

DATED [●] 2022

ENTERPRISE SOFTWARE LICENSE AGREEMENT

between

□ LIMITED

and

BRAINN WAVE LIMITED

THIS AGREEMENT is made on

between

PARTIES

- (1) **[] LIMITED** a company incorporated and registered in [] (Company Number []), whose registered office is at [] (the "**Customer**"); and
- (2) **BRAINN WAVE LIMITED** a company incorporated and registered in England (Company Number 09611417), whose registered office is at 207 Regent Street, Level 3, London, England, W1B 3HH (the "**Supplier**").

The Customer and the Supplier are herein referred to, individually, as a Party or party and, collectively, as the **Parties** or parties

BACKGROUND

- (A) The Customer is [*describe Customer business*].
- (B) The Customer wishes the Supplier to supply the Services to it, all on the terms and conditions set out below.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this Clause apply in this Agreement.

- 1.1.1. Unless otherwise defined in this Agreement, terms used in this Agreement shall have the meaning given to them in the Conditions of Purchase:

"**Affiliate**" means in respect of an entity, another entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with the aforementioned

"**Authorised Users**" means an individual who has been authorized by the Customer to access and use the Software and Hosted Services;

"**Business Day**" means a day (other than a Saturday, Sunday or a public holiday) when banks in London and Edinburgh are open for business;

"**Brainnwave Customer Service and Support**" means the customer service and support to be provide by the Supplier set out in Schedule 2, which includes provision of corrections, updates and upgrades to the Software and Hosted Services as well as support and training;

"**Charges**" means the charges payable by the Customer for the supply of the Services as set out in Schedule 6;

"**Commencement Date**" means **XXXXX** or such other date agreed in writing by the Parties;

"Commercial Markings" means any trade names, marks, logos, branding or any other form of commercial identification whatsoever;

"Control" means in respect of an entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another whether through the beneficial ownership of more than fifty per cent (50%) of the issued share capital, by agreement or otherwise;

"Customer Data" the data inputted into the Hosted Services and/or Software by the Customer, by Authorised Users, or by the Supplier on the Customer's behalf and all other data relating to the Customer communicated to or processed or generated by the Supplier;

"Customer Materials" has the meaning set out in clause 4.5;

"Deliverables" means all documents, software, products and materials delivered or to be delivered by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, software, data, specifications and reports (including drafts);

"Development Services" means the development services already provided by the Supplier, and those to be provided by the Supplier during the continuance of this Agreement, and as further agreed between the parties from time to time;

"Extended Term" as defined in Clause 2.1;

"Hosted Services" means the provision to the Customer and its Authorised Users of access to, and use of the Software as a service, all as described in Schedule 1;

"Hosting Site(s)" means the location(s) chosen by the Supplier as a base for the Hosted Services as set out in Schedule 1;

"Initial Term" as defined in Clause 2.1;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"KPIs" means the key performance indicators requirements set out in Schedule 6;

"Market Data" means third party data made available to Authorised Users via the Hosted Services and subject to the provisions of the agreements between the Customer and such third parties;

"Software" means the Supplier's advanced data and market intelligence software and platform as described in Schedule 1 (including all business, logic, components, algorithms and software developed for the Customer by the Supplier both before this Agreement was entered into and during the continuance of this Agreement) as such may be updated, upgraded, amended, developed or added to by the Supplier from time to time;

"Services" means the Hosted Services, the Development Services, Brainnwave Customer Service and Support and all other services which may be provided by the Supplier to the Customer hereunder;

"Service Facilitator" means a third party company chosen by the Supplier and authorised to promote services, provide implementation, customer support, training and other services, as well as to invoice and collect monies from Customer in relation to this Agreement;

"Subscription Fees" means the fees for the Hosting Services and Brainnwave Customer Service and Support being the fees set out under "Subscription Fees" in Schedule 6, as such may be amended pursuant to Clause 7.3, or such other amount as may be agreed in writing between the Parties;

"Term" means the Initial Term, and if this Agreement is extended pursuant to Clause 2, the aggregate of the Initial term and all Extended Terms;

"TUPE Regulations" the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended or replaced from time to time);

- 1.2. Clause and Schedule headings shall not affect the interpretation of this Agreement. References to Clauses and Schedules are to the Clauses and Schedules of this Agreement.
- 1.3. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.4. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. TERM

- 2.1. This Agreement commences with effect from the Commencement Date notwithstanding the date hereof and will continue, unless terminated earlier pursuant to Clause 12, for a minimum period of 36 months (**Initial Term**) and thereafter for successive periods of 12 months unless terminated by either party by the giving of at least [3] months written notice of termination to expire on the next anniversary of the Commencement Date (**Anniversary Date**).

- 2.2. The parties shall meet, with such meetings commencing at least 6 months before each successive Anniversary Date to review (acting in good faith) whether (a) this Agreement should be continued beyond the next Anniversary Date and (b) whether any amendments to this Agreement are necessary or desirable and, if so, whether such extension and/or amendments should be made.

3. LICENCE

- 3.1. During the continuance of this Agreement, the Supplier grants to the Customer and its Affiliates a non-exclusive, right and licence to access and use, and allow Authorised Users to access and use, the Software through the Hosted Services, all on the terms and conditions set out in this Agreement.

4. SERVICES

- 4.1. From the Commencement Date, the Supplier shall supply the Services on the terms and conditions set out in this Agreement.
- 4.2. The Supplier shall meet any performance dates for the Services specified in the Agreement or notified to the Supplier by the Customer.
- 4.3. In providing the Services, the Supplier warrants that it shall:
- 4.3.1. co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - 4.3.2. perform the Services with reasonable care, skill and diligence in accordance with good industry practice;
 - 4.3.3. 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 in accordance with this Agreement;
 - 4.3.4. ensure that the Software, Services and Deliverables will conform with all descriptions and specifications set out in this Agreement, or otherwise agreed between the Parties, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - 4.3.5. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - 4.3.6. observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises and any other premises where the Services are to be performed;
 - 4.3.7. The Supplier will use its reasonable endeavours to ensure that the Services will not contain any feature designed to prevent or impair its use, including without limitation, computer viruses or other codes, instructions, routines, or components designed to permit unauthorised access, modifications, erasure, damage or

disabling of any software, hardware or data, or to impair its operation or performance. Nothing in this Schedule shall relieve Customer from an obligation to exercise reasonable care in detecting computer viruses in the Services.

- 4.4. The Supplier shall at all times throughout the Term have sufficient manpower, capacity and resources available to meet its obligations under this Agreement.
- 4.5. The Supplier shall ensure that it holds materials, drawings, specifications and data supplied by the Customer to the Supplier ("Customer Materials") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation.
- 4.6. In providing the Services, the Supplier shall use reasonable endeavours to comply with the KPIs. In respect of availability of the Hosted Services however, the Customer accepts that computer and telecommunications systems are not fault free and may experience or require occasional periods of downtime (during which some or all of the Services will not be available) whether for repair, upgrading, maintenance or otherwise. The Supplier will use reasonable endeavours to minimise such periods of non-availability and will attempt to rectify the problem in accordance with the Brainnwave Customer Service and Support. The Customer acknowledges that no undertakings or warranties are given by the Supplier that the Customer may make continuous or uninterrupted use of the Service.
- 4.7. Throughout the continuance of this Agreement, the Supplier shall have in place such technical, physical and organisational measures in respect of the Hosted Services as are appropriate, in accordance with good industry practice from time to time for professional providers providing services similar to the Services being provided by the Supplier herein, (i) to ensure the security and confidentiality of the Customer Data and (ii) to protect the Customer Data against threats or risks to its security or integrity and against unauthorised access, use or disclosure. The Supplier shall ensure that all its permitted subcontractors comply with the same obligations.
- 4.8. The warranties set forth in this Clause 4 are limited warranties and are the only warranties made by the Supplier. Except as otherwise provided herein, the service is provided "as is" and without any warranty whatsoever, express or implied, including implied warranties regarding description, merchantability and fitness for a particular purpose.

5. CUSTOMER REMEDIES

- 5.1. If the Supplier fails to perform any material part of the Services by the applicable date in accordance with this Agreement, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 5.1.1. to terminate this Agreement with immediate effect by giving written notice to the Supplier;
 - 5.1.2. to refuse to accept any subsequent performance of the Services;

- 5.1.3. where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier;
 - 5.1.4. to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates; and/or
 - 5.1.5. to require the Supplier to perform the Services and withhold payment of Charges until it has done so.
- 5.2. If the Supplier has performed Services that do not comply with the undertakings set out in clause 4.3, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Services:
- 5.2.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 5.2.2. to require the Supplier to re-perform the defective Services at the Supplier's cost, or to provide a full refund of the price of the defective Services (if paid) and to withhold payment of other Charges until the Supplier has done so; and/or
 - 5.2.3. to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services from a third party where it is reasonable to believe that the third party is able to provide such substitute services on a comparable basis to the Supplier.
- 5.3. Clauses 5.1 and 5.2 shall extend to any substituted or remedial Services supplied by the Supplier.
- 5.4. The Customer's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.
- 5.5. The Supplier agrees that it shall not use or access, or permit or allow any third party to use or access any Market Data licensed to the Customer by a third party except to the extent necessary to provide the Services, and will not exceed the usage of that Market Data, as advised to it by the Customer. In any use of any Market Data pursuant to provision of the Services, the Supplier shall comply with the terms of the Customer's licence in respect of that Customer Data and shall not, by any act or omission, cause the Customer to be in breach of such licence.

6. CUSTOMER'S OBLIGATIONS

- 6.1. The Customer shall, to the extent it considers it reasonably necessary for the performance of the Services: (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and (b) provide such information as the Supplier may reasonably request for the provision of the Services and for the purpose of providing the Services.

- 6.2. Customer or the Customer's Affiliates shall not until twelve (12) months after termination of this Agreement for whatever reason, directly or indirectly solicit or procure the employment of any of the Supplier's employee(s), Affiliate(s), agent(s) or subcontractor(s) unless otherwise agreed in writing by the Supplier.
- 6.3. Customer will ensure that there is good access provision (including but not limited to network equipment) between each Authorised User and the Hosting Site and that all Authorised Users are adequately trained in the use of the Software.
- 6.4. The Customer undertakes that it will not use and will ensure that no Authorised User uses the Hosted Services to transmit any obscene, illegal or defamatory messages or transmit any message, data, image or program that would violate the rights of any third party, including unauthorised copyright text, trade secrets or other proprietary information.
- 6.5. The Customer warrants that it has all necessary rights and licences in respect of all Customer Data.
- 6.6. The Customer acknowledges that it is entirely responsible for the provision of the appropriate hardware and software to enable it to make use of the Hosted Services, and that full access to the Hosted Services may only be possible if the Customer utilises appropriate hardware and software.
- 6.7. The Customer acknowledges that it is, subject to Clause 6.6, entirely responsible for maintaining and complying with any third party data licences required for the Market Data ("Direct Data Licences") that are entered into directly between the Customer and the data provider. The Customer must ensure they have the appropriate license that allows them to connect the Market Data to the Hosted Services and the Software as required in accordance with this Agreement.

7. CHARGES

- 7.1. The Charges for the supply of the Services shall be as set out in Schedule 6.
- 7.2. The Charges are fixed for the duration of the Term, unless amended pursuant to Clause 7.3 or otherwise agreed in writing between the Parties.
- 7.3. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.4. The Supplier shall invoice the Customer according to Schedule 6. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 7.5. In consideration of the supply of Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

- 7.6. All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under this Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.7. If the Customer fails to pay any undisputed amount properly due and payable by it under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of Royal Bank of Scotland plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Customer disputes in good faith.

8. GOVERNANCE/MANAGEMENT

- 8.1. The Parties are both committed to achieving a successful relationship throughout the Term and will act in good faith and collaboratively in all matters concerning the performance of this Agreement. Accordingly, each of the Supplier and the Customer shall appoint a Supplier's representative and a Customer's representative, respectively, (each a Representative and together the Representatives) who shall be the single contact point on all aspects of the Services.
- 8.2. The functions of the Representatives include:
- 8.2.1. reviewing the performance of the Supplier since the last quarterly review meeting;
 - 8.2.2. reviewing the quality of the Services and any remedial measures required;
 - 8.2.3. discussing ways in which the Services can be improved;
 - 8.2.4. discussing the Supplier's compliance with this Agreement in the previous period and the steps to be taken to correct any issues;
 - 8.2.5. informing each other promptly of any problems encountered in relation to the Services provided under this Agreement; and
 - 8.2.6. resolving disputes in accordance with Clause 8.5.
- 8.3. Either Party may remove or replace its Representative by written notice to the other Party which notice shall state the name of the replacement Representative for such Party.
- 8.4. The Representatives shall meet quarterly (or as otherwise agreed by the Parties in writing) at the Customer's premises at [] or such other venue as the Representatives may agree.
- 8.5. Subject to Clause 8.6, should any dispute arise between the Parties as to any matter relating to the Services or the terms of this Agreement then such dispute shall in the first instance be referred to the Representatives, who shall within 10 Business Days of such reference discuss the matter at issue and seek to resolve it in an amicable manner in accordance with

the partnering principles set out in this Clause 8. If the Representatives are unable to reach agreement within 10 Business Days of a reference being made to them then the matter may be escalated by either Representative to the Chief Procurement Officer (CPO) of the Customer and TITLE of the Supplier for determination as soon as practicable and in any event within 20 Business Days of the matter being referred to them. All discussions undertaken under this Clause 9.5 shall be on a "without prejudice" basis in the event that legal proceedings are subsequently commenced.

- 8.6. Nothing in Clause 8.5 will prevent or delay either Party from seeking orders for specific performance or final injunctive relief at any time or, following the expiry of the period of 20 Business Days referred to in Clause 8.5, from exercising any right it may have to terminate this Agreement or from commencing any legal proceedings.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. To the extent that any Intellectual Property Rights (including Software) are created or developed under or in connection with this Agreement such Intellectual Property Rights will remain the property of the Supplier subject to the terms of any licence that may be granted to the Customer under this Agreement.
- 9.2. The Supplier warrants that it has and will continue to have the right to license the Software to the Customer and it hereby grants to the Customer, without further charge, a perpetual and irrevocable right to use and maintain the Software on or in connection with the Deliverables (and any back-up or related equipment) and to make copies as are necessary to use and maintain the Software and for back-up and ancillary purposes.
- 9.3. The Supplier shall use reasonable endeavours to obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under the provisions of any applicable law in any jurisdiction.
- 9.4. The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned and licensed to the Customer in accordance with clause 10.
- 9.5. All Customer Materials and all Intellectual Property Rights therein are the exclusive property of the Customer.
- 9.6. The Supplier shall not in any way reproduce or use (whether or not in connection with the supply of the Services) the Customer's Intellectual Property Rights or Commercial Markings in any advertising, promotion, marketing or public communication or announcement without the prior written consent of the Customer.
- 9.7. The Customer Data and all Intellectual Property Rights therein shall be owned by the Customer at all times and Supplier shall have no rights therein, except to use the extent necessary to provide the Services during the term of the Agreement.

10. LIABILITY AND INDEMNITY

10.1. The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

10.1.1. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the performance of the Services, to the extent that the defect in the performance of the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

10.1.2. any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim wholly attributable to the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors;

10.1.3. any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the supply or use of the Deliverables and/or Software, or receipt, use or supply of the Services.

10.2. In respect of the indemnity in Clause 10.1.3 above:-

10.2.1. The indemnity only applies if:

- (a) Customer promptly notifies the Supplier in writing of the claim;
- (b) Supplier has sole control of the defence and all related settlement negotiations;
- (c) Customer provides the Supplier with the reasonable assistance, information and authority necessary to perform the Supplier's obligations under this Clause. The Supplier will reimburse reasonable out-of-pocket expenses incurred by Customer in providing such assistance;

10.3. The Supplier shall have no liability for any claim of infringement based on the combination, operation or use of the Services furnished under this Agreement with software, hardware or other materials not furnished by the Supplier and not approved by the Supplier if such infringement would have been avoided by the use of the Services without such software, hardware or other materials.

10.4. In the event a final interdict is obtained against the use of the Services, the Supplier shall at its option and expense:

10.4.1. Use commercially reasonable efforts to replace the Services with a similar service;
or

- 10.4.2. Use commercially reasonable efforts to obtain from the third party on behalf of Customer a licence to continue to provide the Service; or
- 10.4.3. terminate the Services and refund any Charges actually paid to the Supplier upfront in advance that cover any future period pursuant to this Agreement.
- 10.5. For the duration of this Agreement and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with this Agreement and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 10.6. Subject to clause 10.5, neither party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit or business or any indirect or consequential damage or loss suffered by the other party that arises under or in connection with this Agreement.
- 10.7. Subject to clause 10.6, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed an amount equal to 100% of the Charges paid or payable by the Customer under this Agreement..
- 10.8. Nothing in the Contract shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud or fraudulent misrepresentation, defective products under the Consumer Protection Act 1987, breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or section 12 of the Sale of Goods Act 1979 (title and quiet possession), breach of confidentiality or breach of Clauses 4.7 or 4.8 or for claims under Clause 10.1 or for any other matter in respect of which it would be unlawful for that party to exclude or limit its liability.
- 10.9. This clause 10 shall survive termination of this Agreement.
- 10.10. The foregoing provisions of this Clause 10 allocate the risks under this Agreement between the Supplier and Customer. The Customer acknowledges and agrees that the Supplier's pricing reflects this allocation of risk and the limitation of liability specified herein.

11. CONFIDENTIALITY

- 11.1. A party (Receiving Party) shall keep in strict confidence all technical or commercial information and know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents, subcontractors or professional advisers, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's

obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of this Agreement.

11.2. Notwithstanding Clause 11.1 above, nothing in this Agreement shall be construed to prevent or restrict the Supplier from disclosing or using in the course of its business any technical knowledge, skill, know-how, concepts or expertise of a generic nature whether acquired by Supplier in the performance of this Agreement or otherwise.

11.3. The provisions of this Clause shall survive the expiration or termination of this Agreement for five (5) years but the restrictions contained in this Clause 11.3 shall cease to apply to any information which:

11.3.1. may come into the public domain through no wrongful act of the Receiving Party;
or

11.3.2. is already known to the Receiving Party otherwise than through unauthorised disclosure by the Receiving Party, its employees, agents or sub-contractors; or

11.3.3. is lawfully obtained by the Receiving Party from a third party who in making such disclosure breaches no obligation of confidence to the Disclosing Party.

12. TERMINATION

12.1. Without limiting its other rights or remedies, the Customer may terminate this Agreement with immediate effect by giving written notice to the Supplier if:

12.1.1. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;

12.1.2. an event occurs, or proceeding is taken, in any jurisdiction to which Supplier is subject that has an effect equivalent or similar to the following events: an order is made or a resolution is passed for the winding up of Supplier, or an order is made for the appointment of an administrator to manage the affairs, business and property of Supplier, or such an administrator is appointed, or a receiver or manager or administrative receiver is appointed in respect of all or any of Suppliers' assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or which entitle the court to make a winding-up or bankruptcy order, or the Supplier takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by Supplier with its creditors or an application to a court for protection from its creditors is made by Supplier; or

- 12.1.3. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

13. CONSEQUENCES OF TERMINATION

On termination of this Agreement or any part of it for any reason:

- 13.1. where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- 13.2. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 13.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13.4. each Receiving Party of Confidential Information shall immediately destroy, and certify to the Disclosing Party that it has destroyed, all Confidential Information of the other party in its possession or control;
- 13.5. the Customer shall cease and procure that the Authorised Users cease, use of the Services;
- 13.6. all sums due to be paid by the Customer in respect of the Charges shall immediately become payable.

14. GENERAL LEGAL PROVISIONS

- 14.1. It is not envisaged by the Parties that the TUPE Regulations will apply on the commencement or termination of this Agreement or the commencement or cessation of any part of the services to be provided to the Customer pursuant to this Agreement. Notwithstanding and without prejudice to the foregoing, the Supplier indemnifies and shall keep indemnified the Customer for and against all claims, costs, expenses or liabilities incurred or suffered by the Customer (including without limitation all legal expenses and other professional fees together with any VAT thereon) in relation to (a) the employment, transfer of employment or termination of employment of any employee of the Supplier or its contractors, (b) any breach of the TUPE Regulations by either Party or the Supplier's contractors in the event that the TUPE Regulations apply on the commencement or termination of this Agreement or the commencement or cessation of any part of the services to be provided to the Customer pursuant to this Agreement and/or (c) any allegation, claim or finding by any person, court or tribunal in relation to any of the foregoing.
- 14.2. No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of, the Parties.

- 14.3. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Services for more than 14 days, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Agreement e Contract with immediate effect by giving written notice to the Supplier.
- 14.4. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 14.5. 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.
- 14.6. A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be 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.
- 14.7. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 14.8. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understanding or agreement between them, whether written or oral, relating to its subject matter.
- 14.9. Each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any representation or warranty (whether made negligently or innocently) that is not set out in this Agreement. This does not apply to fraud.
- 14.10. The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.11. The Customer may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
- 14.12. Nothing in this Agreement is intended to, or shall operate to, create a partnership between its Parties, or to authorise either Party to act as agent for the other, and neither Party to this Agreement shall have authority to act in the name or on behalf of or otherwise to bind the

other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15. ANTI-SLAVERY/ANTI-CORRUPTION

- 15.1. The Supplier shall:
- 15.2. comply with all applicable laws, statutes, regulations, and codes relating to anti-slavery, anti-bribery and anti-corruption, including the Modern Slavery Act 2015 and the Bribery Act 2010 (Relevant Requirements);
- 15.3. comply with the Customer's Supplier Code of Conduct (available at [www.\[\]\(\).com](http://www.[]().com)) as the Customer may update from time to time (Relevant Policy); and
- 15.4. have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policy, and will enforce them where appropriate.

16. NOTICES

- 16.1. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- 16.2. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.3. This clause 17 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.
- 16.4. Invoices to Customer should be sent to:

Attn: Name, address

Email: aname@customer.com

EU VAT No: 123456789 (all EEC clients)

17. GOVERNING LAW AND JURISDICTION

- 17.1. 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 laws of England.

- 17.2. The Parties irrevocably agree that the English courts 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).

This Agreement has been signed on the last page on the date stated at the beginning of it.

18. BUSINESS CONTINUITY

With effect from the date the Supplier becomes unable or unwilling to provide any of the Services for the Customer for whatever reason, including insolvency, liquidation or acquisition or any of the events set out in Clause 13.1.2 happening to the Supplier, the Supplier grants the Customer a perpetual, irrevocable, non-exclusive, license to use, modify and maintain the Software and all the said Source Material for the purposes of enabling the Customer and its Authorised Users to continue accessing and using the Software.

19. LIMITATION OF LIABILITY OF THIRD PARTIES PROVIDING MARKET DATA

- 19.1. All information provided via the Service (including information obtained through Direct Data Licences and Market Data) shall be provided "as is," without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, title and non-infringement.
- 19.2. Customer acknowledges that the data may contain some nonconformities, defects, or errors. The Supplier does not warrant that Market Data will meet the needs or expectations of Customer, that the use of the information will be uninterrupted, or that defects, errors or nonconformities can or will be corrected.
- 19.3. In no event shall the Supplier, the third parties providing Market Data to the Supplier, or their officers, directors, shareholders, employees, agents or representatives or their affiliates or any of their respective officers, directors, shareholders, employees, agents or representatives (collectively, the "Brainnwave Partners") be liable, whether in contract, tort, strict liability or otherwise, for any direct, punitive, special, consequential or indirect damages, claims or losses (including without limitation lost profits, cost of procuring substitute service or lost opportunity) arising out of or in connection with the use of the information or with the delay or inability to access the information.
- 19.4. In the event of unplanned unavailability of any information, such as in the event of an emergency, then the Supplier shall attempt to provide Customer with prior notice of the unavailability to the extent reasonably practicable.

SCHEDULE 1 - HOSTED SERVICES

Use of the following -

Brainnwave	Advanced	Included
Intelligence	Platform	
(Branded for Customer as AMI)		

which, with the exception of planned maintenance periods, will be provided from the Hosting Site for use by Authorised Users at least 99% of every month.

Applicable Apps

For Authorised Users under 'User Roles' Customer is authorised to use the Service within any of the Applicable Apps supported by Brainnwave and described below without restriction.

Applicable Apps	Description	License
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Hosting Site(s)

Brainnwave data centre in the United Kingdom and as varied from time to time at Brainnwave's sole discretion in either case being a secure data centre which provides secure physical and logical access to authorised personnel only .

Hosting Services

Brainnwave shall be responsible for the hosting of all systems that are required to provide the Service and all Data on a 24 hour a day, 7 days a week basis including all public holidays.

The following services shall be provided in the hosting site:

- (a) Uninterrupted power supply;
- (b) Physical site monitoring and security at all times;
- (c) Fire suppression systems;
- (d) Heat, light, temperature, air quality and humidity controls and systems;
- (e) Flooding and infestation prevention;
- (f) Systems and network monitoring at all times.

Security & Monitoring

The following security and monitoring obligations shall apply:

Brainnwave shall have in place at all times a contract with a premium cloud services vendor in respect of the physical and logical security of the Service ensuring that relevant services are provided continuously on a twenty-four (24) hour, seven (7) days a week basis including public holidays. This contract shall include provisions guarding against unauthorised access, alteration or destruction of any element of the Service;

Brainnwave shall use reasonable efforts to ensure that all Data is kept secure at all times;

Brainnwave shall ensure that any physical and logical access to the Service is only possible for authorised Brainnwave personnel to enable them to perform their duties;

Scheduled Downtime

Brainnwave must notify Customer in writing at least ten (10) Business Days in advance of any Scheduled Downtime, which may include the deployment of a Release that will affect availability and/or performance of the Service.

Brainnwave agrees that there shall be no Scheduled Downtime during Change Freeze Periods.

All Scheduled Downtime will occur during Customer's non-peak usage hours unless otherwise agreed by Customer.

Brainnwave shall use reasonable endeavours to limit Scheduled Downtime that will affect the Availability and/or performance of the Service.

Brainnwave shall inform Customer of any planned work overruns that affect the availability and/or performance of the Service.

Brainnwave shall notify Customer in writing as soon as reasonably possible of any emergency work required to the Service providing all appropriate details as required by Customer in order to establish if the emergency maintenance work will have an impact on the Availability and/or performance of the Service.

Authorised Users

Unlimited.

SCHEDULE 2 - SUPPORT SERVICES –

Type of Support:		Brainnwave Customer Service and Support		
Brainnwave Support Centre:	Support	Address: 21 Young Street, Edinburgh, EH2 4HU		
		Telephone: + 44 (0) 131 xxxxx		
		or visit http://www.Brainnwave.com/support		
		E-mail: support@Brainnwave.com		
Cover:	Brainnwave will respond to all defects reported within Brainnwave's normal working hours of 9.00 to 5.00pm UK time, Monday to Friday, excluding public holidays, in accordance with the response time detailed below. A 'response' is defined as either a fix or a plan of action to deal with the defect. Customers with more than one open defect can assign relative priorities for such defects. Note should Customer use customised facilities within the Service, Brainnwave may make additional charges for Brainnwave Customer Service and Support; however, such charges would be defined and agreed by both parties prior to use of the customised facilities within the Service			
		Severity	Definition	Response Time
		1 – Major	A defect that means that the Brainnwave site or a major part of the Brainnwave site is unavailable.	Within 3 working hours
		2 – Minor	A defect in a part of Brainnwave, but there is a simple bypass.	2 working days
		3 – Cosmetic	A documentation or cosmetic error.	5 working days

SCHEDULE 3 – MARKET DATA

Access to the Data feeds listed (but not limited to the) below is included within the scope of this agreement on condition that the access is subscribed directly by the Customer. If additional data feeds are required by the Customer, the subscription cost of such access and the cost of any technical work necessary to provide access will be borne by the Customer.

Data Feed	Description	Date of Renewal	Customer Account Contact

SCHEDULE 4 - TECHNICAL SPECIFICATION FOR THE SOFTWARE/SERVICES

Feature	Included Y/N	Description
		☐
		☐
		☐
		☐
		☐
		☐

Dependencies

Dependency	Owner

SCHEDULE 5 - CHARGES

Subscription Fees

SCHEDULE 6

SLA/KPIS

Overall Performance and Quality KPIS

Brainnwave will provide a weekly Project Management Report detailing the agreed deliverables and timeline plotted against actual progress with a red flag report for any at risk items.

ID	Indicator	Definition	Calculation	Threshold
KPI-1	Availability of AMI	The [] platform will be available for at least 99% of every month	Retro-planning: Comparison of delivery against target	1% downtime
KPI-2	Punctuality of reports/ deliverables	Every report/deliverable will have an agreed deadline, which may be extended in duly justified circumstances. A deliverable is on time if its delivery date matches its due date. Delays are counted in whole days, irrespective of time of the day. No delays are tolerated.	Retro-planning: Comparison of delivery date against due date	0 working days
KPI-3	Response to reported defects	Brainnwave will respond to all defects reported within Brainnwave's normal working hours of 9.00 to 5.00pm UK time, Monday to Friday, excluding public holidays, in accordance with the response time detailed below. A 'response' is defined as either a fix or a plan of action to deal with the defect. Customers with more than one open defect can assign relative priorities for such defects. Note should Customer use customised facilities within the Service, Brainnwave may make additional charges for Brainnwave Customer Service and Support; however, such charges would be defined and agreed by both parties prior to use of the customised facilities within the Service. If the identified problem requires technical support from the	1. Major – a defect that means the service or a major part of the service is unavailable 2. Minor – a defect in a part of the service, but there is a simple by-pass 3. Cosmetic – a documentation or cosmetic errors	1. Within 3 working hours 2. Two working days 3. Five working days

		Customer then the Customer shall provide such support on a timely and efficient basis.		
KPI-4	Quality of reports/ deliverables	All reports/deliverables are subject to acceptance (with or without reservations) or rejection by the Customer, within the specified deadlines. Only one is possible before the KPI threshold is exceeded.	Count of rejections per report/deliverable or Measured by Project Officer	1 rejection ¹

SCHEDULE 7

Data Protection

1. In this Schedule, terms defined in the Services Agreement (of which this is Schedule [●]) shall have the same meaning when used herein and the following terms shall have the following meanings:-

"Data Protection Laws" mean all laws applicable in the UK from time to time relating to the processing of personal data and/or privacy, including, the General Data Protection Regulation (Regulation (EU) 2016/679) (the **"GDPR"**); and

"controller", **"processor"**, **"data subject"**, **"personal data"** and **"processing"** shall have the meanings ascribed to them in the Data Protection Laws.

2. In processing personal data forming part of the Customer Data pursuant to the Services Agreement (the "Contract Personal Data") the Supplier shall comply at all times with the Data Protection Laws.
3. The table at the end of this Schedule 5 sets out the types of personal data (and categories of data subjects) which the parties intend shall be processed under the Services Agreement, as well as the permitted nature, purpose and duration of that processing.
4. the Supplier shall, in relation to any Contract Personal Data for which it is the "processor":
 - 4.1 only process Customer Personal Data in accordance with the documented instructions of the Customer as set out in table at the end of this Schedule or as otherwise notified to the Supplier by the Customer;
 - 4.2 not transfer any Customer Personal Data to a country outside of the European Economic Area ("EEA") without the prior written consent of the Customer and then subject to adequate safeguards as required by the GDPR being in place in advance as directed by the Customer (or the relevant regulatory authority from time to time);
 - 4.3 ensure that any persons authorised by it to process Customer Personal Data are bound by appropriate confidentiality obligations in relation thereto;
 - 4.4 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the severity of the risk to the rights and freedoms of natural persons, take and maintain appropriate technical and organisational measures in relation to the Customer Personal Data to ensure a level of security appropriate to the level of risk (and in assessing risk shall take account, in particular, of the risks that are presented by processing in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Customer Personal Data);
 - 4.5 not appoint any third party to process any Customer Personal Data without the prior written consent of the Customer and provided that if such consent is obtained, it shall require each

such third party to agree to accept obligations equivalent to those accepted by the Supplier, as set out in this Schedule;

- 4.6 when requested by the Customer, assist the Customer in fulfilling the Customer's obligations under the Data Protection Laws, including assisting the Customer in (i) ensuring compliance with its obligations relating to data security, data breach and data protection impact assessments under applicable Data Protection Laws (including, once in effect, Article 32 to 36 of the GDPR), and (ii) responding to requests from data subjects in relation to the exercise of that data subject's rights with respect to their personal data under the Data Protection Laws;
- 4.7 forthwith at the end of the provision of services relating to processing under the Services Agreement, delete or return to the Customer (as requested by the Customer) all Customer Personal Data in its and/or its sub-processors' possession or control, and shall, on the Customer's request, certify in writing to the Customer that it has done so;
- 4.8 prepare, keep, and make available to the Customer on its request all such documentation and information as is necessary to demonstrate its compliance with the Data Protection Laws and this Schedule;
- 4.9 allow for, contribute to, and cooperate with, audits (including inspections) conducted by the Customer or another auditor mandated by the Customer relating to it and all sub-processors to it (if any);
- 4.10 immediately inform the Customer if it becomes aware of a personal data breach (as defined under the Data Protection Laws) but the Supplier shall not notify any regulator or data subject of such breach except on express instructions from the Customer, unless required to do so by law;
- 4.11 immediately inform the Customer if in its opinion an instruction from the Customer infringes the Data Protection Laws; and
- 4.12 promptly notify the Customer upon receipt of a request from a person in relation to a person's personal data forming part of the Contract Personal Data to exercise any of their rights under the GDPR, including the right to access their data, but the Supplier shall not respond to that request, without the Customer's written instructions, unless required to do so by law.

Duration of processing	For the continuance of the Services Agreement
Nature and purpose of processing	To perform the Services
Categories of data subjects	Customer's customers/suppliers, [parties to amend]
Types of personal data	Names, emails addresses, telephone numbers, job titles, addresses

	[parties to amend]
--	--------------------

Signed for and on behalf of **□ LIMITED**

.....

Name:

Position:

Signed for and on behalf of **BRAINN WAVE LIMITED**

.....

Name:

Position:

DATED [●] 2022

CONSULTING SERVICES AGREEMENT

between

□ LIMITED

and

BRAINN WAVE LIMITED

1.1 Terms and Conditions

1.1.1 Confidential Information

Each party will safeguard and keep confidential all Confidential Information of the other and will return the other's Confidential Information upon request, except to the extent further retention of such Confidential Information is necessary for a party to perform any post-termination obligations or exercise any post-termination rights under this Agreement. Each party agrees to safeguard the other's Confidential Information using measures that are equal to the standard of performance used by it to safeguard its own Confidential Information of comparable value, but in no event less than reasonable care. Neither party will use any Confidential Information of the other party for any purpose except to implement its rights and obligations under this Agreement and as otherwise expressly contemplated by this Agreement; provided, however, that if any party or its representatives is requested or required to disclose any Confidential Information by a subpoena or court order, that party will promptly notify the other party (unless prohibited by such subpoena or order) of such request or requirement so that the other party may seek an appropriate protective order or other appropriate relief and/or waive compliance with provisions of this Agreement, and if, in the absence of such relief or waiver hereunder, a party or its representative are, in the opinion of its counsel, legally compelled to disclose Confidential Information, then that party may disclose so much of the Confidential Information as is, according to such opinion, required, without liability hereunder.

1.1.2 Data Protection

The following terms shall have the following meanings:

"Data Protection Laws" mean all laws applicable in the UK from time to time relating to the processing of personal data and/or privacy, including, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"); and

"controller", "processor", "data subject", "personal data" and "processing" shall have the meanings ascribed to them in the Data Protection Laws.

- (a) In processing personal data forming part of the Customer Data pursuant to the Services Agreement (the "Contract Personal Data") the Supplier shall comply at all times with the Data Protection Laws.
- (b) The table at the end of this Section 4.2 sets out the types of personal data (and categories of data subjects) which the parties intend shall be processed under the Services Agreement, as well as the permitted nature, purpose and duration of that processing.
- (c) the Supplier shall, in relation to any Contract Personal Data for which it is the "processor":

 - (i) only process Customer Personal Data in accordance with the documented instructions of the Customer as set out in table at the end of this Schedule or as otherwise notified to the Supplier by the Customer;
 - (ii) not transfer any Customer Personal Data to a country outside of the European Economic Area ("EEA") without the prior written consent of the Customer and then subject to adequate safeguards as required by the GDPR being in place in advance as directed by the Customer (or the relevant regulatory authority from time to time);
 - (iii) ensure that any persons authorised by it to process Customer Personal Data are bound by appropriate confidentiality obligations in relation thereto;
 - (iv) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the severity of the risk to the rights and freedoms of natural persons, take and maintain appropriate technical and organisational measures in relation to the Customer Personal Data to ensure a level of security appropriate to the level of risk (and in assessing risk shall take account, in particular, of the risks that are presented by processing in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Customer Personal Data);
 - (v) when requested by the Customer, assist the Customer in fulfilling the Customer's obligations under the Data Protection Laws, including assisting the Customer in (i) ensuring compliance with its obligations relating to data security, data breach and data protection impact assessments under applicable Data Protection Laws (including, once in effect, Article 32 to 36 of the GDPR), and (ii) responding to requests from data subjects in relation to the exercise of that data subject's rights with respect to their personal data under the Data Protection Laws;
 - (vi) forthwith at the end of the provision of services relating to processing under the Services Agreement, delete or return to the Customer (as requested by the Customer) all Customer Personal Data in its and/or its sub-processors' possession or

control, and shall, on the Customer's request, certify in writing to the Customer that it has done so;

- (vii) prepare, keep, and make available to the Customer on its request all such documentation and information as is necessary to demonstrate its compliance with the Data Protection Laws and this Schedule;
- (viii) immediately inform the Customer if it becomes aware of a personal data breach (as defined under the Data Protection Laws) but the Supplier shall not notify any regulator or data subject of such breach except on express instructions from the Customer, unless required to do so by law;
- (ix) immediately inform the Customer if in its opinion an instruction from the Customer infringes the Data Protection Laws; and
- (x) promptly notify the Customer upon receipt of a request from a person in relation to a person's personal data forming part of the Contract Personal Data to exercise any of their rights under the GDPR, including the right to access their data, but the Supplier shall not respond to that request, without the Customer's written instructions, unless required to do so by law.

Duration of processing	For the continuance of the Services Agreement
Nature and purpose of processing	To perform the Services
Categories of data subjects	Customer's employees
Types of personal data	Name, address, emails addresses, telephone numbers, job titles, job role, rent payments, demographics (e.g. age, sex...)

1.1.3 Undertaking

Vouvray Acquisition shall not, during the term of this agreement and for a period of 12 months after its termination for any reason, circumvent the intent and purpose of this agreement by employing, or entering into any direct or indirect engagement for the provision of services with, any member of Brainnwave's staff who is providing, or has provided, Project services to Vouvray Acquisition.

1.1.4 Provision of Services

Brainnwave will provide the Services with reasonable skill and care and in accordance with the best practice prevailing in its industry from time to time, and will allocate sufficient resources to the Services to enable it to comply with its obligations hereunder. Moreover, in the provision of the Services, Brainnwave will use personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the performance and service levels which they are required to achieve and who will perform those tasks in a workmanlike and professional manner.

[client] acknowledges and agrees that Brainnwave may suspend provision of the Services to it, in whole or in part, if (i) [client] fails to pay the Fees due to Brainnwave for a period of twenty-eight (28) days after the date of the invoice, or (ii) Brainnwave is obligated to suspend Services via subpoena, court order or otherwise as required by law. To the extent Brainnwave validly takes any suspension action as authorised by this section, it will not be liable to [client] or any one claiming by or through

[client] for damages. The suspension remedies with respect to (i) and (ii) will not preclude Brainnwave from pursuing other remedies available by statute or otherwise permitted by law.

1.1.5 Limitation of liability

Brainnwave's liability for breach of contract (including breach of section 4.10 below) or in tort or otherwise howsoever shall be limited to the aggregate amount of all Fees received by it as at the date of claim. Nothing in this clause shall limit Brainnwave's liability to Vouvray Acquisition for death or personal injury.

1.1.6 Substitution

With Vouvray Acquisition prior written consent, Brainnwave has the right to supply a substitute of equivalent knowledge and expertise and acknowledges that Vouvray Acquisition has the right to refuse the replacement if, in its view, the replacement is not sufficiently qualified to undertake the work. Where substitution occurs Brainnwave remains responsible for the continuous performance of the Services.

1.1.7 Expenses

6.7.1 If any member of Brainnwave's staff is asked to travel on behalf of Vouvray Acquisition or incur other expenses directly related to the Services, Vouvray Acquisition shall reimburse Brainnwave for the actual cost without mark-up of such expense provided they are pre-approved and reasonable ("Expenses"). Brainnwave will submit an invoice with supporting documentation for any Expenses within thirty (30) days of the date the Expense is incurred. Payment for Expenses shall be tendered to Brainnwave within fourteen (14) days of Vouvray Acquisition's receipt of an undisputed invoice. Brainnwave will follow Vouvray Acquisition's expense policy at all time.

6.7.2 In the event a dispute arises between the parties regarding any portion of any invoice, Vouvray Acquisition shall pay all undisputed portions of the invoice(s) while withholding payment of the disputed portions pending good faith resolution by the parties.

1.1.8 Insurance

Brainnwave will, at its own expense, obtain and maintain its current insurances of a type and amount as may be reasonable to protect its interests and obligations connected with performance under this Agreement Brainnwave will, within thirty (30) days of Vouvray Acquisition's written request, provide Vouvray Acquisition with a certificate of insurance evidencing such coverage, provided that the existence of such insurance will in no way expand or limit Vouvray Acquisition's liability hereunder.

1.1.9 Term and termination

- (a) Vouvray Acquisition may terminate this Agreement for cause immediately upon notice to Brainnwave. Cause shall be a material breach of this Agreement by Brainnwave.**
- (b) Brainnwave may terminate this Agreement for cause immediately upon notice to Vouvray Acquisition. Cause shall be a material breach of this Agreement by Vouvray Acquisition.**
- (c) Upon termination of this Agreement, Brainnwave shall deliver to Vouvray Acquisition all information and materials obtained or prepared by Brainnwave hereunder that have not yet been delivered as of the date of termination.**

1.1.10 Indemnification

- (a) Brainnwave will indemnify, release, and hold harmless Vouvray Acquisition against all third-party actions, suits, claims, demands or prosecutions hereinafter including all damages, judgments (including**

reasonable costs and attorney's fees) arising out of a breach of Clause 4.2 (data protection).

- (b) [client] warrants and represents that it is authorised to make data available to Brainnwave for the purposes of this agreement. Vouvray Acquisition will indemnify, release, and hold harmless Brainnwave against all third-party actions, suits, claims, demands or prosecutions hereinafter including all damages, judgments (including reasonable costs and attorney's fees) arising out of a breach of this clause 4.10.2.
- (c) It is agreed that each party shall notify the other party immediately, to be followed by written notice, as soon as either party becomes aware of any claim(s) made, brought or instituted against them based upon or arising out of the performance of this Agreement.
- (d) Any party liable to provide indemnification hereunder shall be entitled to control the defense and settlement of any claim on which it is liable. The parties shall reasonably cooperate in the investigation, defense and settlement of any claim.

1.1.11 Compliance with Anti-Bribery Laws

The parties will:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the Term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- (d) promptly report to each other any request or demand for any undue financial or other advantage of any kind received by them in connection with the performance of this Agreement;
- (e) ensure that any of their connected persons who are performing Services comply with this clause and do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the relevant party.

1.1.12 Foreign Corrupt Practices Act/Anti-Bribery Anti-Corruption Compliance

- (a) In carrying out its responsibilities under this Agreement, neither Brainnwave nor any of its employees, agents, subcontractors or representatives will pay, offer or promise to pay, or authorise the payment of, any money, or give or promise to give, or authorise the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any governmental authority or instrumentality, or of a public international organisation, or of any agency or subdivision thereof, or to any political party or official thereof or to any candidate for political office for the purpose of improperly (i) influencing any act or decision of that person in his official capacity, including a decision to fail to perform his official

functions with such governmental agency or instrumentality or such public international organisation or such political party, (ii) inducing such person to use his influence with such governmental agency or instrumentality or such public international organisation or such political party to affect or influence any act or decision thereof or (iii) securing any improper advantage.

- (b) Breach of this Section 4.12 shall be deemed a material breach of this Agreement.**

1.1.13 Governing Law

The provisions of this Agreement and any documents delivered pursuant hereto shall be governed by and construed in accordance with the laws of England and Wales (excluding any conflicts-of-law rule or principle that might refer same to the laws of another jurisdiction).

1.1.14 Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. No supplement or modification of this Agreement shall be binding unless executed in writing by both parties hereto. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement

1.1.15 Notice

Any notice given to a party under or in connection with this deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address set for it out in clause [] or by email to the email address set out in clause []. Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;**
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;**
- (c) if sent by email at the time of sending.**
- (d) The addresses for service of notices are:**
- (e) Brainnwave**

address: Exchange Place 2, 5 Semple Street, Edinburgh, EH3 8BL

- (i) for the attention of: Chris Magennis
 - (ii) e-mail: chris@brainnwave.ai
- (f) [client]:
 - (i) address: [REDACTED]
 - (ii) for the attention of: [REDACTED]
 - (iii) e-mail: [REDACTED]

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.

1.1.16 Severability

The invalidity or un-enforceability of any provision hereof shall in no way affect the validity of enforceability of any other provision hereof.