

Talanos Cybersecurity

G Cloud 13 Example Terms & Conditions

May 2022



Public – G Cloud 13 Example Terms and Conditions

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THIS AGREEMENT is made the

BETWEEN:

1. [CUSTOMER] a company registered in England and Wales ([NUMBER]) and whose registered office is [ADDRESS] (“Customer”); and
2. Prosense Technology Limited trading as Talanos Cybersecurity is a company registered in England and Wales (No. 10019631) and whose registered office is Bellarmine House, 14 Upper Church Street, Chepstow, NP16 5EX (“Consultant”)

BACKGROUND

- (A) [CUSTOMER BACKGROUND]
- (B) The parties intend that this agreement is a framework agreement for the supply of services by the Consultant to [CUSTOMER] on the terms set out in this agreement

OPERATIVE TERMS

1 Definitions and interpretation

- 1.1 In this agreement the words and expressions have the meanings set out next to them, unless the context otherwise requires:

Affected Party	the party seeking to claim relief for a Force Majeure Event;
Applicable Law	any: statute, statutory instrument, by law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body (including the Financial Conduct Authority); and/or industry code of conduct or guideline which relates to this Agreement and/or the Services or the activities which are comprised in all or some of the Services, the use or application of the output from any part of the Services and/or CUSTOMER’s business or the business of any other Service Recipient
Associated Person	an employee, agent, subsidiary or contractor who performs services (or supplies goods) for or on the Consultant's behalf and includes but is not limited to any subcontractor of the Consultant;
Business Day	a day on which CUSTOMER is open for business;
Commencement Date	the date the Services are to commence, as set out in a Work Order;

Confidential Information	all information relating to the Project or the CUSTOMER (whether or not marked "confidential") including knowledge, concepts, ideas, processes, technical know-how, financial statements, budgets, business plans, marketing plans and studies, agreements, documents, permits, licences, approvals and all other information whether disclosed orally, electronically (including in a magnetic or digital form), visually or in writing by CUSTOMER to the Consultant, its employees or agents or which becomes known as a consequence of this agreement, together with all analyses, compilations, forecasts, studies or other documents prepared by the Consultant to the extent such materials contain or otherwise reflect any of the information provided by CUSTOMER;
Deliverables	the deliverables and materials set out in a Work Order;
Effective Date	the date of this agreement, as set out at the top of page 2 of this agreement.
Fees	the charges for the Services set out in and calculated in accordance with the Work Order;
Force Majeure Event	an event or circumstance or sequence of events or circumstances beyond a party's reasonable control (but excluding any strike, lockout or industrial action involving that party's employees or their sub-contractors) preventing or delaying it from performing its obligations under this agreement;
Good Industry Practice	that degree of care and skill, prudence, efficiency, foresight, competence and timeliness that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of business under the same or similar conditions;
Insolvent	in the case of either party the appointment of, or the application for the appointment of, a liquidator, provisional liquidator, administrator, administrative receiver or receiver, the entering into of a scheme of arrangement or composition for the benefit of creditors generally, any re-organisation, moratorium or other administration involving its creditors or any class of its creditors, the proposal or passing of a resolution to wind it up (other than a voluntary winding-up as part of a reorganisation) or the company becoming unable or being deemed to be unable to pay its debts as and when they fall due within the meaning of section 123 of the Insolvency Act 1986;
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, future copyright, moral rights, trade marks, trade names and domain names, rights in get-up, look and feel, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database 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 (or rights to apply for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
IPR Claim	any claim for infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Rights used to provide the Services or the Deliverables;
Material Breach	a breach which is serious in the widest sense of having a serious effect on the benefit which the innocent party would otherwise derive from this agreement in accordance with its terms;
Customer	any entity within the CUSTOMER group of companies including CUSTOMER, its subsidiaries, its ultimate holding company and any subsidiaries of such holding company;
Pre-existing IPR	Intellectual Property Rights owned by the Consultant before the Effective Date or created by the Consultant independently of this agreement;
Project	the project as set out in a Work Order;
Project Results	all products, services, works and materials designed, developed, written or prepared by the Consultant and all related documentation including any specification graphics, programs, data, reports and all other written materials or computer output in each case produced by the Consultant in the course of providing the Services under a Work Order;
Rectification Plan	a plan for the rectification and/or prevention of a Service Default prepared by the Consultant under clause 5.1
Security Measures	technical and organisational measures that prevent or are designed to prevent the accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to Personal Data which comply with Good Industry Practice from time to time
Services	all the services to be provided by the Consultant under this agreement including those set out in each Work Order; and
Service Default	a failure to achieve any or all of the Service Levels during any given measurement period and/or to perform or provide any or all of the Services or fulfil any of its obligations at all or to at least the standard required by any other term of this Agreement

Work Order a description of the particular services in the form set out in **Error! Reference source not found.**, each numbered sequentially.

1.2 In this agreement unless otherwise specified, reference to:

1.2.1 a "holding company" or "subsidiary" have the meanings given to them by section 1159 of the Companies Act 2006;

1.2.2 a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking or organisation (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

1.2.3 a party is to a party to this agreement and includes its successors in title and permitted assignees;

1.2.4 a "statute" or "statutory instrument" or any of their provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been amended or re-enacted before the date of this agreement;

1.2.5 clauses, paragraphs or Schedules are to clauses of and paragraphs of and Schedules to this agreement. The Schedules form part of the operative provisions of this agreement and references to this agreement will, unless the context otherwise requires, include references to the Schedules;

1.2.6 "writing" includes any methods or representing words in a legible form (other than writing on an electronic or visual display screen) or other writing in non-transitory form;

1.2.7 "includes" "including" and words of similar effect will not limit the general effect of the words that follow them;

1.2.8 words in the singular include the plural and the plural include the singular; and

1.2.9 a reference to one gender includes other genders.

1.3 The headings in this agreement are for information only and shall be ignored for the purposes of its interpretation.

2 Scope

2.1 This agreement contemplates that CUSTOMER and the Consultant may sign additional Work Orders in the future for the Company to provide Services to the Client.

2.2 The provisions of this agreement automatically apply to each Work Order and all capitalised terms which are defined in the main body of the agreement will have the same meaning in a Work Order.

2.3 If there is any inconsistency between the provisions of this agreement and the provision of a Work Order the terms of this agreement will have priority.

2.4 Each Work Order must be numbered consecutively and contain the type of information specified in Schedule 1, to the extent applicable.

3 Services

3.1 The Consultant must provide the Services from the Commencement Date using the best applicable techniques and standards and in accordance with:

- 3.1.1 Good Industry Practice;
 - 3.1.2 the reasonable instructions of CUSTOMER from time to time;
 - 3.1.3 all applicable codes of practice or policies of CUSTOMER notified to the Consultant; and
 - 3.1.4 the timetable specified in each Work Order.
- 3.2 It is normally expected that the Services will be provided between the hours of 0900 and 1800 but the Consultant must comply with CUSTOMER's reasonable requests to provide the Services on specific days or at specific times. For security purposes the Consultant may not provide the Services at CUSTOMER's offices before 0900 or after 1800 without the prior permission of an CUSTOMER manager.
- 3.3 The Consultant acknowledges that the Services provided under this agreement may be for the benefit of other companies or entities within the CUSTOMER.
- 3.4 Where the Services are carried out on CUSTOMER's premises CUSTOMER will provide suitable offices and such equipment as is reasonably necessary for the performance of the Consultant's obligations under this agreement.
- 3.5 The Consultant must comply, and is responsible for ensuring that all persons carrying out the Services under this agreement comply with CUSTOMER's health and safety policy, technology policy and security arrangements, as notified to the Consultant from time to time.
- 3.6 CUSTOMER will use its reasonable endeavours to provide information reasonably requested by the Consultant to enable it to perform its obligations under this agreement.

4 RECORDS

4.1 Maintenance of Records

The Consultant shall (and shall procure that each other Consultant Party shall) maintain (in a form logically and technically separate from records pertaining to third parties) the following documentation and records (the Retained Records) in relation to the Consultant's (or that Consultant Party's (as appropriate)) performance of its obligations (in addition to any other obligation in this Agreement requiring the Consultant to maintain a record):

- 4.1.1 all documents and records as are required to be maintained by it by Applicable Law;
- 4.1.2 details of the Charges, the manner in which they have been calculated and copies of all invoices and supporting documentation;
- 4.1.3 details of any information that is reasonably required in order to verify the accuracy or veracity of the Charges;
- 4.1.4 copies of any reports, registers, management information or analogous documentation that the Consultant is required to provide (or procure the provision of) to the CUSTOMER pursuant to any provision of this Agreement;
- 4.1.5 minutes of all meetings of the governance forums as referred to in any SOW;
- 4.1.6 complete and up to date personnel records in relation to the Consultant personnel (and shall ensure that it has the right to provide copies of the same to the CUSTOMER without breaching any Applicable Law);

- 4.1.7 a full record of all hazards and incidents relating to health, safety or security which occur during the Term;
- 4.1.8 an operations manual detailing all procedures and processes adopted by the Consultant (and any other Consultant Party) in performing the Services (Consultant Operations Manual);
- 4.1.9 any CUSTOMER Data held by the Consultant or a Consultant Party; and
- 4.1.10 records of all documentation relating to Changes and Operational Changes, including requests for Changes and Change Control Notes.

4.2 Rights to Copy and Inspect

The Consultant shall (and shall procure that each other Consultant Party shall) at any time whilst the Consultant (or any other Consultant Party) is required to retain Retained Records pursuant to clause 4.3, promptly on request from time to time (and at no cost to the CUSTOMER), provide copies of any of the Retained Records to CUSTOMER or any other Service Recipient and shall permit the Retained Records to be copied or examined or inspected by CUSTOMER and any other Service Recipient, and any of their Representatives or any Representative of any Regulatory Authority or Replacement Consultant.

4.3 Retention of Retained Records

Unless the Consultant is required elsewhere in this Agreement to retain the same for a longer period, the Consultant shall (and shall provide that each other Consultant Party shall) retain the Retained Records for the longer of:

- 4.3.1 seven years from the Termination Date; and
- 4.3.2 the period of time (if any) required by Applicable Law.

5 SERVICE DEFAULTS AND RECTIFICATION

5.1 Creation and implementation of a Rectification Plan

If at any time a Service Default occurs or the Consultant (or any other Consultant Party) becomes aware that a Service Default is likely to occur then the Consultant shall, in each case without cost to CUSTOMER, and immediately upon it (or the relevant Consultant Party) becoming aware of such Service Default or anticipated Service Default:

- 5.1.1 notify CUSTOMER in writing of the nature and extent of the relevant Service Default, the anticipated impact of the relevant Service Default on the Services, the root cause of the Service Default and the Consultant's proposed Rectification Plan in respect of that Service Default. All Rectification Plans shall (unless otherwise agreed in writing by CUSTOMER) require the Consultant (and any relevant Consultant Party) to deploy all additional resources and take all remedial action that is necessary to rectify the relevant Service Default (provided the failure in question is remediable) within the timescales agreed in the Rectification Plan and, in any case, as soon as reasonably practicable and to prevent the Service Default in question from recurring;
- 5.1.2 amend any proposed Rectification Plan to reflect all of CUSTOMER's reasonable comments and so as to require the Consultant to take any additional steps CUSTOMER may reasonably require and then implement the amended Rectification Plan as soon as possible;

- 5.1.3 if CUSTOMER so requests, procure that the member of the Consultant Personnel who is responsible for rectifying the relevant Service Default is available to discuss the matter with CUSTOMER;
 - 5.1.4 if CUSTOMER so requests permit CUSTOMER (or its Representatives) to attend operational meetings to the extent that they relate to the planning and implementation of the Rectification Plan;
 - 5.1.5 report to CUSTOMER on a reasonably appropriate basis given the nature of the breach and Rectification Plan and, in any event no less than weekly, on the Consultant's progress against the Rectification Plan implemented by it; and
 - 5.1.6 promptly notify CUSTOMER in writing of any non-trivial changes required to the Rectification Plan from time to time and the reasons for those changes, all such changes to be subject to CUSTOMER's prior written consent.
- 5.2 CUSTOMER right to require a Rectification Plan
- If at any time the Consultant fails to comply with an obligation under this Agreement or CUSTOMER anticipates that the Consultant is likely to fail to comply with an obligation under this Agreement and such failure or anticipated failure has or is likely to have a detrimental impact on the Consultant's delivery or CUSTOMER's receipt of the Services, then, in each case without cost to the CUSTOMER and without prejudice to any other rights accruing to CUSTOMER with respect to such failure or anticipated failure by the Consultant, CUSTOMER shall have the right to require the Consultant to produce and comply with a Rectification Plan on the same terms as set out in clauses 5.1.1 to 5.1.6.
- 5.3 CUSTOMER right to remedy
- If the Consultant fails to carry out any of the matters referred to in clauses 5.1.1 to 5.1.6 CUSTOMER may, at the Consultant's cost, without prejudice to any other rights accruing with respect to such breach, do such things itself and the Consultant shall provide and permit the use by CUSTOMER and other service recipients of the Consultant's assets, equipment and personnel for such purposes.
- 5.4 Responsibility for breach
- If the Consultant fails to perform the Services or its other obligations in accordance with this Agreement it shall only be excused from such failure to perform arising as a result of the exercise by CUSTOMER of its rights pursuant to clause 6.3 to the extent the relevant failure would not have occurred but for the exercise by CUSTOMER of its rights under clause 5.3. In any event the Consultant will not be excused the consequences of its own (or another Consultant Party's) failures to the extent that they result from the acts or omissions of the Consultant (or any other Consultant Party) that occurred before CUSTOMER exercised its rights under clause 5.3, even if the consequences of such acts or omissions continue after the exercise by CUSTOMER of its rights.
- 5.5 Costs
- All of the Consultant's costs in developing and implementing a Rectification Plan and, if entitled to do so, of taking any action under clause 5.1, together with all of CUSTOMER's costs in commenting on and monitoring a Rectification Plan, shall be met by the Consultant.
- 5.6 Rectification Failure
- If the Consultant:

- 5.6.1 does not fully, effectively and promptly implement a Rectification Plan in all material respects in accordance with its terms;
 - 5.6.2 fails to promptly produce a Rectification Plan when it is required to do so; and/or
 - 5.6.3 any cause of a Rectification Plan recurs more than one time, then CUSTOMER may terminate this Agreement.
- 6 Consultant's Personnel
- 6.1 The Consultant warrants and represents that:
- 6.1.1 all personnel assigned to the performance of the Services will possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.; and
 - 6.1.2 it has undertaken such reference checks on personnel assigned to the performance of the Services to satisfy itself that all personnel are suitable to work in a regulated business.
- 6.2 The Consultant shall procure that at all times during the continuance in force of this agreement a sufficient number of suitably qualified and experienced personnel are dedicated to the provision of the Services for a sufficient number of hours per week in order to ensure that the Services are provided.
- 6.3 CUSTOMER may request that a named individual or individuals are provided by the Consultant to perform the Services.
- 6.4 If any personnel provided by the Consultant become unavailable due to ill health or any other reason beyond the Consultant's control during the course of provision of the Services, the Consultant shall provide replacements.
- 6.5 The consent in writing of CUSTOMER shall be required before the Services are provided by any person other than those agreed between the parties. CUSTOMER may withhold its consent on reasonable grounds, including without limitation, where the replacement proposed by the Consultant is not suitably qualified or experienced.
- 6.6 The Consultant is liable for paying all costs associated with the employment of personnel engaged in the provision of Services on behalf of the Consultant and is responsible for making all deductions required by law.
- 7 Fees
- 7.1 In consideration of the Consultant performing the Services, CUSTOMER shall pay the Fees in accordance with the terms of this agreement.
- 7.2 The Consultant shall invoice CUSTOMER for the Fees on the date(s) specified in the relevant Work Order.
- 7.3 Where CUSTOMER agrees to pay the Consultant additional expenses, the Consultant will provide copies of receipts to CUSTOMER when invoicing those expenses. Additional expenses include travel and subsistence costs travelling to CUSTOMER offices and will be paid in accordance with the CUSTOMER Expenses Policy, a copy of which will be provided to the Consultant.

8 Invoices

- 8.1 Invoices submitted by the Consultant must be properly prepared in accordance with clause 8.5 and are payable by CUSTOMER within 30 days of receipt, except in the case of a clear error or a genuine dispute as to the amount due or the satisfactory provision of the Services to which an invoice relates.
- 8.2 If CUSTOMER does not pay a valid and properly prepared invoice by the due date, the Consultant may, in addition to the invoice amount, charge CUSTOMER late payment interest at a rate of two per cent (2%) above the base rate of Barclays Bank plc from time to time for the period from the expiry of the 30 day period referred to above until such payment is made. Such interest will accrue on a daily basis.
- 8.3 If CUSTOMER in good faith disputes the whole or part of an invoice it may withhold payment of the disputed line items on the invoice pending resolution of the dispute.
- 8.4 Interest is not payable on the disputed amount unless the dispute is finally resolved in the Consultant's favour in which case CUSTOMER will pay interest at the rate specified in Clause 8.2 for the period commencing the date the dispute has been so resolved and ending the date payment is made.
- 8.5 All invoices must be addressed to CUSTOMER at its registered address, show the date, invoice number, the Consultant's name and address, any relevant purchase order numbers, the Project name, the price and VAT breakdowns, itemised details of any additional costs or expenses incurred, together with any other information CUSTOMER may reasonably request.
- 8.6 Payment by CUSTOMER to the Consultant may be delayed as a result of the Consultant's failure to send accurate and properly prepared invoices.

9 Change control

- 9.1 A change to a Work Order or the Services (a "Change") may only be made in accordance with this clause and with the express written consent of both parties.
- 9.2 The Consultant accepts that it may be necessary from time to time for CUSTOMER to require:
- 9.2.1 amendment to the nature or specification of the Services; or
 - 9.2.2 the Consultant to undertake alternative or additional services.
- 9.3 If CUSTOMER identifies a requirement for a Change it shall promptly inform the Consultant. The Consultant may not unreasonably refuse any request by CUSTOMER for a Change.
- 9.4 CUSTOMER shall supply the Consultant with all information necessary to enable the Consultant to provide, in writing and within 2 days:
- 9.4.1 an estimate of the feasibility of the Change;
 - 9.4.2 an estimate of the impact of the change on the remainder of the Work Order or Services, including its impact on timescales; and
 - 9.4.3 a revised version of the Fees payable for the Services affected by that Change.
- 9.5 If the Consultant wishes to suggest a Change it shall provide CUSTOMER with the details set out in clauses 9.4.1 to 9.4.3.
- 9.6 Any Change which is agreed shall be recorded in writing and signed by each of the parties and the Work Order, the Services, the timetable, and the Fees shall be deemed to have been varied accordingly.

- 10 Intellectual property rights
- 10.1 The Deliverables and all documents and other work prepared by the Consultant for CUSTOMER and all Intellectual Property Rights in the Project Results, other than the Consultant's Pre-existing IPR, shall become shared property upon creation. On request and in any event at the termination of the agreement the Consultant shall deliver up to CUSTOMER the Deliverables and all such documents and the Consultant may keep one copy of all such documents.
- 10.2 The Consultant:
- 10.2.1 grants the CUSTOMER a licence to use any Intellectual Property incorporated into the Project Results or any Deliverables, documents or materials supplied as part of the Services;
- 10.3 The Consultant shall not undertake any work pursuant to this agreement if such work could or would infringe any third party's Intellectual Property Rights.
- 10.4 The Consultant shall at all times, during this agreement and after its termination, indemnify CUSTOMER and each company in the CUSTOMER and keep them indemnified against all losses, damages cost or expenses and other liabilities (including legal fees) incurred by or awarded against or agreed to be paid by CUSTOMER or any company in the CUSTOMER arising from any IPR Claim.
- 10.5 This clause shall survive termination of this agreement.
- 11 No conflict and non-procurement
- 11.1 The Consultant may not:
- 11.1.1 engage in any consultancy services or enter into any agreement which may conflict with this agreement for the duration of the provision of the Services;
- 11.1.2 whilst at CUSTOMER's premises, or whilst using CUSTOMER 's tools or equipment undertake any work other than for CUSTOMER.
- 11.2 Each party shall not at any time during the provision of the Services, employ or engage the services of any person who is employed, or was employed in the previous 12 months by the other, save with that party's prior written permission.
- 11.3 Each party shall not for a period of 12 months following the expiry or termination of the Services, employ or engage the services of any person who was employed by the other at any time in the period of 12 months prior to the expiry or termination of the Services, save with that party's prior written permission.
- 12 Indemnity
- 12.1 Each party shall indemnify the other against any actions, costs, claims, damages, expenses or demands suffered by the other (including any additional costs it may incur) to the extent that such actions, costs, claims, damages, expenses or demands arise directly from any breach by the other of any of the provisions of this agreement.
- 12.2 The Consultant will indemnify and keep CUSTOMER indemnified against all liabilities incurred or suffered by CUSTOMER however arising as a result of any breach of the Consultant's obligations under:
- 12.2.1 Clause 18 (Confidentiality);
- 12.2.2 Clause 19 (Data Protection);

- 12.2.3 Clause 20 (Anti - Bribery).
- 13 Limitation of liability
- 13.1 Nothing in this agreement limits or excludes a party's liability for:
- 13.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 13.1.4 any other liability which may not lawfully be excluded.
- 13.2 Nothing in this agreement limits or excludes the Consultant's liability for:
- 13.2.1 breach of clause 10 (Intellectual Property Rights); or
 - 13.2.2 clause 12 (Indemnity).
- 13.3 Neither party will be liable to the other (or to any third party claiming through the other party), whether in contract, tort (including negligence) or otherwise for any indirect or consequential loss or damage including:
- 13.3.1 loss of profits;
 - 13.3.2 loss of contracts;
 - 13.3.3 loss of data;
 - 13.3.4 loss of use of equipment.
- 13.4 Subject to clauses 13.1 and 13.2, the liability of each party for breach of contract, tort (including negligence) or otherwise, shall be limited to the amount in aggregate specified in each Work Order.
- 13.5 Nothing in this clause restricts either party's general obligation at law to mitigate a loss which it incurs and which might give rise to a claim under clause 13.1.
- 13.6 This clause shall survive termination of this agreement.
- 14 Insurance
- 14.1 The Consultant must arrange and maintain with a reputable insurer sufficient insurance to cover its potential liabilities under this agreement.
- 14.2 The Consultant must produce to CUSTOMER within 7 days of request the insurance certificate(s) giving details of such insurance cover and the receipt for the current year's premium.
- 15 Term and Termination
- 15.1 This agreement commences on the Effective Date and will continue for a period of three (3) years when it then expires automatically unless and until it is terminated in accordance with clause 15.2 or 15.3.
- 15.2 A party may terminate this agreement at any time on written notice to the other party:

- 15.2.1 if the other party becomes Insolvent;
 - 15.2.2 if the other party commits an irremediable Material Breach of this agreement;
 - 15.2.3 if the other party commits a Material Breach of this agreement and fails to remedy such breach within 30 days of receiving written notice to do so; or
 - 15.2.4 giving three month's notice in writing unless specified otherwise in the Work Order.
- such notice to take effect in accordance with its terms.
- 15.3 CUSTOMER may terminate the provision of any specified Services or any Work Order:
- 15.3.1 by written notice to the Consultant if the Consultant commits a Material Breach of this agreement in respect of the supply of the Services in question and fails to remedy that breach within 5 Business Days of being required to do so by written notice from CUSTOMER ; or
 - 15.3.2 at any time by giving one month's written notice to the Consultant unless specified otherwise in the Work Order
- Any notice of termination given pursuant to this clause shall take effect in accordance with its terms.
- 15.4 If the provision of any Services or a Work Order is terminated under clause 15.3, the Fees for the Services in question shall be reduced to an amount equal to the cost to the Consultant of supplying those Services (if any) on a time and materials basis, unless otherwise agreed in writing between the parties. The Consultant's obligation to provide the remaining Services or to perform its obligations under any remaining Work Order shall continue in force.
- 15.5 For the purposes of clauses 15.2 and 15.3 a Material Breach is remediable if time is not of the essence in performing the obligation and if the breaching party can comply with the obligation within the 30 day period.
- 15.6 If the Consultant is unable to carry out the Services due to illness or accident and such incapacity continues for a period of 10 Business Days (and the Consultant is unable to provide a replacement reasonably acceptable to CUSTOMER for the duration of such period of incapacity), CUSTOMER shall be entitled to terminate the agreement forthwith by notice in writing to the Consultant given at any time while such incapacity continues.
- 16 Consequences of Termination
- 16.1 Termination of this agreement for whatever reason shall be without prejudice to the rights, obligations and liabilities of either party then accrued, nor shall termination affect the coming into force or the continuation in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force at or after termination.
- 16.2 Upon termination of this agreement howsoever arising any Fees due from CUSTOMER are payable in accordance with the terms of this agreement.
- 17 Force Majeure
- 17.1 The Affected Party will not be deemed to be in breach of this agreement or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under this agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to a Force Majeure Event provided that the Affected Party:

- 17.1.1 could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought to have taken but did not take;
 - 17.1.2 has used reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this agreement in any other way that is reasonably practicable.; and
 - 17.1.3 promptly notifies the other party of the nature and extent of the circumstances giving rise to the Force Majeure Event.
- 17.2 Where the Consultant is the Affected Party, the Consultant must take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 17.3 If a Force Majeure Event prevails continuously for more than one month from the date on which it began, CUSTOMER may terminate this agreement by giving at least 30 clear days' notice to terminate. Once a notice to terminate has been validly given, this agreement will terminate on the termination date set out in the notice.
- 18 Confidential information
- 18.1 The Consultant undertakes that during the term of this agreement and after its termination it will not:
- 18.1.1 use, divulge or communicate to any person, except such of its employees or agents who need to know for the provision of Services under this agreement, its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any Confidential Information concerning CUSTOMER or any company in the CUSTOMER which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any Confidential Information;
 - 18.1.2 divulge or communicate any of CUSTOMER's Confidential Information (or any company in the CUSTOMER's Confidential Information) to any of CUSTOMER's employees or agents other than those employees or agents who form part of the project team (as notified by CUSTOMER from time to time) without the prior written agreement of CUSTOMER.
- 18.2 Subject to clause 10.1, upon termination of this agreement for any reason, or upon the receipt by the Consultant of written demand from CUSTOMER , the Consultant must forthwith:
- 18.2.1 return to CUSTOMER all written Confidential Information provided to the Consultant; and
 - 18.2.2 either return or destroy all notes, memoranda and other stored information (including information stored in any computer system or other device capable of containing information whether in readable form or otherwise) prepared by the Consultant which relates to any Confidential Information, whether or not any of the same are then in the Consultant's possession; and
 - 18.2.3 confirm in writing by its authorised representative that all Confidential Information has been returned or destroyed.
- 18.3 Any copy documents retained in accordance with clause 10.1 will remain subject to the obligations of confidentiality set out in this clause 18
- 18.4 Subject to clause 10, CUSTOMER shall keep confidential all information relating to the Consultant's business systems, methodologies, proprietary systems or application programs which may be communicated to or gained by CUSTOMER in connection with or in the course of provision of the Services which is designated in writing as confidential at the time of its supply save that it may be disclosed to such of its employees or

agents who need to know for the purposes of this agreement, to its professional representatives or advisers or as may be required by law or any legal or regulatory authority.

18.5 The duty of confidence of either party in this clause 18 shall not extend to any information which:

18.5.1 was already in the possession of the receiving party or lawfully received from a third party,

18.5.2 was already published at the date of such disclosure; or subsequently published or disclosed through no fault of the other party;

18.5.3 can be shown to have been independently developed or created without access to such information disclosed; or

18.5.4 is required to be disclosed by law or regulatory authority.

18.6 This clause shall survive termination of this agreement.

19 DATA PROTECTION

19.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that CUSTOMER and/or the relevant service recipient (as appropriate) is the Data Controller and that the Consultant and the relevant Consultant Parties are the Data Processors.

19.2 In respect of any Personal Data processed by the Consultant pursuant to this Agreement for and on behalf of CUSTOMER or any other Service Recipient (as appropriate) the Consultant warrants and undertakes that it shall and shall procure that each of the Consultant Parties shall:

19.2.1 comply at all times with the Data Protection Legislation;

19.2.2 only process the Personal Data:

(a) on behalf of CUSTOMER or any other Service Recipient (as appropriate) to the extent necessary to provide the Services and then only in accordance with this Agreement; and

(b) on instructions received from CUSTOMER or the relevant Service Recipient (as appropriate) from time to time;

19.2.3 promptly comply with any change of instructions from CUSTOMER or the relevant Service Recipient (as appropriate) relating to:

(a) the Personal Data; and/or

(b) the Consultant's (or the relevant Consultant Party's (as appropriate)) role as Data Processor

as issued in accordance with this Agreement and/or as otherwise required by the Data Protection Legislation;

19.2.4 put in place:

(a) appropriate Security Measures;

(b) a level of Security Measures which ensures that only authorised personnel have access to the Personal Data and processing equipment to be used to process such Personal Data and that any such persons whom the Consultant (or the relevant Consultant Party)

authorises to have access to such Personal Data will respect and maintain all due confidentiality; and

- (c) a level of Security Measures which reflects the level of harm, damage and/or distress that might be suffered by a Data Subject to whom the Personal Data relates;

19.2.5 promptly give Notice to CUSTOMER of any actual or suspected incident of unauthorised or accidental disclosure of or access to the Personal Data or other breach of clause 19.2 made by any of the Consultant's (or the relevant Consultant Party's) (as appropriate) staff or any other identified or unidentified third party (a Security Breach);

19.2.6 promptly provide CUSTOMER with all information in the Consultant's (or the relevant Consultant Party's) (as appropriate) possession concerning any Security Breach;

19.2.7 not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach (a Security Breach Notice) without the prior written consent of CUSTOMER and prior written approval by CUSTOMER of the content, media and timing of the Security Breach Notice;

19.2.8 hold all Personal Data to which this Agreement relates physically and electronically separate from any other data held by the Consultant (or the relevant Consultant Party (as appropriate)) and ensure that such Personal Data is readily identifiable;

19.2.9 not process any or all of the Personal Data to which this Agreement relates as a means to enhance or enrich any Personal Data to which this Agreement does not relate (which includes any Personal Data in respect of which the Consultant (or the relevant Consultant Party (as appropriate)) or a customer of the Consultant (or the relevant Consultant Party (as appropriate)) is a Data Controller);

19.2.10 not make any copies of the Personal Data (whether in electronic or paper form) unless strictly necessary for the Services;

19.2.11 not do, or omit to do, anything, which would cause any Customer Related Party to be in breach of its obligations under the Data Protection Legislation;

19.2.12 immediately give Notice to CUSTOMER in the event that it becomes aware of any breach by the Consultant or any other Consultant Party of this clause 19;

19.2.13 not modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party (including any agent or sub-contractor) unless expressly required to do so as part of the Services or specifically authorised in writing to do so by CUSTOMER;

19.2.14 upon expiry or termination of this Agreement, permanently delete all electronic copies of Personal Data from the Consultant's (or the relevant Consultant Party's (as appropriate)) computer system (including servers, hardware and mobile devices); and return all hard copies and those held on any portable electronic media of the Personal Data to CUSTOMER (or the relevant Service Recipient (as appropriate)) or, at CUSTOMER's option, destroy all hard and soft copies of the same and certify to CUSTOMER that it has done so, unless retention of a single copy of Personal Data is required by Applicable Law where the Consultant (or the relevant Consultant Party (as appropriate)), shall:

- (a) give Notice to CUSTOMER of any such retention requirement;

- (b) observe all the requirements of Data Protection Legislation in relation to such data as is retained; and
 - (c) only process such data in accordance with the specific purposes for which the Consultant (or the relevant Consultant Party (as appropriate)) is under a legal duty to retain it;
- 19.2.15 give Notice to CUSTOMER (within five Business Days) of any request received from a Data Subject to have access to his Personal Data or of any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement and provide all details of such requests or communication to CUSTOMER and fully cooperate and assist CUSTOMER (or the relevant Service Recipient (as appropriate)) in relation to any such request or communication including a response to any such request or communication and provide CUSTOMER (or the relevant Service Recipient (as appropriate)) with full and prompt co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
- (a) providing CUSTOMER (or the relevant Service Recipient (as appropriate)) with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA but strictly in accordance with CUSTOMER's instructions; and
 - (c) providing CUSTOMER (or the relevant Service Recipient (as appropriate)) with any Personal Data it holds in relation to a Data Subject making a complaint or request within the timescales required by CUSTOMER (or the relevant Service Recipient (as appropriate));
- 19.2.16 not cause CUSTOMER (or the relevant Service Recipient (as appropriate)) to be in breach of any part of the Data Protection Legislation, whether by reason of an act or omission by the Consultant (or the relevant Consultant Party (as appropriate)) or by their respective agents, directors, officers, employees and sub-contractors; and
- 19.2.17 take such steps as are required in order to put in place sufficient protection for the Personal Data so as to satisfy the requirements of the Data Protection Legislation whilst it is being processed by any sub-contractors and do such acts or things as may be reasonably required by CUSTOMER (or the relevant Service Recipient (as appropriate)) in order to satisfy the obligation in this clause 19.2.17 (including requiring any sub-contractors to enter into a direct agreement with CUSTOMER (or the relevant Service Recipient (as appropriate)) containing equivalent terms to those set out in this clause 19, and to enter into the Data Transfer Agreement, and require any sub-contractors to do the same.
- 19.3 In the event that the Consultant obtains CUSTOMER's (or the relevant Service Recipient's (as appropriate)) prior written consent to permit Personal Data to be transferred to anywhere outside the European Economic Area or to permit any other act of processing of the Personal Data to occur outside the European Economic Area, in accordance with clause **Error! Reference source not found.**:
- 19.3.1 the Consultant shall (or shall procure that the relevant Consultant Party shall) execute the Data Transfer Agreement with CUSTOMER; or
 - 19.3.2 where the Consultant has registered with the US Safe Harbor Scheme as a means of providing adequacy of data protection for any Personal Data processed in the United States of America, the Consultant warrants to CUSTOMER (or the relevant Service Recipient's (as appropriate)) and undertakes that at all times whilst it is processing any Personal Data in the United States of America it shall:

- (a) fully comply with all its obligations under the US Safe Harbor Scheme; and
- (b) promptly and duly execute the Standard Contractual Clauses in the manner set out in clause 19.3.1 if for any reason the Consultant is unable to comply fully with its obligations under the US Safe Harbor Scheme, or if the US Safe Harbor Scheme is repealed or ceases to satisfy the Commission or if the Consultant is no longer subject to the adequacy protection provided by the US Safe Harbor Scheme.

The Consultant shall procure that each other relevant Consultant Party shall give an equivalent warranty to that contained in this clause 19.3.2 to CUSTOMER and each other Service Recipient subject to references to the Consultant in clauses (a) and (b) being deemed to be amended so as to refer to the relevant Consultant Party.

- 19.4 Each of the Parties shall notify the other in writing of an individual within their respective organisations authorised to respond from time to time to enquiries regarding any Personal Data. Each of the Parties shall (and CUSTOMER shall procure that each other Service Recipient shall and the Consultant shall procure each other Consultant Party shall) deal with such enquiries promptly.
- 19.5 The Consultant shall (and shall procure that each other Consultant Party shall) comply with any agreement between CUSTOMER (or the relevant Service Recipient (as appropriate)) and any Data Subject and with any Court order requiring specific processing including the rectification, blocking, erasure or destruction of any Personal Data notified in writing to the Consultant by CUSTOMER (or the relevant Service Recipient (as appropriate)).
- 19.6 The Consultant shall Indemnify CUSTOMER and each other Service Recipient in respect of any breach of this clause 19.
- 19.7 The Consultant shall (and shall procure that each other Consultant Party shall), at all times, in the course of providing the Services (including in relation to the processing of Customer Data) comply with the Information Security Requirements.
- 19.8 The Consultant shall inform CUSTOMER immediately if it receives any correspondence or request for information from any Regulatory Authority (including the Information Commissioner's Office (ICO)) in relation to the Personal Data to which this Agreement relates including correspondence or requests which relate to an ICO enforcement notice or information notice.
- 20 Anti-bribery/corruption
- 20.1 The Consultant shall and shall procure that its Associated Persons:
 - 20.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - 20.1.2 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;
 - 20.1.3 comply with CUSTOMER's Ethics, Anti-bribery and Anti-corruption Policies as notified to the Consultant from time to time;
 - 20.1.4 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 clause 20.1.2, and will enforce them where appropriate;

- 20.1.5 promptly report to CUSTOMER any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;
- 20.1.6 immediately notify CUSTOMER (in writing) if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement).
- 20.2 The Consultant shall within one month of the date of this agreement, and annually thereafter, certify to CUSTOMER in writing signed by an officer of the Consultant, compliance with this clause 20 by the Consultant and all Associated Persons. The Consultant shall provide such supporting evidence of compliance as CUSTOMER may reasonably request.
- 20.3 The Consultant shall ensure that any Associated Person who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 20 (Relevant Terms). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to CUSTOMER for any breach by such persons of any of the Relevant Terms.
- 20.4 Breach of this clause 20 shall be deemed an irremediable Material Breach under clause 15.2.2 (Termination).
- 20.5 For the purpose of this clause 20 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 21 Assignment and sub-contracting
- 21.1 The Consultant shall not, without the prior consent of CUSTOMER , assign, transfer, declare a trust of the benefit of or subcontract or delegate to any third party the performance of all or any of its obligations under this agreement, nor any benefit arising under or out of this agreement.
- 21.2 Where, with consent, the Consultant uses sub-contractors, any sub-contractor will be the sole responsibility of the Consultant who will be liable for all Services that are provided by such sub-contractors. All Services provided by sub-contractors will be provided under the terms of this agreement and the Consultant will ensure that they enter into agreements with any sub-contractors detailing their obligations and in particular obligations of confidentiality regarding Personal Data they receive or process in relation to the Services.
- 21.3 CUSTOMER may, with consent, assign its rights under the agreement or any part of it to any person, firm, company or entity.
- 22 Variation
- Except as set out in clause 9 (Change Control), a variation to this agreement may be made only by a document signed by each of the parties and expressly incorporating the terms of this agreement as varied into that document.
- 23 Waiver
- 23.1 A waiver of any term, provision or condition of this agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.

- 23.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 23.3 No breach of any provision of this agreement shall be waived or discharged except with the express written consent of the parties.
- 24 Entire Agreement
- 24.1 This agreement and each Work Order constitutes the entire and only agreement between the parties relating to the subject matter of this agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating to or in connection with this agreement.
- 24.2 Each party acknowledges that it has not been induced to enter into this agreement in reliance upon, nor has it been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as expressly set out in this agreement and, to the extent it has been, it unconditionally and irrevocably waives any claims, rights and remedies which it might otherwise have had in relation thereto.
- 24.3 The provisions of this clause shall not exclude any liability which any of the parties would otherwise have to the other or any right which either of them may have to rescind this agreement in respect of any statements made fraudulently by the other prior to the execution of this agreement or any rights which either of them may have in respect of fraudulent concealment by the other.
- 25 No partnership
- 25.1 Nothing in this agreement and no action taken by the parties pursuant to this agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.
- 26 Notices
- 26.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or prepaid first class post:
- in the case of the Consultant to:
- the Consultant's address set out in the Work Order.
- In the case of CUSTOMER to:
- the CUSTOMER's address set out in the Work Order.
- and shall be deemed to have been duly given or made as follows:
- 26.1.1 if personally delivered, upon delivery at the address of the relevant party;
- 26.1.2 if sent by first class post, two Business Days after the date of posting;
- provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

- 26.1.3 A party may notify the other party to this agreement of a change to its name, relevant addressee, or address for the purposes of clause 26.1 provided that such notification shall only be effective on:
 - 26.1.4 the date specified in the notification as the date on which the change is to take place; or
 - 26.1.5 if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

27 Illegality

If any provision in the agreement is found by a court of competent jurisdiction to be illegal, void or unenforceable, the offending part shall be deemed severed from the agreement and the remainder of the agreement shall continue in full force and effect.

28 Exclusion of third party rights

For the purposes of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties agree that they do not intend any provision of this agreement to be enforceable by any third party (other than any company in the CUSTOMER Group) save that any third party rights which exist independently of that Act shall be preserved.

29 Governing law and jurisdiction

- 29.1 This agreement (and any dispute (whether contractual or non-contractual), proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation) shall be governed by and construed in accordance with English law.
- 29.2 Each of the parties to this agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes (whether contractual or non-contractual), which may arise out of or in connection with this agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.