

# **MASTER SERVICES**

## Agreement

**ONE  
BEYOND**

**THIS AGREEMENT IS DATED:**

**PARTIES**

- (1) One Beyond a company incorporated and registered in England and Wales (CRN: 04126477) and whose registered office is at Victoria House, 50-58 Victoria Road, Farnborough, Hampshire GU14 7PG (**One Beyond**).
- (2) \_\_\_\_\_ incorporated and registered in \_\_\_\_\_ with company number \_\_\_\_\_ whose registered office is at \_\_\_\_\_

Signed on behalf of One Beyond Limited \_\_\_\_\_. Date of signature: \_\_\_\_\_

Signed on behalf of the Customer \_\_\_\_\_. Date of signature: \_\_\_\_\_

By signing above, each party agrees to be bound by the terms and conditions below.

## 1 INTERPRETATION

**1.1** The following definitions and rules of interpretation apply in this agreement:

**Applicable Data Protection Laws:**

(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which One Beyond is subject, which relates to the protection of personal data.

**Applicable Laws:** all applicable laws, statutes and regulation from time to time in force.

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

**Business Hours:** the period from [9.00 am to 5.00 pm] on any Business Day.

**Charges:** the sums payable for the Services as set out in a Work Order or, if applicable, the Proposal.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in a Work Order.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to One Beyond in connection with the Services, including the items provided pursuant to clause 5.1 (c).

**Deliverables:** any output of the Services but excluding the One Beyond Materials.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**One Beyond Materials:** all documents, information, items and materials in any form, owned by or licensed One Beyond prior to the date of this agreement or developed outside the scope of this agreement including One Beyond's proprietary software, and any error corrections, updates, upgrades, modifications and enhancements in relation to the that software.

**Proposal:** in relation to a Work Order, any One Beyond proposal referenced in that Work Order.

**Services:** the services which are provided by One Beyond under a Work Order, if applicable as described in the Proposal.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Work Order:** a detailed plan, agreed in accordance with clause 3.1, describing the services to be provided by One Beyond and the related matters listed in the template Work Order set out in the Appendix to this agreement.

- 1.2** Clause headings shall not affect the interpretation of this agreement.
- 1.3** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6** Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7** This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8** A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9** A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10** A reference to **writing** or **written** excludes fax but not email.
- 1.11** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12** A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.
- 1.13** References to clauses are to the clauses of this agreement.
- 1.14** Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 COMMENCEMENT AND DURATION

- 2.1** This agreement shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with clause 12, until either party gives to the other party written notice to terminate. Such notice shall expire on the completion of all Work Orders entered into before the date on which it is served.

- 2.2** If there are no uncompleted Work Orders as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with immediate effect.
- 2.3** The parties shall not enter into any further Work Orders after the date on which notice to terminate is served under clause 2.1.
- 2.4** The Customer may procure any of the Services by agreeing a Work Order with One Beyond pursuant to clause 3.1.
- 2.5** One Beyond shall provide the Services from the date specified in the relevant Work Order.

### 3 WORK ORDERS

- 3.1** Each Work Order shall be agreed in the following manner:
- (a)** the Customer shall ask One Beyond to provide services and provide One Beyond with as much information as One Beyond reasonably requests in order to prepare a draft Work Order for the services requested;
  - (b)** following receipt of the information requested from the Customer One Beyond shall, as soon as reasonably practicable either:
    - (i)** inform the Customer that it declines to provide the requested services; or
    - (ii)** provide the Customer with a draft Work Order.
  - (c)** if One Beyond provides the Customer with a draft Work Order pursuant to clause 3.1(b)(ii), One Beyond and the Customer shall discuss and agree that draft Work Order; and
  - (d)** both parties shall sign the draft Work Order when it is agreed.
- 3.2** Once a Work Order has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 16. Each party may terminate a Work Order for convenience by giving written notice to the other party at least equal in length to the notice period specified in the Work Order.
- 3.3** Each Work Order shall be part of this agreement and shall not form a separate contract to it.

### 4 ONE BEYOND'S RESPONSIBILITIES

- 4.1** One Beyond shall provide the Services to the Customer, in accordance with a Work Order in all material respects.
- 4.2** One Beyond shall use reasonable endeavours to meet any performance dates specified in a Work Order but any such dates shall be estimates only and time for performance by One Beyond shall not be of the essence of this agreement.
- 4.3** One Beyond shall appoint a designated person from time to time in respect of the Services to be performed under each Work Order. That person shall have authority to contractually bind One Beyond on all matters relating to the relevant Services.
- 4.4** One Beyond shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it in writing, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.
- 4.5** One Beyond shall take good care of any Customer's Equipment provided by the Customer pursuant to clause 5.1(f).

- 4.6** The Customer acknowledges and agrees that it is the Customer's responsibility (and not One Beyond's responsibility) to ensure that the Services are sufficient and fit for the Customer's purposes and that any action or decision taken or made on the basis of the Services is in the Customer's best interests and in compliance with all applicable Customer policies, objectives and strategies.
- 4.7** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this agreement.

## 5 CUSTOMER'S OBLIGATIONS

- 5.1** The Customer shall:
- (a)** co-operate with One Beyond in all matters relating to the Services;
  - (b)** appoint a designated person from time to time in respect of the Services to be performed under each Work Order. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Services;
  - (c)** provide, for One Beyond, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by One Beyond including any such access as is specified in a Work Order;
  - (d)** provide to One Beyond in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Work Order or otherwise reasonably required by One Beyond in connection with the Services and ensure that they are accurate and complete;
  - (e)** inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
  - (f)** provide the Customer's Equipment to One Beyond prior to the dates specified and in the manner prescribed in a Work Order and ensure it is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards or requirements;
  - (g)** obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable One Beyond to provide the Services, including in relation to the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and
  - (h)** comply with any additional responsibilities of the Customer as set out in the relevant Work Order.
- 5.2** If One Beyond's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, One Beyond shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## 6 NON-SOLICITATION AND EMPLOYMENT

The Customer shall not, without the prior written consent of One Beyond, at any time from the date on which any Services commence to the expiry of twelve months after the completion of such Services, solicit or entice away from One Beyond or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of One Beyond in the provision of such Services.

## 7 CHARGES AND PAYMENTS

- 7.1** In consideration of the provision of the Services by One Beyond, the Customer shall pay the Charges on a time and materials basis. All Customer payments under this clause shall be non-refundable.
- 7.2** The Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a)** the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom One Beyond engages in connection with the Services; and
  - (b)** the cost to One Beyond of any materials or services procured by One Beyond from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.
- 7.3** One Beyond may increase the Charges on an annual basis by up to 5% by giving at least [60] days' notice to the Customer. If the Customer gives notice of termination of any Work Order in accordance with the provisions of that Work Order during that notice period, One Beyond shall not apply the increase to the charges payable under that Work Order.
- 7.4** One Beyond shall invoice the Customer for the Charges at the intervals specified in the Work Order. If no intervals are so specified, One Beyond shall invoice the Customer at the end of each month for Services performed during that month.
- 7.5** The Customer shall pay each invoice submitted to it by One Beyond within 30 days of receipt to a bank account nominated in writing by One Beyond from time to time.
- 7.6** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay One Beyond any sum due under this agreement on the due date:
- (a)** the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time; and
  - (b)** One Beyond may suspend part or all of the Services until payment has been made in full and notwithstanding suspension may continue to invoice the Customer in accordance with each Work Order for the period of suspension.
- 7.7** All sums payable to One Beyond under this agreement:
- (a)** are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - (b)** shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1** On payment of each invoice, any and all Intellectual Property Rights subsisting in the Deliverables to which that invoice relates shall vest in the Customer, and if they do not vest in Customer, One Beyond hereby assigns all of its right, title and interest in or to any such Intellectual Property Rights to the Customer. The Customer grants to One Beyond a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables and the Customer Materials solely for the purpose of providing the Services to the Customer. The Intellectual Property Rights in the One Beyond Materials are owned by One Beyond and if One Beyond includes or incorporates any One Beyond Materials in any Deliverable, One Beyond hereby grants Customer a non-exclusive, world-wide, unlimited, perpetual licence to copy, use, market, modify, exploit, sell, distribute, and enhance ("Use") such One Beyond Materials in relation to Customer's Use of such Deliverable.
- 8.2** One Beyond:
- (a)** warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
  - (b)** shall, subject to clause 11.7, indemnify the Customer against all direct liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Services and Deliverables.
  - (c)** shall not be in breach of the warranty at clause 8.2(a), and the Customer shall have no claim under the indemnity at clause 8.2(b) to the extent the infringement arises from:
    - (i)** the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
    - (ii)** any modification of the Services or any Deliverable, other than by or on behalf of One Beyond; and
    - (iii)** compliance with the Customer's specifications or instructions, save to the extent that One Beyond was aware that the Customer's proposed use of the Services and/or a Deliverable would infringe a third party's Intellectual Property Rights and did not notify the Customer;
  - (d)** compliance by us with your instructions or directions, whether express or reasonably inferred from your conduct;
  - (e)** the combination, operation or use of the Deliverables by you with any item(s) not furnished by us; and/or
  - (f)** modification to item(s) made by you or by any third party;
- 8.3** The Customer:
- (a)** warrants that the receipt and use in the performance of this agreement by One Beyond, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - (b)** shall indemnify One Beyond against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred or paid by One Beyond arising out of or in connection with any claim brought against One Beyond, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.
- 8.4** If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 8, the Indemnified Party shall:



- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 8.2(b) or clause 8.3(b) (as applicable) **(IPRs Claim)**;
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## 9 DATA PROTECTION

- 9.1 For the purposes of this clause 9, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.
- 9.2 Each party will comply with all applicable requirements of Applicable Data Protection Laws. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 9.3 The Customer undertakes to notify One Beyond of any requirement for One Beyond to process Personal Data on behalf of the Customer and shall provide details of the scope, nature and purpose of that processing, the duration of the processing and the types of Personal Data and categories of Data Subject (Customer Personal Data).
- 9.4 Without prejudice to the generality of clause 9.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to One Beyond and/or lawful collection of the same by One Beyond for the duration and purposes of this agreement.
- 9.5 Without prejudice to the generality of clause 9.2, One Beyond shall, in relation to Customer Personal Data:
  - (a) process that Customer Personal Data only on the documented instructions of the Customer unless One Beyond is required by Applicable Laws to otherwise process that Customer Personal Data (Purpose). Where One Beyond is relying on Applicable Laws as the basis for processing Customer Processor Data, One Beyond shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. One Beyond shall inform the Customer if, in the opinion of One Beyond, the instructions of the Customer infringe Applicable Data Protection Laws;
  - (b) implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (c) ensure that any personnel engaged and authorised by One Beyond to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;



- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to One Beyond), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
  - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless One Beyond is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 9.5(f) Customer Personal Data shall be considered deleted where it is put beyond further use by One Beyond; and
  - (g) maintain records to demonstrate its compliance with this clause 9, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 9.6** The Customer provides its prior, general authorisation for One Beyond to:
- (a) appoint processors to process the Customer Personal Data, provided that One Beyond:
    - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on One Beyond in this clause 9;
    - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of One Beyond; and
    - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to One Beyond's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify One Beyond for any losses, damages, costs (including legal fees) and expenses suffered by One Beyond in accommodating the objection.
  - (b) transfer Customer Personal Data outside the UK as required for the Purpose, provided that One Beyond shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of One Beyond, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 9.7** One Beyond's liability for losses arising from breaches of this clause 9 is as set out in clause 11.7(a).

## 10 CONFIDENTIALITY

- 10.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2(a).
- 10.2** Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 10.3** No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **11 LIMITATION OF LIABILITY**

- 11.1** The limits and exclusions in this clause reflect the insurance cover One Beyond has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 11.2** References to liability in this clause 11 include every kind of liability arising under or in connection with this agreement including [but not limited to] liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.4** Nothing in this clause 11 shall limit the Customer's payment obligations under this agreement.
- 11.5** Nothing in this agreement shall limit the Customer's liability under clause 8.2(c)(iii).
- 11.6** Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a)** death or personal injury caused by negligence;
  - (b)** fraud or fraudulent misrepresentation; and
  - (c)** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.7** Subject to clauses 11.3 and 11.6, One Beyond's total liability to the Customer:
- (a)** for loss arising from One Beyond's failure to comply with its obligations under clauses 9 and 10 and under the indemnity at clause 8.2, shall not exceed £2,000,000 (two million pounds); and
  - (b)** for all other loss or damage which does not fall within subclause (a) shall not exceed an amount equal to 110% of the total Charges payable by the Customer under this agreement or (as the case may be) the applicable Work Order in the twelve months preceding the date of the claim.
- 11.8** Subject to clauses 11.3, 11.4, 11.5 and 11.6 and not in relation to any claim under clause 6, this clause 11.8 specifies the types of losses that are excluded:
- (a)** loss of profits;
  - (b)** loss of sales or business;
  - (c)** loss of agreements or contracts;
  - (d)** loss of anticipated savings;
  - (e)** loss of use or corruption of software, data or information;
  - (f)** loss of or damage to goodwill; and
  - (g)** indirect or consequential loss.
- 11.9** One Beyond has given commitments as to compliance of the Services with relevant specifications in clause 4.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.10** Unless the Customer notifies One Beyond that it intends to make a claim in respect of an event within the notice period, One Beyond shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire [twelve] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## 12 TERMINATION

- 12.1** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a)** the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (b)** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
  - (c)** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (d)** the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
  - (e)** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f)** an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
  - (g)** the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - (h)** a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - (i)** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - (j)** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
  - (k)** the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (l)** the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 12.2** Without affecting any other right or remedy available to it, One Beyond may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [seven] days after being notified in writing to make such payment.

## 13 CONSENSUS OF TERMINATION

- 13.1** On termination of this agreement:
- (a)** the Customer shall immediately pay to One Beyond all of One Beyond's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, One Beyond may submit an invoice, which shall be payable immediately on receipt;
  - (b)** in accordance with clause 12, all existing Statements at Work shall terminate automatically.
- 13.2** Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 13.3** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 14 FORCE MAJEURE

- 14.1** **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a)** acts of God, flood, drought, earthquake or other natural disaster;
  - (b)** epidemic or pandemic;
  - (c)** terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (d)** nuclear, chemical or biological contamination or sonic boom;
  - (e)** any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - (f)** collapse of buildings, fire, explosion or accident; and
  - (g)** interruption or failure of utility service.
- 14.2** Provided it has complied with clause 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.3** The Affected Party shall:
- (a)** as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - (b)** use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## 15 ASSIGNMENT AND OTHER DEALINGS

- 15.1** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

- 15.2** One Beyond may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that One Beyond gives prior written notice of such dealing to the Customer.

## 16 VARIATION

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

## 17 WAIVER

- 17.1** A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2** A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.3** A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## 18 RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 19 SEVERANCE

- 19.1** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 19.2** If any provision or part-provision of this agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 20 ENTIRE AGREEMENT

- 20.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## 21 CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of a Work Order, the provisions of the Work Order shall prevail.

## 22 NO PARTNERSHIP OR AGENCY

- 22.1** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 23 THIRD PARTY RIGHTS

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## 24 NOTICES

- 24.1** Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a)** delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b)** sent by email to the address specified above.
- 24.2** Any notice or communication shall be deemed to have been received:
- (a)** if delivered by hand, at the time the notice is left at the proper address;
  - (b)** if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
  - (c)** if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 24.3** This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 25 COUNTERPARTS

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

## **26 GOVERNING LAW**

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

## **27 JURISDICTION**

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