

THE TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 Defined words and expressions used in this Agreement shall take the following meanings:

Affected Party: has the meaning given in clause 16.1.

Agreement: the agreement comprised of the Proposal, the SoW, these Terms and the Annex and Schedules hereto.

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

Arbitration Rules: the ICC Arbitration Rules.

Asset Transfer: the transferring of any of the Customer's assets to Sundown Solutions (as the case may be) as part of the Managed Services.

Authorised User: the employees and agents of the Customer who use the Solution.

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

Business Hours: means 09:00 to 17:00 on a Business Day.

Change: an amendment to:

- (a) the scope, nature, volume or execution of the Solution; or
- (b) any other term, Annex or Schedule of this Agreement.

Change Control Procedure: the procedure for agreeing a Change, as set out in the Annex to these Terms.

Commencement Date: means the date on which the Agreement is entered into or where different, the date set out in the SoW.

Compliance Legislation: means the Bribery Act 2010, the Criminal Finances Act 2017, the Modern Slavery Act 2015, the Money Laundering Regulations 2017 and such other pieces of Applicable Law relating to corporate criminal offences.

Confidential information: means any and all confidential information (whether in oral, written or electronic form) imparted in confidence by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with the party.

Customer: the party to which the Proposal is issued and/or whose details are set out in the SoW.

Customer Data: means any personal data provided by or on behalf of the Customer (or a user of the Solution).

Data Protection Laws: means, to the extent that the:

- (a) UK GDPR applies, the Applicable Law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and
- (b) EU GDPR applies, the Applicable Law of the European Union or any member state of the European Union to which Sundown Solutions is subject, which relates to the protection of personal data,

and the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other Applicable Laws relating to the Processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Dispute: has the meaning given in clause 24.1.

Dispute Notice: has the meaning given in clause 24.1.

Documentation: the operating manuals, user instruction manuals and guides, technical literature, knowledge articles, support scripts and all other related materials in human-readable or machine-readable forms supplied by Sundown Solutions in connection with the Solution.

Deliverables: means the outputs of the Services, Managed Services or the performance of any other obligation by Sundown Solutions under

this Agreement including any reports, documentation, materials or other written deliverables.

Equipment: computers, hardware, the operating system and such other equipment or consumable goods owned or operated by the Customer on or in conjunction with which the Software is operated.

Export Control Laws: has the meaning given in clause 13.

Existing Systems: means the systems, software and operational models used (including any Third-Party Software) or owned (**Customer Software**) by the Customer, which shall be subject to an Assessment.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: the fees payable by the Customer to Sundown Solutions in accordance with this Agreement as set out in the SoW, together with any additional costs and expenses.

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation acts of God; flood, drought, earthquake or other natural disaster; epidemic, pandemic or similar event; 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; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, lockdown or restriction; collapse of buildings, fire, explosion or other accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); interruption or failure of utility service or in the case of Sundown Solutions any failure of a supplier or subcontractor.

ICC: the International Chamber of Commerce.

Initial Term: the period of time specified in the Proposal and/or SoW, in the absence of which shall be 3 years.

Intellectual Property Rights: means any and all copyright, database rights and any and all related rights; source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation; rights in designs, trade marks, domain names, goodwill, business names, rights to sue for passing off; patents; rights in confidential information (including know how and trade secrets); and any other intellectual property rights (including, where relevant, all extensions, reversions, revivals and renewals of the same), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent rights or forms of protection which now, or will in the future, subsist in any part of the world.

IPR Claim: has the meaning given in clause 6.4.

Loss: means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

Managed Services: means the Asset Transfer, provision of the Managed Software, support and maintenance services provided to the Customer by Sundown Solutions in respect of the Managed Software in accordance with Schedule 3 and as more particularly detailed in the Proposal and/or SoW or otherwise in accordance with this Agreement.

Materials: the content, information, instructions, scripts, media, documentation, specifications or other materials provided to Sundown Solutions by the Customer from time to time and in whatever form or media for incorporation in the Solution or otherwise for Sundown Solutions' use in conjunction with the provision of the Solution.

Mediation Rules: the ICC Mediation Rules.

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at www.opensource.org) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at www.gnu.org), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked.

Privacy Policy: shall have the meaning given in clause 8.4.

Proposal: the proposal, quotation and/or specification issued by Sundown Solutions to the Customer in writing relating to the supply of the Solution and which for the avoidance of doubt shall not be classified as an offer but an invitation to treat.

Renewal Term: the period of time specified in the Proposal and/or SoW, in the absence of which shall be 12 months.

Restricted Person: means any firm, company or person employed or engaged by Sundown Solutions during the Term, who or which has been engaged in the provision of the Solution (or any part thereof) or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Services: the professional services to be provided by Sundown Solutions to the Customer in accordance with Schedule 1 and as more particularly detailed in the Proposal and/or SoW and further to which Deliverables shall be generated.

Software: means the software to be developed and/or licensed by Sundown Solutions to the Customer as part of the Solution in accordance with Part 1 and/or Part 2 of Schedule 2 respectively as more particularly detailed in the Proposal and/or SoW, including Sundown Solutions Software and any Third-Party Software.

Solution: means the solution provided to the Customer by Sundown Solutions comprised of any or all of the Services (including any Deliverables), the Software, the Documentation and the Managed Services (as the case may be and detailed in the Proposal and/or SoW).

SoW: means the statement of work issued by Sundown Solutions to the Customer and to which these Terms are incorporated.

Sundown Solutions: Sundown Solutions Limited, incorporated and registered in England and Wales with company number 06988701 and whose registered office is at Moorside House, Burnley Road, Altham, Accrington, Lancashire BB5 5TZ.

Sundown Solutions Software: means application software, the Intellectual Property Rights to which are owned by Sundown Solutions including any and all executables, dynamic link libraries, report files and programmable database objects.

Term: the period of time during which the Agreement remains in force.

Terms: means these standard terms and conditions.

Third-Party Licence Terms: the standard terms and conditions which apply to the use of the Third-Party Software.

Third-Party Software: means any software, the Intellectual Property Rights to which are owned by a third party, including but not limited to any Open-Source Software.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 In this Agreement, the following rules of interpretation apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) References to clauses, the Annex and the Schedules are to the relevant clauses, the Annex and the Schedules of or to these Terms and references to paragraphs are to the paragraphs of the Annex or the Schedules (as the case may be).
- (e) The headings to the clauses, the Annex, the Schedules and the paragraphs of this Agreement will not affect the interpretation.
- (f) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not

limit the sense of the words preceding those terms.

- (g) A reference to writing or written includes emails.
- (h) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3 Where there is any conflict between the terms of:

- (a) the SoW;
 - (b) the Proposal;
 - (c) the Schedules; and
 - (d) these Terms and the Annex,
- the terms set out in the respective document first set out in the list above will prevail.

2. PROVISION OF THE SOLUTION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE AND THE TERMS OF THE APPLICABLE SCHEDULE

- 2.1 Sundown Solutions shall provide the Solution in accordance with these Terms and the applicable Schedule(s). Whilst Sundown Solutions shall use its reasonable endeavors to comply with any proposed timescales or deadlines in providing the Solution, such times are indicative and time for performance in accordance with them shall not be of the essence.
- 2.2 Sundown Solutions may, on reasonable prior written notice to the Customer, make changes to the Solution, provided that such changes do not have a materially adverse effect on the Customer's business operations or its enjoyment of the Solution.
- 2.3 Save in respect of any specific warranties given elsewhere in this Agreement, Sundown Solutions does not warrant or guarantee that the Solution, when taken in whole or in part, will contain no Vulnerabilities and it shall be the Customer's sole responsibility to ensure that its cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems under any Applicable Laws are notified to Sundown Solutions in sufficient detail so they can be implemented by Sundown Solutions.
- 2.4 The warranties in this Agreement replace all other warranties, conditions, terms and representations expressed or implied including any warranties of merchantability or fitness for particular purpose. Sundown Solutions disclaims and excludes all other warranties to the fullest extent permitted by Applicable Law.
- 2.5 Any Change will be subject to the Change Control Procedure.
- 2.6 Risk in any media bearing any Software and/or Documentation or other information that may from time to time be supplied by Sundown Solutions to the Customer shall pass to the Customer on receipt.

3. CUSTOMER OBLIGATIONS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

- 3.1 The Customer shall be responsible, without any charge to Sundown Solutions, for (in each case as and to the extent applicable):
 - (a) providing Sundown Solutions with:
 - (i) all co-operation and information as may be required by Sundown Solutions in relation to the performance of its obligations under this Agreement;
 - (ii) all necessary access to such information as may be reasonably required by Sundown Solutions;
 - (iii) security, approval and access information and configuration services;
 - (iv) a suitable network connection to enable connection to the Solution or in order to provide any element of the same;
 - (v) safe access to, egress from and movement around its premises at any time during Business Hours (or on reasonable notice outside of Business Hours), where the same is needed to be accessed by Sundown Solutions in order to perform any of its obligations under this Agreement; and
 - (vi) access to such facilities (including computer consumables, computer programs, storage, data preparation, communications facilities and such other Equipment) data (including reasonable test data suitable for use on acceptance tests and the results expected to be achieved by processing such test data) information, documentation, personnel and time on the Customer's computer equipment as Sundown Solutions may reasonably request in connection with the performance of its obligations under this Agreement;
 - (b) the provision and maintenance of the operational and environmental conditions necessary for the proper functioning of the Software and the Equipment on or in conjunction with which the Software is used and procuring the maintenance of the same in the manner and form from time to time prescribed by the manufacturer and/or its suppliers;
 - (c) the safe custody of the Solution and any Equipment and documentation;

- (d) maintaining full security copies of all programs (including the Software) and data used on or in conjunction with the Equipment on or in conjunction with which the Software is used;
- (e) compliance with all Applicable Laws with respect to its activities under this Agreement;
- (f) carrying out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
- (g) obtaining and shall maintain all necessary licences, consents, and permissions necessary for Sundown Solutions, its contractors and agents to perform their obligations under this Agreement;
- (h) ensuring that the Software and the Equipment on or in conjunction with which it is used is operated in a proper manner by competent trained employees;
- (i) ensuring that backups of the Software and data files are kept on a regular basis and made available to Sundown Solutions on request;
- (j) ensuring that its network and systems comply with the relevant specifications required by Sundown Solutions from time to time;
- (k) procuring and maintaining its network connections and telecommunications links from its systems to Sundown Solutions' data centres (or those of its suppliers, where applicable), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- (l) meeting any other requirements detailed in the SoW and maintaining compliance with such requirements throughout the Term.
- 3.2 If Sundown Solutions is obliged to spend additional time in the performance of any of its obligations under this Agreement because of any of the acts or omissions of the Customer or any of its employees, agents, contractors or sub-contractors (including the supply of any incorrect or inadequate data or information), and where any resultant delay results in Sundown Solutions incurring additional costs and expenses then, notwithstanding anything else contained in these Terms and only after seeking prior approval of the Customer:
- (a) Sundown Solutions may invoice the Customer for such additional costs and expenses on a time and materials basis; and
- (b) the time for performance of any of Sundown Solutions' obligations is extended by a reasonable period in light of the delay.
- 3.3 The Customer shall be responsible for the accuracy and completeness of the Materials and shall provide them in whatever form and format reasonably required by Sundown Solutions.
- 3.4 The Customer is responsible for taking all appropriate measures to prevent the outbreak of a Virus on its Equipment, the Existing Systems and all other aspects of its computer systems, networks and hardware. For the avoidance of doubt Sundown Solutions will not be responsible for the removal of any Virus introduced by the Customer or any other third party. Any restoration or reconstruction of data, programs or the Solution by Sundown Solutions required by the Customer is fully chargeable and will attach a premium rate if it is required to be performed on an immediate or short-term basis.
- 3.5 The Customer warrants and represents that the Materials:
- (a) do not infringe any Applicable Laws or third party rights (including Intellectual Property Rights); and
- (b) are not obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous,
- and the Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless, in full and on demand from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) arising out of or in connection with any action or claim relating to the Materials or breach of the warranty set out in this clause.
- 3.6 The Customer warrants and represents to Sundown Solutions that the representative/individual signing the SoW has all legal authority and power to enter into the Agreement and bind the Customer.
- 4. SUNDOWN SOLUTIONS' OBLIGATIONS**
- Sundown Solutions warrants and represents to the Customer that:
- (a) it is fully authorised to enter into, execute and perform all of its obligations under this Agreement;
- (b) the officer signing the Agreement on its behalf has all legal authority and power to bind Sundown Solutions;
- (c) it has all necessary expertise to comply with its obligations under this Agreement subject to having sufficient resources available;
- (d) it is not subject to any contractual or other restriction that could prevent or materially impede Sundown Solutions from meeting its obligations under this Agreement; and
- (e) it shall notify the Customer of all material changes in the organization of its business within a reasonable period of such change taking place.
- 5. FEES AND PAYMENT – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**
- 5.1 The Customer shall pay Fees due to Sundown Solutions in accordance with the payment terms detailed in the SoW, the applicable Schedule or, if no such terms are specified, within thirty (30) days of the date of the invoice to which those Fees relate. Time for payment of all Fees under and in accordance with this Agreement is of the essence.
- 5.2 The Customer agrees and acknowledges that all invoices shall be issued in and it shall pay the Fees in GBP or such other currency stipulated within the Proposal and/or SoW.
- 5.3 The Fees do not include the cost of surcharges or import or customs duties and taxes levied on or payable by Sundown Solutions and the Customer shall pay to Sundown Solutions the amount of any such duties, taxes or surcharges levied on or payable by Sundown Solutions.
- 5.4 The Customer shall pay all amounts due under this Agreement in full, without deduction, withholding, set-off or counterclaim.
- 5.5 In the event that Sundown Solutions has not received payment of any due Fees by the due date for payment and without prejudice to any other rights or remedies of Sundown Solutions:
- (a) Sundown Solutions may suspend or otherwise disable the provision of, or cease to provide any or all of the Solution whilst the relevant Fees concerned remain unpaid; and
- (b) daily interest on such amount at a rate of up to 8% per annum above the Bank of England's base rate from time to time in force, from the date on which such amount was payable until such amount is paid (both before and after any judgement).
- 5.6 The Fees exclude value added tax and any applicable additional or substitute taxes, levies, imposts, duties, fees or charges whatsoever and whenever, all of which shall be paid additionally by the Customer in accordance with this Agreement.
- 5.7 In the event of a change in Applicable Law that materially changes the cost of providing the applicable Solution, Sundown Solutions may give the Customer written notice thereof and the Customer shall have thirty (30) days to accept such increased costs else the applicable portion of the Agreement shall be deemed terminated with immediate effect.
- 5.8 If the Customer disputes any amount payable under an invoice in good faith, the Customer must notify Sundown Solutions of the dispute within five (5) Business Days of receipt of the invoice. Any non-disputed amount is payable in accordance with clause 5.2. Both parties must negotiate in good faith to resolve any payment dispute, and interest on the disputed amount will not be payable until the dispute has been resolved and the Customer has received a reasonable period of time in which to pay any further amounts owing.
- 6. INTELLECTUAL PROPERTY RIGHTS**
- 6.1 The parties agree that any and all Intellectual Property Rights in or arising out of or in connection with the Solution (or any part thereof), shall be owned by Sundown Solutions (or its licensors) and that for the avoidance of doubt any and all Intellectual Property Rights remain in the possession of Sundown Solutions (or its licensors) at all times, do not transfer to the Customer and the Customer is not permitted to make an onward sale or transfer of the Solution (or any part thereof), to any third party without the prior written consent of Sundown Solutions (or its licensors).
- 6.2 Sundown Solutions hereby grants a non-exclusive, royalty-free, revocable licence to the Customer to make use of the Intellectual Property Rights referred to in clause 6.1 strictly from and limited to making use of the Solution (or any part thereof).
- 6.3 The Customer shall use its best endeavours to prevent any infringement of Sundown Solutions' Intellectual Property Rights and shall promptly report to Sundown Solutions any such infringement that comes to its attention. In particular, the Customer shall:
- (a) ensure that each Authorised User, before starting to use the Solution, is made aware that it is proprietary to Sundown Solutions and that it may only be used and copied in accordance with this Agreement;
- (b) implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Solution, save to the extent provided for by this Agreement; and
- (c) not permit third parties to have access to the Solution without the prior

- written consent of Sundown Solutions, which may require that such third party executes a written confidentiality agreement before being given access to the Solution.
- 6.4 Provided that Sundown Solutions makes no warranty that the Solution (or any part thereof) does not breach the Intellectual Property Rights of any third party, if the Solution (or any part thereof) is found to breach a third party's Intellectual Property Rights and such breach is found to be at the fault of Sundown Solutions (**IPR Claim**), Sundown Solutions shall at its absolute discretion:
- use all reasonable endeavours to obtain the right for the Customer to continue to use the Solution (or applicable part thereof); or
 - replace or modify the Solution (or applicable part thereof) so that it becomes non-infringing without materially affecting its functionality.
- 6.5 Where Sundown Solutions replaces or modifies the Solution in accordance with this clause, the Solution shall be deemed to take the form of the replaced or modified Solution.
- 6.6 Sundown Solutions shall have no liability under this clause to the extent that any IPR Claim arises from any modification of the Solution undertaken by the Customer without Sundown Solutions' prior written consent or from any use of the Solution by the Customer in breach of the terms of this Agreement.
- 6.7 The Customer grants to Sundown Solutions an irrevocable (subject to the terms of this Agreement), sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the Term to use, exploit, copy, reproduce, manufacture, sub-license, modify, improve, enhance and make derivative works of the Customer's Intellectual Property Rights solely to the extent and as incorporated into the Solution and solely to the extent necessary to enable Sundown Solutions to comply with its obligations under this Agreement.
- 6.8 The Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless in full and on demand from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Sundown Solutions arising out of or in connection with any claim that its use of Materials or other Customer Intellectual Property Rights supplied by it to Sundown Solutions in connection with the performance of its obligations under this Agreement infringes the rights (including the Intellectual Property Rights) of any third party.
- ## 7. CONFIDENTIALITY
- 7.1 Each party agrees and undertakes that it shall maintain the confidentiality of and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party the other party's Confidential Information and shall not, without the prior written consent of the other party, use, disclose, copy or modify such Confidential Information or permit others to do so other than as necessary for the performance of its right and obligations under the Agreement.
- 7.2 Each party shall:
- disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement, and
 - to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 7.3 Each party shall:
- give notice to the other party of any unauthorised misuse, disclosure, theft or loss of its Confidential Information immediately upon becoming aware of the same;
 - take all reasonable steps to maintain the confidentiality of the Confidential Information;
 - maintain adequate security measures to safeguard the Confidential Information from theft, and from access by any person other than as permitted by this Agreement;
 - except as expressly permitted under Section 50B of the Copyright, Designs and Patents Act 1988 not copy, alter, modify or adapt the Confidential Information in any way whatsoever, or permit the Solution to be combined with or to become incorporated in any other programs unless carried out by Sundown Solutions, or decompile or disassemble the executable code version of any Solution, or attempt to do or permit the doing of any of these things;
 - not (and the Customer shall use its best endeavours to procure that no person other than its personnel will) access, use, copy, alter, modify or adapt any source code; and
- promptly bring to the other party's attention any infringement of its rights in, or any unauthorised use of, the Confidential Information, which it becomes aware of.
- 7.4 The provisions of this clause shall not apply to information which is:
- or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;
 - independently developed by the recipient, without access to or use of such information; or
 - required by Applicable Law, by court or governmental or regulatory order to be disclosed provided that the other party is, where possible, notified at the earliest opportunity.
- 7.5 Whilst Sundown Solutions may publicly announce that a business relationship has been entered into with the Customer, Sundown Solutions shall not, without the prior written consent of the Customer not to be unreasonably withheld or delayed publicise the details or terms of this Agreement or use the Customer's name or brand in the context of endorsing the quality of its work.
- ## 8. DATA PROTECTION
- 8.1 For the purposes of this clause 8, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR. References in this clause 8 to Applicable Laws shall for the avoidance of doubt include the Data Protection Laws.
- 8.2 Both parties will comply with all applicable requirements of Data Protection Laws. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Laws.
- 8.3 The parties have determined that, for the purposes of Data Protection Laws Sundown Solutions shall process the Customer Data provided that should such determination change, then each party shall work together in good faith to make any changes which are necessary to this clause 8 or the related schedules.
- 8.4 By entering into this Agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Sundown Solutions in connection with the processing of the Customer Data, provided these are in compliance with the then-current version of Sundown Solutions' privacy policy available at [Privacy Policy - Sundown Solutions Ltd \(Privacy Policy\)](#). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 8.5 Without prejudice to the generality of clause 8.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Data to Sundown Solutions and or lawful collection of the same by Sundown Solutions for the Term (and any applicable period thereafter) and purposes of this Agreement.
- 8.6 Without prejudice to the generality of clause 8.2 Sundown Solutions shall, in relation to Customer Data:
- process that Customer Data only on the documented instructions of the Customer, which shall be to process the Customer Data for the purposes of providing the Solution or otherwise directly related thereto, unless Sundown Solutions is required by Applicable Laws to otherwise process that Customer Data. Where Sundown Solutions is relying on Applicable Laws as the basis for processing Customer Processor Data, Sundown Solutions shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Sundown Solutions from so notifying the Customer on important grounds of public interest. Sundown Solutions shall inform the Customer if, in the opinion of Sundown Solutions, the instructions of the Customer infringe Data Protection Laws;
 - implement the technical and organisational measures to protect against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - ensure that any personnel engaged and authorised by Sundown Solutions to process Customer Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Sundown

- Solutions), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Data;
- (f) at the written direction of the Customer, delete or return Customer Data and copies thereof to the Customer on termination of the Agreement unless Sundown Solutions is required by Applicable Law to continue to process that Customer Data. For the purposes of this clause Customer Data shall be considered deleted where it is put beyond further use by Sundown Solutions; and
- (g) maintain records to demonstrate its compliance with this clause 8.
- 8.7 The Customer hereby provides its prior, general authorisation for Sundown Solutions to:
- (a) appoint processors to process the Customer Data, provided that Sundown Solutions shall:
- (i) ensure that the terms on which it appoints such processors comply with Data Protection Laws, and are consistent with the obligations imposed on Sundown Solutions in this clause 8;
- (ii) remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Sundown Solutions; and
- (iii) inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Sundown Solutions' reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Law, the Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless from and against any and all Losses suffered or incurred by Sundown Solutions arising out of or in connection with accommodating the objection; and
- (b) transfer Customer Data outside of the UK as required, provided that Sundown Solutions shall ensure that all such transfers are effected in accordance with Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Sundown Solutions, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Information Commissioner from time to time (where the UK GDPR applies to the transfer).
- 8.8 Except as expressly provided otherwise, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any data, which is or personal data.
- 8.9 Each party shall indemnify, keep indemnified and hold harmless the other party in full and on demand from and against any and all Losses suffered or incurred by the other party arising out of or in connection with its breach of this clause 8.
- 9. COMPLIANCE**
- In performing its obligations under the Agreement, each party agrees to and warrants that:
- (a) it shall comply fully, at its own expense, with the Applicable Laws; and
- (b) as far as it is aware, it has not done (or agreed to do) nor will it do (or agree to do) anything which constitutes a breach of the Compliance Legislation.
- 10. INSURANCE**
- 10.1 Sundown Solutions shall maintain the following insurances throughout the Term:
- (a) for an amount of at least £5,000,000:
- (i) professional liability insurance; and
- (ii) public liability insurance;
- (b) with reputable insurers lawfully carrying on insurance business in the UK; and
- (c) on customary and usual terms and conditions prevailing for the time being in the insurance market.
- 10.2 Whenever the Customer reasonably requests, Sundown Solutions shall send the Customer evidence that the insurances which it requires to hold in accordance with clause 10.1 are in force.
- 11. INDEMNITY AND LIMITATION OF LIABILITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**
- 11.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort (including negligence), contract, breach of statutory duty or in any other way) shall be as set out in this clause.
- 11.2 The Customer assumes sole responsibility for results obtained from the use of the Solution and for any conclusions drawn from such use. Sundown Solutions shall have no liability for any Losses arising out of or connected with:
- (a) errors or omissions in any Materials, Customer Data input into the Software or information provided to Sundown Solutions by the Customer in connection with the Solution; or
- (b) any actions taken by Sundown Solutions at the Customer's direction.
- 11.3 Subject to clause 11.6, Sundown Solutions shall not be liable to the Customer or any third party arising out of or in connection with this Agreement:
- (a) for any:
- (i) consequential, indirect or special Losses;
- (ii) loss of profit;
- (iii) loss of contract or business;
- (iv) loss of opportunity;
- (v) loss of savings, discount or rebate (whether actual or anticipated);
- (vi) damage to, loss or corruption of data;
- (vii) harm to reputation or loss of goodwill; and/or
- (viii) any other Losses of a pure economic nature; and
- (b) for any Losses not excluded by clause 11.3(a), of an amount in excess of the sum of all Fees paid or payable to Sundown Solutions by the Customer under this Agreement in the preceding twelve (12) months.
- 11.4 Subject to the remainder of this clause 11:
- (a) in no event shall Sundown Solutions, its employees, agents and subcontractors be liable to the Customer or any third party for any Losses arising from issues with the Solution (or part thereof) or to the extent that any alleged infringement of Intellectual Property Rights is based on:
- (i) a modification of the Solution by anyone other than Sundown Solutions; or
- (ii) the Customer's use of the Solution in a manner contrary to the instructions given to the Customer by Sundown Solutions; or
- (iii) the Customer's use of the Solution after notice of the alleged or actual infringement from Sundown Solutions or any appropriate authority; or
- (iv) the fraudulent or unauthorised use of any Solution by the Customer; or
- (b) the Customer's installation of any applications, utilities or other software programs or hardware or re-configuration of the Solution (including, but not limited to, hardware, firmware, software, programming, configuration and service) or otherwise modifies or alters any of the foregoing.
- 11.5 Subject to the remainder of this clause 11, Sundown Solutions shall indemnify the Customer, keep the Customer indemnified and hold the Customer harmless from and against any and all Losses suffered or incurred by the Customer in failing to meet its obligations to its clients that it has proven are as a direct result of Sundown Solutions committing a material breach of any of its obligations under this Agreement. In order to rely upon such indemnity the Customer must notify Sundown Solution of the breach and corresponding client obligations within 2 Business Days of the occurrence of such breach and use its best endeavours to mitigate its Losses to the fullest extent.
- 11.6 The Customer shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless from and against any and all Losses (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Sundown Solutions arising out of or in connection with:
- (a) the Customer's breach of this Agreement howsoever arising;
- (b) any wilful or negligent act or omission of the Customer, its officers, employees, contractors or agents; and
- (c) the Customer's use of the Solution.
- 11.7 The exclusions and limitations of liability set out in this clause shall not apply in respect of:
- (a) death or personal injury;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other Losses which cannot be excluded or limited by Applicable Law.
- 12. NON-SOLICITATION**

- 12.1 In order to protect the legitimate business interests of Sundown Solutions, the Customer covenants with Sundown Solutions that it shall not (except with the prior written consent of Sundown Solutions) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.
- 12.2 The Customer shall be bound by the covenant set out in clause 12.1 during the Term and for a period of twelve (12) months after termination or expiry of this Agreement.
- 12.3 If the Customer commits any breach of this clause, it shall, on demand, pay to Sundown Solutions a sum equal to one year's salary of the Restricted Person, or the annual fee that would have been payable by Sundown Solutions in relation to the services provided by the Restricted Person plus the recruitment costs incurred by Sundown Solutions in replacing such person.
- 13. EXPORT AND IMPORT CONTROL**
- The Customer acknowledges that the export of computer products and/or technology may be subject to certain Applicable Laws (including the export regulations or restrictions of any state, government or governing body) (**Export Control Laws**). Where the Customer exports or re-exports any computer hardware and/or software it agrees to comply with the relevant export regulations and/or restrictions in force from time to time. Furthermore, the Customer agrees to keep Sundown Solutions accurately informed of all regulations or restrictions relevant to export or import of the particular products which it is supplying to the Customer.
- 14. TERM AND TERMINATION**
- 14.1 This Agreement shall be for the Term, commencing with the Commencement Date and save where terminated earlier in accordance with clause 14.2, continue in accordance with the relevant provisions of the applicable Schedule.
- 14.2 Sundown Solutions may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the Customer in the event that:
- the Customer fails to pay any undisputed amounts due to Sundown Solutions;
 - the Customer commits any breach of this Agreement that is irremediable or, if remediable, is not remedied by the Customer within fourteen (14) days' of receipt of Sundown Solutions' written notice specifying the breach and requiring its remedy; or
 - any regulatory decision or governmental order requiring Sundown Solutions to suspend or terminate the provision of its obligations under this Agreement.
- 14.3 Either party may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the other in the event that:
- 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 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - 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 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;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - the other party (being an individual) is the subject of a bankruptcy petition or order;
- a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
 - any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(a) to clause 14.2(g) (inclusive);
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 14.4 In any circumstance in which Sundown Solutions may terminate any or any portion of this Agreement, it may exercise its right to suspend performance of any of its obligations. Such exercise of the right to suspend shall:
- be without liability to the Customer; and
 - not function as a waiver of any right of termination that Sundown Solutions may have under this Agreement.
- 14.5 On termination of this Agreement by Sundown Solutions, all licences granted by Sundown Solutions under this Agreement shall terminate immediately and the Customer shall return to Sundown Solutions the relevant licences and/or documentation and all copies of the relevant documentation or, if requested by Sundown Solutions, destroy them and certify in writing to Sundown Solutions that they have been destroyed.
- 14.6 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of any person at any time up to the date of termination and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.
- 15. NOTICES**
- 15.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, or by commercial courier or email.
- 15.2 A notice or other communication shall be deemed to have been received if:
- delivered personally, when left at the address referred to in clause 15.1;
 - sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
 - delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - sent by email, one Business Day after transmission.
- 15.3 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.
- 16. FORCE MAJEURE**
- 16.1 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.
- 16.2 The Affected Party shall:
- as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
 - use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17. NO PARTNERSHIP OR AGENCY**
- 17.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. ENTIRE AGREEMENT

- 18.1 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.
- 18.2 Each party acknowledges that in entering into this Agreement it does not rely on, and 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.
- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

19. VARIATION

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

20. ASSIGNMENT AND OTHER DEALINGS

This Agreement is personal to each party and the rights and obligations hereunder may not be assigned, sub-contracted or transferred to a third party without the prior written approval of the other party, such consent not to be unreasonably withheld or delayed.

21. WAIVER

- 21.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Applicable Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 21.2 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. SEVERANCE

- 22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 22.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. THIRD PARTY RIGHTS

No one other than a party to this Agreement shall have any right to enforce any of its terms.

24. MULTI-TIERED DISPUTE RESOLUTION

- 24.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Agreement, the parties may at their discretion 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, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute; and
- (b) if the management level employees are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it.

- 24.2 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it in accordance with the following procedure.

- (a) The parties shall have recourse to mediation in accordance with the Mediation Rules, which are deemed to be incorporated by reference into this clause.
- (b) If the Dispute is not settled by mediation within thirty (30) days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be submitted to the International Court of Arbitration of the ICC whose seat shall be London and shall be finally settled under the Arbitration Rules, by one or more arbitrators appointed in accordance with the Arbitration Rules. The Emergency Arbitrator Provisions under the Arbitration Rules shall not apply.
- (c) This clause 24 takes the form of an arbitration agreement and is governed by the law of England and Wales.
- (d) The language to be used in the mediation and in the arbitration shall be English.

- 24.3 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 26 in relation to the whole or part of the Dispute.

GOVERNING LAW

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

26. JURISDICTION

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

ANNEX – CHANGE CONTROL PROCEDURE

PART 1 – PROCEDURE

1. DEFINITIONS

The following defined words and expressions used in this Annex shall take the following meanings:

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Dispute Resolution Procedure: the multi-tiered dispute resolution procedure set out in clause 24.

2. PURPOSE

2.1 This Annex sets out the procedure for dealing with Changes, including:

- (a) the rights of the parties to request a Change;
- (b) the rights of the parties to approve or reject a proposed Change;
- (c) the apportionment of costs incurred by the parties in compliance with this Annex; and
- (d) the form of any authorised Change.

2.2 A Change will not be effective until a relevant Change Control Note has been signed by the authorised representatives of both parties.

2.3 A Change Control Note will be in substantially the form set out in 0 of this Annex.

3. REQUESTING A CHANGE

3.1 Either party may submit a written request for Change to the other party.

- (a) Where Sundown Solutions initiates a request for a Change, it will at the same time send to the Customer a draft Change Control Note signed by an authorised representative of Sundown Solutions.
- (b) If the Customer reasonably considers that it requires further information in order to consider the proposed Change, it will notify Sundown Solutions within five (5) Business Days of receipt of the request. Such notification must detail the further information required.
- (c) If paragraph 3.1(b) applies, Sundown Solutions will provide the required information and, if required, re-issue the draft completed Change Control Note signed by an authorised representative of Sundown Solutions within five (5) Business Days of receiving such notification from the Customer.
- (d) Where the Customer initiates a request for Change, it will at the same time provide Sundown Solutions with as much detail as is necessary to enable Sundown Solutions to prepare a draft Change Control Note.
- (e) If Sundown Solutions considers that it requires further information in order to consider the proposed Change, it will notify the Customer within five (5) Business Days of receipt of the request. Such notification

must detail the further information required. The Customer will provide the further information within five (5) Business Days of receipt of the notification from Sundown Solutions. Sundown Solutions may repeat this process until it is satisfied that it has sufficient information to approve or reject the request for Change.

- (f) Sundown Solutions will, within five (5) Business Days of the date of receipt of the request for Change pursuant to paragraph 3.1(d), or the date of receipt of further information pursuant to paragraph 3.1(e), submit an estimate of the costs of assessing the request for Change and preparing and negotiating a draft Change Control Note. The Customer will respond rejecting or accepting any estimate within five (5) Business Days of receipt. Any dispute in relation to the estimate of costs will be dealt with in accordance with the Dispute Resolution Procedure.

- (g) Once the Change has been accepted, Sundown Solutions shall send two copies of the Change Control Note to the Customer.

4. APPROVING AND REJECTING A CHANGE

4.1 Sundown Solutions may reject a request for Change from the Customer at its absolute discretion.

4.2 Within five (5) Business Days of receiving two copies of the Change Control Note pursuant to paragraph 3.1(g), the Customer will evaluate the draft Change Control Note and must do one of the following:

- (a) approve the Change Control Note. On the Customer's signature, the Change Control Note will constitute a binding Change to this Agreement;
- (b) reject the Change Control Note and notify Sundown Solutions in writing of the rejection. The Customer will not reject any Change Control Note to the extent that the Change is necessary for Sundown Solutions to comply with Applicable Law. If the Customer does reject a Change, it must explain its reasons in writing to Sundown Solutions as soon as reasonably practicable; or

if the Customer believes the Change Control Note has errors or omissions, require Sundown Solutions to modify the document accordingly in which case Sundown Solutions will make such modifications and re-submit the draft signed Change Control Note within five (5) Business Days of receipt of the request to modify. The Customer will then approve or reject the proposed Change Control Note within five (5) Business Days.

5. COSTS OF PREPARING CHANGE REQUESTS

5.1 Subject to paragraph 5.2, each party will bear its own costs in relation to compliance with this Change Control Procedure.

5.2 Sundown Solutions may charge the Customer for the time spent on preparing and negotiating any Change Control Note with the Customer where the Customer has requested the Change.

PART 2 – FORM OF CHANGE CONTROL NOTE

CCN No:	Agreement:	Effective date of Change:
Initiated by: Change requested by [Sundown Solutions OR the Customer]		
Date of request:		
Period of validity: This Change Control Note is valid for acceptance until [DATE].		
Reason for Change:		
Description and impact of the Change (including to delivery and performance):		
Required amendments to wording of Agreement:		
Adjustment to the Fees resulting from Change:		
Additional one-off charges and means of determining these (for example, fixed price basis):		
Managed Servicing or additional information:		
SIGNED ON BEHALF OF THE CUSTOMER		SIGNED ON BEHALF OF SUNDOWN SOLUTIONS
Signature:		Signature:
Name:		Name:
Position:		Position:
Date:		Date:

SCHEDULE 1 – THE SERVICES

1. DEFINITIONS

Defined words and expressions used in this Schedule shall take the meaning given to them in the Terms, unless detailed below:

Assessment: the due diligence, assessment and discovery element of the Services (where applicable), the nature of which involve Sundown Solutions providing professional consultancy and advisory services through assessing and discovering the Existing Systems and the full scope and extent of which is set out within the Proposal and/or SoW.

Assessment Meeting: has the meaning given in paragraph 3.4 below.

Assumptions: any assumptions in respect of the Assessment, as set out in the Proposal and/or SoW.

Interim Assessment Report: the written report produced by Sundown Solutions to document the Interim Recommendations following the Assessment and which shall be construed as a Deliverable.

Interim Recommendations: means Sundown Solutions' recommendations in respect of the Proposed Solution and associated design thereof.

Onboarding: the element of the Services (where applicable), the nature of which involves Sundown Solutions providing professional consultancy and advisory services in connection with the Existing Systems and detailing any requirements for the execution of an Asset Transfer.

Onboarding Plan: the time schedule and sequence of events for the performance of the Onboarding as set out in the Proposal and/or SoW or as developed in accordance with the provision of the Onboarding.

Proposed Solution: has the meaning given in paragraph 3.5 below.

2. SERVICES

2.1 Sundown Solutions shall provide the Services with reasonable care, skill and ability.

2.2 Unless it has been specifically authorised to do so by the Customer in writing, Sundown Solutions shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of the Customer; and
- (b) hold itself out as having authority to bind the Customer.

2.3 Sundown Solutions' account team shall consist of those personnel listed in the Proposal and/or SoW. Sundown Solutions shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement for the duration of the Term.

3. ASSESSMENT AND DISCOVERY

3.1 Unless otherwise definitively set out in the Proposal and/or SoW and where the Services are specified as comprising of an Assessment, Sundown Solutions shall carry out such Assessment for the purposes of determining the nature of the Customer's requirement for the Solution (in whole or in part) and the Interim Recommendations shall be documented within an Interim Assessment Report.

3.2 The Customer acknowledges that the Assessment will be prepared on the basis of the Assumptions and the Customer further agrees that it shall provide Sundown Solutions with full, complete and accurate information regarding the Existing Systems (which shall include the provision of all Materials reasonably required by Sundown Solutions) as documented within the Proposal and/or SoW or otherwise may be required by Sundown Solutions in order for the Assessment to take place. Where the Customer fails to comply with this paragraph 3.2 and Sundown Solutions has carried out an Assessment on the basis of incomplete and/or incorrect information (or Materials) provided by the Customer, Sundown Solutions reserves its right to charge further Fees in the event that such failure necessitates a further Assessment.

3.3 Sundown Solutions shall devote such time as set out within the Proposal and/or SoW or, in the absence of agreed terms, as it deems reasonably necessary for the proper performance of the Assessment and shall exercise reasonable endeavours to produce and deliver the Interim Assessment Report in accordance with any timeframes contained in the Proposal and/or the SoW.

3.4 The parties shall meet within a reasonable period (or such other period as specified in the Proposal and/or SoW) of time following delivery of the Interim Assessment Report under paragraph 3.2 in order to discuss the Interim Recommendations and any further Customer requirements (**Assessment Meeting**).

3.5 Following the Assessment Meeting, Sundown Solutions shall refine and/or define the Interim Recommendations (or applicable element thereof) and provide full details of the managed services and design of the proposed solution to the Customer for its approval (**Proposed Solution**). The Proposed Solution shall be:

- (a) approved where the Customer confirms so in writing; or
- (b) deemed to have been approved in the absence of the Customer notifying Sundown Solutions that it is rejected in writing within ten (10) Business Days.

3.6 Where the Customer expressly rejects the Proposed Solution, it shall provide full written reasons as to why it has been rejected such that Sundown Solutions is able to either:

- (a) make appropriate amendments to the Proposed Solution ahead of reissuing it; or
- (b) detail reasons as to why the Customer's rejection is not in its best interests or otherwise unsuitable in its professional opinion and reissue the Proposed Solution.

3.7 Following the reissuing of the Proposed Solution in accordance with paragraph 3.6 above, the approval process in accordance with paragraphs 3.5 – 3.6 above shall be repeated.

3.8 Where, following the commencement of the development and/or provision of the Solution (or any element thereof), a further Assessment is required, this shall constitute a Change and the Change Control Procedure shall be followed.

4. ONBOARDING

4.1 Upon completion of the Assessment and where the Services are specified as comprising of Onboarding, Sundown Solutions shall provide the Onboarding for the purposes of implementing and configuring the Solution (or any element thereof), as detailed in the Proposal and/or the SoW.

4.2 The Onboarding shall be provided:

- (a) as part of and commensurate with the provision to the Customer of the Solution by Sundown Solutions; and
- (b) in accordance with any Onboarding Plan.

5. TIMESCALES

5.1 Subject to clause 2.1 and paragraph 5.2 below, Sundown Solutions shall use its reasonable endeavours to complete each element of the Services in each stage of the Onboarding Plan by the date specified therein.

5.2 Subject to clauses 2.1 and 3.2, Sundown Solutions shall be given an extension of time for completion of any one or more of the stages in the Onboarding Plan, or any of its other performance obligations in connection with the Services, if one of more of the following events occurs:

- (a) a Change takes place;
- (b) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors; or
- (c) any other event takes place as provided for by the Terms.

5.3 If Sundown Solutions is entitled to an extension of time under paragraph 5.2, it shall use its reasonable endeavours to give written notice to the Customer as soon as reasonably practicable after the beginning of the event. Such notice shall specify the event relied on and, where and to the extent practicable, shall estimate the probable extent of the delay.

6. EXPENSES

6.1 The Customer shall reimburse all reasonable expenses properly and necessarily incurred by Sundown Solutions in the course of the provision of the Services, subject to production of receipts or other appropriate evidence of payment.

6.2 Sundown Solutions may raise invoices for expenses incurred in accordance with paragraph 6.1.

6.3 If Sundown Solutions is required to travel abroad in the course of the provision of the Services, it shall be responsible for any necessary insurances, inoculations and immigration requirements.

SCHEDULE 2 – THE SOFTWARE

1. DEFINITIONS

Defined words and expressions used in this Schedule shall take the meaning given to them in the Terms, unless detailed below:

Acceptance Date: has the meaning given in paragraph 6.5 below.

Acceptance Tests: the tests of the Software (or any module or item thereof) to be carried out following its initial design and development to be agreed in accordance with paragraph 6 below to determine the Software as Ready for Service.

Completion Date: the estimated date specified in the Programme (as varied in accordance with this Agreement) by which Sundown Solutions is to endeavour to provide the Software as being Ready for Service, or if there is none by a date by which it would be considered commercially reasonable to have provided the Software as being Ready for Service.

Go Live Date: the date on which Sundown Solutions makes the Software available for the Customer to use.

Licensed Purpose: has the meaning given in paragraph 8.1 below.

OAC: means operational acceptance criteria.

Programme: the schedule and sequence of events for the performance of the obligations in this Schedule.

Ready for Service: tested and having passed or deemed to have passed the Acceptance Tests.

Technical Specification: the specification of the Software outlined in the Proposal and/or SoW or developed further to and in the course of providing the Services.

User Subscriptions: the user subscriptions purchased by the Customer pursuant which entitle Authorised Users to access and use the Software and the Documentation in accordance with this Agreement.

Work: all the works, duties and obligations to be carried out by Sundown Solutions under this Schedule, including but not limited to the design and development of the Software.

PART 1 – DESIGN, DEVELOPMENT AND SUPPLY OF THE SOFTWARE

2. SCOPE

Sundown Solutions shall supply the Software and the Documentation to the Customer in accordance with this Schedule and the content of any Deliverables supplied as part of the Services (where applicable).

3. SOFTWARE AND DOCUMENTATION

3.1 Sundown Solutions shall:

- (a) carry out the Work with reasonable diligence and despatch and with reasonable skill and expertise; and
- (b) use its reasonable endeavours to provide the Software in accordance with the Technical Specification by the Completion Date.

3.2 Sundown Solutions shall provide:

- (a) any Third-Party Software necessary in the course of developing and/or licensing the Software to the Customer under the Third-Party Licence Terms, copies of which shall be provided to the Customer on request, and the Customer agrees to be bound to the third-party licensor under such Third-Party Licence Terms; and
- (b) Sundown Solutions Software under the terms of this Agreement.

3.3 Sundown Solutions shall provide to the Customer, from time to time, copies of the Documentation containing up-to-date information for the proper use and maintenance of the Software. Such Documentation may be supplied in electronic form.

3.4 The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Software and for training the Customer's personnel in use of the Software. The Customer shall ensure that all of Sundown Solutions' proprietary notices are reproduced in any such copy.

3.5 The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with clause 7.

4. SOFTWARE DEVELOPMENT

4.1 Sundown Solutions shall develop the Software in accordance with the requirements of the Technical Specification in all material respects.

4.2 Sundown Solutions agrees:

- (a) to carry out, in conjunction with the Customer, the Acceptance Tests; and
- (b) subject to paragraph 7.2 below, to use its reasonable endeavours to provide the Software Ready for Service by the Completion Date, on the terms and conditions set out in this Agreement.

4.3 The Customer agrees that any tools and know-how configured and/or developed, and methods invented, by Sundown Solutions in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work shall vest in Sundown Solutions.

4.4 Before commencing any Acceptance Tests in connection with any module or item comprising the Software, Sundown Solutions shall carry out reasonable service rehearsals to ensure that such item is in operable condition and is capable of meeting the requirements of the Technical Specification. These tests shall be repeated until such time as Sundown Solutions is satisfied that the applicable Software (or module or item thereof) meets the relevant requirements.

5. AVAILABILITY OF THE SOFTWARE AND DELAYS

5.1 Subject to paragraph 7.2 below, Sundown Solutions shall use its reasonable endeavours to make the Software available to the Customer by the applicable Completion Date.

5.2 Sundown Solutions shall supply to the Customer, within a reasonable time before any relevant Go Live Date, such information and assistance as the Customer may reasonably request.

5.3 Save where otherwise agreed in writing with Sundown Solutions, the Customer shall be responsible for ensuring that each item of Equipment is installed and is in working order and available to Sundown Solutions no later than the relevant date specified in the Programme.

5.4 If the making available for use of the Software is delayed at the request of the Customer, or because of acts or omissions, the Programme shall be amended to take account of such delay in accordance with paragraph 7.2 below. If Sundown Solutions can demonstrate that the delay has resulted in an increase in cost to Sundown Solutions of carrying out its obligations under this Agreement, Sundown Solutions may, at its sole discretion, notify the Customer that it wishes to increase the Fees by an amount not exceeding any such demonstrable cost. Sundown Solutions may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.

6. ACCEPTANCE TESTS

6.1 No later than 30 days from the commencement of the Work, the Customer shall deliver proposed OAC to Sundown Solutions and test data for the Acceptance Tests for the Software. These OAC shall be such as are reasonably required to show that the Software complies with the Technical Specification. Sundown Solutions shall provide the Customer with reasonable assistance to prepare such OAC and test data at the Customer's request and at Sundown Solutions' standard rates then in force. The parties shall use best endeavours to agree the Acceptance Tests for the Software within ten (10) Business Days from the date of delivery to Sundown Solutions of the proposed OAC and test data.

6.2 Sundown Solutions shall carry out the agreed Acceptance Tests for the Software within ten (10) Business Days of the Go Live Date. The Acceptance Tests shall be run continuously during Business Hours. Sundown Solutions shall give the Customer at least one (1) Business Day's notice of the start of the Acceptance Tests and permit the Customer to observe all or any part of the testing.

6.3 If any element of the Software fails to pass the Acceptance Tests, the Customer shall, within one (1) Business Day from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). Sundown Solutions shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

6.4 If any element of the Software fails in some material respect to pass

any repeated Acceptance Tests within one (1) month from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to Sundown Solutions, choose at its sole discretion:

- (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the applicable element of the Software on the same terms and conditions. If the applicable element of the Software fails such further tests then the Customer may request a repeat test under this paragraph;
 - (b) to permit delivery of the Software subject to such change of OAC and/or reduction in the Fees as, after taking into account all the relevant circumstances, is reasonable; or
 - (c) if Sundown Solutions is unable to correct material defects within a period of three (3) months from the commencement of Acceptance Tests, to reject the Software as not being in conformity with the Agreement, in which event the Customer may terminate this Agreement.
- 6.5 Acceptance of the Software shall be deemed to have occurred on whichever is the earliest of:
- (a) the Customer signifying its acceptance of the Software in writing;
 - (b) the expiry of five (5) Business Days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under this paragraph;
 - (c) the expiry of ten (10) Business Days after the Go Live Date of the Software if the Acceptance Tests have not started, or have not been pursued with due diligence; or
 - (d) the use of the Software by the Customer in the normal course of its business,
- (Acceptance Date).**

6.6 On or after the Acceptance Date, Sundown Solutions shall provide knowledge transfer sessions ahead of formal sign off by the Customer of completion of the same.

7. TIMESCALES

- 7.1 Subject to clause 2.1 and paragraph 7.2 below, Sundown Solutions shall use its reasonable endeavours to complete each element of the Work in each stage of the Programme by the date specified in the Programme.
- 7.2 Subject to clauses 2.1 and 3.2, Sundown Solutions shall be given an extension of time for completion of any one or more of the stages of the Programme, or any of its other performance obligations in connection with the Services, if one of more of the following events occurs:
- (a) a Change takes place;
 - (b) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors; or
 - (c) any other event takes place as provided for in the Terms (including but not limited to a Force Majeure Event under clause 15).
- 7.3 If Sundown Solutions is entitled to an extension of time under paragraph 7.2, it shall use its reasonable endeavours to give written notice to the Customer as soon as reasonably practicable after the beginning of the event. Such notice shall specify the event relied on and, where and to the extent practicable, shall estimate the probable extent of the delay.

PART 2 – LICENCE OF THE SOFTWARE

8. SOFTWARE LICENCE AND DOCUMENTATION

- 8.1 Sundown Solutions grants, subject to the terms of this Agreement, the Customer the non-exclusive, non-transferable right (subject to clause 18) to use the Software for any purpose related to its business **(Licensed Purpose)**.
- 8.2 The Software may be used only by Authorised Users, except that the licence may, with the prior written consent of Sundown Solutions, be extended to additional Authorised Users (where applicable), provided that any appropriate additional Fee is paid to Sundown Solutions before such use;
- 8.3 In relation to the Authorised Users, the Customer undertakes (where and to the extent applicable to the Software) that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the

prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;

- (c) each Authorised User shall keep a secure password for his use of the Software and Documentation, that such password shall be changed no less frequently than once every three (3) months and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Sundown Solutions within five (5) Business Days of Sundown Solutions' written request at any time or times;
- (e) it shall permit Sundown Solutions or Sundown Solutions' designated auditor to audit the Software in order to establish the name and password of each Authorised User and Sundown Solutions' data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Sundown Solutions' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in paragraph 8.3(e) above reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Sundown Solutions' other rights, the Customer shall promptly disable such passwords and Sundown Solutions shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in paragraph 8.3(e) above reveal that the Customer has underpaid Fees to Sundown Solutions, then without prejudice to Sundown Solutions' other rights, the Customer shall pay to Sundown Solutions an amount equal to such underpayment within ten (10) Business Days of the date of the relevant audit.

8.4 Subject to paragraphs 8.5 and 8.6 below, the Customer may, from time to time during the Initial Term or Renewal Term, purchase additional User Subscriptions in excess of the number held from time to time and Sundown Solutions shall grant access to the Software and the Documentation to such additional Authorised Users in accordance with the provisions of this paragraph.

8.5 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Sundown Solutions in writing. Sundown Solutions shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Sundown Solutions approves the request, Sundown Solutions shall activate the additional User Subscriptions within five (5) Business Days of its approval of the Customer's request.

8.6 If Sundown Solutions approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of Sundown Solutions' invoice, pay to Sundown Solutions the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Term or any Renewal Term (as applicable), such fees shall be pro-rated from the date of activation by Sundown Solutions for the remainder of the Initial Term or then current Renewal Term (as applicable).

8.7 The Customer shall comply with any Third-Party Licence Terms and shall indemnify Sundown Solutions, keep Sundown Solutions indemnified and hold Sundown Solutions harmless in full and on demand from and against any and all Losses arising out of or in connection with the Customer's breach of such Third-Party Licence Terms howsoever arising.

8.8 Sundown Solutions may treat the Customer's breach of any Third-Party Licence Terms as a breach of this Agreement.

9. TRANSFER OR REPRODUCTION OF THE SOFTWARE

9.1 Sundown Solutions shall at all times own the Software.

9.2 The Customer shall not:

- (a) sub-license, rent, lend, assign or transfer in any other way this Agreement or the Software to any person without the prior written consent of Sundown Solutions and in accordance with such terms as may be required by Sundown Solutions; and
- (b) give access to the Software through any network of computers to users who are not employees or agents of the Customer.

10. USE AND ADAPTATION OF THE SOFTWARE

10.1 The Customer may use the Software with other software approved by Sundown Solutions from time to time.

10.2 The Customer shall not:

- (a) make adaptations or variations of the Software without the prior consent of Sundown Solutions;

- (b) access all or any part of the Software and Documentation in order to build a product or service which competes with the Solution;
- (c) use the Software to provide services to third parties;
- (d) attempt to copy (other than for back-up purposes), modify, duplicate, distribute, rent, lease, or sublicense any portion of the Software, modify or prepare derivative works, frame, mirror, republish, download, display, transmit or distribute the Software over a network, by telephone, or electronically using any means;
- (e) attempt to reverse engineer or reverse compile, de-compile, disassemble or otherwise reduce to human-perceivable form all or any part of the Software;
- (f) subject to the remainder of this agreement, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third; or
- (g) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this paragraph.

11. DURATION

- 11.1 The licence of the Software shall commence on the Acceptance Date and remain in force for the Initial Term and continue thereafter for consecutive Renewal Terms, unless and until terminated by the Customer serving Sundown Solutions with no less than three (3) months' written notice prior to the end of the Initial Term or Renewal Term (as the case may be) or otherwise in accordance with the Terms.
- 11.2 In the event that the licence of the Software is terminated for any reason prior to the end of the Initial Term or a Renewal Term, any and all Fees which would have become due and payable to Sundown Solutions for the remainder of the Initial Term or applicable Renewal Term shall become immediately due and payable.

PART 3 – COMPLIANCE

12. EXPORT

- 12.1 Neither party shall in any circumstances export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any Export Control Laws, including in any manner where at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 12.2 Each party undertakes:
 - (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

13. SOFTWARE WARRANTY

- 13.1 Sundown Solutions warrants and represents that:
 - (a) the Software shall, as at the Acceptance Date, perform in all material respects in accordance with the Technical Specification;
 - (b) no Viruses are knowingly contained in the Software; and
 - (c) the Software incorporates encryption technology of commercially reasonable and appropriate standards, consistent with its intended use.
- 13.2 The warranties set out in paragraph 13.1 and elsewhere in the Terms are in lieu of all other express or implied warranties or conditions,

including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, Sundown Solutions specifically denies any implied or express representation that the Software will be fit to operate:

- (a) in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Software; or
 - (b) uninterrupted or error-free.
 - 13.3 Subject to paragraph 13.1 above, the Software is furnished on an "as is" basis and without warranty as to the results the Customer may obtain by using the Software. The Customer assumes the entire risk as to the results and performance of the Software.
 - 13.4 Any unauthorised modifications, use or improper installation of the Software by, or on behalf of, the Customer shall render all Sundown Solutions' warranties and obligations under this Agreement null and void.
 - 13.5 The Customer acknowledges that the only warranties in relation to the Third-Party Software, or the supply thereof, are those contained in the applicable Third-Party Licence Terms, and that to the extent that any of such warranties are given to Sundown Solutions, it will pass on the benefit of such warranties to the Customer.
 - 13.6 The Customer shall not and shall implement appropriate precautions to ensure that it shall not:
 - (a) introduce any Virus or Vulnerability to the Software or the network and information systems of Sundown Solutions; or
 - (b) access, store, distribute or transmit any material during the course of its use of the Software that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- is otherwise illegal or causes damage or injury to any person or property,
- and Sundown Solutions reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any aspect of the Solution that breaches the provisions of this paragraph.

14. THIRD PARTY PROVIDERS

- 14.1 The Customer acknowledges that the Software may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Sundown Solutions makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Sundown Solutions.
- 14.2 Sundown Solutions recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Sundown Solutions does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software.

SCHEDULE 3 – THE MANAGED SERVICES

1. DEFINITIONS

Defined words and expressions used in this Schedule shall take the meaning given to them in the Terms, unless detailed below:

Acceptance Date: has the meaning given to it in Schedule 2.

Activation Date: has the meaning given in paragraph 3.3 below.

Critical Fault: a reproducible Fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Managed Software.

Customer Software: has the meaning given in the definition of Existing Systems.

Enhanced Support: the element of Managed Services to be supplied by Sundown Solutions to the Customer under paragraphs 9.1 and 9.4 below.

Error: has the meaning given in paragraph 3.1 below.

Exit Plan: has the meaning given in paragraph 12.1 below.

Fault: any Vulnerability, Virus, fault or security incident which:

- (a) may affect the Managed Services;
- (b) may affect Sundown Solutions Systems such that it could potentially affect the Customer or the Managed Services; or
- (c) is reported to Sundown Solutions by the Customer.

Managed Software: means the elements of the Existing Systems and any other Software, specified or otherwise agreed as being subject to Managed Services in the Proposal and/or SoW or in accordance with this Agreement, as the case may be and any Modifications thereto.

Maintenance Release: a release of the Managed Software which correct Faults, adds functionality or otherwise amends or upgrades the Managed Software, but which does not constitute a New Version.

Modification: any Maintenance Release or New Version which is acquired as part of the Managed Services.

New Version: any new version of the Managed Software which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Non-Critical Fault: any reproducible Fault in the Managed Software other than a Critical Fault.

Onboarding Plan: has the meaning given in Schedule 2.

Optional Managed Services: any other services that the Customer and Sundown Solutions may from time to time agree shall form part of the Managed Services and be supplied to the Customer by Sundown Solutions under the terms of this Schedule.

Service Levels: those standards of performance to be achieved by Sundown Solutions in performing the Standard Support and the Enhanced Support as may be agreed between the parties in advance of the Activation Date or otherwise from time to time, or where no such service levels have been agreed, as notified to the Customer by Sundown Solutions based on the relative criticalness of any Fault.

Site(s): means any site(s) owned or occupied by the Customer at which it uses the Managed Software as the parties agree in writing to be covered by the Managed Services from time to time.

Standard Support: the element of Managed Services to be supplied by Sundown Solutions to the Customer under paragraphs 9.1 and 9.2 below.

Sundown Solutions System: the network, information and communications technology system to be used by Sundown Solutions (or any of its sub-contractors) in performing the Managed Services.

Transition Services: means the services described in paragraph 12.1 below.

Updating Service: the element of Managed Services to be supplied by Sundown Solutions to the Customer under paragraphs 9.1 and 9.3 below.

PART 1 – ASSET TRANSFER AND ACTIVATION

2. EXISTING SYSTEMS

2.1 If the Onboarding Plan identifies the need to transfer any Third-Party Software for the purposes of providing the Managed Services then the Customer shall, in accordance with the Onboarding Plan, either:

- (a) arrange for the novation of its licences to such Third-Party Software from itself to Sundown Solutions, such novations to be effective as of the Activation Date (or such earlier date as is reasonably and in good faith agreed by the parties); and/or
- (b) terminate its own licences to such Third-Party Software and assist Sundown Solutions in obtaining, as from the Activation Date (or such earlier date as is reasonably and in good faith agreed by the parties), licences directly from the licensor on similar terms.

2.2 If the Onboarding Plan identifies any Customer Software then the Customer shall, as from the Activation Date (or such earlier date as is reasonably and in good faith agreed by the parties), grant Sundown Solutions a royalty-free licence in accordance with clause 6.7 to use such Customer Software for the purpose of providing the Managed Services for the remainder of the term of this Agreement.

2.3 If the Onboarding Plan identifies any Intellectual Property Rights (aside from the Third-Party Software and the Customer Software) that is needed by Sundown Solutions to provide the Services then the Customer shall:

- (a) arrange for the novation of its licences to such Intellectual Property Rights from itself to Sundown Solutions, such novations to be effective as of the Activation Date (or such earlier date as is reasonably and in good faith agreed by the parties);
- (b) terminate its own licences to such Intellectual Property Rights and assist Sundown Solutions in obtaining, as from the Activation Date (or such earlier date as is reasonably and in good faith agreed by the parties), licences directly from the licensor on similar terms; or
- (c) grant Sundown Solutions a royalty-free licence to use such Intellectual Property Rights for the purpose of providing the Managed Services for the remainder of the Term in accordance with clause 6.7.

3. ACTIVATION

3.1 When Sundown Solutions considers that the Managed Services are ready for activation it shall so notify the Customer. Within five (5) Business Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with any specification. If the Managed Services fail in any material respect to conform with any specification, the Customer shall give Sundown Solutions a detailed description of any such non-conformance (**Error**) in writing, within such five (5) Business Day review period.

3.2 Sundown Solutions shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, notify the Customer that the Managed Services are ready for activation. The provisions of paragraph 3.1 and this paragraph 3.2 shall then apply again, until such time as the Error is rectified.

3.3 If the Managed Services are found to conform with any specification or if the Customer does not provide any notification of Errors within the five (5) Business Day review period described in paragraph 3.1, the Managed Services shall be deemed accepted by the Customer as from:

- (a) the date of the notification that the Managed Services conform; or
- (b) expiry of such five (5) Business Day review period without notification of any Errors; or
- (c) in the case of Software developed in accordance with Schedule 2, the Acceptance Date,
(in each case the **Activation Date**).

PART 2 – PROVISION OF THE MANAGED SERVICES

4. DURATION

4.1 Sundown Solutions shall provide the Managed Services from the Activation Date until expiration of the Minimum Managed Services Term and thereafter for consecutive Renewal Terms, unless and until terminated by the Customer serving Sundown Solutions with no less than three (3) months' written notice prior to the end of the Initial Term or Renewal Term (as the case may be) or otherwise in accordance with

the Terms.

- 4.2 In the event that the Managed Services are terminated for any reason prior to the end of the Initial Term or a Renewal Term, any and all Fees which would have become due and payable to Sundown Solutions for the remainder of the Initial Term or applicable Renewal Term shall become immediately due and payable.

- 4.3 Any Service Levels shall apply with effect from the start of the first complete calendar month occurring at least 30 days following the Activation Date.

5. GENERAL

- 5.1 Subject to clause 5.6, the Managed Software shall be licensed to the Customer as though it was Software developed in accordance with Schedule 2 and on the terms set out in Part 2 of that Schedule and references to Software throughout shall be construed accordingly.

- 5.2 The Customer shall not provide the Managed Services directly or indirectly to third parties and shall remain responsible for the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

- 5.3 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer from time to time. This includes informing Sundown Solutions promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Sundown Solutions shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services in whole or in part).

- 5.4 Sundown Solutions reserves the right, in its absolute discretion, to:

- (a) modify Sundown Solutions System, its network, system configurations or routing configuration; or
- (b) modify or replace any hardware or software in its network or in equipment used to deliver any service (including the Managed Service) over its network,

provided and to the extent that this has no materially adverse effect on its ability to perform its obligations under this Agreement. If such changes will have a materially adverse effect, Sundown Solutions shall notify the Customer and the parties shall implement any necessary changes to the Managed Services through the Change Control Procedure.

- 5.5 Sundown Solutions shall provide sufficient staff to fulfil its obligations under the terms of this Schedule. The staff shall be suitably trained and experienced in the support and maintenance of the Managed Software.

- 5.6 The provision of the Managed Services shall be subject to the applicable terms of any Third-Party Licence Terms.

6. THE CUSTOMER'S RESPONSIBILITIES

- 6.1 Without prejudice to the remainder of this Schedule, the Customer shall provide Sundown Solutions, its support staff and all other persons duly authorised by Sundown Solutions with full, safe and uninterrupted access including remote access to the Site(s), systems, facilities and the Managed Software as may reasonably be required (and to the extent not already accessible by Sundown Solutions) for the purpose of performing the Managed Services, such access, except in the case of the Enhanced Managed Services Service, emergency or agreed out-of-hours downtime, to be within Business Hours. Where the Managed Services are to be performed at any of the Site(s), the Customer shall provide adequate working space and office facilities (including telecommunications facilities) for use and take reasonable care to ensure their health and safety.

- 6.2 Where and to the extent applicable, the Customer shall ensure that appropriate environmental conditions are maintained for the Managed Software and shall take all reasonable steps to ensure that the Managed Software is operated in a proper manner by the Customer's employees.

- 6.3 The Customer shall nominate a manager to be available to liaise with and respond to queries from Sundown Solutions.

- 6.4 The Customer shall:

- (a) co-operate with Sundown Solutions in performing the Managed Services and provide any assistance or information as may reasonably be required by Sundown Solutions, including in relation to the diagnosis of any Faults;
- (b) report Faults immediately to Sundown Solutions; and
- (c) keep full backup copies of all of its data.

- 6.5 The Customer shall not and shall implement appropriate precautions to ensure that it shall not:

- (a) introduce any Virus or Vulnerability to the Managed Software or Sundown Solutions Systems; or
- (b) access, store, distribute or transmit any Virus, Vulnerability or material during the course of its receipt of the Managed Services that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (vi) is otherwise illegal or causes damage or injury to any person or property,

and Sundown Solutions reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any aspect of the Managed Services where the Customer breaches the provisions of this paragraph.

7. SUNDOWN SOLUTIONS' WARRANTIES

Sundown Solutions represents and warrants to the Customer that at the date of this Agreement, Sundown Solutions has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for Sundown Solutions to perform the Managed Services.

8. FAULT REPORTING

- 8.1 Sundown Solutions shall:

- (a) notify the Customer as soon as reasonably practicable if it becomes aware of any Fault and respond without unreasonable delay to all queries and requests for information from the Customer about any Fault, whether discovered by Sundown Solutions or the Customer;
- (b) at the Customer's cost, promptly cooperate with any request for information made in respect of any Fault or requests for information, or inspection, made by a regulator with competent jurisdiction over the Customer (including in connection with any applicable Data Protection Laws or cybersecurity legislation).

- 8.2 Sundown Solutions shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Sundown Solutions to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. Sundown Solutions shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Sundown Solutions to perform services related to Customer Data maintenance and back-up).

9. SUPPORT

- 9.1 To the extent set out in the Proposal and/or SoW, Sundown Solutions shall supply, and the Customer shall take and pay for, the following elements of Managed Services:

- (a) the Standard Support;
- (b) the Updating Service;
- (c) the Enhanced Support; and

- (d) such of the Optional Managed Services as are included from time to time within an order for Optional Managed Services agreed between Sundown Solutions and the Customer under paragraph 10 below.

- 9.2 In relation to the Standard Support:

- (a) the Standard Support shall be provided during Business Hours and shall comprise:
 - (i) a telephone help desk to provide first-line technical support to users of the Managed Software; and
 - (ii) remote diagnosis and, where possible, correction of Faults;
- (b) if on-site support is required in any month it may be provided by Sundown Solutions to the extent specified in the Proposal and/or SoW or otherwise at its option at an additional charge agreed in advance;
- (c) where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release Sundown Solutions may decline to provide assistance in respect of that Non-Critical Fault; and
- (d) the Standard Support shall meet any Service Levels.

- 9.3 Subject to paragraph 9.5, in relation to the Updating Service:

- (a) Sundown Solutions shall use all reasonable endeavours to issue or (in the case of Third-Party Software or Customer Software) procure the issue of Modifications of the Managed Software as and when required and in whatever form (including, in the case of Non-critical Faults, by way of a local fix or patch of the Managed Software or a temporary by-pass solution) in the absolute discretion of Sundown Solutions;
 - (b) the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer; and
 - (c) for the avoidance of doubt, the cost of the Updating Service is included in the Fees payable for the Standard Support, but excludes any sum payable by the Customer in respect of the licence of a New Version.
- 9.4 In relation to the Enhanced Support, in addition to the Standard Support, Sundown Solutions:
- (a) shall provide to the Customer support at times other than the Business Hours; and
 - (b) may provide to the Customer enhanced Service Levels when compared with the Standard Support, as agreed between the parties.
- 9.5 The Customer agrees and acknowledges that where any charges are incurred by Sundown Solutions with a third party (including but not limited to with the owner of Third-Party Software) in providing a Modification under the Updating Service, it may pass on such charges to the Customer when raising a subsequent invoice for the Fees.
- 9.6 Sundown Solutions shall have no obligation to provide the Managed Services where Faults arise from:
- (a) misuse, incorrect use of or damage to the Managed Software from whatever cause (other than any act or omission by Sundown Solutions), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Managed Software;
 - (c) use of the Managed Software in combination with any equipment or software not provided by Sundown Solutions or not designated by Sundown Solutions for use with any Modification forming part of the Managed Software, or any Fault in any such equipment or software;
 - (d) relocation or installation of the Managed Software by any person other than Sundown Solutions or a person acting under Sundown Solutions' instructions;
 - (e) any breach of the Customer's obligations under this Agreement, howsoever arising or having the Managed Software maintained by a third party;
 - (f) any Modification not authorised by Sundown Solutions; or
 - (g) operator error.

10. ORDERS FOR OPTIONAL MANAGED SERVICES

- 10.1 The Customer may from time to time request Sundown Solutions to supply Optional Managed Services at an additional charge agreed in advance. Sundown Solutions shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that Sundown Solutions' ability to supply the Optional Managed Services shall depend on the availability of appropriate resources at

the time in question.

- 10.2 Where Sundown Solutions agrees to provide Optional Managed Services, such agreement shall be embodied in an order for Optional Managed Services. Each order for Optional Managed Services shall be made under, and shall incorporate, the terms of this Agreement.

11. PROVISION OF THE MANAGED SERVICES AT THE SITE(S)

- 11.1 Unless otherwise specified in the Proposal and/or SoW, Sundown Solutions' obligation to provide on-site services shall extend to the Site(s).
- 11.2 Sundown Solutions shall ensure that, while on the Site(s), its support staff and all other persons who enter such premises with the authority of Sundown Solutions for the purpose of, or in connection with, this Agreement or the provision of the Managed Services, adhere to the Customer's security procedures and health and safety regulations, notified to Sundown Solutions in advance of their attendance at the Site(s). The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, Sundown Solutions shall incur no liability for any delay in performing or failure to perform its obligations under this Agreement as a result of compliance with the terms of this paragraph.
- 11.3 No representation or warranty is given by Sundown Solutions that all Faults will be fixed, or will be fixed within a specified period of time.

PART 4 – TRANSITION SERVICES

12. EXIT ASSISTANCE AND TRANSFER OF MANAGED SOFTWARE

- 12.1 Sundown Solutions shall, on request from the Customer and provided always that Sundown Solutions' charges for doing so are agreed in advance, prepare or update a detailed plan for the orderly transition of the Managed Services from Sundown Solutions to the Customer's nominated replacement supplier or to the Customer (**Exit Plan**).
- 12.2 The Customer may, at any time before expiry or termination of all or any part of this Agreement for any reason request Sundown Solutions to provide the Transition Services in consideration for the charges agreed in accordance with clause 12.1 or otherwise between the parties. Sundown Solutions shall provide such Transition Services for a maximum period of three months to bridge termination of this Agreement, howsoever arising.
- 12.3 As part of the Transition Services, Sundown Solutions and Customer shall co-operate to procure the novation or assignment to the replacement supplier or the Customer of the Managed Software.
- 12.4 The Customer shall:
- (a) accept assignments from Sundown Solutions or join with Sundown Solutions in procuring a novation of each item of Managed Software (as applicable); and
 - (b) once the Managed Software is novated or assigned to the replacement supplier or the Customer, carry out, perform and discharge all the obligations and liabilities created by such novation or assignment, or as applicable, procure that any third party replacement supplier does the same.