

THE TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Defined words and expressions used in this Agreement shall take the following meanings:

Affected Party: has the meaning given in clause 15.1.

Agreement: the agreement comprised of the Proposal, the SoW, these Terms and the Annexes and Schedules hereto.

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

Arbitration Rules: the ICC Arbitration Rules.

Authorised User: the employees and agents of the Customer who use the Solution.

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

Business Hours: means 09:00 to 17:00 on a Business Day.

Change: an amendment to:

- (a) the scope, nature, volume or execution of the Solution; or
- (b) any other term, Annex or Schedule of this Agreement.

Change Control Procedure: the procedure for agreeing a Change, as set out in Annex 2 to these Terms.

Commencement Date: means the date on which the Agreement is entered into or where different, the date set out in the SoW.

Compliance Legislation: means the Bribery Act 2010, the Criminal Finances Act 2017, the Modern Slavery Act 2015, the Money Laundering Regulations 2017 and such other pieces of Applicable Law relating to corporate criminal offences.

Confidential information: means any and all confidential information (whether in oral, written or electronic form) imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party.

Customer: the party to which the Proposal is issued and/or whose details are set out in the SoW.

Customer Data: means any personal data provided by or on behalf of the Customer (or a user of the Solution).

Data Protection Laws: means, to the extent that the:

- (a) UK GDPR applies, the Applicable Law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and
- (b) EU GDPR applies, the Applicable Law of the European Union or any member state of the European Union to which Sundown Solutions is subject, which relates to the protection of personal data,

and the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other Applicable Laws relating to the Processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Dispute: has the meaning given in clause 23.1.

Dispute Notice: has the meaning given in clause 23.1.

Documentation: the operating manuals, user instruction manuals and guides, technical literature, knowledge articles, support scripts and all other related materials in human-readable or machine-readable forms supplied by Sundown Solutions in connection with the Solution.

Deliverables: means the outputs of the Services, including any reports, documentation, materials or other written deliverables.

Equipment: computers, hardware, the operating system and such other equipment or consumable goods owned or operated by the Customer on or in conjunction with which the Software is operated.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: the fees payable by the Customer to Sundown Solutions in accordance with and as defined in this Agreement and any additional costs and expenses.

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation acts of God; flood, drought, earthquake or other natural disaster; epidemic, pandemic or similar event; terrorist 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; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, lockdown or restriction; collapse of buildings, fire, explosion or other accident; 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); interruption or failure of utility service or in the case of Sundown Solutions any failure of a supplier or subcontractor.

ICC: the International Chamber of Commerce.

Intellectual Property Rights: means any and all copyright, database rights and any and all related rights; source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation; rights in designs, trade marks, domain names, goodwill, business names, rights to sue for passing off; patents; rights in confidential information (including know how and trade secrets); and any other intellectual property rights (including, where relevant, all extensions, reversions, revivals and renewals of the same), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent rights or forms of protection which now, or will in the future, subsist in any part of the world.

IPR Claim: has the meaning given in clause 6.4.

Loss: means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

Materials: the content, information, instructions, scripts, media, documentation, specifications or other materials provided to Sundown Solutions by the Customer from time to time and in whatever form or media for incorporation in the Solution or otherwise for Sundown Solutions' use in conjunction with the provision of the Solution.

Mediation Rules: the ICC Mediation Rules. **Open-Source Software:** any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at www.opensource.org) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at www.gnu.org), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked.

Privacy Policy: shall have the meaning given in clause 8.4.

Proposal: the proposal, quotation and/or specification issued by Sundown Solutions to the Customer in writing relating to the supply of the Solution and which for the avoidance of doubt shall not be classified as an offer but an invitation to treat.

Restricted Person: means any firm, company or person employed or engaged by Sundown Solutions during the Term, who or which has been engaged in the provision of the Solution (or any part thereof) or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Services: the professional services to be provided by Sundown Solutions to the Customer in accordance with Schedule 1 and as more particularly detailed in the Proposal and/or SoW and further to which Deliverables shall be generated.

Software: means the software to be developed and/or licensed by Sundown Solutions to the Customer as part of the Solution in accordance with Part 1 and/or Part 2 of Schedule 2 respectively as more particularly detailed in the Proposal and/or SoW, including Sundown Solutions Software and any Third-Party Software.

Solution: means the solution provided to the Customer by Sundown Solutions comprised of any or all of the Services (including any Deliverables), the Software, the Documentation and the Support (as the case may be and detailed in the Proposal and/or SoW).

SoW: means the statement of work in the form set out in Annex 1 issued by Sundown Solutions to the Customer and to which these Terms are incorporated.

Sundown Solutions: Sundown Solutions Limited, incorporated and registered in England and Wales with company number 06988701 and whose registered office is at Moorside House, Burnley Road, Altham, Accrington, Lancashire BB5 5TZ.

Sundown Solutions Software: means application software, the Intellectual Property Rights to which are owned by Sundown Solutions including any and all executables, dynamic link libraries, report files and programmable database objects.

Support: means the support and maintenance services provided to the Customer by Sundown Solutions in respect of the Software in accordance with Schedule 3 and as more particularly detailed in the Proposal and/or SoW but which shall include:

- (a) investigation into the reported fault in the Software;
- (b) correction of errors in the code of any Software and which has been written by Sundown Solutions; and
- (c) any other support services agreed between the Customer and Sundown Solutions that Sundown Solutions is responsible for providing.

Term: the period of time during which the Agreement remains in force.

Terms: means these standard terms and conditions.

Third-Party Software: means any software, the Intellectual Property Rights to which are owned by a third party and which Sundown Solutions makes use of in the course of developing and/or licensing the Software, including but not limited to any Open-Source Software.


UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 In this Agreement, the following rules of interpretation apply:


- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) References to clauses, Annexes, Schedules and paragraphs are to the relevant clauses, Annexes, Schedules (as applicable) or paragraphs of this Agreement.
- (e) The headings to the clauses, Annexes, Schedules and paragraphs of this Agreement will not affect the interpretation.
- (f) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (g) A reference to writing or written includes emails.
- (h) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3 Where there is any conflict between the terms of 

- (a) the SoW;
- (b) the Proposal;
- (c) the Schedules; and
- (d) these Terms and its Annexes,

the terms set out in the respective document first set out in the list above will prevail.

2. PROVISION OF THE SOLUTION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE AND THE TERMS OF THE APPLICABLE SCHEDULE

- 2.1 Sundown Solutions shall provide the Solution in accordance with these Terms and the applicable Schedule(s). Whilst Sundown Solutions shall use its reasonable endeavors to comply with any proposed timescales or deadlines in providing the Solution, such times are indicative and time for performance in accordance with them shall not be of the essence.
- 2.2 Sundown Solutions may, on reasonable prior written notice to the Customer, make changes to the Solution, provided that such changes do not have a materially adverse effect on the Customer's business operations or its enjoyment of the Solution.
- 2.3 Save in respect of any specific warranties given elsewhere in this agreement, Sundown Solutions does not warrant or guarantee that the Solution, when taken in whole or in part, will contain no Vulnerabilities and it shall be the Customer's sole responsibility to ensure that its cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems under any Applicable Laws are notified to Sundown Solutions in sufficient detail so they can be implemented by Sundown Solutions.
- 2.4 The warranties in this Agreement replace all other warranties, conditions, terms and representations expressed or implied including any warranties of merchantability or fitness for particular purpose. Sundown Solutions disclaims and excludes all other warranties to the fullest extent permitted by Applicable Law.
- 2.5 Any Change will be subject to the Change Control Procedure.
- 2.6 Risk in any media bearing any Software and/or Documentation or other information that may from time to time be supplied by Sundown Solutions to the Customer shall pass to the Customer on receipt. 

3. CUSTOMER OBLIGATIONS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

- 3.1 The Customer shall be responsible, without any charge to Sundown Solutions, for (in each case as and to the extent applicable):
- (a) providing Sundown Solutions with:
 - (i) all co-operation and information as may be required by Sundown Solutions in relation to the performance of its obligations under this Agreement;
 - (ii) all necessary access to such information as may be reasonably required by Sundown Solutions;
 - (iii) security, approval and access information and configuration services;
 - (iv) a suitable network connection to enable connection to the Solution;
 - (v) safe access to, egress from and movement around its premises at any time during Business Hours (or on reasonable notice outside of Business Hours), where the same is needed to be accessed by Sundown Solutions in order to perform any of its obligations under this Agreement; and
 - (vi) access to such facilities (including computer consumables, computer programs, storage, data preparation, communications facilities and such other Equipment) data (including reasonable test data suitable for use on acceptance tests and the results expected to be achieved by processing such test data) information, documentation, personnel and time on the Customer's computer equipment as Sundown Solutions may reasonably request in connection with the performance of its obligations under this Agreement;
 - (b) the provision and maintenance of the operational and environmental conditions necessary for the proper functioning of the Software and the Equipment on or in conjunction with which the Software is used and procuring the maintenance of the same in the manner and form from time to time prescribed by the manufacturer and/or its suppliers;
 - (c) the safe custody of the Solution and any Equipment and documentation;
 - (d) maintaining full security copies of all programs (including the Software) and data used on or in conjunction with the Equipment on or in conjunction with which the Software is used;
 - (e) compliance with all Applicable Laws with respect to its activities under this Agreement;
 - (f) carrying out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
 - (g) obtaining and shall maintain all necessary licences, consents, and permissions necessary for Sundown Solutions, its contractors and agents to perform their obligations under this Agreement;
 - (h) ensuring that the Software and the Equipment on or in conjunction with which it is used is operated in a proper manner by competent trained employees;
 - (i) ensuring that backups of the Software and data files are kept on a regular basis and made available to Sundown Solutions on request;
 - (j) ensuring that its network and systems comply with the relevant specifications required by Sundown Solutions from time to time; and
 - (k) procuring and maintaining its network connections and telecommunications links from its systems to Sundown Solutions' data centres (or those of its suppliers, where applicable), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 3.2 If Sundown Solutions is obliged to spend additional time in the performance of any of its obligations under this Agreement because of any of the acts or omissions of the Customer or any of its employees, agents, contractors or sub-contractors (including the supply of any incorrect or inadequate data or information), and where any resultant delay results in Sundown Solutions incurring additional costs and expenses then, notwithstanding anything else contained in these Terms and only after seeking prior approval of the Customer:

- (a) Sundown Solutions may invoice the Customer for such additional costs and expenses on a time and materials basis; and
 - (b) the time for performance of any of Sundown Solutions' obligations is extended by a reasonable period in light of the delay.
- 3.3 The Customer shall be responsible for the accuracy and completeness of the Materials and shall provide them in whatever form and format reasonably required by Sundown Solutions.
- 3.4 The Customer is responsible for taking all appropriate measures to prevent the outbreak of a Virus on its Equipment and all other aspects of its computer systems, networks, hardware. For the avoidance of doubt Sundown Solutions will not be responsible for the removal of any Virus introduced by the Customer or any other third party. Any restoration or reconstruction of data, programs or the Solution by Sundown Solutions required by the Customer is fully chargeable and will attract a premium rate if it is required to be performed on an immediate or short-term basis.
- 3.5 The Customer warrants and represents that the Materials:
- (a) do not infringe any Applicable Laws or third party rights (including Intellectual Property Rights); and
 - (b) are not obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous,
- and the Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless, from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) arising out of or in connection with any action or claim relating to the Materials or breach of the warranty set out in this clause.
- 3.6 The Customer warrants and represents to Sundown Solutions that the representative/individual signing the SoW has all legal authority and power to enter into the Agreement and bind the Customer.

4. SUNDOWN SOLUTIONS' OBLIGATIONS

Sundown Solutions warrants and represents to the Customer that:

- (a) it is fully authorised to enter into, execute and perform all of its obligations under this Agreement;
- (b) the officer signing the Agreement on its behalf has all legal authority and power to bind Sundown Solutions;
- (c) it has all necessary expertise to comply with its obligations under this Agreement subject to having sufficient resources available; and
- (d) it is not subject to any contractual or other restriction that could prevent or materially impede Sundown Solutions from meeting its obligations under this Agreement.

5. FEES AND PAYMENT – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

- 5.1 The Customer shall pay Fees due to Sundown Solutions in accordance with the payment terms detailed in the SoW, the applicable Schedule or, if no such terms are specified, within thirty (30) days of the date of the invoice to which those Fees relate. Time for payment of all Fees under and in accordance with this Agreement is of the essence.
- 5.2 The Customer agrees and acknowledges that all invoices shall be issued in and it shall pay the Fees in GBP or such other currency stipulated within the Proposal and/or SoW.
- 5.3 The Fees do not include the cost of surcharges or import or customs duties and taxes levied on or payable by Sundown Solutions and the Customer shall pay to Sundown Solutions the amount of any such duties, taxes or surcharges levied on or payable by Sundown Solutions.
- 5.4 The Customer shall pay all amounts due under this Agreement in full, without deduction, withholding, set-off or counterclaim.

- 5.5 In the event that Sundown Solutions has not received payment of any due Fees by the due date for payment and without prejudice to any other rights or remedies of Sundown Solutions:
- (a) Sundown Solutions may suspend or otherwise disable the provision of, or cease to provide any or all of the Solution whilst the relevant Fees concerned remain unpaid; and
 - (b) daily interest on such amount at a rate of up to 8% per annum above the Bank of England's base rate from time to time in force, from the date on which such amount was payable until such amount is paid (both before and after any judgement).
- 5.6 The Fees exclude value added tax and any applicable additional or substitute taxes, levies, imposts, duties, fees or charges whatsoever and whenever, all of which shall be paid additionally by the Customer in accordance with this Agreement.
- 5.7 In the event of a change in Applicable Law that materially changes the cost of providing the applicable Solution, Sundown Solutions may give the Customer written notice thereof and the Customer shall have thirty (30) days to accept such increased costs else the applicable portion of the Agreement shall be deemed terminated with immediate effect.
- 5.8 If the Customer disputes any amount payable under an invoice in good faith, the Customer must notify Sundown Solutions of the dispute within five (5) Business Days of receipt of the invoice. Any non-disputed amount is payable in accordance with clause 5.2. Both parties must negotiate in good faith to resolve any payment dispute, and interest on the disputed amount will not be payable until the dispute has been resolved and the Customer has received a reasonable period of time in which to pay any further amounts owing.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The parties agree that any and all Intellectual Property Rights in or arising out of or in connection with the Solution (or any part thereof), shall be owned by Sundown Solutions (or its licensors) and that for the avoidance of doubt any and all Intellectual Property Rights remain in the possession of Sundown Solutions (or its licensors) at all times, do not transfer to the Customer and the Customer is not permitted to make an onward sale or transfer of the Solution (or any part thereof), to any third party without the prior written consent of Sundown Solutions (or its licensors).
- 6.2 Sundown Solutions hereby grants a non-exclusive, royalty-free, revocable licence to the Customer to make use of the Intellectual Property Rights referred to in clause 6.1 strictly from and limited to making use of the Solution (or any part thereof).
- 6.3 The Customer shall use its best endeavours to prevent any infringement of Sundown Solutions' Intellectual Property Rights and shall promptly report to Sundown Solutions any such infringement that comes to its attention. In particular, the Customer shall:
- (a) ensure that each Authorised User, before starting to use the Solution, is made aware that it is proprietary to Sundown Solutions and that it may only be used and copied in accordance with this Agreement;
 - (b) implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Solution, save to the extent provided for by this Agreement; and
 - (c) not permit third parties to have access to the Solution without the prior written consent of Sundown Solutions, which may require that such third party executes a written confidentiality agreement before being given access to the Solution.
- 6.4 Provided that Sundown Solutions makes no warranty that the Solution (or any part thereof) does not breach the Intellectual Property Rights of any third party, if the Solution (or any part thereof) is found to breach a third party's Intellectual Property Rights and such breach is found to be at the fault of Sundown Solutions (**IPR Claim**), Sundown Solutions shall at its absolute discretion:
- (a) use all reasonable endeavours to obtain the right for the Customer to continue to use the Solution (or applicable part thereof); or

- (b) replace or modify the Solution (or applicable part thereof) so that it becomes non-infringing without materially affecting its functionality.
- 6.5 Where Sundown Solutions replaces or modifies the Solution in accordance with this clause, the Solution shall be deemed to take the form of the replaced or modified Solution.
- 6.6 Sundown Solutions shall have no liability under this clause to the extent that any IPR Claim arises from any modification of the Solution undertaken by the Customer without Sundown Solutions' prior written consent or from any use of the Solution by the Customer in breach of the terms of this Agreement.
- 6.7 The Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Sundown Solutions arising out of or in connection with any claim that its use of Materials supplied by it to Sundown Solutions in connection with the performance of its obligations under this Agreement infringes the Intellectual Property Rights of any third party.

7. CONFIDENTIALITY

- 7.1 Each party agrees and undertakes that it shall maintain the confidentiality of and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party the other party's Confidential Information and shall not, without the prior written consent of the other party, use, disclose, copy or modify such Confidential Information or permit others to do so other than as necessary for the performance of its right and obligations under the Agreement.
- 7.2 Each party shall:
- (a) disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement, and
 - (b) to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 7.3 Each party shall:
- (a) give notice to the other party of any unauthorised misuse, disclosure, theft or loss of its Confidential Information immediately upon becoming aware of the same;
 - (b) take all reasonable steps to maintain the confidentiality of the Confidential Information;
 - (c) maintain adequate security measures to safeguard the Confidential Information from theft, and from access by any person other than as permitted by this Agreement;
 - (d) except as expressly permitted under Section 50B of the Copyright, Designs and Patents Act 1988 not copy, alter, modify or adapt the Confidential Information in any way whatsoever, or permit the Solution to be combined with or to become incorporated in any other programs unless carried out by Sundown Solutions, or decompile or disassemble the executable code version of any Solution, or attempt to do or permit the doing of any of these things;
 - (e) not (and the Customer shall use its best endeavours to procure that no person other than its personnel will) access, use, copy, alter, modify or adapt any source code; and
 - (f) promptly bring to the other party's attention any infringement of its rights in, or any unauthorised use of, the Confidential Information, which it becomes aware of.
- 7.4 The provisions of this clause shall not apply to information which is:
- (a) or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - (b) lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;

- (c) independently developed by the recipient, without access to or use of such information; or
- (d) required by Applicable Law, by court or governmental or regulatory order to be disclosed provided that the other party is, where possible, notified at the earliest opportunity.

7.5 Whilst Sundown Solutions may publicly announce that a business relationship has been entered into with the Customer, Sundown Solutions shall not, without the prior written consent of the Customer not to be unreasonably withheld or delayed publicise the details or terms of this Agreement or use the Customer's name or brand in the context of endorsing the quality of its work.

8. DATA PROTECTION

8.1 For the purposes of this clause 8, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR. References in this clause 8 to Applicable Laws shall for the avoidance of doubt include the Data Protection Laws.

8.2 Both parties will comply with all applicable requirements of Data Protection Laws. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Laws.

8.3 The parties have determined that, for the purposes of Data Protection Laws Sundown Solutions shall process the Customer Data provided that should such determination change, then each party shall work together in good faith to make any changes which are necessary to this clause 8 or the related schedules.

8.4 By entering into this Agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Sundown Solutions in connection with the processing of the Customer Data, provided these are in compliance with the then-current version of Sundown Solutions' privacy policy available at [COMPANY WEBSITE URL] (Privacy Policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.

8.5 Without prejudice to the generality of clause 8.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Data to Sundown Solutions and or lawful collection of the same by Sundown Solutions for the Term (and any applicable period thereafter) and purposes of this Agreement.

8.6 Without prejudice to the generality of clause 8.2 Sundown Solutions shall, in relation to Customer Data:

- (a) process that Customer Data only on the documented instructions of the Customer, which shall be to process the Customer Data for the purposes of providing the Solution or otherwise directly related thereto, unless Sundown Solutions is required by Applicable Laws to otherwise process that Customer Data. Where Sundown Solutions is relying on Applicable Laws as the basis for processing Customer Processor Data, Sundown Solutions shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Sundown Solutions from so notifying the Customer on important grounds of public interest. Sundown Solutions shall inform the Customer if, in the opinion of Sundown Solutions, the instructions of the Customer infringe Data Protection Laws;
- (b) implement the technical and organisational measures to protect against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer Data, which the Customer has reviewed and confirms are 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;
- (c) ensure that any personnel engaged and authorised by Sundown Solutions to process Customer Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Sundown Solutions), and at the Customer's cost and written request, in

responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Data;
- (f) at the written direction of the Customer, delete or return Customer Data and copies thereof to the Customer on termination of the agreement unless Sundown Solutions is required by Applicable Law to continue to process that Customer Data. For the purposes of this clause Customer Data shall be considered deleted where it is put beyond further use by Sundown Solutions; and
- (g) maintain records to demonstrate its compliance with this clause 8.

8.7 The Customer hereby provides its prior, general authorisation for Sundown Solutions to:

- (a) appoint processors to process the Customer Data, provided that Sundown Solutions shall:
 - (i) ensure that the terms on which it appoints such processors comply with Data Protection Laws, and are consistent with the obligations imposed on Sundown Solutions in this clause 8;
 - (ii) remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Sundown Solutions; and
 - (iii) inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Sundown Solutions' reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Law, the Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless from and against any and all Losses suffered or incurred by Sundown Solutions arising out of or in connection with accommodating the objection; and
- (b) transfer Customer Data outside of the UK as required, provided that Sundown Solutions shall ensure that all such transfers are effected in accordance with Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Sundown Solutions, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

8.8 Except as expressly provided otherwise, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any data, which is not personal data.

9. COMPLIANCE

In performing its obligations under the Agreement, each party agrees to and warrants that:

- (a) it shall comply fully, at its own expense, with the Applicable Laws; and
- (b) as far as it is aware, it has not done (or agreed to do) nor will it do (or agree to do) anything which constitutes a breach of the Compliance Legislation.

10. INDEMNITY AND LIMITATION OF LIABILITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

10.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort (including negligence), contract, breach of statutory duty or in any other way) shall be as set out in this clause.

10.2 The Customer assumes sole responsibility for results obtained from the use of the Solution and for any conclusions drawn from such use. Sundown Solutions shall have no liability for any Losses arising out of or connected with:

- (a) errors or omissions in any Materials, Customer Data input into the Software or information provided to Sundown Solutions by the Customer in connection with the Solution; or

(b) any actions taken by Sundown Solutions at the Customer's direction.

10.3 Subject to sub-clause 10.6, Sundown Solutions shall not be liable to the Customer or any third party arising out of or in connection with this Agreement:

(a) for any:

- (i) consequential, indirect or special Losses;
- (ii) loss of profit;
- (iii) loss of contract or business;
- (iv) loss of opportunity;
- (v) loss of savings, discount or rebate (whether actual or anticipated);
- (vi) damage to, loss or corruption of data;
- (vii) harm to reputation or loss of goodwill; and/or
- (viii) any other Losses of a pure economic nature; and

(b) for any Losses not excluded by clause 10.3(a), of an amount in excess of the sum of all Fees paid or payable to Sundown Solutions by the Customer under this Agreement in the preceding twelve (12) months.

10.4 Subject to the remainder of this clause 10:

(a) in no event shall Sundown Solutions, its employees, agents and sub-contractors be liable to the Customer or any third party for any Losses arising from issues with the Solution (or part thereof) or to the extent that any alleged infringement of Intellectual Property Rights is based on:

- (i) a modification of the Solution by anyone other than Sundown Solutions; or
- (ii) the Customer's use of the Solution in a manner contrary to the instructions given to the Customer by Sundown Solutions; or
- (iii) the Customer's use of the Solution after notice of the alleged or actual infringement from Sundown Solutions or any appropriate authority; or
- (iv) the fraudulent or unauthorised use of any Solution by the Customer; or

(b) the Customer's installation of any applications, utilities or other software programs or hardware or re-configuration of the Solution (including, but not limited to, hardware, firmware, software, programming, configuration and service) or otherwise modifies or alters any of the foregoing.

10.5 The Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Sundown Solutions arising out of or in connection with:

- (a) the Customer's breach of this Agreement howsoever arising;
- (b) any wilful or negligent act or omission of the Customer, its officers, employees, contractors or agents; and
- (c) the Customer's use of the Solution.

10.6 The exclusions and limitations of liability set out in this clause shall not apply in respect of:

- (a) death or personal injury;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other Losses which cannot be excluded or limited by Applicable Law.

11. NON-SOLICITATION

- 11.1 In order to protect the legitimate business interests of Sundown Solutions, the Customer covenants with Sundown Solutions that it shall not (except with the prior written consent of Sundown Solutions) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.
- 11.2 The Customer shall be bound by the covenant set out in clause 11.1 during the Term and for a period of twelve (12) months after termination or expiry of this Agreement.
- 11.3 If the Customer commits any breach of this clause, it shall, on demand, pay to Sundown Solutions a sum equal to one year's salary of the Restricted Person, or the annual fee that would have been payable by Sundown Solutions in relation to the services provided by the Restricted Person plus the recruitment costs incurred by Sundown Solutions in replacing such person.

12. EXPORT AND IMPORT CONTROL

The Customer acknowledges that the export of computer products and/or technology may be subject to government export regulations or restrictions. Where the Customer exports or re-exports any computer hardware and/or software it agrees to comply with the relevant export regulations and/or restrictions in force from time to time. Furthermore, the Customer agrees to keep Sundown Solutions accurately informed of all regulations or restrictions relevant to export or import of the particular products which it is supplying to the Customer.

13. TERM AND TERMINATION

- 13.1 This Agreement shall be for the Term, commencing with the Commencement Date and save where terminated earlier in accordance with clause 13.2, continue in accordance with the relevant provisions of the applicable Schedule.
- 13.2 Sundown Solutions may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the Customer in the event that:
- (a) the Customer fails to pay any undisputed amounts due to Sundown Solutions;
 - (b) the Customer commits any breach of this Agreement that is irremediable or, if remediable, is not remedied by the Customer within fourteen (14) days' of receipt of Sundown Solutions' written notice specifying the breach and requiring its remedy; or
 - (c) any regulatory decision or governmental order requiring Sundown Solutions to suspend or terminate the provision of its obligations under this Agreement.
- 13.3 Either party may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the other in the event that:
- (a) 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (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;
 - (c) 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;
 - (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

- (e) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (g) 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 fourteen (14) days;
- (h) 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 13.3(a) to clause 13.2(g) (inclusive);
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (f) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

13.4 In any circumstance in which Sundown Solutions may terminate any or any portion of this Agreement, it may exercise its right to suspend performance of any of its obligations. Such exercise of the right to suspend shall:

- (a) be without liability to the Customer; and
- (b) not function as a waiver of any right of termination that Sundown Solutions may have under this Agreement.

13.5 On termination of this Agreement by Sundown Solutions, all licences granted by Sundown Solutions under this Agreement shall terminate immediately and the Customer shall return to Sundown Solutions the relevant licences and/or documentation and all copies of the relevant documentation or, if requested by Sundown Solutions, destroy them and certify in writing to Sundown Solutions that they have been destroyed.

13.6 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of any person at any time up to the date of termination and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

14. NOTICES

14.1 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 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, or by commercial courier or email.

14.2 A notice or other communication shall be deemed to have been received if:

- (a) delivered personally, when left at the address referred to in clause 14.1;
- (b) 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;
- (c) delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) sent by email, one Business Day after transmission.

14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. FORCE MAJEURE

15.1 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 performance of such obligations shall be extended accordingly.

15.2 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, 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.

16. NO PARTNERSHIP OR AGENCY

16.1 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.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

17. ENTIRE AGREEMENT

17.1 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.

17.2 Each party acknowledges that in entering into this Agreement it does not rely on, and 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.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

18. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. ASSIGNMENT AND OTHER DEALINGS

19.1 This Agreement is personal to the Customer and the rights and obligations hereunder may not be assigned, sub-contracted or transferred to a third party without the prior written approval of Sundown Solutions.

19.2 Sundown Solutions may assign, sub-contract or otherwise transfer its rights and obligations hereunder without the Customer's prior written consent.

20. NO AUTOMATIC WAIVER

20.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Applicable 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.

20.2 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.

21. SEVERANCE

21.1 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.

21.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. THIRD PARTY RIGHTS

No one other than a party to this Agreement shall have any right to enforce any of its terms.

23. MULTI-TIERED DISPUTE RESOLUTION

23.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Agreement, the parties may at their discretion follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute; and
- (b) if the management level employees are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it.

23.2 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it in accordance with the following procedure.

- (a) The parties shall have recourse to mediation in accordance with the Mediation Rules, which are deemed to be incorporated by reference into this clause.
- (b) If the Dispute is not settled by mediation within thirty (30) days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be submitted to the International Court of Arbitration of the ICC whose seat shall be London and shall be finally settled under the Arbitration Rules, by one or more arbitrators appointed in accordance with the Arbitration Rules. The Emergency Arbitrator Provisions under the Arbitration Rules shall not apply.
- (c) This clause 23 takes the form of an arbitration agreement and is governed by the law of England and Wales.
- (d) The language to be used in the mediation and in the arbitration shall be English.

23.3 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 25 in relation to the whole or part of the Dispute.

24. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

ANNEX 1 – FORM OF SOW

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ANNEX 2 – CHANGE CONTROL PROCEDURE

PART 1 – PROCEDURE

1. DEFINITIONS

The following defined words and expressions used in this Annex shall take the following meanings:

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Dispute Resolution Procedure: the multi-tiered dispute resolution procedure set out in clause 23.

2. PURPOSE

2.1 This Annex sets out the procedure for dealing with Changes, including:

- (a) the rights of the parties to request a Change;
- (b) the rights of the parties to approve or reject a proposed Change;
- (c) the apportionment of costs incurred by the parties in compliance with this Annex; and
- (d) the form of any authorised Change.

2.2 A Change will not be effective until a relevant Change Control Note has been signed by the authorised representatives of both parties.

2.3 A Change Control Note will be in substantially the form set out in Part 2 of this Annex.

3. REQUESTING A CHANGE

3.1 Either party may submit a written request for Change to the other party.

- (a) Where Sundown Solutions initiates a request for a Change, it will at the same time send to the Customer a draft Change Control Note signed by an authorised representative of Sundown Solutions.
- (b) If the Customer reasonably considers that it requires further information in order to consider the proposed Change, it will notify Sundown Solutions within five (5) Business Days of receipt of the request. Such notification must detail the further information required.
- (c) If paragraph 3.1(b) applies, Sundown Solutions will provide the required information and, if required, re-issue the draft completed Change Control Note signed by an authorised representative of Sundown Solutions within five (5) Business Days of receiving such notification from the Customer.
- (d) Where the Customer initiates a request for Change, it will at the same time provide Sundown Solutions with as much detail as is necessary to enable Sundown Solutions to prepare a draft Change Control Note.
- (e) If Sundown Solutions considers that it requires further information in order to consider the proposed Change, it will notify the Customer within five (5) Business Days of receipt of the request. Such notification must detail the further information required. The Customer will provide the further information within five (5) Business Days of receipt of the notification from Sundown Solutions. Sundown Solutions may repeat this process until it is satisfied that it has sufficient information to approve or reject the request for Change.
- (f) Sundown Solutions will, within five (5) Business Days of the date of receipt of the request for Change pursuant to paragraph 3.1(d), or the date of receipt of further information pursuant to paragraph 3.1(e), submit an estimate of the costs of assessing the request for Change and preparing and negotiating a draft Change Control Note. The Customer will respond rejecting or accepting any estimate within five (5) Business Days of receipt. Any dispute in relation to the estimate of costs will be dealt with in accordance with the Dispute Resolution Procedure.
- (g) Once the Change has been accepted, Sundown Solutions shall send two copies of the Change Control Note to the Customer.

4. APPROVING AND REJECTING A CHANGE

- 4.1 Sundown Solutions may reject a request for Change from the Customer at its absolute discretion.
- 4.2 Within five (5) Business Days of receiving two copies of the Change Control Note pursuant to paragraph 3.1(g), the Customer will evaluate the draft Change Control Note and must do one of the following:
 - (a) approve the Change Control Note. On the Customer's signature, the Change Control Note will constitute a binding Change to this Agreement;
 - (b) reject the Change Control Note and notify Sundown Solutions in writing of the rejection. The Customer will not reject any Change Control Note to the extent that the Change is necessary for Sundown Solutions to comply with Applicable Law. If the Customer does reject a Change, it must explain its reasons in writing to Sundown Solutions as soon as reasonably practicable; or
 - (c) if the Customer believes the Change Control Note has errors or omissions, require Sundown Solutions to modify the document accordingly in which case Sundown Solutions will make such modifications and re-submit the draft signed Change Control Note within five (5) Business Days of receipt of the request to modify. The Customer will then approve or reject the proposed Change Control Note within five (5) Business Days.

5. COSTS OF PREPARING CHANGE REQUESTS

- 5.1 Subject to paragraph 5.2, each party will bear its own costs in relation to compliance with this Change Control Procedure.
- 5.2 Sundown Solutions may charge the Customer for the time spent on preparing and negotiating any Change Control Note with the Customer where the Customer has requested the Change.

PART 2 – FORM OF CHANGE CONTROL NOTE

CCN No:	Agreement:	Effective date of Change:
Initiated by: Change requested by [Sundown Solutions OR Customer]		
Date of request:		
Period of validity: This Change Control Note is valid for acceptance until [DATE].		
Reason for Change:		
Description and impact of the Change (including to delivery and performance):		
Required amendments to wording of Agreement:		
Adjustment to the Fees resulting from Change:		
Additional one-off charges and means of determining these (for example, fixed price basis):		
Supporting or additional information:		
SIGNED ON BEHALF OF THE CUSTOMER	SIGNED ON BEHALF OF THE CONFIG TEAM	
Signature:	Signature:	

Name:	Name:
Position:	Position:
Date:	Date: