



<<Client Name>>

and

Gemserv Limited

Services Agreement



Gemserv

This agreement ("Client Services Agreement") is made on <<dd mmmm yyyy>> (the "Commencement Date")

**BETWEEN:**

<<Client Name>>, a company incorporated and registered in << Country>> (registered number <<nnnnnnnn>>) having its registered office at:

<<full registered address>>

(the "Client");

and **Gemserv Limited**, a company incorporated and registered in England and Wales (registered number 04419878), having its registered office at:

2<sup>nd</sup> Floor, 77 Gracechurch Street

London

EC3V 0AS

("Gemserv")

each a "Party" and together the "Parties"

**WHEREAS:**

(A) Gemserv is a provider of Services (as defined below).

(B) The Client now wishes to engage Gemserv to provide the Services in accordance with the terms of the Agreement (as defined below).

**NOW IT IS AGREED:**

## 1 Form of Agreement

1.1 Gemserv agrees to provide the Services in accordance with the provisions contained in:

1.1.1 this Client Services Agreement;

1.1.2 its Annexes; and

1.1.3 the Gemserv Standard Terms (as may be varied by section 3 of this Client Services Agreement), which are hereby incorporated by reference,

in each case as may be varied and amended in accordance with the Gemserv Standard Terms from time to time (together, the "Agreement"). In the event and to the extent of any conflict or inconsistency between any of the terms of the Agreement then the term falling into the category first appearing in the list at section 1.1 above shall take precedence.

## 2 Commercial Terms

2.1 The following Commercial Terms apply to the Agreement:

<b>Term</b>	The Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with the Gemserv Standard Terms, the Agreement shall remain in force until <<the Services under the Agreement are completed OR DATE>> when it shall automatically terminate without notice.
<b>Services</b>	Gemserv shall provide the Services as specified in Annex 1.
<b>Charges</b>	In consideration of Services delivered by Gemserv in accordance with the Agreement, the Client shall pay the Charges detailed in Annex 1, in accordance with the Gemserv Standard Terms.
<b>Invoicing</b>	Gemserv shall invoice the Client for the Services at the times and in the amounts set out in Annex 1 and in accordance with the Gemserv Standard Terms.
<b>Client Address for notices</b>	Notices sent to the Client under the Agreement should be addressed to <<TBC>> and sent either by email to <<TBC>>, or by post or by hand to the Client's registered office.

<b>Client Contract Manager</b>	<<TBC>> or such other person as is notified by the Client to Gemserv in writing from time to time.
<b>Gemserv Address for Notices</b>	Notices sent to Gemserv under the Agreement should be addressed to the Commercial Team and sent either by email to commercial@gemserv.com, or by post or by hand to the Commercial Team at Gemserv's registered office.
<b>Gemserv First Point of Contact</b>	Gemserv's Operations Team (operations@gemserv.com) shall be Gemserv's first point of contact for all matters under the Agreement.
<b>Client Licence Terms</b>	<<TBC>>.
<b>Policies</b>	<<TBC>>.
<b>Third-Party Licencing</b>	<<TBC>>.
<b>Processing of Personal Data</b>	Details regarding personal data that may be processed under the Agreement are set out in Annex 2.

### 3 Variations to the Gemserv Standard Terms

3.1 <<The Parties agree that the following additional terms shall be added to the Gemserv Standard Terms in relation to the Agreement:

3.1.1 <<List out any additional terms or delete clause>>

3.2 The Parties agree that in relation to the Agreement, the Gemserv Standard Terms are varied as follows:

3.2.1 <<List out any additional terms or delete clause>>

3.3 <<If no changes to terms>> Any variations to the Gemserv Standard Terms shall be agreed between the Parties in accordance with those Gemserv Standard Terms.>>

### 4 Counterparts

4.1 The Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

### 5 Execution

5.1 In witness hereof, the Agreement has been duly executed on the Commencement Date by the Parties' authorised signatories whose names and marks appear below.

Signed		Signed	
Date		Date	
Name		Name	
Position		Position	
Duly authorised signatory for and on behalf of <<the Client>>		Duly authorised signatory for and on behalf of <b>Gemserv Limited</b>	

## Annex 1 - Statement of Work

<b>Background</b>	<<Set out the background to Services to be provided>>.	
<b>Scope of Works</b>	<<Name of Deliverable>>	<<Provide details of each deliverable, additional rows may be required>>
	<<Name of Deliverable>>	1) <<Provide details of each deliverable, additional rows may be required>>
	<<Name of Deliverable>>	1) <<Provide details of each deliverable, additional rows may be required>>
<b>Timescales</b>	<<date of commencement, any key milestones etc.>>	
<b>Charges</b>	<<to include details of day rates, fixed price elements, total estimated charges etc>>	
<b>Payment Terms</b>	<<Payment terms always to be completed as Gemserv Standard Terms point to the SoW, to include conditions for payment and whether milestone or time based etc>>	
<b>Expenses</b>	<p>Total charges are &lt;&lt;inclusive OR exclusive&gt;&gt; of Travel Time.</p> <p>Total charges are &lt;&lt;inclusive OR exclusive&gt;&gt; of Expenses and Accommodation.</p> <p>Unless specified in the row above, the Client shall pay Gemserv for any:</p> <ol style="list-style-type: none"> <li>1) Expenses, and</li> <li>2) Travel Time of Gemserv Staff, which shall be payable at the day rates detailed in this Annex 1 and prorated for any partial day (based on a 7.5 hour day).</li> </ol> <p>For the purposes of this section:</p> <ol style="list-style-type: none"> <li>1) "Expenses" means all travel, accommodation and subsistence expenses incurred by Gemserv Staff to attend meetings in-person at Client's request; and</li> <li>2) "Travel Time" means: <ol style="list-style-type: none"> <li>a. any time taken by Gemserv Staff during normal working hours or in lieu of normal working hours to travel to meetings at an overseas location at Client's request; and</li> </ol> </li> </ol> <p>any time taken in excess of four (4) hours by Gemserv Staff during normal working hours or in lieu of normal working hours to travel to meetings at a UK location at Client's request.</p>	
<b>Named Individuals</b>	<<To insert any Named Individuals that are to deliver the Services as required e.g. Client Contract Manager, First Point of Contact>>	
<b>Assumptions</b>	<<Insert any assumptions Gemserv is operating on in setting up and delivering the services>>	
<b>Client Assistance</b>	<<Insert any specific assistance, data or other information required in order to mobilise the services>>	

## Annex 2 – Schedule of Processing

### Part 1 – General provisions.

In this Annex 2:

- a) **“data subject”**, **“personal data”**, and **“recipient”** shall have the meaning given to those terms in the Data Protection Legislation;
- b) **“processing”** shall have the meaning given to that term in the Data Protection Legislation (and **“process”** and **“processed”** shall be construed accordingly); and
- c) All other defined terms shall have the meanings attributed to them in the Gemserv Standard Terms, which form part of the Agreement.

The provisions of Clause 9 of the Gemserv Standard Terms shall apply to any Client Personal Data processed under the Agreement.

<b>Subject matter of processing</b>	<p>The Client Personal Data to be processed by Gemserv pursuant to the Agreement concerns the following subject matter(s):</p> <ul style="list-style-type: none"><li>a) The processing of names and business contact details of directors, staff, agents, consultants and contractors of the Client as is necessary to deliver the Services during the course of the Agreement, and to undertake contract management activity.</li></ul>
<b>Duration of the processing</b>	<p>The Client Personal Data shall be processed for the duration of the Agreement, and as required during any exit phase, all in accordance with the terms of the Agreement.</p>
<b>Nature and purposes of the processing</b>	<p>The nature of the processing of Client Personal Data will include collection, recording, organisation, structuring, storage, retrieval, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data etc.</p> <p>The processing is needed in order to ensure that Gemserv can effectively deliver the contract to provide the Services it was originally created for.</p> <p>Processing takes place for the purposes of</p> <ul style="list-style-type: none"><li>a) General management of the Agreement;</li><li>b) Supporting the activities required to be undertaken in accordance with the Statement of Works.</li></ul>
<b>Types of personal data</b>	<p>The Client Personal Data to be processed by Gemserv pursuant to the Agreement concerns:</p> <ul style="list-style-type: none"><li>a) names and business contact details of the Client’s directors, staff, agents, consultants and contractors where required in order to allow Gemserv to deliver the Services.</li></ul>
<b>Special categories of personal data</b>	<p>No special categories of personal data are processed as Client Personal Data under the Agreement.</p>



<b>Categories of data subjects</b>	The Client Personal Data to be processed under the Agreement concern the following categories of data subjects:  a) Directors, staff, agents, contractors and consultants of the Client who are involved in the operation of the Agreement.																										
<b>Recipients of personal data</b>	The Client Personal Data to be processed under the Agreement:  a) shall be transferred between the Client and Gemserv for the purposes of fulfilling the specific purposes of the Agreement;  b) shall be transferred between Gemserv and any sub-processor named below for the purposes of assisting Gemserv in providing the Services.																										
<b>Sub-processors of personal data</b>	Gemserv may use any of the sub-processors listed below to process Client Personal Data under the Agreement. <table><tr><th>Subprocessor</th><th>Region</th><th>Purpose</th></tr><tr><td>DocuSign</td><td>Europe</td><td>Cloud storage of signed documents</td></tr><tr><td>Egress</td><td>UK, Europe</td><td>Secure file and email management</td></tr><tr><td>Manage Engine (Zoho Corporation)</td><td>Europe</td><td>Service support and incident management tools</td></tr><tr><td>Microsoft</td><td>UK, Europe</td><td>Email and file cloud storage, backup storage and customer relationship management</td></tr><tr><td>Ninian Solutions Ltd t/a Huddle</td><td>UK</td><td>File storage and collaboration</td></tr><tr><td>OneTrust</td><td>UK, Europe</td><td>Service automation platform for provision of and storage of responses to forms and assessments issued</td></tr><tr><td>Threatspike</td><td>UK</td><td>Threat intelligence monitoring of emails and attachments</td></tr></table>			Subprocessor	Region	Purpose	DocuSign	Europe	Cloud storage of signed documents	Egress	UK, Europe	Secure file and email management	Manage Engine (Zoho Corporation)	Europe	Service support and incident management tools	Microsoft	UK, Europe	Email and file cloud storage, backup storage and customer relationship management	Ninian Solutions Ltd t/a Huddle	UK	File storage and collaboration	OneTrust	UK, Europe	Service automation platform for provision of and storage of responses to forms and assessments issued	Threatspike	UK	Threat intelligence monitoring of emails and attachments
Subprocessor	Region	Purpose																									
DocuSign	Europe	Cloud storage of signed documents																									
Egress	UK, Europe	Secure file and email management																									
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Threatspike	UK	Threat intelligence monitoring of emails and attachments																									



## GEMSERV STANDARD TERMS

### 1 Definitions and Interpretation

- 1.1 Unless stated otherwise, the definitions and interpretations in these Gemserv Standard Terms and any associated Client Services Agreement(s) shall apply to the Agreement in its entirety.
- 1.2 In these Gemserv Standard Terms, unless the context requires otherwise, any reference to:
- 1.2.1 a **"person"** includes a reference to an individual, body corporate, association or partnership;
  - 1.2.2 a **"day"** means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight saving) ending at 12.00 midnight;
  - 1.2.3 a **"month"** means a calendar month;
  - 1.2.4 the singular shall include the plural and vice versa;
  - 1.2.5 a Clause or Schedule is a reference to a clause of or schedule to or part of these Gemserv Standard Terms;
  - 1.2.6 writing includes all methods of reproducing words in a legible and non-transitory form;
  - 1.2.7 references to **"include"** or **"including"** are to be construed without limitation to the generality of the preceding words;
  - 1.2.8 any obligation on a Party not to do something includes an obligation not to allow that thing to be done;
  - 1.2.9 any statute or any other subordinate legislation, any other agreement or instrument shall be construed as a reference to that statute, subordinate legislation, other agreement or instrument as amended or re-enacted from time to time; and
  - 1.2.10 another agreement or any deed or other instrument or document shall be construed as a reference to that agreement, deed or other instrument or document as the same may have been, or may from time to time be, amended, varied, supplemented or novated.
- 1.3 The headings in these Gemserv Standard Terms are for ease of reference only and shall not affect their interpretation.
- 1.4 In these Gemserv Standard Terms, unless the context requires otherwise: **"controller"**, **"data subject"**, **"personal data"**, **"personal data breach"**, **"processor"**, **"recipient"**, **"supervisory authority"** and **"processing"** shall have the meaning given to those terms in the Data Protection Legislation (and **"process"** and **"processed"** shall be construed accordingly).
- 1.5 The following words and expressions shall have the following meanings:

<b>"Agreement"</b>	shall have the meaning given in the Client Services Agreement;
<b>"Bribery Act"</b>	has the meaning given to that term in Clause 12.1.1;
<b>"Cancellation Fee"</b>	has the meaning given to that term in Clause 6.9;
<b>"CFA"</b>	has the meaning given to that term in Clause 12.1.1;
<b>"Charges"</b>	means the charges and fees agreed for the provision of the Services, excluding VAT, as set out in Statements of Work, but subject to any adjustment in accordance with any other provision of the Agreement;
<b>"Client"</b>	means the person identified as such in the Client Services Agreement to which these Gemserv Standard Terms apply;
<b>"Client Contract Manager"</b>	means the individual named as the person managing the relationship between the Client and Gemserv in relation to matters under the Agreement;
<b>"Client Materials"</b>	has the meaning given to that term in Clause 8.2;
<b>"Client Personal Data"</b>	means any personal data relating to or originating from the Client, its employees or customers. Client Personal Data shall consist of the types of personal data and categories of data subject set out in Annex 2 to the Client Services Agreement;
<b>"Client Services Agreement"</b>	means the Client Services Agreement between the Client and Gemserv pursuant to which Gemserv agrees to provide Services to that Client, and which forms a part of the Agreement;



<b>“Confidential Information”</b>	means any and all confidential information and data (in whatever form communicated, obtained or maintained, whether orally, in writing, electronically, hard copy, computer storage, or otherwise) disclosed or made available (directly or indirectly) by a Disclosing Party to a Receiving Party for the purposes permitted under the terms of the Agreement, including but not limited to financial information, commercial and strategic data, details of employees and commercial information relating to operations, pricing, contracts, tenders processes, initiatives, plans, product information, technical or commercial know-how, specifications, inventions, designs, trade secrets, software, market opportunities and such expression shall include any reproduction or summary of a Disclosing Party’s confidential information which a Receiving Party may make and any documents otherwise generated or prepared based on such information;	<b>“Force Majeure Event”</b>	shall mean any event beyond the reasonable control of the Party seeking to rely on it including, but not limited to: actions taken by a government or public authority, epidemics, pandemics, earthquakes, landslides or displacements of other materials, storms, floods, lightning, hurricanes, tempest, acts of God, nuclear accident, state or public enemy, wars, revolutions, uprisings, hostilities, civil disturbances, terrorist activity, blockades, embargoes, government restraints or similar disruptions or interferences with trade, riots, civil commotion, civil war, insurrection, invasion, explosions and fires. For the avoidance of doubt, strikes, lockouts and shutdowns of a Party or any of its Group (or of any person engaged by any of them) shall not be a force majeure event for that Party;
<b>“Consultancy Day”</b>	means a scheduled day during which work relating to the Services is due to be delivered by a Gemserv consultant either off-site or on-site from the Client’s office;	<b>“Gemserv Standard Terms”</b>	means these terms as they apply to the Agreement;
<b>“Data Protection Legislation”</b>	means the EU GDPR, UK GDPR, the DPA and all Laws giving effect or purporting to give effect to such legislation or otherwise relating to data protection (to the extent the same apply);	<b>“Group”</b>	means a Party, any subsidiary or holding company from time to time of that Party, and any subsidiary or holding company from time to time of that Party’s holding companies, as such terms are defined in the Companies Act 2006 (or any replacement statutes);
<b>“Delivery Date”</b>	means the date or dates for completion of the Services and/or delivery of the deliverables as set out in the Client Service Agreement;	<b>“Insolvency Event”</b>	means any event where: a) a Party proposes or enters into any composition, compromise or other arrangement for the benefit of its creditors or a class of creditors; or b) a Party obtains a moratorium or other protection from its creditors; or c) a Party takes any steps (or has steps taken against it) towards: (i) winding up (where such step is a winding up petition, it shall only constitute an Insolvency Event where such petition is not withdrawn within 60 days) or dissolving the other Party; (ii) appointing a trustee, supervisor, receiver, liquidator, administrator or similar officer or other encumbrancer in respect of the other Party or any of its assets; and/or (iii) taking possession of or levying a distress or execution against any of the other Party’s assets; or d) an event occurs which would result in a floating charge crystallising over any of a Party’s assets; or
<b>“Disclosing Party”</b>	means a Party when it discloses its Confidential Information, directly or indirectly, to the other Party;		
<b>“DPA”</b>	means the Data Protection Act 2018;		
<b>“EU GDPR”</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);		
<b>“First Point of Contact”</b>	means the individual named as the first point of contact for Gemserv in relation to matters under the Agreement;		





<b>"Intellectual Property Rights"</b>	e) a Party stops carrying on business; or	<b>"Named Individual"</b>	means any individual who is a director, officer, employee, worker, agent, or sub-contractor of Gemserv, and whom Gemserv has proposed provide Services under a Client Services Agreement subject to the Parties agreeing that such Named Individual(s) have the required skills, qualifications, resources and personnel to provide the Services in accordance with the Agreement. If no such Named Individuals have been specified in the Client Services Agreement then this term is not relevant and shall not apply to the Agreement;
	f) a Party is unable to pay its debts or admits it is unable to do so (within the meaning of section 123 of the Insolvency Act 1986 (without any need for the terminating Party to prove it in court)); or		
	g) the value of a Party's assets are at any time less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or		
	h) a 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; or		
	a) any event analogous to any of the above happens in any jurisdiction;		
	means all patents, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, 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;	<b>"Policies"</b>	shall have the meaning given in the Client Services Agreement. If no definition is set out in the Client Services Agreement then this term is not relevant and shall not apply to the Agreement;
		<b>"Receiving Party"</b>	means a Party when it receives Confidential Information, directly or indirectly, from the other Party;
		<b>"Representatives"</b>	has the meaning given to that term in Clause 7.2.1;
		<b>"Schedule of Processing"</b>	means the information attached to the Client Services Agreement and which sets out the scope and means of processing of relevant personal data under the Agreement, as well as other data protection related information;
		<b>"Services"</b>	means the services to be provided by Gemserv under the Agreement, in accordance with the Statement of Work;
<b>"Law"</b>	all applicable laws, statutes, regulations from time to time in force;	<b>"Software"</b>	has the meaning given in Clause 5.2.1;
<b>"Lawful Safeguard"</b>	means such mechanism(s) for transfers of personal data as may be permitted under Data Protection Legislation from time to time;	<b>"Staff"</b>	means all directors, officers, employees, sub-contractors, agents, or other persons used by either Party in relation to performance of Services or other matters under the Agreement from time to time;
<b>"Modification"</b>	means each translation, adaptation, arrangement, derivative work, development, enhancement, error correction, fix, version, upgrade, update, new release and, without limitation, by reference to the foregoing, modification;	<b>"Statement of Work"</b>	means a detailed plan, agreed with the Client describing Services to be provided by Gemserv under the Agreement, including details of expenses and fees and any timetable for performance;
<b>"MSA"</b>	has the meaning given to that term in Clause 13.1.1;	<b>"Sub-Processor"</b>	means any person engaged by Gemserv as a further processor in relation to Client Personal Data that is processed under the Agreement;
		<b>"Term"</b>	shall have the meaning given in the Client Services Agreement; and



**“UK GDPR”** means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time);

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## 2 Provision of Services

- 2.1 Gemserv shall use reasonable endeavours to supply the Services in accordance with the terms of the Agreement in all material respects.
- 2.2 For the avoidance of doubt, no other terms and conditions shall apply to the Agreement. In particular, the Client’s standard terms and conditions shall not apply to the provision of the Services notwithstanding any reference to such terms in any document. The Client waives any right which it otherwise might have to rely on its own terms and conditions.
- 2.3 Any performance or continued performance under the Agreement shall be deemed to constitute the Client’s acceptance of the terms of the Agreement.
- 2.4 Gemserv shall provide at its own cost, all such necessary equipment as is reasonable for the satisfactory performance of the Services. If, as a matter of convenience, Gemserv or its Staff are provided with equipment by the Client for the purposes of providing the Services, Gemserv shall be responsible for ensuring that the security and condition (subject to usual wear and tear) of such equipment is preserved. If and to the extent that any equipment is lost or damaged while in the possession of Gemserv or Gemserv Staff, Gemserv shall bear the reasonable, demonstrable cost of any necessary repairs or replacement (on a ‘like-for-like’ basis).
- 2.5 Gemserv may undertake provision of the Services at any location within the United Kingdom, where this does not materially impact the delivery of such Services to the Client. Where any of Gemserv’s Staff is located at any Client premises, Gemserv procures that those Staff shall use reasonable endeavours to observe the Policies, and shall use any equipment or facilities in a responsible manner.
- 2.6 Subject to Clause 3.2, where the Client has requested, and Gemserv has confirmed, that the provision of all or part of the Services is to be undertaken by one or more Named Individuals, Gemserv shall use reasonable endeavours to ensure that such Named Individuals are available to deliver the Services in accordance with the Agreement.

2.7 If a specific Named Individual is not available to deliver the Services (or any part of them), Gemserv shall use reasonable endeavours to ensure that sufficient equivalently skilled Staff are available to achieve the agreed deliverables and timescales as set out in the Statement of Work.

2.8 Gemserv may substitute Named Individuals in the performance of the Services, provided that it provides details to the Client of any such substitute Named Individual in advance of the planned substitution.

## 3 Management and Communication

- 3.1 Gemserv shall use reasonable endeavours to comply with the Client’s reasonable instructions in relation to performance of the Services. Any instructions relating to the Agreement shall be given to Gemserv by the Client Contract Manager.
- 3.2 All queries to Gemserv regarding the Agreement should initially be addressed to Gemserv’s First Point of Contact. Gemserv may replace Gemserv’s First Point of Contact from time to time where reasonably necessary in the interests of Gemserv’s business.
- 3.3 In addition to the day-to-day operational contact between the Parties, the Client and Gemserv shall meet at least once a month (or otherwise at the reasonable request of either Party) to review Gemserv’s performance in relation to the provision of the Services. The scope and attendance of these meetings shall be agreed between the Client Contract Manager and Gemserv’s First Point of Contact. Subject to Clause 5.4, any failure of Gemserv identified in these meetings shall be promptly addressed and Gemserv shall take such action as Gemserv considers reasonably necessary to minimise the impact of that failure, correct the failure, and prevent it from recurring.

## 4 Gemserv Obligations

- 4.1 Gemserv shall at all times use reasonable endeavours to:
  - 4.1.1 fulfil its obligations under the Agreement in all material respects, including that provision of the Services shall be performed in all material respects in accordance with the Client Services Agreement, and these Gemserv Standard Terms;
  - 4.1.2 devote to the performance of its obligations hereunder such of its time, attention and skill as may be necessary for the proper performance of those obligations in accordance with the Agreement, in all material respects;
  - 4.1.3 obtain and maintain all software and licences necessary to deliver the Services;



- 4.1.4 ensure that each of its Staff involved in the delivery of the Services is suitably qualified, adequately trained, holds appropriate professional qualifications, is familiar with relevant Policies, is lawfully able to work in the UK, and can provide the applicable Services in respect of which they are engaged;
  - 4.1.5 meet any performance dates specified in the Statement of Work but any such dates shall be estimates only and time for performance by Gemserv shall not be of essence to the Agreement; and
  - 4.1.6 comply with all Laws applicable to Gemserv's provision of the Services.
  - 4.2 Any Staff provided by Gemserv for the purpose of carrying out its obligations under the Agreement, shall at all times be and be deemed to be employees, agents, or sub-contractors of Gemserv and not of the Client.
  - 4.3 Gemserv shall be responsible for paying all salaries, taxes, contributions and charges payable in respect of its Staff and nothing hereunder shall place any liability on the Client in relation to the payment of such salaries, taxes, contributions and charges.
  - 4.4 Except as provided in the Agreement, the Services, (or any other component thereof) any Third-Party Licencing (as defined in the Client Services Agreement) are provided "as is" without any warranty or condition of any kind. All warranties or conditions, whether express or implied, including but not limited to all warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, are expressly excluded to the fullest extent permissible under applicable Law.
- 5.1.5 provide Gemserv and its Staff access to required Client's premises, systems, and personnel, in accordance with the timescales and requirements specified in the Statement of Work; and
  - 5.1.6 advise Gemserv of any updates to the Policies which may affect Gemserv or any of Gemserv's Staff during the performance of the Services, whether such Services are being performed at the Client's premises or elsewhere.
  - 5.2 Client shall not, without the prior written permission of Gemserv:
    - 5.2.1 sell or resell, mortgage, lease or sub-licence any software delivered as part of the Services ("**Software**");
    - 5.2.2 alter, modify, translate, reverse engineer, imitate, decompile any Software; or
    - 5.2.3 incorporate the Software into any other products or destroy or remove any proprietary labels embedded within the Software.
  - 5.3 Unless specified to the contrary, all items to be provided to Gemserv by the Client shall be provided free of charge.
  - 5.4 To the extent that performance by Gemserv of any of its obligations under the Agreement is prevented by reason of any failure or delay by the Client in performing or procuring the performance of, any of the dependencies applicable to the Services pursuant to Clause 5.1, Gemserv shall be entitled to claim relief from performing the obligation for the period during which the failure or delay in performing the dependency or dependencies continues and shall be allowed an additional period of time to perform the obligation.

## 5 Client's Obligations

- 5.1 The Client shall, promptly:
  - 5.1.1 provide Gemserv and its Staff with all necessary co-operation, assistance, information, materials, adequate and accurate information necessary for the performance of the Services by Gemserv under the Agreement;
  - 5.1.2 obtain and maintain all necessary licences and consents and comply with all applicable Law as required to enable Gemserv to provide the Services, the use of all Client Materials and the use of the Client's equipment (provided in accordance with Clause 2.4), in all cases before the Commencement Date;
  - 5.1.3 comply with any third party licence terms notified to Client by Gemserv in the Statement of Work;
  - 5.1.4 provide any Client assistance specified in the Statement of Work;
- 5.5 Unless otherwise agreed between the Parties, the additional period referenced in Clause 5.4 shall be equal to the amount of time during which Gemserv is delayed or prevented from performing the obligation provided that Gemserv shall not be excused from performance of any obligation other than pursuant to this Clause 5 or otherwise as permitted under the Agreement (including without limitation Clause 6.5.2 and Clause 16).
- 5.6 The Client undertakes that it shall:
  - 5.6.1 inform Gemserv forthwith if any problems arise or upon the occurrence of any events which cause, or are likely to cause, Gemserv difficulty or delay in the performance and/or completion of the Services in accordance with the Agreement;
  - 5.6.2 inform Gemserv in writing forthwith if it becomes aware of facts which constitute or may give rise to a conflict of interest or have a material impact on the performance of its obligations hereunder, and upon such notification the Parties shall agree appropriate procedures for managing the same; and



5.6.3 comply with all applicable Laws.

5.7 If during the Term the Client proposes to appoint additional contractors to support the delivery of the Services set out in the Statement of Work, the Client shall inform Gemserv in advance of any such appointment.

5.8 If any appointment under Clause 5.7 leads to a potential or actual conflict of interest between Gemserv and any additional contractor, Gemserv may suspend the Services without penalty until such time as such conflict is resolved to the satisfaction of the Parties, or terminate the Agreement if the conflict is not resolved within three (3) months.

## 6 Charges and Payment

6.1 In consideration of Gemserv providing the Services in accordance with the terms of the Agreement, the Client shall pay the Charges in accordance with this Clause 6 and the terms of the Agreement, and at the amounts and times set out in the Statement of Work. If no payment dates are specified Gemserv shall invoice the Client at the end of each month for Services performed during that month.

6.2 Gemserv shall invoice the Client for the Charges in accordance with the terms on invoicing set out in the Statement of Work, as well as the provisions of this Clause 6. Unless the Statement of Work specifies otherwise, the Client shall pay each invoice submitted to it within thirty (30) days of receipt.

6.3 All invoices submitted shall include details of the UK bank account to which payment should be made.

6.4 The Client shall not have any right of set off, abatement, counterclaim, retention, deduction or any other withholding against amounts invoiced to it (including where invoices have been issued late or have been subsequently amended to correct errors) by Gemserv.

6.5 Without prejudice to Gemserv's rights and remedies under the Agreement (including but not limited to those set out under Clause 12), in the event of any undisputed invoices being unpaid on the due date, Gemserv may in its sole discretion:

6.5.1 charge a late payment charge equal to 3% above the base rate of the Royal Bank of Scotland PLC until such time as all outstanding undisputed invoices have been paid; and/or

6.5.2 suspend the Services until such time as the overdue invoices have been paid. If Gemserv suspends the Services pursuant to this Clause 6.5.2, Gemserv shall be excused any liability or default for delays caused by such suspension of Services and all schedules for completion of Services will be automatically adjusted to extend any deadlines by the number of days for which Gemserv suspended the provision of the Services due to the Client's failure to pay overdue invoices.

6.6 All fees due hereunder are exclusive of VAT, which shall be paid by the Client at the rate and in the manner for the time being prescribed by Law.

6.7 If the Client has a bona fide dispute in relation to the whole or any part of an invoice submitted by Gemserv, the Client shall notify Gemserv of the amount in dispute and the nature of the dispute within fourteen (14) days from receipt of the invoice. After such period the invoice shall be deemed to be accepted by the Client.

6.8 The Client may, upon giving prior written notice to Gemserv, instruct Gemserv to suspend or postpone provision of the Services ("**Suspension Notice**"). Following the receipt of a Suspension Notice, Gemserv shall invoice for the Charges due for those Services up to the date of suspension or postponement and the Client shall pay the Charges in accordance with the provisions of this Clause 6.

6.9 Notwithstanding Clause 6.8, if the Client issues a Suspension Notice not less than fourteen (14) days prior to any scheduled Consultancy Days, the Client shall pay a fee equal to the value of the suspended or postponed Consultancy Days including any expenses incurred by Gemserv ("**Cancellation Fee**"). Gemserv shall invoice the Client and Client shall pay the Cancellation Fees in accordance with the provisions of this Clause 6.

6.10 Gemserv may terminate the Agreement if, on the expiration of three (3) calendar months following the receipt of the Suspension Notice, the Client has not issued a further written instruction to resume the carrying out of the Services.

6.11 The Parties may agree to a contingency budget based on the defined scope. If applicable, the monetary amount set out as contingency shall be stated in the Client Service Agreement. The contingency budget shall only be considered for the specific Services set out in the Client Service Agreement with prior approval from the Client.

## 7 Confidentiality

7.1 Where a Party is a Receiving Party, that Party shall not at any time disclose to any person any and all Confidential Information disclosed to it by the Disclosing Party concerning the business or affairs of the Disclosing Party or of any member of the Disclosing Party's Group, except as permitted by Clause 7.2.

7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information:



- 7.2.1 to the Receiving Party's Staff, and to its Group's, employees, workers, officers, consultants, or professional advisers ("**Representatives**") who need to know such information for the purposes of carrying out the Receiving Party's obligations under the Agreement, provided that the Receiving Party shall ensure that its Staff and Representatives comply with the confidentiality obligations contained in this Clause 7. The Receiving Party shall remain principally liable to the Disclosing Party where any of its Staff or any Representative fails to comply with the obligations of confidence and security owed to the Disclosing Party under the Agreement;
- 7.2.2 as may be required by Law, court order or by any governmental or regulatory authority or any securities exchange to which the Receiving Party is subject; and
- 7.2.3 to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this Clause 7.
- 7.3 On completion, termination or other expiry of the Agreement, the Confidential Information and any records or copies of the same in whatever form, must be destroyed or returned promptly to the Disclosing Party at their request.
- 7.4 The Client will not use Gemserv's name in any marketing or publicity material nor reveal its arrangement with Gemserv to any third party without a specific written consent signed by a duly authorised representative of Gemserv.
- 7.5 Gemserv shall be entitled to use the Client's name in its marketing and publicity materials and to reveal its arrangement with the Client to third parties without obtaining the prior consent of the Client.
- ## 8 Intellectual Property Rights
- 8.1 Save for Intellectual Property Rights referred to in this Clause 8, all Intellectual Property Rights vesting in either Party whether prior to or on or after the Commencement Date shall remain vested in such Party.
- 8.2 The Client shall retain title to all Intellectual Property Rights in any computer programme, data or other material which constitute the pre-existing proprietary items of the Client and which are submitted to Gemserv in relation to the provision of the Services (the "**Client Materials**").
- 8.3 The Client grants to Gemserv and members of Gemserv's Group a fully paid-up, worldwide, non-exclusive, non-transferable, royalty-free licence to use, copy and modify the Client Materials for the Term for the purpose of providing the Services to the Client. Gemserv or any member of the Gemserv Group may sublicense its rights under this Clause 8.3 to its subcontractors to the extent necessary and for as long as is necessary in order for such subcontractors to provide any Services and perform any obligations under this Agreement.
- 8.4 In relation to the Intellectual Property Rights in the Services:
- 8.4.1 Gemserv and its licensors and successors shall retain ownership in all Intellectual Property Rights, excluding the Client Materials;
- 8.4.2 following receipt of payment for the relevant Services, Gemserv grants to the Client or shall use reasonable endeavours to procure the direct grant to the Client of fully paid-up, worldwide, non-exclusive, royalty-free licences during the Term for the purpose of receiving and using the results of the Services in its business, including the copying and, save in respect of any PCI Report on Compliance, Modification of materials received by the Client as part of the Services. For the avoidance of doubt, the Customer acknowledges that any PCI Report on Compliance delivered as part of the Services is an official document that cannot be amended or modified without the prior written approval of Gemserv.
- 8.5 The Client unconditionally agrees to adhere to and be bound by the terms and conditions of all licences, as provided or made available to the Client from time to time in relation to the Services, (including any updated versions of them which are provided or made available to the Client) and the Client shall have no right to assign, sublicense or transfer such licences.
- 8.6 Gemserv warrants that the receipt and use of the Services by the Client shall not infringe the Intellectual Property Rights of any third party. Gemserv shall not be in breach of this warranty to the extent the infringement arises from:
- 8.6.1 the use of Client Materials;
- 8.6.2 any Third-Party Licensing;
- 8.6.3 any modification of the Services other than by or on behalf of Gemserv; and
- 8.6.4 compliance with the Client's specifications or instructions.
- 8.7 The Client warrants that the receipt and use of the Client Materials in the performance of the Agreement, shall not infringe third party Intellectual Property Rights.





- 8.8 If the all or part of the Services become or are likely to become the subject of any third party intellectual property infringement claim or action, Gemserv may, at Gemserv's sole option, either:
- 8.8.1 replace such solutions with a materially equivalent solution so as to avoid the infringement;
  - 8.8.2 modify or obtain a license for the solutions so that they no longer infringe on any rights; or
  - 8.8.3 after Gemserv has demonstrated its good faith efforts to achieve the foregoing without success, terminate the Agreement effective immediately.
- 8.9 Gemserv shall be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired or developed by Gemserv in the course of performing the Services, subject to the obligations under Clause 7 of this Agreement.

## 9 Data Protection

- 9.1 Each Party shall comply with all relevant Data Protection Legislation in relation to all personal data processed under the Agreement and neither Party shall, and Gemserv shall procure that no Sub-Processor shall, by act or omission, put the other Party in breach of the Data Protection Legislation.
- 9.2 Each Party agrees and acknowledges that the provisions of this Clause 9 are in addition to, and do not relieve, remove, or replace that Party's obligations under the Data Protection Legislation and that it shall at all times remain liable for the acts or omissions of their respective Staff in relation to compliance with the Data Protection Legislation.
- 9.3 The Parties acknowledge and agree that for the purposes of Data Protection Legislation, the Client is the controller and Gemserv is the processor of any Client Personal Data processed under the Agreement. The Schedule of Processing sets out a description of the Client Personal Data that is permitted to be processed under the Agreement and provides required information in relation to that processing.
- 9.4 Gemserv may process Client Personal Data within the United Kingdom and the European Economic Area in connection with the performance by Gemserv of its obligations under the Agreement, and may transfer Client Personal Data from the United Kingdom to the European Economic Area and from the European Economic Area to the United Kingdom. Subject to the preceding sentence, Gemserv shall not transfer any personal data outside of the United Kingdom and European Economic Area unless the following conditions are fulfilled:
- 9.4.1 the Client or Gemserv has provided appropriate a Lawful Safeguard in relation to the transfer;

- 9.4.2 the data subject has enforceable rights and effective legal remedies;
  - 9.4.3 Gemserv complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - 9.4.4 Gemserv complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data.
- 9.5 Without prejudice to the generality of Clause 9.1, Gemserv shall, in relation to any Client Personal Data processed in connection with the performance by Gemserv of its obligations under the Agreement:
- 9.5.1 process that personal data only on the documented written instructions of the Client unless Gemserv is required by applicable Law to otherwise process that personal data. Gemserv shall promptly notify the Client if Gemserv believes that any Client instruction infringes any applicable Law. Where Gemserv is relying on applicable Law as the basis for processing personal data, Gemserv shall promptly notify the Client of this before performing the processing required by the applicable Law unless the applicable Law prohibits Gemserv from so notifying the Client;
  - 9.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, 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 (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 9.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and



- 9.5.4 assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 9.5.5 notify the Client without undue delay on becoming aware of a personal data breach;
- 9.5.6 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement unless required by applicable Law to store the personal data;
- 9.5.7 maintain complete and accurate records and information to demonstrate its compliance with this Clause 9 and allow for audits by the Client or the Client's designated auditor provided that:
- (a) any such audit or inspection shall be conducted at the Client's expense; and
  - (b) the Client provides Gemserv with at least five (5) Working Days' written notice in advance of such audit or inspection.
- 9.5.8 immediately inform the Client if, in the opinion of Gemserv, an instruction infringes the Data Protection Legislation.
- 9.6 The Client consents to Gemserv appointing any entities listed in Annex 2 of a Client Services Agreement as a third party processor of Client Personal Data under the Agreement. Gemserv confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business and in either case which Gemserv undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and Gemserv, Gemserv shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Clause 9.
- 9.7 The Parties may, at any time, agree to revise this Clause 9 in relation to the Client Personal Data by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).

## 10 Limitation of Liability and Insurance

- 10.1 Subject to any express contractual terms and conditions of the Agreement, in no event shall either Party be liable to the other Party for any indirect or consequential damages, loss of profits, loss of sales or business, loss of use or corruption of software, data or information, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, arising out of, or in connection with, the Agreement however caused.
- 10.2 Nothing in the Agreement shall limit or exclude a Party's liability for
- 10.2.1 death or personal injury caused by its negligence; or
  - 10.2.2 fraud or fraudulent misrepresentation; or
  - 10.2.3 any other liability which cannot be limited or excluded by applicable Law.
- 10.3 Subject to Clause 10.1 and Clause 10.2, each Party's total liability to the other Party (including all losses, liabilities, claims, actions, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto) in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement, shall be limited:
- (a) for any one event or series of connected events, to the amounts of Charges paid or payable under the Agreement during the contract year in which the relevant breach or breaches occurred; and
  - (b) in aggregate, to the amounts of Charges paid or payable under the Agreement.
- 10.4 Gemserv shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks and liabilities which may be incurred by Gemserv and its Staff under the Agreement.
- 10.5 Gemserv shall produce on demand such evidence as the Client may reasonably require confirming compliance with Clause 10.4.
- 10.6 Any claim, action or suit by the Client against Gemserv arising under or in relation to this Agreement, including (but not limited to) any claim for breach of contract, breach of duty, fault, negligence, indemnity or otherwise, shall be notified to Gemserv within twelve (12) months and be brought within three (3) years, from the date of the event or occurrence alleged to give rise to such claim, action or suit. Any claim, action or suit not notified or brought by the Client in accordance with this Clause 10.6 shall be deemed to be waived and Gemserv shall be discharged of all and any liability whatsoever.



## 11 Termination

11.1 The provisions of this Clause 11 are without prejudice to any other rights and remedies of either Party under the Agreement or at Law.

11.2 Either Party may terminate the Agreement forthwith by giving written notice to the other Party:

11.2.1 if that other Party:

(a) commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Working Days after being notified in writing to do so; or

(b) is subject to an Insolvency Event;  
or;

11.2.2 in accordance with Clause 15.

11.3 Gemserv may terminate the Agreement forthwith by giving written notice to the Client:

11.3.1 if the Client does not make payment of sums overdue under the Agreement within thirty (30) days of formal written demand for payment of same from Gemserv; or

11.3.2 if the Client does or allows to be done anything which in Gemserv's reasonable opinion will or may have the effect of preventing Gemserv from delivering the Services, or delivering services to any other client; or

11.3.3 if Gemserv reasonably suspects that the Services are being used for any illegal, improper, immoral, fraudulent or unlawful purpose, or in a manner prejudicial to the interests of Gemserv; or

11.3.4 if any information supplied to Gemserv by the Client is materially false or misleading; or

11.3.5 in accordance with Clause 6.10.

11.4 On termination or expiry of the Agreement for any cause:

11.4.1 each Party shall upon demand, return to the other Party all equipment, materials, Client Materials, Confidential Information and property supplied to it in connection with the Agreement;

11.4.2 the licences granted in relation to the provision of the Services shall cease;

11.4.3 the Client shall immediately pay Gemserv all of the Client's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Gemserv may submit an invoice, which shall be payable immediately on receipt.

11.5 Termination or expiry of the 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.

11.6 Notwithstanding the provisions of this Clause 11, the provisions of Clauses 8 (Intellectual Property Rights), 9 (Data Protection), 10 (Limitation of Liability and Insurance) except Clause 10.4, 14 (Non-Solicitation), and Clauses 16 to 24 inclusive shall survive the termination or expiry of the Agreement for any cause.

## 12 Bribery, Corruption and Financial Crime

12.1 Each Party shall:

12.1.1 at all times comply with all applicable Laws and sanctions relating to anti-bribery, corruption and financial crime including but not limited to the Bribery Act 2010 (the "**Bribery Act**"), the Criminal Finances Act 2017 (the "**CFA**") and foreign anti-corruption regulations with extraterritorial application, in particular the French "Sapin 2" anti-corruption law ("**Sapin 2**") and the US Foreign Corrupt Practices Act (the "**UFCP**");

12.1.2 not engage in any activity, practice or conduct which would constitute an offence by it under the Bribery Act, the CFA, Sapin 2 or the UFCP;

12.1.3 devise, implement and enforce written policies and procedures constituting adequate procedures under the Bribery Act in order to prevent commission of any offence under the Bribery Act and request, provide the other Party copies of such written policies and procedures;

12.1.4 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Agreement; and

12.1.5 promptly report to the other Party if it has or has reasonable grounds to believe it may have committed an offence under the CFA.

## 13 Modern Slavery

13.1 In performing its obligations under the Agreement, each Party shall:

13.1.1 comply with all applicable anti-slavery and human trafficking Laws and codes from time to time in force including but not limited to the Modern Slavery Act 2015 (the "**MSA**");

13.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the MSA if such activity, practice or conduct were carried out in the UK;





- 13.1.3 include in contracts with its direct subcontractors and suppliers' provisions which are at least as onerous as those set out in this Clause 13;
- 13.2 Gemserv shall:
- 13.2.1 notify the Client as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement; and
- 13.2.2 maintain a complete set of records to trace the supply chain of all Services provided to the Client in connection with the Agreement and permit the Client to inspect such records to audit Gemserv's compliance with its obligations under this Clause 13.
- 13.3 Gemserv represents and warrants that at the date of the Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 13.4 The Client may terminate the Agreement forthwith by giving written notice to Gemserv if Gemserv commits a breach of this Clause 13.

#### 14 Non-Solicitation

- 14.1 The Client undertakes that during the Term and for the period of twelve (12) months following termination or expiry it shall not directly or by agent or affiliates or otherwise whether for itself or the benefit of any other person make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person directly involved with the provision of the Services on behalf of Gemserv.
- 14.2 If the Client breaches Clause 14.1 it shall pay Gemserv an amount equal to the last twelve (12) months' salary of the applicable individual. The Parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by Gemserv in these circumstances and not a penalty.
- 14.3 Payment of the amount referenced in Clause 14.2 shall be Gemserv's only remedy for a breach of Clause 14.1.

#### 15 Force Majeure

- 15.1 Neither Party will be liable for any breaches of its obligations under the Agreement resulting from a Force Majeure Event.
- 15.2 If either Party is prevented or delayed in the performance of any of its obligations under the Agreement by a Force Majeure Event, that Party shall notify the other Party specifying the nature and extent of the circumstances giving rise to that Force Majeure Event.

- 15.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Agreement by reason of a Force Majeure Event shall use all reasonable endeavours to mitigate the effects of that Force Majeure Event upon the performance of the Agreement, and to bring the Force Majeure Event to a close or to find a solution by which the Agreement may be performed despite the continuance of that Force Majeure Event.
- 15.4 In the event that either Party is unable to fulfil its obligations under the Agreement for more than thirty (30) consecutive Working Days during the Term due to Force Majeure Events, the Party whose performance is not affected by the Force Majeure Event shall be entitled to terminate the Agreement in accordance with Clause 11.

#### 16 Assignment and Sub-Contracting

- 16.1 The Agreement is personal to the Client. The Client may not assign, transfer, sub-contract or deal in any other manner with any of its rights and obligations under the Agreement, without the prior written consent of Gemserv.
- 16.2 Nothing in the Agreement shall prevent or restrict Gemserv from assigning, transferring, subcontracting, or dealing in any other manner with any of its rights or obligations under the Agreement. Notwithstanding the foregoing, Gemserv shall remain liable for the acts and omissions of its subcontractors as if they were those of its own.

#### 17 Third Party Rights

- 17.1 Each member of the Gemserv Group shall have the benefit of all rights, benefits and limitations provided for in the Agreement and accordingly shall be entitled to enforce the Agreement subject to and in accordance with its terms.
- 17.2 Notwithstanding Clause 17.1, the Client and Gemserv may agree to rescind or vary the Agreement without the consent of any other person or entity.
- 17.3 Except as provided in Clauses 17.1 and 17.2, the Agreement is not intended to be for the benefit of, and shall not be enforceable by any person (other than by a Party and any member of the Gemserv Group) under the Contracts (Rights of Third Parties) Act 1999.

#### 18 No Agency or Partnership

- 18.1 Nothing in the Agreement shall:
- 18.1.1 constitute either Party as an employee, worker, agent or partner of the other. The Parties hereto are independent contractors and shall have no power, nor will either of the Parties represent that either has any power, to bind the other Party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other Party or in the other Party's name; or



- 18.1.2 be construed as creating any relationship of partnership between the Parties hereto in terms of the Partnership Act 1890 or any similar or analogous legislation in any jurisdiction to which either Party is subject.

## 19 Notices

- 19.1 All notices (which include invoices and correspondence) under the Agreement shall be in writing and be sent to the physical address(es) or email address(es) as set out in the Client Services Agreement or other such address(es) as the Parties may agree from time to time by giving not less than five (5) Working Days' notice of the same.
- 19.2 Notices may be delivered in person, by first class post or by email and in the absence of evidence of earlier receipt, shall be deemed to have been served if by hand when delivered, if by first class post forty-eight (48) hours after posting and if by email at the time it is successfully transmitted to the destination (or incoming) mail server without any "bounce-back" or other fatal error.
- 19.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 20 No Waiver

- 20.1 No failure or delay by either Party in exercising any right power or privilege to which it is entitled under the Agreement shall operate as a waiver nor shall any single or partial exercise of any such right power or privilege preclude any other or further exercise.

## 21 Severance

- 21.1 If any provision of the Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of the Agreement which shall remain in full force and effect.

## 22 Entire Agreement

- 22.1 The Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior written and oral representations, contracts, negotiations or understandings relating to the subject matter of the Agreement provided that neither Party excludes liability for fraudulent misrepresentation upon which the other Party has relied.

## 23 Rights and Remedies

- 23.1 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

## 24 Applicable Law and Jurisdiction

- 24.1 The terms of the Agreement shall be governed by and construed in accordance with English law. The Parties irrevocably submit to the exclusive jurisdiction of the English Courts to resolve any dispute or claim arising out of or in connection with the Agreement.