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Framework Agreement for the provision of Software and/or Services

SIMPSON ASSOCIATES INFORMATION SERVICES LIMITED <sup>(1)</sup> and

[●] <sup>(2)</sup>

**THIS AGREEMENT** is made on .....

## **BETWEEN**

**SIMPSON ASSOCIATES INFORMATION SERVICES LIMITED** (company number 03442572) whose registered office is at Suite 3B, 20 George Hudson Street, York YO1 6WR ("**Simpson Associates**").

[●] (company number [●]) whose registered office is at [●] (the "**Customer**").

## **BACKGROUND**

Simpson Associates has been appointed as an authorised reseller and/or supplier of certain software and services relating to software.

The Customer wishes to appoint Simpson Associates to provide (or procure the provision of) certain software and/or services to the Customer and Simpson Associates agrees to procure and/or provide the Services and Software in accordance with and subject to the provisions of this Agreement and the relevant Statement of Work.

## **OPERATIVE PROVISIONS**

### **PART A: APPOINTMENT, ORDER PROCESS AND SERVICES**

#### **1. APPOINTMENT**

- 1.1 Simpson Associates agrees to procure and/or provide the Services and/or Software, with effect from the Effective Date, on the terms set out in this Agreement and the relevant Statement of Work) for the benefit of the Customer and any Authorised Party which from time to time uses the Services and/or the Software.
- 1.2 Nothing in this Agreement shall prevent Simpson Associates from supplying software or services that are the same as, or similar to, the Services and/or the Software (in whole or in part) to any third party.
- 1.3 The Customer shall order the Services and/or Software using a Statement of Work. Each Statement of Work shall specify the Software and/or the Services, the applicable Charges and any other relevant details.

#### **2. STATEMENT OF WORK PROCESS**

- 2.1 Each Statement of Work shall be agreed in the following manner:
  - 2.1.1 the Customer shall ask Simpson Associates to provide any or all of the Services and/or Software and provide Simpson Associates with as much information as Simpson Associates reasonably requests in order to prepare a draft Statement of Work for the Services and/or Software requested;
  - 2.1.2 following receipt of the information requested from the Customer, Simpson Associates shall, as soon as reasonably practicable either:
    - (a) notify the Customer that it declines to provide the requested Services and/or Software; or
    - (b) provide the Customer with a draft Statement of Work.
  - 2.1.3 if Simpson Associates provides the Customer with a draft Statement of Work pursuant to Clause 2.1.2(b), Simpson Associates and the Customer shall discuss and agree that draft Statement of Work; and
  - 2.1.4 both parties shall sign the draft Statement of Work when it is agreed.
- 2.2 A Statement of Work shall be deemed to be accepted on the earlier of:
  - 2.2.1 the parties signing the draft Statement of Work in accordance with Clause 2.1.4;

2.2.2 the Customer issuing a purchase order or other written acceptance of the Statement of Work; and

2.2.3 Simpson Associates commencing the supply of the Services or doing any act consistent with performing the Statement of Work,

at which point a contract shall come into existence.

2.3 Once a Statement of Work has been accepted in accordance with Clause 2.2, no amendment shall be made to it except in accordance Clause 33 (Variation).

2.4 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

### 3. SERVICES

#### Service Provision

3.1 On and from the relevant Services Commencement Date until the end of the relevant Statement of Work term, Simpson Associates shall perform the Services described in the Statement of Work for the Customer in accordance with and subject to the terms of this Agreement and the Statement of Work.

3.2 Simpson Associates shall use commercially reasonable endeavours to meet any performance dates for the Services specified in the Statement of Work, but any such dates shall be approximate only and time of performance of the Services is not of the essence.

3.3 Subject to the terms of the relevant Statement of Work, Simpson Associates reserves the right to make any changes to the Services which are necessary to comply with any Applicable Laws or safety requirement, or which do not materially affect the nature or quality of the Services.

3.4 The Customer shall give Simpson Associates a minimum of four weeks' notice if they wish to cancel or postpone delivery of the Services ("**Notice of Cancellation**"). If Notice of Cancellation is not given Simpson Associates may charge the Customer for all such cancelled or postponed days already scheduled to be delivered ("**Cancelled Days**"). Cancelled Days shall be charged to the Customer (and the Customer shall pay) on the basis of the day rates as set out in the relevant Statement of Work, or if a rate hasn't been agreed, at £1,500 per day. If Notice of Cancellation is not given for Services charged on a Fixed Price Basis, Simpson Associates has the right to charge, and the Customer will pay, for the current milestone and any milestones expected to be delivered within the next four weeks' period. Where milestones aren't specified Simpson Associates has the right to charge the full fixed fee.

3.5 The parties agree that Simpson Associates is discharged from any liability arising as a result of such delay in performance of the Services resulting from the Customer's postponement request.

#### Standard of Service Provision

3.6 Subject to Clause 3.1, and unless otherwise agreed in a Statement of Work, Simpson Associates warrants to the Customer that the Services will be performed:

3.6.1 using reasonable skill and care in accordance with the Statement of Work;

3.6.2 in accordance with Good Practice;

3.6.3 in compliance with all Applicable Laws and Customer policies

3.7 In the event of any Unscheduled Downtime, Simpson Associates shall issue a service request number against which details of the Unscheduled Downtime will be recorded. Simpson Associates shall, without reference to the Customer, initiate the necessary corrective actions. Simpson Associates shall advise the Customer of all such Unscheduled Downtime.

3.8 The Service Level Arrangements in the Statement of Work are specific to directly provided Services of Simpson Associates and do not relate to Third Party Software (of which such Third-Party Software will be governed by their own relevant service levels).

**Services performance locations**

- 3.9 Simpson Associates shall perform the Services at Simpson Associates' premises or at any Customer Site as the parties may agree from time to time.

**Support Services**

- 3.10 Simpson Associates will provide the Support Services with all due care, skill and ability during the Term unless earlier terminated for any reason.
- 3.11 Simpson Associates shall provide the Support Services in accordance with the Service Level Arrangements as stated in the Statement of Work.
- 3.12 The Customer shall not store, distribute or transmit any material through the Support Services that:
- 3.12.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - 3.12.2 facilitates illegal activity;
  - 3.12.3 depicts sexually explicit images; and/or
  - 3.12.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
- 3.13 The Customer shall remain responsible for the use of the Support Services under its control, including any use by third parties that Customer has authorised to use the Support Services.
- 3.14 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 by Simpson Associates in writing. This includes informing Simpson Associates promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Simpson Associates will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Support Services).
- 3.15 The Customer shall not provide the Support Services to third parties without the prior written consent of Simpson Associates.
- 3.16 The Customer acknowledges that certain conditions outside of Simpson Associates' control may adversely impact the ability of Simpson Associates to perform functions of the Support Services. Examples of such conditions are listed below:
- 3.16.1 failure of Customer Hardware, software or operating system;
  - 3.16.2 any upgrades to Third Party Software which the Customer has not adhered to and does not use the latest upgrades. The Support Services may either be limited or restricted depending on how many previous upgrades the Customer did not adhere to. For the avoidance of doubt, Simpson Associates excludes any and all liability in relation to the Services in the event the Customer has not complied with any requirement to upgrade the Third Party Software and the Support Services fail as a consequence of this;
  - 3.16.3 network connectivity issues between Customer server and Simpson Associates' monitoring platform;
  - 3.16.4 network connectivity issues including but not limited to downtime or maintenance time between Customer server and Microsoft's systems.
- 3.17 Simpson Associates reserves the right to:
- 3.17.1 modify Simpson Associates' System, its network, system configurations or routing configuration;
  - or

3.17.2 modify or replace any Hardware in its network or in equipment used to deliver any Support Service over its network,

provided that this has no adverse effect on Simpson Associates' obligations or performance under this Agreement and its provision of the Support Services or the Service Level Arrangements.

3.18 Simpson Associates shall be under no obligation to provide the Support Services to the Customer in the following circumstances:

3.18.1 providing the Support Services outside of Business Hours unless otherwise agreed between the parties in writing;

3.18.2 training in use of any upgrades; and

3.18.3 providing the Support Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer pursuant to the call for technical support.

#### **Exclusions from the warranty**

3.19 Simpson Associates shall not in any circumstances be liable under the warranties in Clause 3.6 if it can demonstrate that any failure of the Services to comply with such warranties was caused or contributed to by any Relief Event.

#### **Warranty Limitations**

3.20 Simpson Associates shall have no obligation to perform the Services where defects arise from:

3.20.1 items of Customer equipment which enable Simpson Associates to perform its obligations under the Statement of Work being missing or defective (including without limitation, electricity lines or cables, control or main fuses, or energy supply); and

3.20.2 use of the Software in combination with any equipment or software not provided or procured by Simpson Associates or any fault in any such equipment or software.

3.21 Simpson Associates shall have no liability for:

3.21.1 defects which arise from defective installations, upgrades and/or migrations (unless such defect is caused directly by Simpson Associates);

3.21.2 the Customer's misuse, incorrect use of or damage to the Software;

3.21.3 malfunctions of the Customer's system infrastructure or operating system;

3.21.4 the Customer's failure to maintain the necessary operational or environmental conditions for use of the Software (including but not limited to additions or changes to hardware, operating systems, compilers or Third Party Software);

3.21.5 alteration, modification, repair or servicing of the Software by any person other than Simpson Associates; or

3.21.6 relocation of the Software by any person other than Simpson Associates.

3.22 In such circumstances where additional services to the Services are required to correct any issues or defects with the Services and/or Software Simpson Associates may (at its discretion) perform services which are in addition to any Services specified in a Statement of Work and the Customer shall pay for such additional services in accordance with Clause 6.

### Acceptance testing

- 3.23 Where, in connection with the provision of Professional Services, the parties have agreed that acceptance testing is to be carried out in respect of identified Deliverables, that shall be identified in (or appended to) the relevant Statement of Work and shall be carried out by the Customer and the time for performing acceptance testing (**Acceptance Period**) shall be set out in the Statement of Work (**Acceptance Criteria**).
- 3.24 The Customer shall use best efforts to correctly and efficiently ensure appropriate acceptance testing in relation to any Deliverables and shall notify Simpson Associates within the Acceptance Period (as defined in the Statement of Work) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that the Customer has undertaken the acceptance testing within the Acceptance Period and fails to reject any Deliverables within the relevant Acceptance Period, for all purposes under this Agreement such Deliverables, shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverables have been accepted by the Customer and payment has been settled, the Deliverables shall become the property of the Customer. For the avoidance of doubt, should any the Customer discover that the Deliverables do not conform to the Acceptance Criteria but failed to inform Simpson Associates of such non-conformities during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 3.26 below.
- 3.25 If there are any non-conformities of any Deliverables, which have been highlighted by the Customer or Simpson Associates during the Acceptance Period and whereby the Deliverables have not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of Simpson Associates (and is not subject to a variation made under Clause 33 or attributable to the Customer's acts or omissions including inadequate acceptance testing) Simpson Associates shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverables which shall accordingly be modified.
- 3.26 If any non-conformity cannot be remedied by Simpson Associates due to an error, defect or fault which Simpson Associates is able to demonstrate to the reasonable satisfaction of the Customer to be outside Simpson Associates control and which has disabled Simpson Associates ability to remedy such non-conformity, then Simpson Associates reserves the right to terminate work on that specific Deliverables. Simpson Associates agrees not to charge Customer, any amounts paid or payable by Customer to Simpson Associates which specifically relate to the non-conforming Deliverables which cannot be remedied.

## 4. CUSTOMER OBLIGATIONS

- 4.1 The Customer grants Simpson Associates and Simpson Associates' Personnel full, safe and uninterrupted access (including remote access, where appropriate) to the premises, systems and software of the Customer or any other entity as may reasonably be required for the purpose of Simpson Associates performing its obligations under the Statement of Work, in particular to perform the Services. Unless otherwise agreed in a Statement of Work, such access shall be permitted within Business Hours.
- 4.2 To enable Simpson Associates to fully provide the Software and/or the Services, the Customer shall:
- 4.2.1 co-operate with Simpson Associates in performing the Services and provide any assistance or information as may reasonably be required by Simpson Associates (and within the timescales agreed);
  - 4.2.2 make available a person familiar with the Customer's systems and site to liaise with Simpson Associates;
  - 4.2.3 promptly provide Simpson Associates with such information and documentation as it may reasonably request for the provision of the Software and/or the Services and ensure that such information and documentation is true, accurate, complete and not misleading and will not subject Simpson Associates to any valid claim for infringement of any Intellectual Property Rights of any third party;

- 4.2.4 obtain and maintain in full all third party consents, licences and rights required by Simpson Associates for the provision of the Software and/or the Services and where the Services are to be performed at a Customer Site or any other entity, the Customer shall provide or arrange for the provision of adequate working space and facilities for use by Simpson Associates Personnel and take reasonable care to ensure their safety by notifying them in advance of any of the policies of the Customer which must be complied with on Site;
- 4.2.5 respond as fully as reasonably practicable to all reasonable communications of Simpson Associates relating to the Services;
- 4.2.6 maintain appropriate and adequate information security, back-up, data recovery, disaster recovery and policies and procedures in accordance with Good Practice;
- 4.2.7 inform Simpson Associates if the Customer becomes aware of any issue which the Customer considers might materially affect the ability of Simpson Associates to provide the Services in accordance with the provisions of this Agreement;
- 4.2.8 where Simpson Associates shall reasonably require, make available to Simpson Associates for consultation and guidance staff that are familiar with the Customer's organisation, operations and business practices;
- 4.2.9 in respect of any Microsoft funded services, sign and deliver the Proof of Execution ("POE") on the last day of scheduled work;
- 4.2.10 provide the minimum level of access to the Customer's relevant Microsoft cloud services portals for the duration of the Agreement;
- 4.2.11 where a Microsoft Cloud service is deployed / utilised within the project (e.g. Azure, Enterprise Mobility Suite or Office365) Simpson Associates will be assigned to the cloud subscription/s as the Digital Partner of Record and Claiming Partner of Record for a minimum of twelve (12) months from project completion date;
- 4.2.12 to the extent that Simpson Associates requires access to the Customer's Operating Environment to perform the Support Services, the Customer shall use reasonable endeavours to provide such access during Business Hours and to provide a suitable work environment to enable Simpson Associates to perform such Support Services subject to Simpson Associates complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to Simpson Associates in writing from time to time;
- 4.2.13 ensure that Simpson Associates is able to access the systems needed to provide remote support, including but not limited to remote desktop access or screen sharing system. Simpson Associates can provide screen sharing capabilities via Microsoft Teams but it is the Customer's responsibility to ensure that this works in their configuration or, alternatively, to provide another option. For the avoidance of doubt, remote access to the systems will take the form of a connection to Simpson Associates' monitoring platform. The exact method of connectivity will be agreed but can take the form of an internet based connection or via VPN as required by the Customer's security guidelines;
- 4.2.14 make Customer's Operating Environment and Customer-side Equipment, required to provide the Services, accessible to Simpson Associates' support staff and enable logons or passwords required for such support staff (who will have their own logons);
- 4.2.15 permit Simpson Associates to install the current version of software required to provide the Support Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- 4.2.16 provide notice of intention to change applicable Customer-side Equipment or Customer Operating Environment or data-feeds that will directly impact the Support Services; and
- 4.2.17 the parties will agree a press release on signature of the Agreement. The approved press release may be used by both parties in a variety of ways to promote the engagement and it should be

noted that neither party can be held responsible for changes made by third parties upon release of the press release. On successful delivery of the Services the parties will seek to agree a case study which both may use on their websites, marketing or other materials and may reproduce the marks and logo of the other until the other withdraws consent to the use of their marks and logo.

## **5. SUPPLIER RELIEF**

- 5.1 Simpson Associates shall not be in breach of this Agreement and shall not be liable for any failure to perform its obligations under this Agreement if such failure is caused by a Relief Event.
- 5.2 Where the Customer commits a breach of any of the Customer Obligations, Simpson Associates shall (without affecting any of its other rights or remedies) be entitled to suspend the performance of part or all of the Services until such time as the Customer Obligation is successfully completed or performed or this Agreement is terminated.
- 5.3 The Customer will indemnify and hold harmless Simpson Associates from and against all Liabilities which Simpson Associates incurs or suffers in respect of any non-compliance with the Customer Obligations.

## **PART B: CHARGES AND PAYMENT, LIABILITY, WARRANTIES AND INDEMNITIES**

### **6. CHARGES AND PAYMENT**

#### **Charges**

- 6.1 In consideration of Simpson Associates providing the Software and/or performing the Services from time to time, the Customer shall pay the Charges in full on the due date set out in the relevant Statement of Work and without set-off or counterclaim in respect of any liability of Simpson Associates. Unless otherwise set out in the applicable Statement of Work, payment shall be made by BACS payment. The Customer shall pay each undisputed invoice for the Charges in full and cleared funds (without deduction or set-off) in advance unless otherwise agreed (Expenses shall be invoiced separately) of providing the Services. The parties may agree to direct debit payments if agreed and set out in the Statement of Work.
- 6.2 Unless agreed to the contrary by the parties in a Statement of Work, all payments due under the Agreement are subject to the receipt by the payer of a valid value added tax invoice, and shall be paid within thirty (30) days after the date of the invoice.
- 6.3 If the performance of the Services is suspended or terminated for any reason and the Charges for such Services are due to Simpson Associates, Simpson Associates may raise an invoice in respect of the Services performed by Simpson Associates which the Customer shall pay by the due date for payment specified in such invoice.
- 6.4 Any amount due to Simpson Associates is not duly made or received unless and until the amount is received by Simpson Associates in cash or cleared funds.
- 6.5 Reasonable out-of-pocket expenses may be charged by Simpson Associates on production of reasonable evidence of expenditure to the Customer.
- 6.6 Travelling time to and from any Customer Site greater than 2 hours per day (total elapsed time) to be charged on a pro rata basis at the standard daily fee rate set out in the relevant Statement of Work. Simpson Associates shall use reasonable endeavours to minimise travel time.
- 6.7 The Charges are exclusive of value added tax, which shall be added to the Charges and paid by the Customer in accordance with this Clause 6.
- 6.8 Where the Services are provided on a time-and-materials basis:
  - 6.8.1 the Charges payable for the Services shall be calculated in accordance with the Rate Card;

- 6.8.2 Simpson Associates standard daily fee rates are calculated on the basis of an eight-hour day (excluding weekends and public holidays) but, for the avoidance of doubt, shall be payable on the basis of actual time worked with the minimum price payable calculated as a four hour half day;
- 6.8.3 work required on weekends or public holidays, at Customers request, will incur a higher charge of two (2) times the standard daily fee rates.
- 6.9 For the avoidance of doubt, Simpson Associates may increase any Third-Party Software fee in line with any increases imposed upon Simpson Associates by such third party upon thirty (30) days' notice and in line with the terms of the Licence Agreement.
- 6.10 Simpson Associates may amend the Charges not more than once in any twelve (12) month period and shall give the Customer at least thirty (30) days written notice of any such amendment. The Customer may give notice to terminate the corresponding Statement of Work as applicable without liability within fifteen (15) days of receipt of such written notice from Simpson Associates. If Simpson Associates does not receive written notice within fifteen (15) days the Customer is deemed to have agreed to the amendment to the Charges, as applicable.

#### **Default interest**

- 6.11 If the Customer fails to pay any sum due and payable under the Agreement by the due date, interest in accordance with this Clause 6.11 shall accrue on the unpaid amount from the due date to the date of actual payment (after as well as before judgment). Interest shall be calculated on the basis of a year of 365 days and the actual number of days elapsed shall accrue and be compounded daily from the due date. For the purposes of this Clause 6.11, the interest rate shall be four (4) per cent above the base rate of Lloyds TSB Bank plc from time to time.

### **7. LIABILITY**

- 7.1 Nothing in this Agreement shall exclude or limit the liability of any party for:
  - 7.1.1 death and/or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents;
  - 7.1.2 fraud and/or fraudulent misrepresentation by it, or its directors, officers, employees, contractors or agents; and
  - 7.1.3 any other Losses to the extent they are not capable of being excluded or limited by law.
- 7.2 Subject to Clause 7.1 and provided that this Clause 7.2 shall not affect the Customer's obligation to pay the Charges, neither party shall have any liability for any losses or damages which may be suffered by the other party (or any person claiming under or through that party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - 7.2.1 special damage even if the other party was aware of the circumstances in which such special damage could arise;
  - 7.2.2 loss of profits;
  - 7.2.3 loss of anticipated savings;
  - 7.2.4 loss of business opportunity;
  - 7.2.5 loss of goodwill;
  - 7.2.6 loss or corruption of data; or
  - 7.2.7 any loss that is an indirect or secondary consequence of any act or omission of the party in question.

- 7.3 Subject to Clause 7.1, the maximum aggregate liability of Simpson Associates for claims, Losses or damages under this Agreement in contract, tort (including negligence), misrepresentation, for breach of duty (including strict liability) or otherwise in any Contract Year shall be 125% (one hundred and twenty five per cent) of the total Charges paid or payable by the Customer in respect of the Statement of Work under which the claim arises and during the relevant Contract Year.
- 7.4 Subject to Clause 7.1, the maximum aggregate liability of the Customer in contract, tort (including negligence), misrepresentation, for breach of duty (including strict liability) or otherwise shall be the total Charges paid or payable by the Customer in respect of the Statement of Work under which the claim arises and during the relevant Contract Year, provided that this Clause 7.4 shall not affect the Customer's obligations to pay undisputed and properly invoiced Charges in accordance with this Agreement.
- 7.5 Subject to Clause 7.1, the Service Level Arrangements state the Customers' full and exclusive right and remedy, and Simpson Associates' only obligation and liability, in respect of the performance and availability of the Support Services, or their non-performance and non-availability.

## **8. WARRANTIES**

- 8.1 Without affecting the other warranties set out in this Agreement, each party warrants to the other that throughout the Term it has the legal right, full power and authority and all necessary consents, approvals, licences and title to enter into and to perform its obligations under this Agreement and that this Agreement is executed by its duly authorised representatives.
- 8.2 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the licences granted by Simpson Associates pursuant to Clause 14.1 and Clause 15 or any collateral contract, whether by statute, common law or otherwise, are excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **9. INDEMNITY**

- 9.1 Provided that the Customer complies with Clause 9.2 and subject to Clause 9.4, Simpson Associates will indemnify the Customer from and against all Liabilities which the Customer incurs or suffers in respect of any claim or action brought against it by any third party during the Term, claiming that the use of any Simpson Associates Software provided or made available to the Customer by or on behalf of Simpson Associates under or in connection with this Agreement infringes a third party's Intellectual Property Rights.
- 9.2 Subject to Clause 9.1, if any claim is made or threatened to be made against the Customer which may reasonably be considered likely to give rise to a potential Liability under the indemnity in Clause 9.1 ("**Claim**"), the Customer shall:
  - 9.2.1 promptly give written notice of the Claim to Simpson Associates, specifying the nature of the Claim in reasonable detail;
  - 9.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Simpson Associates;
  - 9.2.3 give Simpson Associates and its professional advisers access at reasonable times to its premises and its officers, directors, employees, agents, representatives and advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Simpson Associates and its professional advisers to examine them and to take copies for the purpose of assessing the Claim; and
  - 9.2.4 give Simpson Associates the conduct or settlement of any negotiations and litigation arising from any such Claim and shall (and shall procure that the affected Customer Group companies shall), at

Simpson Associates' written request, give Simpson Associates all reasonable assistance in connection with those negotiations and litigation,

provided always that nothing in this Agreement shall restrict or limit a party's general obligation at law to mitigate a Liability it may suffer as a result of an event that may give rise to a Claim.

- 9.3 In the event of a Claim which prevents or may prevent the Customer from using the Software and/or Services in accordance with this Agreement, Simpson Associates may (at its discretion) make all reasonable efforts, as soon as reasonably possible, to:
- 9.3.1 provide the Customer with alternative non-infringing Software and/or Services which shall be capable of use in accordance with this Agreement;
  - 9.3.2 obtain for the Customer the right to use such Software and/or Services in accordance with this Agreement without the infringement of any third party Intellectual Property Right;
  - 9.3.3 promptly replace such Software and/or Services without any degradation in Simpson Associates' ability to provide such Software and/or Services in accordance with this Agreement, so that its use, in accordance with this Agreement, does not infringe any third party Intellectual Property Right; or
  - 9.3.4 terminate this Agreement with immediate effect upon notice to the Customer.
- 9.4 Simpson Associates shall have no obligation or liability for any Claim to the extent such Claim arises from:
- 9.4.1 any use by or on behalf of the Customer of the combination with any item not supplied or recommended by Simpson Associates where such use of the Software/and or Services directly gives rise to the claim, demand or action; or
  - 9.4.2 any modification carried out on behalf of the Customer to any item supplied by Simpson Associates under this Agreement if such modification is not authorised by Simpson Associates in writing where such modification directly gives rise to a claim, demands or action.

## **PART C: TERM, TERMINATION AND CONSEQUENCES OF TERMINATION**

### **10. TERM**

- 10.1 This Agreement shall commence on the Effective Date and shall remain in full force for the Term unless otherwise agreed by the parties or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement (and each Statement of Work) shall continue to automatically renew for a Subsequent Term on each annual anniversary of the Go-Live Date or if the Go-Live Date is not specified, the Term, unless a party gives written notice to the other party, not later than ninety (90) days before the end of the Term or the relevant Subsequent Term, to terminate this Agreement at the end of the Term or the relevant Subsequent Term, as the case may be.
- 10.2 Termination of any Statement of Work shall be without prejudice to any other rights which any party may have under any other Statement of Work.

### **11. TERMINATION**

#### **Termination for insolvency**

- 11.1 Without affecting any rights that have accrued under this Agreement or any of its other rights or remedies, either party may terminate this Agreement immediately (or following such notice period as it sees fit) by giving written notice to the other party if:
- 11.1.1 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) is deemed unable to pay its debts within the meaning of section 123 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 Insolvency Act 1986, or (being a partnership) has any partner to whom any of the above apply;

- 11.1.2 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;
- 11.1.3 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 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 (being a company);
- 11.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party (being a company);
- 11.1.5 the holder of a floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.6 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 11.1.7 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 its assets and such attachment or process is not discharged within 14 days;
- 11.1.8 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 Clauses 11.1.1 to 11.1.7 (inclusive); or
- 11.1.9 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

#### **Termination for breach**

- 11.2 Either party (the “**Non-Defaulting Party**”) may terminate this Agreement immediately by written notice to the other if the other party (the “**Defaulting Party**”) commits any material breach of any of the terms of this Agreement or applicable Statement of Work and, where the breach is capable of remedy, fails to remedy such breach within thirty (30) days of service of a written notice from the Non-Defaulting Party specifying the breach and requiring it to be remedied.

#### **Revocation of Third Party Software**

- 11.3 If, in accordance with the terms of any Third Party Software licence agreement between Simpson Associates and the relevant licensor, the relevant licensor revokes Simpson Associates' right to sub-license the applicable Third Party Software, Simpson Associates may immediately terminate the parts of this Agreement which relate to the affected Third Party Software and associated Services.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 Following any termination of Simpson Associates' engagement or upon expiry of this Agreement or applicable Statement of Work however it arises:
  - 12.1.1 the Customer's right to receive the Services shall cease automatically with immediate effect;

12.1.2 Simpson Associates shall return to the Customer all Customer Material which is in the possession of Simpson Associates, including the originals and any copies which Simpson Associates may hold of all documents whether Confidential Information or not;

12.1.3 Unless as otherwise set out herein or in any Statement of Work, where Simpson Associates grants licences to the Customer under and by this Agreement:

- (a) all rights granted to the Customer under such licences shall cease and the Customer shall cease all activities authorised by such licence;
- (b) the Customer shall immediately pay to Simpson Associates any sums due to Simpson Associates under such licences; and
- (c) the Customer shall immediately, as far as reasonably and technically possible, destroy or return to Simpson Associates (at Simpson Associates' option) all copies of Simpson Associates Software then in its possession, custody or control and, in the case of destruction, certify to Simpson Associates that it has done so; and

12.1.4 to the extent not already paid, all Charges for the Software and/or the Services shall become immediately due and payable by the Customer to Simpson Associates.

12.2 Following any termination of this Agreement and subject to the terms of the relevant Statement of Work, the Customer shall immediately, as far as reasonably and technically possible, destroy, or return to Simpson Associates (at Simpson Associates' option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to Simpson Associates that it has done so.

12.3 Following any termination of this Agreement other than as a result of the Customer's breach of any terms of this Agreement or failure to perform its obligations under this Agreement, for a period of two (2) weeks following the date of termination of the Agreement or a Statement of Work (as appropriate), Simpson Associates shall provide all reasonable assistance to the Customer (at the Customer's expense) to facilitate the orderly transfer of the Services back to the Customer or a third party supplier for a period of fourteen (14) days.

12.4 The termination of this Agreement, however it may arise, will not affect the rights, duties and liability of either Simpson Associates or the Customer accrued prior to termination. The provisions which expressly or impliedly have effect after termination will continue to be in force even if this Agreement is terminated.

## **PART D: SOFTWARE LICENCE GRANT, INTELLECTUAL PROPERTY AND DATA**

### **13. THIRD PARTY SOFTWARE**

13.1 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and that such terms shall form part of this Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements is not applicable to the Services and/or Software being procured or delivered by Simpson Associates to the Customer under this Agreement, such agreements shall not apply.

13.2 Simpson Associates shall procure any Third Party Software required by the Customer for the provision of the Services. Simpson Associates expressly excludes any warranty to the Customer that the Third Party Software supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to Simpson Associates throughout this Agreement and until the end of the respective licence terms and shall adhere to any 'End User Licence Agreements' sent by such third party in relation to the Third Party Software.

### **14. SIMPSON ASSOCIATES SOFTWARE**

14.1 In consideration of the Charges paid by the Customer to Simpson Associates, Simpson Associates grants to the Customer a non-exclusive, non-transferrable and royalty-free licence to use any Simpson

Associates Software (and any relevant Background Intellectual Property) to the extent required for the Customer to use the Simpson Associates Software.

14.2 In relation to scope of use:

14.2.1 for the purposes of Clause 14.1, use of the Simpson Associates Software shall be restricted to use of the Simpson Associates Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Simpson Associates Software by, or for the benefit of, any person other than an employee of the Customer);

14.2.2 for the purposes of Clause 14.1, "use of the Simpson Associates Software" means loading the Simpson Associates Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Simpson Associates Software is licensed under this licence for use on each computer to which the Simpson Associates Software is distributed;

14.2.3 the Customer may not use the Simpson Associates Software other than as specified in Clause 14.1 and Clause 14.2.1 without the prior written consent of Simpson Associates, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Simpson Associates;

14.2.4 except as expressly stated in this Clause 14, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Simpson Associates Software in whole or in part except to the extent that any reduction of the Simpson Associates Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Simpson Associates Software with the operation of other software or systems used by the Customer, unless Simpson Associates is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Simpson Associates to carry out such action or to provide such information (and shall meet Simpson Associates' reasonable costs in providing that information) before undertaking any such reduction.

14.3 The Customer may not use any such information provided by Simpson Associates or obtained by the Customer during any such reduction permitted under Clause 14.2.4 to create any software whose expression is substantially similar to that of the Simpson Associates Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

14.4 The Customer shall not:

14.4.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by Simpson Associates;

14.4.2 allow Simpson Associates Software to become the subject of any charge, lien or encumbrance; and

14.4.3 deal in any other manner with any or all of its rights and obligations under this Agreement, without the prior written consent of the Simpson Associates.

14.5 The Customer shall:

14.5.1 ensure that the Simpson Associates Software is installed on designated equipment only;

14.5.2 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to Simpson Associates on request from time to time;

14.5.3 notify Simpson Associates as soon as it becomes aware of any unauthorized use of the Simpson Associates Software by any person;

14.5.4 pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which Simpson Associates would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

14.6 The Customer shall permit Simpson Associates to inspect and have access to any premises (and to the computer equipment located there) at or on which the Simpson Associates Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that Simpson Associates provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

14.7 The Customer warrants that it shall not compete with the Simpson Associates Software product during the term of this Agreement and for a period of six (6) years thereafter.

## **15. INTELLECTUAL PROPERTY RIGHTS**

15.1 In relation to the Deliverables:

15.1.1 Simpson Associates shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;

15.1.2 Simpson Associates grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free revocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

15.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 15.1 unless agreed in writing by Simpson Associates.

## **16. CUSTOMER MATERIAL**

16.1 The Customer grants Simpson Associates a non-exclusive, transferable and royalty-free licence (including the right to grant sub-licences to the Permitted Subcontractors) to use the Customer's system(s), Customer Materials and the Bespoke Solutions for the Term to the extent required to enable Simpson Associates to perform its obligations under this Agreement. As between the Customer and Simpson Associates, the Customer shall own all Intellectual Property Rights and title in the Customer Materials.

16.2 The Customer will indemnify and hold harmless Simpson Associates from and against all Liabilities which Simpson Associates incurs or suffers in respect of any claim or action brought against it by any third party during the Term, claiming that the use of any Customer Material provided or made available to Simpson Associates by or on behalf of the Customer under or in connection with this Agreement infringes a third party's Intellectual Property Rights.

16.3 Other than as set out in this Agreement, neither party shall have any right to use any of the other party's names, logos or trade-marks without the other party's prior written consent.

## **17. PROTECTION OF PERSONAL DATA**

17.1 The Customer shall not transfer any personal data (as defined in Data Protection Laws) to Simpson Associates and shall ensure that any such data is anonymised prior to its transfer to Simpson Associates and such anonymisation meets the requirements of any guidance issued by the DP Regulator from time to time.

17.2 Notwithstanding Clause 17.1, to the extent that Simpson Associates is acting as a data processor for and on behalf of the Customer in relation to any activity that it is carrying out arising out of, or in connection with, this Agreement, the terms of Schedule 3 (Data Protection) shall apply.

- 17.3 A detailed description of the Personal Data processing activities undertaken by Simpson Associates in the provision of the Services, including the Personal Data concerned, is set out in the Statement of Work.
- 17.4 The Customer shall indemnify and hold harmless Simpson Associates from and against any Liability suffered or incurred by Simpson Associates which arises out of, or in connection with, the Customer's breach of Clause 17.1.

## **18. CONFIDENTIALITY**

- 18.1 Each party undertakes to the other in relation to the Confidential Information of the other:
- 18.1.1 to keep confidential all Confidential Information;
  - 18.1.2 not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
  - 18.1.3 not to use Confidential Information except for the purposes of performing its obligations under this Agreement (and in particular not to use Confidential Information to obtain a commercial, trading or any other advantage); and
  - 18.1.4 to keep separate from all other information all Confidential Information in its possession or control.
- 18.2 The provisions of Clause 18.1 shall not apply to Confidential Information to the extent that it is or was:
- 18.2.1 already in the possession of the other free of any obligation of confidentiality on the date of its disclosure;
  - 18.2.2 in the public domain other than as a result of a breach of this Clause 18; or
  - 18.2.3 required to be disclosed:
    - (a) pursuant to applicable law, or the rules of any exchange on which the securities of a party are or are to be listed; or
    - (b) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,
 but only to the extent and for the purpose of that disclosure.
- 18.3 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of this Clause 18 and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of this Clause 18.
- 18.4 The provisions of this Clause 18 shall survive any termination or expiry of this Agreement.

## **19. RECORDS, AUDIT AND INSPECTION**

Upon the written request of Simpson Associates, the Customer shall permit such technical, legal, regulatory, financial and operational audits and inspections of the Customer's systems, premises and the Customer Materials to verify the Customer's compliance with its obligations under this Agreement. The Customer will promptly resolve any issues identified through such audits (including but not limited to paying any underpaid licence fees for any Software).

## **PART E: PERSONNEL, SUBCONTRACTING AND ASSIGNMENT**

### **20. PERSONNEL**

- 20.1 The Customer shall indemnify (and keep indemnified) Simpson Associates (and/or any Permitted Subcontractor) in respect of all Liabilities it or they may suffer or incur (whenever arising) which arise out

of or in relation to any act or omission of the Customer in respect of any Simpson Associates Personnel prior to the termination or expiry of this Agreement.

- 20.2 The Customer shall not, at any time throughout the Term and for six (6) months after its termination or expiry, (whether directly or indirectly) offer to employ or engage or otherwise endeavour to entice away from Simpson Associates any Restricted Person without the consent of Simpson Associates provided always that this prohibition shall not apply to unsolicited responses to bona fide recruitment drives either through a recruitment agency engaged by the relevant party or via an advertisement placed publicly by the relevant party (either in the press, social media, online or in trade and industry publications).
- 20.3 In the event that the Customer is in breach of Clause 20.2 above then the Customer shall pay to Simpson Associates by way of liquidated damages an amount equal to 50% per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to Simpson Associates' ability to seek injunctive relief.
- 20.4 The parties hereby acknowledge and agree that the formula specified in Clause 20.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.
- 20.5 The parties consider that entering into this Agreement and the arrangements pursuant to it will not give rise to a relevant transfer under TUPE as between the parties (or as between any third party and Simpson Associates or any Permitted Subcontractor) and accordingly no employees of the Customer or any third party will transfer their employment to Simpson Associates and/or to a Permitted Subcontractor in connection with the commencement of this Agreement or any of the arrangements pursuant to this Agreement.
- 20.6 Any Permitted Subcontractor may enforce any of the provisions of this Clause 20 in its favour.
- 20.7 The provisions of this Clause 20 shall survive any termination or expiry of this Agreement.
- 20.8 The parties shall comply with the provisions of Schedule 4 if a transfer does occur contrary to the expectations of the parties as set out in Clause 20.5.

## **21. ASSIGNMENT, NOVATION AND SUB-CONTRACTING**

- 21.1 The Customer may not assign, licence, subcontract or otherwise purport to grant rights over or transfer the benefit of, or hold on trust for any person, or in any manner make over all or any of its rights or obligations under this Agreement without the prior written consent of Simpson Associates.
- 21.2 Simpson Associates may assign, novate, transfer, sub-contract or in any other manner make over all or any part of its rights and/or obligations under this Agreement to any third party service provider appointed by Simpson Associates from time to time. At the time of the assignment, novation, transfer or sub-contract, the Customer shall take such steps as Simpson Associates may reasonably require to achieve those steps.

## **PART F: MISCELLANEOUS**

### **22. DISPUTE RESOLUTION**

- 22.1 If a dispute arises out of or in connection with this Agreement (a "**Dispute**") either party may during the term of this Agreement refer the Dispute to a nominated appropriate senior representative of each party who will seek to resolve the Dispute as soon as possible.
- 22.2 Nothing in this Clause 22 will prevent or delay either party from seeking orders for specific performance, injunctive relief or exercising any rights it has to terminate this Agreement.

**23. GOVERNING LAW AND JURISDICTION**

- 23.1 This Agreement and any non-contractual obligations arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the laws of England and Wales.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**24. FORCE MAJEURE**

- 24.1 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 24.1.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 24.1.2 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 24.2 If the Force Majeure Event continues for a period in excess of three (3) months then, by notice to the affected party, the other party may terminate this Agreement without liability as of the date specified in the notice. Such termination will not affect the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

**25. RIGHTS OF THIRD PARTIES**

- 25.1 Except as expressly provided in this Agreement, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 25.2 Notwithstanding Clause 25.1, the rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

**26. WAIVER**

- 26.1 No failure or delay in exercising any right under this Agreement shall operate as a waiver of any right or remedy arising from such failure or delay or extend to, or affect any other or subsequent failure or delay, or impair any rights or remedies that arise in relation to any such failure or delay or in any way modify or diminish the rights or remedies of the relevant party under this Agreement.

**27. NOTICES**

- 27.1 Any notice to be given under this Agreement shall be in writing, which subject to this Clause 27.1 shall include email, and shall be deemed to have been duly given if delivered in person, by pre-paid first class post or registered post, by fax or by email to the other party at the address, relevant telecommunications number or email address for such party stated below or such other address, telecommunications number or email address as either party may from time to time designate by written notice to the other:

**Simpson Associates:**

Address: Suite 3B, 20 George Hudson Street, York YO1 6WR

E-mail: [finance@simpson-associates.co.uk](mailto:finance@simpson-associates.co.uk)

**Customer:**

Address: [INSERT]

Email: [INSERT]

- 27.2 All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee where the notice or other document is sent by:
- 27.2.1 post, two (2) Business Days following the date of despatch of the notice or other document;
  - 27.2.2 hand, simultaneously with the delivery;
  - 27.2.3 email, at the time of transmission.
- 27.3 To prove the giving of a notice or other document it shall be sufficient to show that it was despatched, in the case of email, to the correct email address of the recipient.
- 27.4 This Clause 27 does not apply to the service of proceedings or other documents in any legal action.

## **28. ANTI-CORRUPTION AND ANTI-BRIBERY**

- 28.1 Each party shall comply with all Applicable Laws relating to Bribery including but not limited to the Bribery Act 2010.
- 28.2 Simpson Associates shall not, and shall procure that Simpson Associates Personnel shall not, Bribe in connection with this Agreement or its performance.
- 28.3 The Customer shall not, and shall procure that Customer Personnel shall not, Bribe in connection with this Agreement or its performance.
- 28.4 Each party shall adopt, implement, maintain, enforce and update (as necessary) adequate policies designed to prevent Bribery from occurring. Each party shall provide adequate training to its personnel in order to ensure an understanding of its policy and procedures and their obligations arising from it on a continuing basis.
- 28.5 Each party shall notify the other party promptly in writing upon becoming aware of, or suspecting, any failure to comply with any provisions of this Clause 28.

## **29. NO PARTNERSHIP**

No provision of this Agreement creates a partnership between the Customer and Simpson Associates, nor makes one party the agent, fiduciary or employee of the other party for any purpose. Neither the Customer nor Simpson Associates has authority or power to bind, to agree in the name of, or to create a Liability for the other in any way or for any purpose.

## **30. ENTIRE AGREEMENT**

- 30.1 This Agreement and (and any documents annexed to or specifically incorporated within it) constitutes the entire agreement between the parties and extinguishes all previous agreements, arrangements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on their behalf other than as expressly set out in this Agreement (provided that this Clause 30 will not limit the Liability of either party for misrepresentations made fraudulently or dishonestly).
- 30.2 Each party represents, warrants and undertakes that 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.
- 30.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**31. SEVERABILITY**

Each provision of this Agreement is severable and distinct from the others. If any provision of this Agreement is or becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law in any jurisdiction, but would be valid, legal and enforceable if the provision were modified, that provision will apply with whatever modification is necessary to make it valid, legal and enforceable. If such modification is not possible, it will to that extent be severed from the remainder of this Agreement and in either case neither the validity, legality and enforceability of the remaining provisions nor the legality, validity and enforceability of such provision under the law of any other jurisdiction will be affected.

**32. SURVIVAL**

- 32.1 Any termination or expiry of this Agreement (however it may arise) shall not affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or continue in force on or after such termination or expiry.
- 32.2 Notwithstanding anything contained elsewhere in this Agreement, the provisions of Clauses 6, 7, 9, 12, 14, 15, 17, 18, 22 and 23 shall survive the expiry or termination of this Agreement (however it may arise) and shall continue in full force and effect.

**33. VARIATIONS**

Any variation or amendment to this Agreement shall be ineffective unless it is in writing, expressly purports to amend this Agreement and is signed by a duly authorised representative of each party.

**34. REMEDIES**

- 34.1 The rights and remedies of Simpson Associates provided by the Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies of Simpson Associates provided by law or in the Agreement.
- 34.2 The rights of the Customer under the Agreement are the Customer's only rights relating to the subject matter of the Agreement, and are to the exclusion of any other rights of the Customer provided by law, other than the right to claim damages for breach of contract which is not otherwise excluded by the Agreement.

**35. LANGUAGE**

This Agreement is drafted in the English language. If this Agreement is translated into any language other than English, the English language version will prevail.

**36. COUNTERPARTS**

- 36.1 This Agreement may be executed in any number of counterparts by the parties, each of which when executed and delivered shall constitute an original, but all of which together shall constitute one and the same agreement.
- 36.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just the signature page) by (a) via email in PDF (or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. Whichever method is adopted, but without affecting the validity of this Agreement, each party shall provide the others with the original counterpart as soon as is reasonably practicable.

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

**SIGNED BY** )  
duly authorised to sign for and on behalf of )  
**[INSERT CUSTOMER'S NAME]** )

**SIGNED BY** )  
duly authorised to sign for and on behalf of )  
**SIMPSON ASSOCIATES INFORMATION SERVICES LIMITED** )

## SCHEDULE 1

### Definitions and Interpretation

1. In this Agreement, unless the context indicates otherwise, the following expressions have the following meanings:

<b>Agreement</b>	the terms and conditions of this framework agreement, the Schedules and any Statement of Work entered into between the parties from time to time.
<b>Applicable Laws</b>	any and all laws, legislation, statutes, regulations, bye-laws, decisions, notices, orders, rules (including any rules or decisions of court), local government rules, statutory instruments or other delegated or subordinate legislation and any directions, codes of practice issued pursuant to any legislation, and voluntary codes that are applicable to the provision or receipt of the Services and/or the Software from time to time.
<b>Authorised Party</b>	each and any agent, employee, contractor, service provider or contractor of the Customer (or a member of the Customer Group) who or which is engaged or employed to provide services to, or for, the Customer or any member of the Customer Group from time to time.
<b>Background Intellectual Property</b>	all Intellectual Property Rights including but not limited to any specific know-how, information or other materials owned or controlled by Simpson Associates prior to the Effective Date of this Agreement or which may be generated or acquired by Simpson Associates independently from the performance of this Agreement.
<b>Bribe</b>	(i) any payment, gift, benefit or advantage of any kind, which is offered, promised, given, authorised, requested, accepted or agreed, whether directly or indirectly (through one or more intermediaries) and whether as an inducement or reward, for any form of improper conduct by any person in connection with their official, public, fiduciary, employment or business role, duties or functions. and/or (ii) anything that would amount to an offence of bribery or corruption under Applicable Law. and <b>Bribes, Bribed, Bribing</b> and other variants of <b>Bribe</b> shall be construed accordingly.
<b>Business Day</b>	any day excluding Saturdays, Sundays and other days on which banks are not generally open for a full range of business in London.
<b>Business Hours</b>	means the hours between 09:00 to 17:00 on Business Days.
<b>Capacity</b>	as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.
<b>Charges</b>	the charges payable by the Customer to Simpson Associates for the Services and Software, as set out in the relevant Statement of Work.
<b>Claim</b>	has the meaning given in Clause 9.2.
<b>Confidential Information</b>	all information which is identified in this Agreement, or at the time of disclosure, by the disclosing party (or in the case of the Customer, any member of the Customer Group) as being confidential information, or which may be reasonably regarded as the confidential information of the disclosing party (or in the case of the Customer, of any member of the Customer Group), including information relating to the business, finances, affairs, products, developments, trade secrets, know-how, personnel,

	customers and suppliers of each party (and in the case of the Customer, the Customer Group).
<b>Contract Year</b>	the period of twelve (12) months starting on the Effective Date and each consecutive period of twelve (12) months thereafter during the Term and the shorter period commencing on a day following the end of a Contract Year and ending on the expiry or termination of this Agreement.
<b>Customer Agreement</b>	the CSP customer agreement, which is a direct agreement between Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into this Agreement, the terms of which are found at <a href="https://www.microsoft.com/licensing/docs/customeragreement">https://www.microsoft.com/licensing/docs/customeragreement</a> and which may be updated from time to time.
<b>Customer Group</b>	the Customer and each and every Subsidiary Company or Holding Company of the Customer and each and every Subsidiary Company of a Holding Company of the Customer, in each case, from time to time.
<b>Customer Materials</b>	any software, forms, manuals, records or other documents in each case owned by and/or licensed to the Customer or any member of the Customer Group and made available by any of them, from time to time, to Simpson Associates in connection with this Agreement.
<b>Customer Obligations</b>	the obligations to be performed by the Customer under this Agreement or as expressly identified in the relevant Statement of Work.
<b>Customer Personnel</b>	the officers, agents and employees of the Customer, any member of the Customer Group or contractors appointed by the Customer from time to time.
<b>Customer Operating Environment</b>	the Customer's computing environment (consisting of hardware and software) that is to be used by the Customer in connection with its use of the Support Services and which interfaces with Simpson Associates' System in order for the Customer to receive the Support Services, but excluding the Customer side Equipment.
<b>Customer Side Equipment</b>	any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Simpson Associates as part of the Services.
<b>Customer Site</b>	means any property owned, leased, licensed or occupied by the Customer or any Affiliate as may be agreed by the parties as being the locations to or at which any Services and/or Software are to be provided.
<b>Data Processing Details</b>	the description of the Personal Data processing activities contemplated by this Agreement, as set out in Appendix 1 to the Statement of Works.
<b>Data Protection Law</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Deliverables</b>	means all Documentation, products and materials developed by Simpson Associates or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data,

	reports and specifications (including drafts) as defined in the Statement of Work.
<b>Documentation</b>	technical and user documentation whether owned by Simpson Associates or a third party (including user manuals, technical manuals, installation and support manuals, operating standards, specifications and training materials) that describes clearly and in detail the operation and use of the Software and/or the Services including technical and user documentation made available to the Customer under a Statement of Work (if any).
<b>DP Regulator</b>	a regulatory, administrative, supervisory or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the Personal Data processing activities contemplated by this Agreement.
<b>Effective Date</b>	the date of this Agreement.
<b>Fixed Price Basis</b>	charges for the Services and/or the Software which are stated in a Statement of Work to be for a fixed price.
<b>Force Majeure Event</b>	any circumstance not within a party's reasonable control including, without limitation: (i) acts of God, flood, drought, earthquake or other natural disaster. (ii) epidemic or pandemic. (iii) terrorist attack, war, commotion or riots, threat of or preparation for war, imposition of sanctions, embargo, or breaking off of diplomatic relations. (iv) collapse of buildings, fire, explosion or accident. and (v) any labour or trade dispute, strikes, industrial action or lockouts. Force Majeure does not include an inability to pay.
<b>GDPR</b>	the Data Protection Act 2018 and the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. Personal Data of citizens in the EU is subject to the legal safeguards specified in the GDPR. GDPR also applies to any "establishment we have or may have in the future in the EU and applied to data protection in the UK prior to 31.12.2020.
<b>Go-Live Date</b>	means the date as specified in the Statement of Work.
<b>Good Practice</b>	in relation to any undertakings and any circumstances, the exercise of the degree of speed, skill, care, prudence and foresight which would be expected from a skilled and experienced professional engaged in the same type of task(s) and diligently seeking to comply with its contractual obligations and all Applicable Laws.
<b>Group</b>	the Customer Group or Simpson Associates Group as the context requires.
<b>Holding Company</b>	shall have the meaning given in section 1159 Companies Act 2006 and shall include parent undertakings as defined in section 1162 Companies Act 2006 (each section being as in force at the Effective Date) and the term shall include companies wherever they are registered.
<b>Hardware</b>	all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided or used by Simpson Associates to deliver the Support Services to the Customer.
<b>Intellectual Property Rights</b>	all patents, trademarks, trade or business names, logos or strap lines, domain names, copyright, moral rights, know-how, rights to prevent

	passing off or unfair competition, database rights, rights in designs and all other intellectual property rights, in each case whether registered or unregistered and including applications or rights to apply for such rights and all extensions and renewals of such rights.
<b>Liability</b>	in relation to any matter, all damages, Losses, liabilities, costs (including legal costs), charges, expenses, actions, adverse judgments, proceedings, claims, penalties, fines and demands incurred or suffered by or brought or made against the relevant party (and Liabilities shall be construed accordingly).
<b>Licence Agreement</b>	means all applicable licence agreements that may have to be entered into by the Customer in respect of Third Party Software used.
<b>Losses</b>	means any and all costs, fines, damages, losses and liabilities suffered by a party.
<b>New Service Provider</b>	means any contractor (or first or subsequent generation subcontractor) at any time appointed (or to be appointed) by the Customer (or any member of the Customer's Group) (whether directly, or indirectly via another agent, contractor or subcontractor) to provide the Services or any part thereof or services similar to the Services or any part thereof, in either case otherwise than pursuant to this Agreement, and this definition shall also include but not be limited to any member of the Customer's Group which at any time provides the Services or any part thereof or services similar to the Services or any part thereof (whether for the Customer or on its own account).
<b>Permitted Subcontractors</b>	any subcontractor which Simpson Associates appoints following the Effective Date.
<b>Personal Data</b>	the personal data (if any) that is processed by Simpson Associates on behalf of the Customer in accordance with this Agreement, as further described in the Data Processing Details.
<b>Professional Services</b>	professional services (if any) which are called off by the Customer in accordance with the relevant Statement of Work.
<b>Professional Services Commencement Date</b>	the date specified as such in the relevant Statement of Work.
<b>Rate Card</b>	means: <ul style="list-style-type: none"> <li>(a) the rates at which the Services which are agreed to be charged on a Time and Materials Basis or Fixed Price Basis by Simpson Associates, if any, (as indicated in the relevant Statement of Work) will be charged by Simpson Associates;</li> <li>(b) the licence fees for any Software; and</li> <li>(c) the Charges.</li> </ul>
<b>Redundancy Costs</b>	statutory and/or contractual redundancy payments, payments in lieu of notice and/or claims for unfair dismissal, notice pay and/or wrongful dismissal.
<b>Relief Event</b>	<ul style="list-style-type: none"> <li>(a) any failure by the Customer to comply with the Customer Obligations under this Agreement;</li> <li>(b) any error or malfunction in the systems or any other software, hardware or systems for which Simpson Associates is not responsible or any failure by the Customer, its agents or contractors</li> </ul>

	(including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which Simpson Associates is not responsible;
	(c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to Simpson Associates which is reasonably required by Simpson Associates for the proper performance of its obligations under this Agreement; or
	(d) any of the causes or events set out in Clause 24.
<b>Restricted Person</b>	anyone employed or engaged by a party who could materially damage the interests of that party if they were involved in any Capacity in any business concern which competes with Simpson Associates' business and with whom the other party dealt in the six (6) months before termination or expiry of this Agreement.
<b>Scheduled Downtime</b>	means the total amount of time during which the Customer is not able to access the Services due to planned maintenance. Simpson Associates may schedule system downtime, with prior agreement of the Customer, in the periods detailed in the Statement of Work. Scheduled Downtime periods do not count against the service level calculation detailed in such Statement of Work
<b>Security Incident</b>	(a) the unlawful or unauthorised processing of Personal Data; or (b) any other security incident affecting the Personal Data (including (without limitation) a personal data breach as defined in the UK GDPR).
<b>Services</b>	all services provided by Simpson Associates under this Agreement, which may include Support Services, Professional Services, and Training Services and as detailed in the Statement of Work.
<b>Services Commencement Date</b>	in respect of a Statement of Work, the date on which Simpson Associates is to commence provision of the relevant Services (if applicable) as set out in the relevant Statement of Work.
<b>Service Level Arrangements</b>	the service level arrangements set out in the Statement of Work.
<b>Simpson Associates Personnel</b>	those agents, directors, officers and employees of Simpson Associates engaged from time to time in performing Simpson Associates' obligations under this Agreement, together with the Permitted Subcontractors and any agents, directors, officers and employees of the Permitted Subcontractors who are so engaged.
<b>Simpson Associates Software</b>	any software or applications which are proprietary to Simpson Associates and which is or will be used by Simpson Associates for the purposes of providing the Services and Software and all modifications, enhancements and upgrades to such software during the Term.
<b>Simpson Associates' System</b>	the system to be used by Simpson Associates' in performing the Support Services, including the Hardware, any Third Party Software, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer's Operating Environment

<b>Software</b>	any software made available by Simpson Associates to the Customer under this Agreement as identified in a Statement of Work which may comprise of Bespoke Solutions, Simpson Associates Software, Third Party Software , Supported Software or software which is the subject of the Professional Services.
<b>Statement of Work</b>	detailed plan, agreed in accordance with Clause 3, describing the Services to be provided by Simpson Associates, the timetable for their performance..
<b>Subsequent Term</b>	means twelve (12) months commencing on the last day of the Term or previous Subsequent Term.
<b>Subsidiary Company</b>	shall have the meaning given in section 1159 Companies Act 2006 and include subsidiary undertakings as defined in section 1162 Companies Act 2006 (each section being as in force at the Effective Date) and the term shall include companies wherever they are registered.
<b>Supported Software</b>	software in respect of which Simpson Associates provides Support Services as more particularly set out in the relevant Statement of Work (if any).
<b>Support Services</b>	the support service described in the Statement of Work (including any support arrangements) to be performed by Simpson Associates in accordance with this Agreement.
<b>Term</b>	for the Agreement means the period commencing on the Effective Date and ending one year after the Go-live Date unless otherwise specified in the Statement of Work. For the avoidance of doubt, each Statement of Work will have their own Term, which will extend the Term of the Agreement if the term of the Statement of Work is longer than the Term of the Agreement.
<b>Time and Materials Basis</b>	the pricing set out in the Rate Card in accordance with which the Services which are payable on a time and materials basis.
<b>Third-Party Software</b>	any code or software programs written or provided by other third parties which are used by the Customer during the provision of the Services.
<b>Training Services</b>	the training services set out in the relevant Statement of Work (if any).
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK GDPR, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>UK GDPR</b>	the retained EU law version of GDPR. Personal Data of UK citizens is subject to the legal safeguards specified in the UK GDPR.
<b>Unscheduled Downtime</b>	means any time when any or all of the applications and Services provided by Simpson Associates to the Customer shall be unavailable to the Customer (exclusive of Scheduled Downtime).
<b>VAT</b>	value added tax, as provided for in the Value Added Tax Act 1994, and any tax replacing the same or of a similar nature.

2. Unless the context otherwise requires, the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

3. The Schedules are incorporated as part of this Agreement.
4. Clause headings are inserted only for convenience and are in no way to be construed as part of this Agreement.
5. References to any statute or any section of any statute include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time, unless the contrary is stated. References to any rules, regulations, codes of practice or guidance include any amendments or revisions from time to time.
6. For the avoidance of doubt, should there be any inconsistency between any of the provisions in the main body of this Agreement and any of the Schedules attached; the provisions in the main body of this Agreement shall prevail.
7. If there is any conflict between the Schedules and/or any appendices to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 7.1 the Agreement;
  - 7.2 the Schedules to this Agreement and the Statement of Work;
  - 7.3 and any other document referred to in this Agreement or any other document attached to this Agreement.
8. References to a "**month**" are to a calendar month and "**year**" are to a calendar year.
9. Use of the words "**include**", "**includes**", "**including**" and "**included**" will be construed without limitation, unless expressly stated to the contrary.
10. In the event of a conflict between any provision of this Agreement (excluding the Statement of Work, Schedules and the Appendices) and a Statement of Work, the Schedules and/or Appendices, the provisions of the Statement of Work shall prevail.
11. Nothing in this Agreement shall restrict or limit the parties' general obligation at law to mitigate any Liability it may suffer or incur as a result of an event that may give rise to a claim under this Agreement.

**SCHEDULE 2**

**Template Statement of Work**

### SCHEDULE 3

#### DATA PROTECTION

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Terms defined in the Data Protection Law shall have the same meaning when used in this Agreement.
- 1.2 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time after the United Kingdom ceases to be a Member State of the European Union.

##### 2. PROTECTION OF PERSONAL DATA

- 2.1 Each party shall comply with Data Protection Law and take all such steps reasonably requested by the other to assist the other in complying with the obligations applicable to the other under Data Protection Law, subject to reimbursement by the Customer of Simpson Associates' reasonable costs.
- 2.2 The parties acknowledge and agree that, for the purposes of the Data Protection Law, Simpson Associates acts as a data processor in its processing of Personal Data on behalf of the Customer (as data controller) in the performance of Simpson Associates' obligations under this Agreement.
- 2.3 The Customer shall not do, or omit to do, any act which causes or contributes to a breach of Data Protection Law by Simpson Associates.
- 2.4 Further information about the Personal Data processing activities contemplated by this Agreement is set out in the Data Processing Details.
- 2.5 Simpson Associates shall:
- 2.5.1 only process the Personal Data for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by the Customer from time to time, unless Simpson Associates is subject to an obligation under applicable law (including Data Protection Law) of the European Union or a member state of the European Union to do otherwise, in which case Simpson Associates shall (to the extent permitted by law) notify the Customer in advance of that legal obligation;
  - 2.5.2 notify the Customer immediately if, in Simpson Associates' opinion, an instruction from the Customer breaches a requirement of Data Protection Law; and
  - 2.5.3 Simpson Associates shall implement and maintain all adequate and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Personal Data and accidental loss, destruction, damage, theft, use or disclosure of such Personal Data, and shall protect against any anticipated threats or hazards to the security or integrity of the Personal Data, and detect and prevent unauthorised processing of, or unauthorised access to, the Personal Data, and such measures shall at a minimum meet the standard required by Data Protection Law, including (without limitation) the standard required by Article 32 of the UK GDPR, even if Simpson Associates is not subject to the requirements of the UK GDPR.
  - 2.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or Simpson Associates has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) Simpson Associates complies with its obligations under Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred;
    - (iv) Simpson Associates complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 2.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 2.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach.
- 2.6 Simpson Associates shall ensure that all personnel with access to Personal Data are subject to a contractual duty of confidence to hold the Personal Data in strict confidence to the standard required by this Agreement.
- 2.7 Simpson Associates shall not subcontract the processing of Personal Data to a sub processor without the prior written consent of the Customer. In the event that the Customer provides its consent, Simpson Associates shall (prior to the sub processor processing the Personal Data) enter into an agreement with the sub processor on terms that provide no less protection for the Personal Data than those set out in this Clause 2.7 and shall ensure that the agreement remains in force for the duration of the sub processor's processing of Personal Data. Simpson Associates shall remain fully liable for the acts and omissions of each sub processor.
- 2.8 Simpson Associates shall, at the Customer's cost, securely return to the Customer or securely destroy the Personal Data, together with all copies in any form and in any media, in Simpson Associates' power, possession or control promptly following the earlier of: (i) termination or expiry of this Agreement; (ii) a request from the Customer; or (iii) if Simpson Associates no longer needs the Personal Data in connection with the performance of its obligations under this Agreement, provided always that Simpson Associates may retain copies of the Personal Data if it is required to do so under applicable law (including Data Protection Law) of the European Union or Member State law.
- 2.9 Simpson Associates shall provide, at the Customer's cost, the Customer with all information that is necessary to enable the Customer to verify Simpson Associates' (and each sub processor's) compliance with this Clause 2.9. Notwithstanding the above, , the Customer shall, on reasonable notice, (save in the event of a Security Incident) be entitled to inspect, test and audit or appoint representatives to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of Simpson Associates and Simpson Associates shall cooperate and assist the Customer (and its representative) with each inspection, test and audit.

## SCHEDULE 4

### TUPE Provisions

3. If any employee, worker or contractor or former employee, worker or contractor of the Customer or any third party (or Liabilities in relation to their employment or engagement and/or its termination) shall transfer to Simpson Associates and/or a Permitted Subcontractor or it is alleged that they have or should have so transferred (whether pursuant to TUPE or otherwise) in connection with the commencement of this Agreement or any of the arrangements pursuant to this Agreement:
  - 3.1 the Customer shall indemnify and hold harmless Simpson Associates (and/or any Permitted Subcontractor as appropriate) from and against all Liabilities it or they may suffer or incur (whenever arising) which arise out of or in relation to the employment or engagement of such person(s) by the Customer or a third party and/or the termination of such employment or engagement, in either case on or prior to such actual or alleged transfer, and/or any Liabilities in respect of which Simpson Associates and/or any Permitted Subcontractor suffers or incurs (or is alleged to suffer or incur) responsibility or liability as a result of the operation of TUPE in relation to the same; and
  - 3.2 Simpson Associates (or any Permitted Subcontractor as appropriate) may terminate the contract(s) of employment or engagement of any or all such persons (whether with or without notice, or with reduced notice), and in such circumstances the Customer shall indemnify and hold harmless Simpson Associates and/or the Permitted Subcontractor from and against any and all Liabilities suffered or incurred by Simpson Associates and/or the Permitted Subcontractor in connection with such dismissal and/or the employment or engagement of such person up to the date of such dismissal, including but not limited to any Liabilities arising from any claim or allegation of unfair dismissal, wrongful dismissal and/or for outstanding remuneration and, for the avoidance of doubt, references in this Clause 1.2 to dismissal, employment and engagement include but shall not be limited to references to purported dismissal, purported employment and purported engagement.
4. If this Agreement or part thereof is terminated and/or the Services or services similar to the Services (or any part thereof) are subsequently carried on by the Customer itself or a New Service Provider:
  - 4.1 Simpson Associates shall be liable for all Liabilities arising out of or in connection with any claim by or in respect of any person arising from any act, fault or omission of Simpson Associates prior to the cessation of the Services (or part thereof) and referable to such person's period of employment with Simpson Associates prior to the cessation of the Services (or part thereof); and
  - 4.2 the Customer shall (and shall procure that the New Service Provider shall) indemnify and hold harmless Simpson Associates and/or any Permitted Subcontractor from and against any and all Liabilities suffered or incurred by Simpson Associates and/or any Permitted Subcontractor arising out of or in connection with any claim by or in respect of any person arising from any actual or anticipated act, fault or omission of the Customer and/or the New Service Provider including, but not limited to, any failure to comply with one or more of the Customer's and/or the New Service Provider's obligations under TUPE, any claim contemplated by Regulation 4(9) and/or 4(11) of TUPE and/or any claim relating to the period on or after the cessation of the Services (or part thereof).
5. Any Permitted Subcontractor may enforce any of the provisions in this Schedule 4 in its favour.
6. The provisions of this Schedule 4 shall survive any termination or expiry of this Agreement.