

# Terms and Conditions Document Cyber - G-Cloud 14



## 1 Terms and Conditions of Contract

These are the terms and conditions of Commisum Associates Limited (referred to in these terms and conditions as "Resillion") ("Terms and Conditions")

### 1. Definitions and interpretation

1.1 In this Agreement unless the context requires otherwise:

**"Act"** means the Data Protection Act 2018;

**"Agreement"** means the Offer Acceptance Form or other formal acceptance of the Resillion Proposal together with the Proposal and these Terms and Conditions and any variations to the Proposal and these Terms and Conditions which are made in accordance with these Terms and Conditions;

**"Charges"** means the price to be paid for the Project calculated (unless otherwise indicated in the Proposal) on a time and materials basis by reference to the Rates and the amount of work undertaken by Resillion together with the costs of any software, Tools or other items specifically purchased for the purpose of carrying out the Consultancy Services;

**"Client"** means the client identified in the Offer Acceptance Form;

**"Client Supplied Items"** means any information, software, connectivity, configuration and data to be provided by the Client or by a Third-Party on the Client's behalf which Resillion requires for the provision of the Consultancy Services and as may be further specified in the Proposal and/or the Deliverables;

**"Commencement Date"** means the commencement date or preferred start date referred to in the Offer Acceptance Form on which this Agreement takes effect;

**"Resillion"** means Commisum Associates Limited, a company incorporated in Scotland (registered number SC229945) and having its registered office at Mitchell House, 5 Mitchell Street, Edinburgh, EH6 7BD, United Kingdom;

**"Consultancy Services"** means the services to be provided by Resillion to the Client as described in the Proposal;

**"Customer Privacy Policy"** means the Resillion policy made available on the Resillion web site at: <https://Resillion.com/customer-privacy-policy>

**"Deliverables"** means any deliverable items relating to the Project as may be specifically described as such in the Proposal or any other part of this Agreement;

**"IPR"** means any rights in or to intellectual property including, but not limited to, copyright, patents, databases, designs, service marks, trade marks, utility models, brand names, trade names, business names, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including without limitation all rights to apply for any of the foregoing rights;

**"Offer Acceptance Form"** means the offer acceptance signature form section of the Resillion Proposal that confirms the acceptance of this Agreement and formation of the contract which contains or refers to details of, inter alia, the Client, and where this is used as a means of accepting the Resillion offer includes the Client signature of acceptance. This is usually the offer acceptance section of the Resillion Proposal, but may be another form accepted by both parties to this Agreement;

**"Personal Data"** means personal data as defined in the Act;

**"Progress Meetings"** means the meetings organised in accordance with Clause 9;

**"Project"** means the delivery of the Consultancy Services and the provision of Deliverables under this Agreement;

**"Project Initiation Document"** means document with the title Project Initiation Document prepared by Resillion at the beginning of the Project that may be contained in the Deliverables and may specify certain additional and/or more detailed requirements relating to the Agreement, such requirements being better identified or defined at a time

following submission of the Proposal and/or execution of this Agreement;

**"Project Manager"** means the person, designated from time to time by each of Resillion and the Client to act as the prime point of contact with the other party;

**"Proposal"** means the proposal specified in this Agreement and referring to these Terms & Conditions and incorporated into this Agreement;

**"Rates"** means the rates to be charged for the Project as set out in the Proposal or rates which are notified to the Client in accordance with these Terms and Conditions.

**"Staff"** means the individuals engaged by Resillion to deliver the Project which may include employees of Resillion, registered Commisum Associates or subcontractors to Resillion.

**"Third-Party"** means any other party not party to this Agreement

**"Third-Party Software"** means software owned or licensed by a Third-Party and which may be delivered to the Client if specifically stated in the Proposal as a Deliverable or which may be used in the provision of the Consultancy Services;

**"Tools"** means the software, documentation and other tools used by Resillion to deliver the Consultancy Services which may also be Third-Party Software; and

**"Working Day"** means any day excluding weekends and bank holidays in England.

1.2 Clause headings are used in this Agreement for ease of reference only and shall not affect interpretation, and references in this Agreement to Clauses are to clauses of this Agreement.

1.3 Words in this Agreement denoting the singular shall include the plural and vice versa.

1.4 Words importing a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to it as from time to time amended, consolidated or re-enacted and includes all instruments or orders made under such enactment.

1.6 In the event of any conflict or ambiguity in the provisions of these Terms and Conditions and the other documents constituting this Agreement, the following descending order of precedence shall be applied unless a contrary intention is specifically expressed:

- 1.6.1 the Deliverables;
- 1.6.2 the Proposal;
- 1.6.3 these Terms and Conditions; and
- 1.6.4 the Offer Acceptance Form.

Should any of the above parts of the Agreement be held to be unenforceable for whatever reason, the order of precedence will continue as if that part of the Agreement was not listed.

### 2. Duration

This Agreement commences on the Commencement Date and shall continue until the Project has been completed and all payments made, subject to termination in accordance with the provisions of this Agreement.

### 3. Resillion's Responsibilities

3.1 Resillion shall use its reasonable endeavours to deliver the Consultancy Services by the due dates (if any) set down in the Proposal [and/or the Deliverables], subject as provided in this Agreement. All deliverables are made in accordance with Inco terms 2000, CPT (Carriage Paid to Client), with the Client agreeing to reimburse Resillion for costs of packing, carriage and insurance incurred.

3.2 Resillion shall use its reasonable endeavours to deliver each of the Deliverables by the due dates (if any) set down in the Proposal and/or the other Deliverables, subject as provided in this Agreement. If any Deliverable is required under the Proposal to be accepted by the Client, such acceptance shall be on the earlier of:

- 3.2.1 such Deliverable being formally agreed and signed by the Client; or

3.2.2 the expiry of 10 Working Days following the delivery of such Deliverable if, during that period, the Client has not notified Resillion of any reason why it considers the Deliverable does not meet the specification set out in the Proposal,

provided always that should such acceptance not take place for any reason within 30 Working Days of the due date for such acceptance as set out in the Proposal and/or the Deliverables then Resillion shall be entitled to terminate this Agreement and charge the Client for any work carried out by Resillion up to and including the date of such termination on a time and materials basis according to the Rates.

3.4 Resillion shall use its reasonable endeavours to ensure that its Staff and associates comply with any relevant site rules and regulations notified to Resillion when at the Client's premises.

3.5 Resillion shall ensure that its Project Manager has sufficient authority to progress the Project and that the appropriate personnel attend Progress Meetings.

#### 4. The Client's Responsibilities

4.1 The Client shall use its reasonable endeavours to co-operate with Resillion in order to facilitate timely completion of the Project.

4.2 The Client shall provide such information as may be required by Resillion for the performance of Resillion's obligations under this Agreement, such information to be as accurate and complete as possible and supplied in a timely manner to facilitate the achievement of any timescale commitments that may apply.

4.3 The Client shall provide, where applicable, adequate office accommodation and all necessary access to the areas in which the Project is to be performed at the Client's sites, and other facilities to enable Resillion's Staff to carry out the Project, taking all reasonable steps to ensure the health and safety of Resillion's Staff and associates while they are at the Client's sites.

4.4 The Client shall use its reasonable endeavours to ensure that its employees comply with Resillion's site procedures and regulations when at Resillion's premises.

4.5 The Client shall supply the Client Supplied Items to Resillion in accordance with the due dates set out in the Proposal and/or the Deliverables and otherwise as requested, orally or in writing, by Resillion.

4.6 The Client shall ensure that its Project Manager has sufficient authority to progress the Project and that the appropriate personnel attend Progress Meetings.

#### 5. Dependencies

5.1 Resillion's obligations and responsibilities to deliver the Consultancy Services and the Deliverables under this Agreement depend on the following factors for which the Client has full responsibility:

5.1.1 the Client Supplied Items being provided to Resillion in accordance with the Proposal [and/or the Deliverables] and any timescales set down within those documents;

5.1.2 the Client providing adequate and timely assistance to Resillion and performing its obligations relating to approval and any sign-off of the Deliverables required under this Agreement;

5.1.3 Resillion being given appropriate physical access to the Client's sites and computer systems and appropriate logical access to the Client's computer systems or Third-Party computer systems to enable Resillion to carry out its duties under this Agreement;

5.1.4 the Client performing the obligations and delivering the items described as being its responsibility in the Proposal and/or the Deliverables; and

5.1.5 the proper performance of the Client's personnel during the Project.

5.2 If any:

5.2.1 failure of any of the dependencies set out in Clause 5.1; or

5.2.2 delay or failure in the Client's performance of its obligations under this Agreement,

causes Resillion delay in the performance of its obligations under this Agreement and/or causes Resillion to incur additional costs then Resillion shall be given an extension of time to meet its obligations under this Agreement to take account of the impact caused by such delay, the Client shall not be entitled to make any claim against Resillion for such delay, and the Client shall reimburse Resillion for any such costs, losses and/or expenses which Resillion may incur as a result of the Client's delay or failure to perform.

5.3 If the Client postpones or cancels any agreed scheduled dates for Services to be delivered at less than 15 working days notice in writing or otherwise causes a delay to Services by any act or omission of The Client, The Client shall pay the Charges for these Services in full and the Services will be considered to have been delivered in full unless at the reasonable discretion of Resillion either:

5.3.1 an alternative date for delivery is agreed by Resillion; or

5.3.2 a lesser charge for the Services is agreed by Resillion.

#### 6. IPR and rights

6.1 All IPR in the Tools and arising from the carrying out of the Project including but not limited to that in the Deliverables but excluding any IPR in the Client Supplied Items shall be owned by Resillion. Any IPR in the Client Supplied Items and the Third-Party Software shall remain vested in the owner of such IPR.

6.2 Resillion hereby grants the Client a non-exclusive, non-transferrable licence to use the Tools and the Deliverables (to the extent that the Deliverables do not comprise Client Supplied Items or Third-Party Software) for the Client's own internal business purposes, provided that the licence to use the Tools shall terminate upon the termination or expiry of this Agreement.

6.3 Resillion warrants that it has all the necessary rights to grant the licence in Clause 6.2 above, and that no Third-Party has or is entitled to claim or would have been entitled to claim any infringement of IPR against the Client for use of any of the IPR licensed in such Clause provided that this warranty shall not extend to a claim brought by a Third-Party in respect of infringement of a software patent.

6.4 The Client hereby grants Resillion a non-exclusive, non-transferrable licence to use the Client Supplied Items for the purposes of the Project provided that the licence to use the Client Supplied Items shall terminate upon the termination or expiry of this Agreement.

6.5 The Client shall secure all necessary rights and permissions for Resillion to deliver the Project including, without limitation, rights and permissions from Third-Parties, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.

6.6 The Client warrants that it has all the necessary rights to grant the licence in Clause 6.4 above and that no Third-Party has or is entitled to claim or would have been entitled to claim any infringement of IPR against Resillion for use of any of the IPR licensed in such Clause. The Client warrants that it has secured and shall at all times during the continuance of the Project keep secured the rights and permissions it is required to secure under Clause 6.5.

6.7 The Client hereby indemnifies Resillion and agrees to keep Resillion indemnified from and against any fines, losses, costs, claims, damages or expenses arising from a breach of any of the Client's warranties contained in Clause 6.6.

6.8 Where Third-Party Software is to be supplied to the Client under this Agreement, the Client shall enter into a licence for such Third-Party Software directly with the Third-Party at the Client's cost. Such licence shall be on the terms as the owner of such Third-Party Software shall require.

#### 7. Warranties and Indemnities

7.1 Resillion warrants to the Client that the Project shall be carried out with reasonable skill and care.

7.2 Except as expressly set out in this Agreement, Resillion gives no warranties in relation to the Third-Party Software or in relation to any Tools, equipment or hardware or

software which may be used in the carrying out of the Project, or which may be used by the Client in relation to the Consultancy Services. The Client acknowledges that the provision of the Consultancy Services may involve the risk of damage to or destruction of its computer systems and data and the Client agrees not to hold Resillion responsible for such damage provided Resillion carries out the Consultancy Services in accordance with this Agreement. The Client further acknowledges that it is always its responsibility to take and maintain appropriate back-ups of its information and data.

7.3 The Client agrees that by signing the Offer Acceptance Form, or otherwise accepting the terms of the Agreement, it has accepted responsibility for advising any Third-Party organisations that may require to be advised of this Agreement as a result of service agreements that the Client may have with these organisations or through legislation. This may include but is not limited to any hosting organisation hosting systems or applications to be tested on behalf of the Client and the Client's Internet Service Provider. The Client hereby indemnifies Resillion and agrees to keep Resillion indemnified from and against any fines, losses, costs, claims, damages or expenses arising from a breach of this Clause 7.3.

7.4 Resillion acknowledges that data supplied to it for the purposes of this Agreement may comprise Personal Data under the terms of the Act and Resillion undertakes that it shall use any such Personal Data solely in accordance with this Agreement. The Client agrees that any specific security measures to be taken in respect of any such Personal Data are specified in the Proposal and/or the Deliverables and that Resillion shall not be required to take any other measure in respect of the security of any such Personal Data beyond those that Resillion ordinarily takes to comply with the Act.

7.5 The Client warrants that:

7.5.1 it shall provide Resillion with any special instructions it requires in relation to data protection compliance;

7.5.2 the instructions given by the Client in respect of any Personal Data disclosed to Resillion shall at all times be in accordance with the relevant laws of the United Kingdom; and

7.5.3 it is legally entitled to allow Resillion to process the Personal Data,

and the Client hereby indemnifies Resillion and agrees to keep Resillion indemnified from and against any fines, losses, costs, claims, damages or expenses arising from a breach of any of the Client's warranties contained in this Clause 7.5.

7.6 The express terms of this Agreement replace and supersede all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

## 8. Charges and Payment

8.1 The Client shall pay the Charges. Where the Charges are calculated according to the Rates, they shall be based on 5 hours per day for each day worked.

8.2 Taxes.

8.2.1 Any Charges set out in the Proposal and/or the Deliverables are expressed exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Client and shall be applied in accordance with United Kingdom legislation in force at the tax point date or the legislation of any other jurisdiction which is applicable to this Agreement and the Charges.

8.2.2 If the Client is required by law to make any deduction or withholding from any payment due hereunder to Resillion, then the gross amount payable by the Client to Resillion will be increased so that, after any such deduction or withholding for taxes, the net amount received by Resillion will not be less than Resillion would have received had no such deduction or withholding been required.

8.2 The Charges do not include expenses incurred by Resillion including but not limited to travel to the Client's sites, couriers, hotel expenses and any other expenses reasonably and properly incurred by Resillion. The Client shall reimburse

Resillion for the cost of any such expenses plus a 15% management charge.

8.3 Resillion shall invoice the Client for the Charges and expenses in respect of each month. All sums due by the Client to Resillion under this Agreement are payable within 14 days after the invoice date ("Payment Date"). Any sums which are not received on or before the Payment Date will be charged at the rate of 4% per annum above the base rate of the Bank of Scotland plc from time to time. This interest shall accrue on a daily basis until payment of all charges have been made in full and be payable on demand.

8.4 In addition to any interest charged for sums not received on or before the Payment Date, Resillion may also choose, without prejudice to any other remedy it may have at any time after payment has become due, to terminate or suspend performance of this Agreement.

8.5 If either party terminates this Agreement for any reason any sums due to Resillion shall become immediately payable in full.

8.6 Resillion shall be entitled to increase the Rates by giving the Client not less than [30] Working Days' written notice setting out such increases. Upon any increase in the Rates the Charges shall be adjusted accordingly.

## 9. Project Management

9.1 Each party shall nominate a primary point of contact for the Project, the Project Manager.

9.2 If agreed with the Client Resillion shall arrange meetings (such meetings to be held in person, by telephone or by any other means of viable communication including but not limited to Video Conference link) with the Client at mutually agreed intervals throughout the duration of the Project, so that the Project Managers or, if either of the Project Managers is not available, appropriate personnel shall review the progress of the Project and attempt to resolve any problems connected with the Project ("Progress Meetings").

9.3 The Project Managers shall be responsible for:

9.2.1 the technical and organisational management of the Project including agreeing any amendments to the Proposal and the Deliverables;

9.2.2 organising Progress Meetings;

9.2.3 providing all information reasonably required by each other for the purposes of carrying out the Project; and

9.2.4 complying with their responsibilities allocated under the Agreement.

9.3 Resillion's Project Manager shall be responsible for preparing the notes of the Progress Meeting in time for circulation prior to the next Progress Meeting where this is deemed appropriate and/or necessary by Resillion.

9.4 The Client agrees that Resillion is entitled to rely on the decisions and feedback of the Client's Project Manager or any appropriately authorised member of the Client's personnel as if they were decisions and feedback made by the Client.

## 10. Confidentiality

10.1 Each party recognises that under this Agreement it may have access to or otherwise receive trade secrets and confidential or proprietary information of the other, including but not limited to information concerning products, clients, financial or contractual arrangements ("Confidential Information"). Each of the parties agree to use its reasonable endeavours not to divulge the other party's Confidential Information to any of their employees, agents or sub-contractors who do not need to know it, and to use its reasonable endeavours to prevent its disclosure to or access by any Third-Party other than its agents or sub-contractors who need to know it without the prior written consent of the other party.

10.2 The provisions of Clause 10.1 shall not apply to the whole or any part of the Confidential Information to the extent that it is already in the other's possession or in the public domain other than as a result of a breach of this Clause 10 or if such Confidential Information is required to be disclosed by reason of a statutory or regulatory requirement having the force of law or by reason of an order of a court of competent jurisdiction in

which event the disclosing party shall notify the other party of such disclosure within 5 Working Days of such disclosure.

10.3 Resillion may use the Client's name as being one of its clients in Resillion's publicity and promotional material providing that precise details of the assignment are not disclosed.

10.4 The rights and obligations of the parties under this Clause 10 shall subsist for 5 years following expiry or termination of this Agreement howsoever caused.

## 11. Data Protection

11.1 In accordance with the Act, in respect of Personal Data processed under this Agreement, Resillion and the Client will be processor and controller (respectively) except as set out in circumstances applicable to 11.2.

11.2 Where Resillion, as part of any Services, is carrying out any Service where it necessarily must make decisions in relation to that Service (such as but not exclusively security testing services) which result in it also determining the means of processing any relevant Personal Data, including exactly which Personal Data will be processed and how, the parties acknowledge and agree that in these circumstances one of the following clauses 11.2.1 or 11.2.2 will apply as explicitly stated in the Proposal:

11.2.1 Resillion and the Client will be joint controllers of that Personal Data, or

11.2.2 the Client grants authority to Resillion to process Personal Data as Resillion reasonably determines, including making use of Personal Data that is discovered during delivery of the Services to further progress the Service, without informing the Client of the Personal Data and the means of processing, to avoid delay to or ceasing to deliver Services, provided that Resillion carries out the Services strictly within the scope of the Agreement and within the law.

11.3 Where Clause 11.2.1 applies the joint controllers are Resillion and the Client, the controllers can be contacted at:

11.3.1 Resillion: Commisum Associates Ltd, Mitchell House, 5 Mitchell Street, Edinburgh, EH6 7BD, United Kingdom

11.3.2 The Client: At the address on the Offer Acceptance Form.

11.4 Contact Details of the Data Protection Officer or other party responsible for data protection:

11.4.1 Resillion: by email at [dataprotection@resillion.com](mailto:dataprotection@resillion.com); by post at Data Protection Officer, Commisum Associates Ltd, Mitchell House, 5 Mitchell Street, Edinburgh, EH6 7BD, United Kingdom

11.4.2 The Client at either of:

(a) the name, address, and if provided, telephone number and email address specified in the Offer Acceptance Form; or

(b) other contact name and contact details separately and formally advised to Resillion in writing.

11.5 Purposes of Processing and Lawful Basis: Resillion processes the personal data of data subjects at the Client for the purpose of providing security services that may include, but are not limited to, penetration testing, security consultancy, and SOC services. The lawful basis for the processing is the contractual obligation between the Client and Resillion, whether as part of service delivery or as part of contract negotiation.

11.6 Categories of Personal Data Concerned: Categories of personal data that are processed by Resillion under this data processing agreement include:

11.6.1 Personnel at the Client (including contractors and professional advisors) required for the negotiation and delivery of Resillion's services

11.6.2 Personnel at the Client (including contractors and professional advisors) that are obtained as result of delivering services to the Client, for example data that may be uncovered during penetration tests

11.7 Recipients of the Personal Data: The recipients of the personal data being processed will be limited to Resillion staff that are involved in contract negotiation, business

administration, or service delivery, and professional advisors such as legal representation where required. Data is only accessible on a need-to-know basis. Personal data uncovered during service delivery may be shared with appropriate staff at the Client.

11.8 International Transfers: In certain circumstances your personal data may be transferred to Resillion's international offices. Adequate safeguards, in the form of EU-approved model clauses, are in place to ensure the privacy and protection of your information.

11.9 Retention Limits: Personal data that is processed under this agreement will only be stored for as long as stated in the Resillion Data Retention Policy, and in accordance with the Customer Privacy Policy.

11.10 Data Subject Rights: The exercising of data subjects' rights is in accordance with the Customer Privacy Policy, and privacy notices provided by the Client.

11.11 Complaints to a Supervisory Authority: The right to complain to a supervisory authority is in accordance with the Customer Privacy Policy, and privacy notices provided by the Client.

11.12 Sources of Personal Data: The personal data used for this processing is obtained in the following ways:

11.12.1 Provided directly by the data subjects.

11.12.2 Provided by existing contacts at the Client.

11.12.3 Discovered from data sources that are part of our service delivery, for example in documentation supplied by the Client.

11.12.4 We may gather and use limited personal data from publicly accessible sources as part of service delivery.

11.13 Automated Decision-Making: No data processed under this agreement is subject to automated decision-making, including profiling.

## 12. Employment Restriction

12.1 For the duration of this Agreement and for the period of 6 months following expiry or termination of this Agreement, the Client shall not without Resillion's prior written consent actively solicit or entice away (or seek or attempt to solicit or entice away) from Resillion's employment any person employed by Resillion in the performance and/or administration of the Project (or any person who has been so employed in the preceding 6 months).

12.2 Clause 12.1 above shall not apply to restrict the Client from employing (or offering to employ) any of Resillion's employees who have responded (without solicitation by the Client) to general recruitment advertising issued by or on behalf of the Client provided that should the Client so employ any of Resillion's employees, it shall pay to Resillion an amount equal to 25% of the annual salary of the relevant employee when employed at Resillion.

## 13. Indemnities and Limits of Liability

13.1 If Resillion fails to comply with any of its obligations under this Agreement, the Client shall give Resillion a reasonable opportunity to comply with its obligations (and Resillion shall provide such work free of charge provided that the compliance failure is not caused by any failure by the Client to comply with any of its obligations under this Agreement).

13.2 Resillion shall not be liable to the Client for any loss of profits or loss of business or for any special, indirect or consequential damages whether or not Resillion has been advised of the possibility of the same.

13.3 Subject to Clause 13.2, Resillion's liability in respect of each calendar year shall be limited to the higher of (i) £50,000 and (ii) the aggregate Charges paid by the Client in such calendar year.

13.5 The Client hereby indemnifies Resillion and agrees to keep Resillion indemnified in respect of any claims made against Resillion by Third-Parties and all related costs, damages, losses or expenses incurred by Resillion through misuse of the Consultancy Services or Third-Party Software by the Client or through any other breach by the Client of this Agreement or

through the Client's negligence provided that the Client's liability for such claims in respect of each calendar year shall be limited to the higher of £50,000 and the aggregate Charges payable by the Client for such calendar year.

13.6 Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by its negligence, or for fraudulent misrepresentation.

13.7 Resillion shall use its reasonable endeavours to comply with all human rights legislation adopted by the UK parliament and the Computers Misuse Act 1990. Notwithstanding the confidentiality provisions of Clause 10, Resillion reserves the right to notify the relevant authorities (including the police) if it becomes aware that any Client or any Clients' employees, officers, contractors or other Third-Parties are in breach of any human rights legislation, the Computers Misuse Act 1990 or any other law (including common law) in the UK and Resillion shall not be liable for any loss, damages, costs or expenses that the Client may incur as a result of such disclosure.

## 14. Termination

14.1 This Agreement may be terminated immediately by notice in writing:

14.1.1 by Resillion if the Client fails to pay any sums due under this Agreement before the expiry of a period of 5 Working Days from receipt by the Client of a notice from Resillion advising that such sums are overdue, without prejudice to any other provisions relating to late payment in this Agreement;

14.1.2 by the Client on giving Resillion not less than 30 Working Days' notice commencing within 10 Working Days of receipt from Resillion of notification of a variation in Resillion's Rates;

14.1.3 by either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) for a period of 10 Working Days after written notice of such breach;

14.1.4 by either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, becomes insolvent or is sequestered or enters into liquidation, whether compulsory or voluntary, other than for the purposes of a bona fide solvent amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has an administrator, receiver, administrative receiver or judicial factor appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act 1986; or equivalent circumstances occur in any other jurisdiction.

## 15. Consequences of termination and expiry

15.1 Any termination of this Agreement shall be without prejudice to any accrued rights or outstanding liabilities of either party at the date of termination and in particular all sums due by the Client to Resillion.

15.2 Upon termination of this Agreement for any reason, the Client shall pay to Resillion a reasonable sum in respect of any work undertaken but for which Charges have not become due, calculated by reference to the amount of such work and the Rates and Charges detailed in the Proposal.

15.3 Upon any termination or expiry of this Agreement Resillion shall, upon the Client's request, return to the Client any Client Supplied Items.

## 16. Economic Sanctions

16.1 The Client warrants that for the term of this Agreement, in relation to any economic and trade Sanctions imposed by the United Nations, the European Union, the United Kingdom, the United States of America or any other country, that:

16.1.1 it is not the target of any Economic Sanctions;

16.1.2 to the best of its knowledge, it is not controlled or beneficially owned by any person subject to Economic Sanctions;

16.1.3 it shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, the Licensee shall not (i) directly or indirectly export, re-export, tranship or otherwise deliver the Consultancy Services or any portion of the Consultancy Services in violation of any Economic Sanctions Law, or (ii) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law;

16.1.4 it is not engaged in any proceedings or subject to any investigations from authorities for the alleged breach of any Economic Sanctions Law.

16.2 The Client shall indemnify Resillion against any losses, liabilities, damages, fines, costs (including but not limited to legal fees) and expenses incurred by, or awarded against Resillion as a result of any breach of clause 16.1 by the Client.

16.3 Without affecting any other right or remedy available to it, Resillion may terminate this Agreement with immediate effect by giving written notice to the Client if the Client commits a breach of clause 16.1, and the Client shall not be entitled to claim compensation or damages for any such termination nor be entitled to any refund of payments already made if such repayment would breach any Economic Sanctions.

16.4 For the purpose of this clause 16:

16.4.1 Economic Sanctions means any economic Sanctions, restrictive measures or trade embargoes adopted by the UN Security Council, the European Union, the United Kingdom, the United States of America or any other sovereign government.

16.4.2 Economic Sanctions Law means any law, regulation or decision enacting Economic Sanctions.

## 17. General Provisions

### 17.1 Entire Agreement and Variations

This Agreement together with the documents referred to in it constitutes the entire agreement between the parties. Each party confirms to the other that it has not relied upon any representation not recorded in this Agreement as an inducement to enter into this Agreement. No variation of these Terms and Conditions shall be valid unless made in writing and signed by both parties.

### 17.2 Severability

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them shall not be prejudiced, unless the substantive purpose of this Agreement is thereby frustrated, in which case either party may terminate this Agreement forthwith on written notice given to the other.

### 17.3 Waiver

No forbearance or delay by either party in enforcing its respective rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any terms of this Agreement shall be deemed to be a waiver of any other right or of any later breach.

### 17.4 Relationship of the Parties

The relationship between the parties is that of independent contractors. Neither party is agent for the other and neither party has any authority to enter into any contract, whether expressly or by implication, in the name of the other party, without that party's prior written consent.

### 17.5 Notices

All formal notices to be given under this Agreement may be given by email, or personally or by recorded delivery post or by facsimile, in either case to the address of the party in question as specified below or as may be notified to the other party from time to time in writing and if delivered personally shall be deemed served on the other party on the day of delivery and if posted by recorded delivery shall be deemed to have been accepted on the expiry of forty eight hours after posting and on proving posting it shall be sufficient to produce a copy of the notice properly addressed with the relevant post office receipt for its despatch by recorded delivery. Notices may be sent by facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy; and by email transmission provided that email

transmissions are confirmed within 24 hours by a first-class mailed confirmation of a copy and no error message has been received. Correctly directed facsimile transmissions and/or email transmissions shall be deemed to have been delivered instantaneously on transmission provided that they are confirmed as set out above.

**If to Resillion:**

**Name:** Commercial Manager

**Address:** Mitchell House, 5 Mitchell Street, Edinburgh, EH6 7BD, United Kingdom

**Telephone Number:** +44(0)131 564 0310

**Email address:** contracts@resillion.com

**If to the Client:**

To the Client at the name, address, telephone number and email address specified in the Offer Acceptance Form.

**17.6 Force Majeure, Epidemics, Travel Restrictions, Quarantines and Disruptions**

**17.6.1 Force Majeure**

Neither party shall be liable to the other for any delay in or failure to perform its obligations (other than for payment of money) as a result of any cause beyond its reasonable control, including but not limited to Act of God, fire, flood, lightning, war, revolution, act of terrorism, strikes, lock-outs or other industrial action (whether of the affected party's own employees or others) or any industrial dispute provided that if any such delay or failure subsists for a period exceeding 65 Working Days then either party may terminate this Agreement by notice given to the other. Any termination under this Clause 17.6.1 shall be subject to Clause 15 but shall otherwise not cause either party to be liable to the other in respect of such termination.

**17.6.2 Epidemics, Travel Restrictions, Quarantines and Disruptions**

In the event the performance of Consultancy Services hereunder is rendered impossible or economically infeasible as a result of an epidemic and its impact to business operations, supply chains and travel, the parties shall discuss alternative means to provide the Services and if the parties are unable to agree on an alternative approach, Resillion shall have a right to terminate this Agreement without any penalties or liabilities. Any termination under this Clause 17.6.2 shall be subject to Clause 15 but shall otherwise not cause either party to be liable to the other in respect of such termination.

**17.7 Assignment**

Neither party is entitled to assign the whole or any part of its rights, duties, liabilities or obligations arising under these Terms and Conditions without the prior written consent of the other party.

**17.8 Escalation Procedure**

17.8.1 Any dispute between the parties arising in relation to or arising out of any aspect of this Agreement (whether as a matter of contractual interpretation or otherwise) ("Relevant Dispute") shall be resolved in accordance with the provisions of this Clause 17.8.

17.8.2 When a party determines that a Relevant Dispute has arisen, that party shall notify the other in writing of the same and the respective Project Managers of each party shall consult in good faith in an attempt to resolve the Relevant Dispute.

17.8.3 Either Project Manager may refer a Relevant Dispute to the Managing Directors (or equivalent office holder) of each of the parties.

17.8.4 If the Managing Directors fail to resolve a Relevant Dispute referred to them within 21 Working Days then either party shall have the right to refer the dispute to an independent Third-Party appointed by agreement between the parties or, in default of agreement by the president for the time being of the British Computer Society who shall act as expert and not as an arbitrator. Such Third-Party's decision shall only be binding upon the parties if reduced to writing and signed by or on behalf of each party.

17.8.5 If the parties fail to resolve a Relevant Dispute following a reference to an independent Third-Party, then either party shall have the option of commencing legal proceedings in the Courts.

17.8.6 This Clause 17.8 shall not prevent either party from seeking an interdict where such relief is necessary to protect its interests pending completion of the dispute resolution proceedings.

**17.9 Counterparts and Electronic Signatures.**

This Agreement and any amendments or notices may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one instrument. For purposes of this Agreement, an authorised electronic or digital copy of a Party's signature shall be sufficient to bind such party.

**17.10 Language, Governing Law & Jurisdiction**

17.10.1 English shall be used in all matters related to any contract and all parties shall use English in all written proceedings and decisions.

17.10.2 These Terms and Conditions are governed by and construed in all respects in accordance with the laws of England without reference to its conflicts of laws principles and the parties hereby prorogate (subject to Clause 17.8) the non-exclusive jurisdiction of the English courts.