

DATED [INSERT DATE]

**MASTER SERVICES AGREEMENT**

between

**[CUSTOMER]**

and

**CODURANCE LTD**

## Parties

- (1) **[FULL COMPANY NAME]** a company incorporated in England and Wales (Company number: **[ ]**) with its registered office at **[REGISTERED OFFICE ADDRESS]** (**Customer**)
- (2) **CODURANCE LTD** a company incorporated in England and Wales (Company number: 8712584) with its registered office at 3 Sutton Lane, London, EC1M 5PU (**Supplier**)

## Background

- (A) The Customer wishes to contract the Supplier to provide certain Services on the terms set out in this agreement.
- (B) The Supplier carries on the business of software development and wishes to provide the Services for the Customer on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

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

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

**Background IPR:** the Intellectual Property Rights owned, used or developed by the Supplier prior to the date of this agreement.

**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 6.00 pm on any Business Day.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

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

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party including any successor legislation.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in a SoW and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

**Intellectual Property Rights and/or IPR's:** patents, rights to inventions, copyright 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, 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.

**Milestone:** a date by which a part or all of the Services is to be completed, as set out in a SoW.

**Personnel:** means, in relation to each SoW, such representative(s) of the Supplier as the Supplier may provide to perform such Services.

**Reference Charges:** the standard charges for the Services or the framework for calculating them as set out in Schedule 2.

**Services:** software development services.

**SoW Charges:** the sums payable for the Services as set out in a SoW.

**SoW:** a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 1.

**Supplier's Equipment:** any equipment, including tools, systems provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in a SoW but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** means (i) the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**); (ii) the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and (iii) any successor legislation to the UK GDPR or the Data Protection Act 2018 and other applicable privacy laws.

**VAT:** value added tax chargeable in the UK.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

1.5 A reference to **writing** or **written** includes fax and email.

1.6 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## **2. Commencement and duration**

2.1 This agreement shall commence on the date of this agreement and continue for an initial period of 12 months. At the end of such initial period, the agreement will automatically renew for successive 12-month periods. Either Party may terminate this agreement at any time during the initial period or in any subsequent 12-month period by serving 30 days' written notice of termination on the other party.

- 2.2 If there are no uncompleted SoW's as at the date notice to terminate is served under 2.1 such notice shall terminate this agreement on the expiry of the 30 day notice period.
- 2.3 The parties shall not enter into any further SoW's 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 SoW with the Supplier pursuant to clause 3.
- 2.5 The Supplier shall provide the Services from the date specified in the relevant SoW.

### **3. SoW**

- 3.1 Each SoW shall be agreed in the following manner:
- (a) the Customer shall ask the Supplier to provide any or all of the Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft SoW for the Services requested;
  - (b) following receipt of the information requested from the Customer the Supplier 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 SoW.
  - (c) if the Supplier provides the Customer with a draft SoW pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree that draft SoW; and
  - (d) both parties shall sign the draft SoW when it is agreed.
- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.
- 3.3 The Supplier may charge for the preparation of a SoW on a time and materials basis in accordance with the Supplier's daily fee rates as set out in Schedule 2.
- 3.4 Each SoW shall be part of this agreement and shall not form a separate contract to it.

### **4. Supplier's responsibilities and personnel**

- 4.1 The Supplier shall use reasonable endeavours to complete the Services, and deliver the Deliverables to the Customer, in accordance with a SoW in all material respects.
- 4.2 The Supplier shall use reasonable skill and care in providing the Services.
- 4.3 In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws.
- 4.4 The Supplier shall use reasonable endeavours to meet any of the Milestones specified in a SoW.
- 4.5 The Supplier shall be entitled to make any changes required to the Services which are necessary to comply with any Applicable Laws or safety requirements and will notify the Customer if this is necessary.

- 4.6 The Supplier shall not, and shall procure that each Personnel shall not, have any authority to incur any expenditure in the name of or for the account of the Customer and/or hold himself out as having authority to bind the Customer or contract on behalf of the Customer.
- 4.7 In the event that the Customer (acting reasonably) wishes the Supplier to replace any Personnel providing the Services with another Personnel, the Supplier shall use reasonable endeavours to do so as soon as reasonably practicable.
- 4.8 The Supplier shall ensure, and shall procure that any Personnel ensures, that any computer equipment and associated software used for the purpose of providing the Services contains anti-virus protection with the latest released upgrade from time to time.
- 4.9 To the extent that any Personnel is not an employee of the Supplier, the Supplier will procure the compliance with the terms of this agreement by such Personnel.

## **5. The Customer's obligations**

### **5.1 The Customer shall:**

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, 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 the Supplier including any such access as is specified in a SoW;
- (c) provide to the Supplier 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 SoW or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (d) inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, and the use of all the Customer Materials, in all cases before the date on which the Services are to start;
- (f) keep and maintain the Supplier's Equipment in good condition and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;
- (g) comply with any additional responsibilities of the Customer as set out in the relevant SoW;
- (h) purchase any third party software or licences required for the Supplier to carry out the Services;
- (i) provide the Supplier and its Personnel with access, licences, log in details and passwords for any systems or third party software on which the Services are to be provided;
- (j) be responsible for ensuring that any third party software and/or licences are installed and fully operative prior to the commencement of the Services; and
- (k) provision, own and manage any third party software accounts and licences. All security, privacy, user accounts, authentication, storage and global admin functions will be managed by the Customer.

- 5.2 In the event that the delivery of the Services is due to the acts or omissions of the Customer including the failure to comply with the provisions of clause 5.1, the date for the completion of the Services shall be amended to reflect the delay. In addition, the Supplier shall be entitled to charge the Customer the SoW Charges notwithstanding the fact that the Supplier may not have been able to undertake certain Services due to the delay. For the avoidance of doubt, the Supplier will not be liable for any delays caused by the Customer.
- 5.3 The Customer shall not, and shall not authorise any third party to,:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means, except as permitted by Supplier under this agreement; or
  - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
  - (c) access all or any part of the Services in order to build a product or service which competes with the Services; or
  - (d) use the Services to provide services to third parties; or
  - (e) licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Deliverables available to any third party save as set out in this agreement, or
  - (f) attempt to obtain, or assist third parties in obtaining, access to the Services; or
  - (g) circumvent any user limits or other timing, use or functionality restrictions built into the Services.
- 5.4 The Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free or will be free from vulnerabilities and Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, or failures or delays involving hardware, software, power or other systems and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 Any errors, issues, or downtime caused by third party software or licences may impact the Supplier's Services and the Customer will need to liaise directly with the third party software or licence providers to resolve such issues.
- 5.6 From time to time, new features may be introduced by third party software and existing features may be deprecated, which may impact the Services. The Supplier will update its applications and provide patches and updates, but the Supplier has no liability whatsoever in the event of any deprecation of functionality from the third party software which cannot be overcome, leads to a loss of functionality or renders the Services unworkable.
- 5.7 The Supplier shall not be liable if the Services fail to comply with any SoW to the extent that such failure is wholly caused by unauthorised modifications made to the Services and/or Deliverables by or on behalf of the Customer.
- 5.8 The Services shall be made available by the Supplier, subject to any unavailability caused by circumstances beyond the Supplier's reasonable control including any computer, tablet, communications (including mobile communication network(s)), internet service or hosting facility failures or delays involving hardware, software, power or other systems not within the Supplier's control.

- 5.9 The Services may be temporarily limited, interrupted or curtailed due to maintenance, repair, modifications, upgrades or relocation. The Supplier shall notify the Customer as soon as is reasonably possible of any such limitation, interruption or curtailment. The Supplier shall have no liability whatsoever in relation to the unavailability of the Services due to the events detailed in this clause.

## **6. Non-solicitation and employment**

- 6.1 During the term of this agreement and/or any SoW and for a period of 12 months from the termination of this agreement, the Customer agrees to pay a one-off fee of £100,000 plus VAT to the Supplier, if the Customer directly or indirectly, solicits, recruits or induces any employee or sub-contractor of the Supplier to terminate his or her employment or working relationship with the Supplier or any of its subsidiaries or subcontractors in order to work for the Customer or any other person or entity engaged in the Customer, either as a permanent employee or on a temporary or contract basis. The parties agree that the amount set out in this clause is a genuine pre-estimate of loss that will be suffered by the Supplier if the Customer is in breach of this clause and this clause is designed to protect the legitimate interests of the Supplier.
- 6.2 During the term of this agreement and/or any SoW and for a period of 12 months from the termination of this agreement, the Supplier agrees to pay a one-off fee of £100,000 plus VAT to the Customer, if the Supplier directly or indirectly, solicits, recruits or induces any employee of the Customer to terminate his or her employment relationship with the Customer or any of its subsidiaries or subcontractors in order to work for the Supplier or any other person or entity engaged in the Supplier, either as a permanent employee or on a temporary or contract basis. The parties agree that the amount set out in this clause is a genuine pre-estimate of loss that will be suffered by the Customer if the Supplier is in breach of this clause and this clause is designed to protect the legitimate interests of the Customer.

## **7. Charges and payment**

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the SoW Charges.
- 7.2 Where the SoW Charges are calculated on a time and materials basis:
- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis of an eight-hour day, worked during Business Hours or hourly rates (as the case may be); and
  - (b) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 7.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a SoW.
- 7.4 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice where such expenses have been approved in advance in writing by the Customer:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and

- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are set out in the SoW.
- 7.5 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the SoW. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 7.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement within 10 Business Days of 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 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
  - (b) the Supplier may suspend part or all of the Services until payment has been made in full.
- 7.8 All sums payable to the Supplier under this agreement 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.
- 7.9 If the Customer disputes any element of such invoice in good faith it shall pay the undisputed element (if any) and the parties shall act in good faith to resolve the disputed element. The Customer will pay the balance on the invoice within 5 Business Days of the dispute being resolved.

## **8. Intellectual property rights**

- 8.1 In relation to the Deliverables:
  - (a) the Supplier transfers to the Customer all exclusive IPRs in the Deliverables developed (other than the Background IPR), namely the exclusive right to use the Deliverables and exclusive right to permit or prohibit any use, rights for remaking the Deliverables without limitation in time and area of use;
  - (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables;
  - (c) the Supplier warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - (d) the Customer shall be entitled to sub-licence, assign or otherwise transfer the rights granted in clause 8.1(b):
    - (i) to its customers; and
    - (ii) to third parties for the purpose of the Customer's receipt of services similar to the Services.
- 8.2 In relation to the Customer Materials, the Customer:



- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials;
  - (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer; and
  - (c) warrants that the receipt, use of the Customer Materials by the Supplier shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 8.3 Nothing in this agreement or otherwise shall be construed to prevent the Supplier from using the Background IPR, general know-how, expertise, skill and understanding possessed prior to or gained during the course of performing the Services under this agreement.
- 9. Data protection**
- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor. Schedule 3 (Processing, personal data and data subjects) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 9.3 If data processing is to take place outside of the United Kingdom and/or EEA, the parties will also agree to and sign the standard contractual clauses set out in Schedule 4 (Standard Contractual Clauses) (where applicable).
- 9.4 Without prejudice to the generality of clause 9.1, the Customer will ensure and warrants that it has all necessary appropriate consents and notices (or other legal basis) in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 9.5 Without prejudice to the generality of clause 9.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
  - (a) process that personal data only on the documented written instructions of the Customer which are set out in Schedule 3 (Processing, personal data and data subjects) unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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);

- (c) without prejudice to clause 10 (Confidentiality), ensure that all Personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the United Kingdom and/or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer'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;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) without prejudice to other provisions of this agreement, at the written direction of the Customer, delete or return personal data and copies to the Customer on termination or expiry of the agreement unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this 9 and allow for audits by the Customer or the Customer's designated auditor of such records and information and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

9.6 The Customer consent to the Supplier appointing the third party processors of personal data listed in the SoW.

9.7 Either party may, at any time on not less than 30 days' notice, revise this clause 9 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 this agreement).

## **10. Confidentiality**

10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of three years after termination or expiry of this agreement, 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 References to liability in this clause 11 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 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

11.3 Save as set out in clause 11.2, each party's liability is limited to the higher of:

- (a) the amount received under the breaching party's insurance in relation to the claim; and
- (b) the total amount of SoW Charges or charges paid (pro-rata to the date of the claim) under this agreement (as the case may be) relating to the matter giving rise to the claim.

11.4 This clause 11.4 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.

## **12. Insurance**

12.1 Each party shall, during the term of this agreement effect and maintain in force the following insurance policies with an insurance company of repute:

- (a) public liability insurance cover with a minimum value of £5,000,000;
- (b) professional indemnity insurance cover with a minimum value of £5,000,000; and
- (c) data protection and cover with a minimum value of £5,000,000.

## **13. Termination**

13.1 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 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) 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;
- (d) 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;
- (e) 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; or
- (f) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**13.2 On termination of this agreement under clause 13.1:**

- (a) the Customer shall pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Supplier shall return any of the Customer Materials not used up in the provision of the Services;
- (c) provided that the Customer is not in breach of this agreement, the Supplier shall, as soon as reasonably practicable and possible, deliver to the Customer all documentation, designs, programs (including source code), and any other materials that it has agreed to supply and assign under this agreement which exist at the date of termination (whether complete or otherwise) and shall assign to the Customer the ownership of the Intellectual Property Rights subsisting therein to the extent that such rights have not already been assigned under the provisions of this agreement; and
- (d) all existing SoW's shall terminate automatically.

**13.3 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.**

**13.4 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, pandemic or quarantine;
- (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 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 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months the party not affected by the Force Majeure Event may terminate this agreement by giving 4 week's written notice to the Affected Party.

## **15. Entire agreement**

15.1 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.

15.2 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.

## **16. Notices**

16.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be 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).

16.2 Any notice 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 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 16.2(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.

16.3 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.

## **17. Multi-tiered dispute resolution procedure**

- 17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Parties shall meet to resolve the dispute;
  - (b) if the Parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.
- 17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute which clause shall apply at all times.

## **18. Governing law and jurisdiction**

- 18.1 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.
- 18.2 Each party irrevocably agrees that the courts of England and Wales shall have non-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.

## **19. General**

- 19.1 Neither party 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 without the other party's consent.
- 19.2 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.3 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.
- 19.4 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.
- 19.5 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.
- 19.6 If any provision or part-provision of this agreement is deemed deleted under clause 19.5 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.

- 19.7 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.
- 19.8 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.9 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.
- 19.10 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.

This agreement has been entered into on the date stated at the beginning of it.

## **Schedule 1     Template SoW**

1. Services: [LIST OUT ALL THE WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK].
2. The Customer's Manager and Supplier's Manager: [LIST OUT THE RELEVANT INDIVIDUALS].
3. Start date and term: [SPECIFY WHEN THE WORKS WILL COMMENCE, AND THE TERM OF THIS STATEMENT OF WORK].
4. The Customer Materials: [LIST OUT THE CUSTOMER MATERIALS].
5. Supplier's Equipment: [LIST OUT THE SUPPLIER'S EQUIPMENT].
6. [Service Levels: [INCLUDE ANY SERVICE LEVELS, IF APPLICABLE].]
7. Timetable: [SET OUT THE TIMETABLE FOR PERFORMING THE WORKS].
8. Milestones: [SET OUT ANY MILESTONES FOR THE WORKS].
9. Deliverables: [SET OUT ANY DELIVERABLES FOR THE WORKS].
10. SoW Charges: [SET OUT THE CHARGES AND PAYMENT FOR THE WORKS].
11. Personnel: [INSERT DETAILS]
12. Third party processors [INSERT DETAILS]

.....

Signed by [NAME OF CUSTOMER REPRESENTATIVE] for and on behalf of the Customer.

.....

Signed by [NAME OF SUPPLIER REPRESENTATIVE] for and on behalf of the Supplier.



## **Schedule 2      Reference Charges and payment terms**

**Fixed price:** [PRE-AGREED PRICES FOR PARTICULAR SERVICES OR METHOD OF CALCULATING FIXED PRICE]

**Time and materials:**

- Daily rates: [DAILY RATES FOR MEMBERS OF THE SUPPLIER'S TEAM]
- Weekend/overtime rates: [WEEKEND/OVERTIME RATES OF MEMBERS OF THE SUPPLIER'S TEAM]

**Additional charges:** The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [DETAILS OF THIRD PARTY MATERIALS AND SERVICES TO BE CHARGED IN ADDITION TO THE CHARGES]

**Payment terms:** [PAYMENT TERMS FOR PARTICULAR SERVICES]

### Schedule 3      **Processing, personal data and data subjects**

#### **1.      Processing by the Supplier**

- 1.1      Scope – software development
- 1.2      Nature – building and design
- 1.3      Purpose of processing – implementation
- 1.4      Duration of the processing –The term of the project

#### **Types of personal data –**

##### **Categories of data**

Name, business contact information (including address, telephone numbers, mobile telephone numbers, web address data, email address) and financial information.

##### **Special (sensitive) categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

[                      ]

**Categories of data subject** – Staff of customers, customers, contractors and suppliers (including employees and temporary or contract personnel). End-clients (project specific) and any person's data in the end-client systems.

#### **Schedule 4 – STANDARD CONTRACTUAL CLAUSES**

For the purposes of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Parties

This Agreement is made between:

[FULL COMPANY NAME] incorporated and registered in [ ] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]

**Customer, (the data exporter)**

and

CODURANCE LTD a company incorporated in England and Wales (Company number 8712584) with its registered office at 3 Sutton Lane, London, EC1M 5PU

**Supplier, (the data importer)**

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

#### **1. DEFINITIONS**

For the purposes of the Clauses:

- (a) personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1);
- (b) the data exporter means the controller who transfers the personal data;
- (c) the data importer means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) the sub-processor means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with its instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) the applicable data protection law means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

- (f) technical and organisational security measures means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## 2. DETAILS OF THE TRANSFER

The details of the transfer and in particular the special categories of personal data where applicable are specified in Annex A which forms an integral part of the Clauses.

## 3. THIRD-PARTY BENEFICIARY CLAUSE

The data subject can enforce against the data exporter this Clause 3, Clause 4(b) to Clause 4(i), Clause 5(a) to Clause 5(e) and Clause 5(g) to Clause 5(j), Clause 6.1 and Clause 6.2, Clause 7, Clause 8.2 and Clause 9 to Clause 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to Clause 5(e) and Clause 5(g), Clause 6, Clause 7, Clause 8.2 and Clause 9 to Clause 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- 3.1 The data subject can enforce against the sub-processor this Clause 3.1, Clause 5(a) to Clause 5(e) and Clause 5(g), Clause 6, Clause 7, Clause 8.2, and Clause 9 to Clause 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

## 4. OBLIGATIONS OF THE DATA EXPORTER

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Annex B to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that

these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Annex B and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to Clause 4(i).

## 5. OBLIGATIONS OF THE DATA IMPORTER

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Annex B before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Annex B which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11; and
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## 6. LIABILITY

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## 7. MEDIATION AND JURISDICTION

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## 8. COOPERATION WITH SUPERVISORY AUTHORITIES

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

## 9. GOVERNING LAW

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## 10. VARIATION OF THE CONTRACT

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## 11. SUB-PROCESSING

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## 12. OBLIGATION AFTER THE TERMINATION OF PERSONAL DATA PROCESSING SERVICES

12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

### On behalf of the data exporter:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

The name, position and address of the signatory on behalf of the data exporter as is identified in the Data Processing Addendum to which these Standard Contractual Clauses are annexed.

### On behalf of the data importer:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

The name, position and address of the signatory on behalf of the data importer as is identified in the Data Processing Addendum to which these Standard Contractual Clauses are annexed.



## **Annex A to the Standard Contractual Clauses (Schedule 4)**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

### **Data exporter**

The data exporter is in the business of providing and supplying certain goods and/or services.

### **Data importer**

The data importer is in the business of providing software and related services.

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

Employees and other personnel engaged to work.

Staff and clients of corporate contacts, customers, contractors and suppliers (including employees and temporary or contract personnel).

### **Categories of data**

The personal data transferred concern the following categories of data:

Name, business contact information (including address, telephone numbers, mobile telephone numbers, web address data, email address), financial information.

### **Special (sensitive) categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

[     ]

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities:

Basic processing activities as described in the agreement between the parties.

## **Annex B to the Standard Contractual Clauses (Schedule 4) (Security Measures)**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

### **Access controls to premises and facilities**

Supplier employs technical and organizational measures to control access to premises and facilities, particularly to check authorisation including:

- Access control system.
- ID reader, magnetic card, chip card.
- (Issue of) keys.
- Door locking (electric door openers etc.).
- Camera surveillance systems at critical internal and external entry points to the data centre.
- Logging of entries and exits to facilities.

### **Access controls to systems**

Supplier employs technical (ID/password security) and organizational (user master data) measures for user identification and authentication including:

- Password procedures (incl. special characters, minimum length, change of password, complex).
- No access for guest users, no anonymous accounts.
- Access to systems centrally managed and restricted to approval by both personnel management and system owner.

### **Access controls to data**

Supplier employs a requirements-driven definition of the authorisation scheme and access rights, and monitoring and logging of accesses including:

- Differentiated access rights (profiles, roles, transactions and objects).
- Access rights defined according to duties and least privilege concepts, segregation of duty.

### **Environmental Security**

Supplier employs controls to reasonably detect, prevent and control destruction due to environmental extremes including:

- Systems that monitor and control the air temperature and humidity at appropriate levels for the computing equipment, CCTV.
- Uninterruptible Power Supply (UPS) modules and backup generators that provide back-up power in the event of an electrical failure.

### **Data Integrity**

Supplier employs policies and procedures to protect the confidentiality, integrity, and availability of Customer Data and protect it from disclosure, improper alteration, or destruction.

### **Audit Controls**

Supplier employs hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic information, including appropriate logs and reports concerning these security requirements.

**Secure Disposal**

Supplier employs policies and procedures regarding the disposal of tangible property containing Customer Data.

**Testing**

Supplier employs regularly testing of the key controls, systems and procedures of its information security program to validate that they are properly implemented and effective in addressing the threats and risks identified. Such testing includes internal risk assessments;

**Monitoring**

Supplier monitors the network and production systems, including error logs on servers, disks and security events for any potential problems. Such monitoring includes:

- reviewing changes affecting systems handling authentication, authorisation, and auditing;
- reviewing privileged access to production systems; and
- performing network vulnerability assessments and penetration testing on a regular basis.

**Security Incident Procedures**

Supplier maintains a security incident response plan that includes procedures to be followed in the event of any security breach of Customer Data. Such procedures include:

- Roles and responsibilities: formation of an internal incident response team with a response leader;
- Investigation: assessing the risk the incident poses and determining who may be affected;
- Communication: internal reporting as well as a notification process in the event of unauthorized disclosure of Customer Data in accordance with the agreement;
- Recordkeeping: keeping a permanent record of what was done (to comprehend) and by whom to help in later analysis and possible legal action; and
- Audit: conducting and documenting root cause analysis and remediation plan.

**On behalf of the data exporter (Customer):**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

The name, position and address of the signatory on behalf of the data exporter as is identified in the Data Processing Addendum to which these Standard Contractual Clauses are annexed.

**On behalf of the data importer (Supplier):**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

The name, position and address of the signatory on behalf of the data importer as is identified in the Data Processing Addendum to which these Standard Contractual Clauses are annexed.

**SIGNED** for and on behalf of

**CODURANCE LTD**

By [ ]

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

**SIGNED** for and on behalf of **[CUSTOMER]** by:

<<Name and Title of person signing for the Second Party>>

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_