

DATED

MASTER SERVICES AGREEMENT

WARP TECHNOLOGIES LTD

and

XXXXXXXXX

This agreement is dated XXXXXX

Parties

- (1) WARP Technologies Ltd incorporated and registered in England and Wales with company number 05257603 whose registered office is at 4th Floor, Park Gate, 161-163 Preston Road, Brighton, England, BN1 6AF (**Supplier**)
- (2) XXXXXX (**Customer**)

BACKGROUND

- (A) The Supplier is in the business of providing IT software and development services.
- (B) The Customer wishes to obtain and the Supplier wishes to provide Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

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

Acceptance Certificate: the certificate to be signed by the Customer under clause 6.2.

Acceptance Tests: has the meaning given to it in clause 6.1.

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

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

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

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

Change Order: has the meaning given in clause 8.1.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010 and **controls, controlled** and the expression **change of control** shall be construed accordingly.

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

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

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

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

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

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

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Statement of Work.

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

Services: those services to be delivered by the Supplier as described in any Statement of Work, if any;

SoW Charges: the sums payable for the Works as set out in a Statement of Work.

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

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

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018; UK GDPR: 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.

VAT: value added tax chargeable in the UK.

Works: the Services which are provided by the Supplier under a Statement of Work, including services which are incidental or ancillary to the Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.12 A reference to **writing** or **written** includes fax and email
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.

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

1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

2.1 This agreement shall commence on and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the date of this agreement and shall expire on the completion of all Statements of Work entered into before the date on which it is served.

2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with immediate effect.

2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.

2.4 The Customer may procure Services by agreeing a Statement of Work with the Supplier pursuant to clause 3 (Statements of Work).

2.5 The Supplier shall provide the Works from the date specified in the relevant Statement of Work.

3. Statements of Work

3.1 Each Statement of Work shall be agreed in the following manner:

- (a) the Customer shall ask the Supplier to provide Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Services requested;
- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Services; or
 - (ii) provide the Customer with a draft Statement of Work.
- (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree that draft Statement of Work; and
- (d) both parties shall sign the draft Statement of Work when it is agreed.

- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.
- 3.3 The Supplier may charge for the preparation of Statements of Work on a time and materials basis in accordance with the Supplier's daily fee rates as set out in **Schedule 2** where this is agreed with the Customer in advance.
- 3.4 Once a Statement of Work has been agreed and signed in accordance with clause **3.1(d)**, no amendment shall be made to it except in accordance with clause **8** (Change control) or clause **19** (Variation).
- 3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. Supplier's responsibilities

- 4.1 The Supplier shall use reasonable endeavours to manage and complete the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet the Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.3 The Supplier shall appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

5. Customer's obligations

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Works;
 - (b) appoint a manager or authorised signatory in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, reasonable access to the Customer's premises, office

accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in a Statement of Work;

- (d) subject to the provisions of clauses 12 (Data Protection) and 13 (Confidentiality), provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete in all material respects;
- (e) inform the Supplier of all health and safety and security requirements that apply at the Customer's premises.
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Works are to start;
- (h) keep and maintain the Supplier's Equipment in accordance with the Supplier's instructions from time to time and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional responsibilities of the Customer as set out in the relevant Statement of Work; and
- (j) test all Deliverables in accordance with the Acceptance Tests set out in the relevant Statement of Work and shall ensure that it acts reasonably in determining whether a Deliverable has passed the Acceptance Tests.

5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer subject to the delay and reason being notified to the Customer in within a reasonable timeframe.

6. Acceptance

6.1 The Supplier shall perform any acceptance and quality tests set out in a Statement of Work before the delivery of the relevant Deliverables or Goods to the Customer (the "Acceptance Tests"). The Supplier shall provide its testing results to the Customer as stated in a Statement of Work or otherwise on request.

6.2 Acceptance shall be deemed to have occurred on whichever is the earliest of:

- (a) the signing by the Customer of an Acceptance Certificate;
- (b) the expiry of the associated warranty if the Acceptance Tests for a Deliverable or Goods have not started, or have not been pursued with due diligence; or
- (c) the use of the relevant Deliverables or Goods by the Customer in the normal course of the Business.

Acceptance by the customer shall not prevent the Supplier from having to rectify defects found within the warranty period within the system that could only have been reasonably identified after such Acceptance had already taken place.

7. Non-solicitation and employment

- 7.1 A party shall not, without the prior written consent of the other Party, at any time from the date on which any Works commence to the expiry of twelve months after the completion of such Works, solicit or entice away from the other Party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the other Party r in the provision or management of such Works.
- 7.2 Any consent given by a Party in accordance with clause 7.1 shall be subject to the hiring Party paying to the other Party r a sum equivalent to 20% of the then current annual base salary of the other Party's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the hiring Party to that employee, consultant or subcontractor.

8. Change control

- 8.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
 - (a) the Works;
 - (b) the SoW Charges;
 - (c) the timetable for the Works; and
 - (d) any of the other terms of the relevant Statement of Work.
- 8.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Order to the Customer.
- 8.3 If the Customer wishes to make a change to the Works:
 - (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and

- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3(a), provide a draft Change Order to the Customer.

8.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 29 (Multi-tiered dispute resolution procedure).

8.5 With the agreement of the Customer, the Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 8.3 on a time and materials basis at the Supplier's daily rates specified in Schedule 2.

9. Charges and payment

9.1 In consideration of the provision of the Works by the Supplier, the Customer shall pay the SoW Charges.

9.2 Where the SoW Charges are calculated on a time and materials basis:

- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis of an eight-hour day, worked during Business Hours;
- (b) with the Customer's prior approval the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate set out in Schedule 2 on a pro rata basis for any time worked by individuals whom it engages on the Works outside Business Hours; and
- (c) the Supplier shall ensure that every individual whom it engages on the Works completes time sheets to record time spent on the Works, and the Supplier shall indicate the time spent per individual in its invoices.

9.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.

9.4 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works and subject to the Customer's prior approval ; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Statement of Work.

- 9.5 The Supplier may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges where those charges have not already been fixed as part of an existing SOW, on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 9.6 Any increase in the Reference Charges shall affect:
- (a) the SoW Charges (to the extent that they are calculated in accordance with the Reference Charges) in Statements of Work in force at the date the increase takes effect; and
 - (b) the calculation of the SoW Charges for Statements of Work entered into after the date the increase takes effect.
- 9.7 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Works performed during that month.
- 9.8 The Customer shall pay each undisputed invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 9.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Supplier may suspend part or all of the Works until payment has been made in full.
- 9.10 All sums payable to the Supplier under this agreement:
- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in the Deliverables shall belong to the Supplier, and the Customer shall have no rights in respect of any of the Deliverables (excluding the Customer Materials) except as expressly granted under these terms or in an SOW.
- 10.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 In relation to the Customer Materials, the Customer:
- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials; and
 - (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Works to the Customer.
- 10.4 The Supplier:
- (a) warrants that the receipt and use of the Works and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - (b) shall, indemnify the customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Works and Deliverables.
 - (c) shall not be in breach of the warranty at clause 10.4(a), and the Customer shall have no claim under the indemnity at clause 10.4(b) to the extent the infringement arises from:
 - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;
 - (ii) any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions
- 10.5 The Customer:
- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party ;and

- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

10.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 10, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 10.4(b) or clause 10.5(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

11. Compliance with laws

- 11.1 In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws; and
- 11.2 Changes to the Works required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 8 (Change control).

12. Data protection

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the customer is the controller and the Supplier is the processor. Schedule 3 (Processing, personal data and data

subjects) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

- 12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Customer [which are set out in Schedule 3 (Processing, personal data and data subjects)] unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) without prejudice to clause 13 (Confidentiality), ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a personal data breach
 - (g) assist the Customer, at customers request, in providing details of the breach to the Information Commissioner's Office;
 - (h) [without prejudice to clause 16.1(b)(Survival),]at the written direction of the Customer, delete or return personal data and copies to the Customer on termination or expiry of the agreement unless required by Applicable Law to store the personal data; and
 - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 12 [and allow for audits by the Customer or the Customer's designated auditor of such records and information] and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 12.5 Without prejudice to clause 18 (Assignment and other dealings), the Supplier shall not appoint any third party processor of personal data under this agreement without the Customer's prior written consent. Where such consent is given, the Supplier will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 12.
- 12.6 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 13. Confidentiality**
- 13.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2(a).

13.2 Each party may disclose the other party's confidential information:

- (a) to its Affiliates, employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

14. Limitation of liability

14.1 References to liability in this clause 14 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in this clause 14 shall limit the Customer's payment obligations under this agreement.

14.3 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation;

14.4 the maximum liability of a Party (including its Group) to the other Party (including its Group) (and all others entitled to claim) under or in connection with this Agreement and/or under the applicable Statement of Work shall not exceed:

- (a) £1m (One million pounds) in respect of liability under clauses 10.4 and 10.5 (IPR Indemnities) only;
- (b) the greater of: (i) 100% (one hundred percent) of the SOW Charges paid or payable under the applicable Statement of Work in the 12 (twelve) months preceding the date on which that liability arises; and (ii) £250,000 (Two Hundred and Fifty thousand pounds) and in all other cases.

14.5 **Payment reducing caps.** The caps on the Customer's liabilities shall not be reduced by:

- (a) amounts awarded or agreed to be paid under clause 10 (IPR indemnities); and
- (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

14.6 Subject to clause (No limitation on the customer's payment obligations and clause 14.3 (Liabilities which cannot legally be limited), this clause 14.6 specifies the types of losses that are excluded:

- (a) loss of profit
- (b) loss of sales or business
- (c) loss of agreements or contracts
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

14.7 **Exclusion of statutory implied terms.** The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.1 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement (including all Statements of Work) with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership);

- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(c) to clause 15.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment;

15.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement by giving at least 30 days written notice to the Customer if there is a change of Control of the Customer.

16. Obligations on termination and survival

16.1 Obligations on termination or expiry

On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been

returned or repossessed, the Customer shall be solely responsible for its safe keeping; and

- (c) the Supplier shall on request return securely destroy any of the Customer Materials not used up in the provision of the Works.

16.2 **Survival**

- (a) On termination or expiry of this agreement, all existing Statements at Work shall terminate automatically.
- (b) Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of this agreement shall remain in full force and effect.
- (c) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

17. **Force majeure**

17.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

17.2 Provided it has complied with clause 17.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure

or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 weeks' written notice to the Affected Party.

18. Assignment and other dealings

18.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

18.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

19. Variation

Subject to clause 8 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Waiver

20.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 20.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

21. Rights and remedies

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

22. Severance

- 22.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 22.2 If any provision or part-provision of this agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. Entire agreement

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

24. Conflict

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

25. No partnership or agency

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

26. Third party rights

- 26.1 Unless it expressly states otherwise, 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.
- 26.2 [The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]

27. Notices

- 27.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to a party's designated contact's address specified in a Statement of Work
- 27.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, on the second Business Day after posting; or
 - (c) if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 27.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. Counterparts

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

29. Multi-tiered dispute resolution procedure

- 29.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On

service of the Dispute Notice, the Project Manager of the Customer and Project Manager of the Supplier shall attempt in good faith to resolve the Dispute;

- (b) if the Project Manager of the Customer and Project Manager of the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the Director of Operations of the Customer and Director of Technology Operations of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the Director of Operations of the Customer and Director of Technology Operations of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 31 which clause shall apply at all times.

29.3 If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 14 days, or the mediation terminates before the expiration of the said period of 14 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 31

30. Governing law

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

31. Jurisdiction

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

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

Schedule 1 Template Statement of Work

- Overview
- Deliverables: [LIST OUT ALL THE WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK.]
- Timescales: [SPECIFY WHEN THE WORKS WILL COMMENCE, AND THE TERM OF THIS STATEMENT OF WORK].
- Charges: [SET OUT THE CHARGES AND PAYMENT FOR THE WORKS].
- Warranty
- Scope
- Acceptance Tests
- Additional Customer Obligations
- Service Levels: [INCLUDE ANY SERVICE LEVELS, IF APPLICABLE].
- IPR/Developed IPR
- Data Protection
- Additional Terms
- Supplier Details
- Key Personnel
- Governance

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

.....

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

Schedule 2 Reference Charges and payment terms

Skills for the Information Age (SFIA) Standard Rate Card

| | Strategy and architecture | Change and Transformation | Development and implementation | Delivery and Operation | People and skills | Relationships and engagement |
|----------------------------|---------------------------|---------------------------|--------------------------------|------------------------|-------------------|------------------------------|
| 1. Follow | N/A | N/A | N/A | £450 | N/A | N/A |
| 2. Assist | N/A | N/A | £525 | £525 | £525 | £525 |
| 3. Apply | £700 | £700 | £525 | £525 | £525 | £525 |
| 4. Enable | £850 | £850 | £600 | £525 | £525 | £525 |
| 5. Ensure or advise | £925 | £925 | £725 | £600 | £600 | £600 |
| 6. Initiate or influence | £925 | £925 | £850 | £725 | £725 | £725 |
| 7. Set strategy or inspire | £1,175 | £1,175 | £1,175 | £850 | £850 | £850 |

Standards for the SFIA Rate Card

- Consultant's Working Day – 7.5 hours exclusive of travel and lunch
- Working Week – Monday to Friday excluding national holidays
- Office Hours - 09:00 – 17:30 Monday to Friday
- Travel and Subsistence – Payable at department's standard T&S rates
- Mileage – Payable at department's standard T&S rates
- Professional Indemnity Insurance – included in day rate
- All rates above exclude VAT

Payment terms: Unless the Statement of Work states otherwise, the Supplier shall invoice Customer for the Works and the Customer will pay the invoice within 30 days of receipt.

Schedule 3 Processing, personal data and data subjects

Any instruction to the Supplier to process personal data must be supplied in the following format.

1. Processing by the Supplier

1.1 Scope

1.2 Nature

1.3 Purpose of processing

1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
SUPPLIER]

.....
Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
CUSTOMER]

.....
Director