarily expect from a person skilled and experienced in the practice or activity in question;

**Group Company** includes the Company and each undertaking that is, at the time in question and from time to time, a parent undertaking, or subsidiary undertaking of a parent undertaking or the Company (the terms parent undertaking and subsidiary undertaking being interpreted in accordance with section 1162 of the Companies Act 2006);

**Initial Term** has the meaning set out in Clause 3.1;

**Initial Term Start Date** means the earlier date of the last service to be made live from the Order or 2 months after the first service from the Order is made live;

**Insolvency Event** means an event where: (a) a person is unable or admits its inability to pay its debts (within the meaning of sections 123, 267 or 268, as applicable, of Insolvency Act 1986); (b) a person suspends or threatens to suspend payment of its debts; (c) any steps are taken with a view to any compromise, composition or arrangement by or in relation to that party with its creditors or any of them, or its members or any of them in relation to its debts or for the purpose of eliminating, reducing, preventing or mitigating the effect of any financial difficulties of that party, or such compromise, composition or arrangement is approved, agreed or sanctioned (save for the sole purpose of a solvent reconstruction or amalgamation); (d) any steps are taken with a view to the general re-scheduling or reconfiguration of all or any of the party's debts; (e) any steps are taken with a view to the obtaining of any moratorium; (f) any steps are taken with a view to the appointment of an administrator, administrative receiver, receiver or liquidator over any (or any part thereof) of its assets, undertaking or income or such an administrator, administrative receiver, receiver or liquidator is appointed; (g) any steps are taken towards a party's winding-up or bankruptcy as applicable (save, in the case of a company, a solvent liquidation for the sole purpose of effecting a reconstruction or amalgamation) or is subject to a petition issued by any court for its winding-up or bankruptcy (as applicable) that is not withdrawn upon the party's application; (h) being a company, is the subject of a notice to strike off the register at Companies House; (i) has any distraint, execution or other process levied or enforced on any of its property; or (j) any event or step analogous to the event or steps set out in (a) to (i) inclusive of this definition occurs in any jurisdiction;



**Intellectual Property Rights** means any and all intellectual property rights including patents, trademarks, design rights, copyright (including in the object code and source code, in drawings, plans, specifications, designs and computer software and including all ideas, concepts, themes, characters, stories and places contained in or forming part of any copyrightable work) rights in the databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached thereto and all extensions and renewals thereof;

**Laws** means: (a) all laws (including the common law); (b) all regulations, policies and codes of conduct which are legally-binding; or (c) directions of a Regulatory Authority with which the Company and the other Group Companies are reasonably required to comply and which, in each case, are applicable to the business of the Company and the other Group Companies or to any activities of the parties undertaken pursuant or in relation to this Agreement;

**Losses** means losses, liabilities, damages, wasted expenditure, costs and expenses (including legal fees on a solicitor/own client basis and all other costs related to the investigation, prosecution or defence of legal claims);

**Milestone** means any act, event or achievement which is specified to be a milestone in a Statement of Work or Project Plan;

**Order** means an order form which sets out the Charges for the Services which will be processed by the Company through the Supplier's online ordering system;

**Personal Data** means personal data (as defined in the Data Protection Laws) to which the Supplier may (by or on behalf of the Company) be granted access, during the course of the provision of the Services;

**Personal Data Breach** has the meaning set out in the Data Protection Laws;

**Process** has the meaning set out in the Data Protection Laws and references to **Processing** shall be construed accordingly;

**Processor** has the meaning set out in the Data Protection Laws;

**Project Plan** means any project plan which is set out in a Statement of Work or which is required to be prepared and agreed in accordance with a Statement of Work;

**Regulatory Authority** means all governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction having responsibility for the regulation or governance of any of the activities of the Company or the Supplier;

**Related Service Provider** means the Supplier's partners, affiliates and other third parties that provide equipment, software or services in connection with this Agreement;

**Renewal Term** has the meaning set out in Clause 3.1;

**Renewal Term Start Date** means the earlier date of the last Service being renewed to be made live from the Order or 2 months after the first Service being renewed from the Order is made live;

**Representative** means, in relation to a party, the person appointed to such position to manage the day to day relationship between the parties;

**Service Level** means each of the minimum performance standards set out in in a Statement of Work;

**Service Live Date** means the first date the Services have been delivered to the Company in accordance with the requirements of this Agreement and have become available for use by the Company;

**Service Operating Manual** means the reference document which describes the mode of operation and support for the Services, including service level agreements, processes and standards;

**Service Schedule** means the Service specific schedule applicable to each relevant Service;

**Services** means the services which the Supplier is to carry out for the Company under this Agreement as described in the Service Schedule and/or a Statement of Work (including those professional services such as implementation, hosting and maintenance, training, consulting etc.) and/or the Service Operating Manual which are included within, or required for the performance of, a Statement of Work and which shall be fully described in the Statement of Work;

**Source Code** has the meaning set out in Clause 21.6a);

**Statement of Work** means an order for the purchase of Services agreed in accordance with the provisions of Clause 2 specifying, among other things, the Services, Supplier Application, Deliverables, Statement of Work Commencement Date, the applicable Charges, the billing period and the other matters identified in the Statement of Work;

**Statement of Work Commencement Date** means the date for commencement of the Services specified in a Statement of Work;

**Subcontractor** means any subcontractor or supplier (including any other member of the Supplier Group) engaged by the Supplier in connection with this Agreement or the provision of any of the Services;

**Supplier Application** means the software (and all related Deliverables) described or referred to in a Statement of Work to which the Company is to be given access on the terms of that Statement of Work;

**Supplier Group** means each undertaking that is, at the time in question and from time to time, a parent undertaking, or subsidiary undertaking of a parent undertaking or the Supplier (the terms parent undertaking and subsidiary undertaking being interpreted in accordance with section 1162 of the Companies Act 2006);

**Supplier Personnel** means: (a) any individual employed or engaged by the Supplier; and (b) the Subcontractor and any individual employed or engaged by the Subcontractor in connection with this Agreement or the provision of any of the Services;

**Supplier Premises** means premises from which the Supplier, any Subcontractor or any Supplier Personnel provide any part of the Supplier Application and/or Services or in which books and records relating to the Services or this Agreement are stored;

**Term** means the period commencing on and from the Initial Term Start Date, or the Renewal Term Start Date, and ending on the Expiry Date, or in the case of a Statement of Work, the period commencing on and from the Statement of Work Commencement Date and ending on the expiry date stated in the Statement of Work;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**UK GDPR** has the meaning set out in the definition of Data Protection Laws; and

**VAT** means value added tax as provided for in the Value Added Tax Act 1994.