

Dated 202_

[CLIENT COMPANY NAME]
ECMS (MANAGED SOLUTIONS) LIMITED

MASTER SERVICES AGREEMENT

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This Agreement is made on

Between

- (1) **[Client Company Name]** a company incorporated in [England] with registered number **[Client's company number]** whose registered office is at **[Client's registered office address]** (**Client**); and
- (2) **ECMS (Managed Solutions) Limited** a company incorporated in England with registered number 11356506 whose registered office is at 7th Floor, 131 Finsbury Pavement, London EC2A 1NT (**ECMS**).

(each a "**Party**", and together "**Parties**")

Whereas

- (A) ECMS and its Operatives are providers of consultancy services to clients relating to business and technology change programmes ("**Relevant Services**").
- (B) Part A of this MSA provides a framework under which the parties can use the statement of work set out in Schedule 2 to this Agreement ("**SOW**") to enter into project agreements for the provision of Relevant Services ("**Project Agreements**").
- (C) Part B of this MSA sets out terms that apply specifically to Project Agreements.
- (D) Part C of this MSA sets out general terms and conditions that apply both to the MSA and to any Project Agreement.

It is agreed

Part A – The MSA

1 Entry into Project Agreement

- 1.1 At any time during the term of this MSA, the Client and ECMS may enter into Project Agreements for the provision of Relevant Services, the charges under any Project Agreement shall be on the basis set out in Schedule 3 and the SOW.

2 Formation of a Project Agreement

- 2.1 A Project Agreement shall be formed each time the Client and ECMS execute a SOW.
- 2.2 All Project Agreements are separate contracts to each other and the MSA.

3 Variation of the MSA

- 3.1 No variation shall be made to this MSA unless agreed in writing and signed by both parties. No variation to this MSA shall amend any terms of an existing Project Agreement.

4 Term and Termination of the MSA

- 4.1 This MSA shall come into force on the date of this MSA and continue unless terminated earlier in accordance with this clause 4.
- 4.2 The Client or ECMS may terminate this MSA for convenience by providing not less than one (1) month's prior written notice.
- 4.3 The Client may terminate this MSA immediately by written notice to ECMS if:
 - (a) ECMS has committed a material breach of any of the provisions of this MSA, which (i) is not capable of remedy or (ii) is capable of remedy and is not remedied within thirty (30) days of receipt by ECMS of the written notice of the breach; and/or

- (b) ECMS is affected by an Insolvency Event or in the Client's reasonable opinion is likely to be affected by an Insolvency Event.

4.4 ECMS may terminate this MSA immediately by written notice to the Client if:

- (a) the Client has committed a material breach of any of the provisions of this MSA, which (i) is not capable of remedy; or (ii) is capable of remedy and is not remedied within thirty (30) days of receipt by the Client of the written notice of the breach;
- (b) the Client is affected by an Insolvency Event or in ECMS' reasonable opinion is likely to be affected by an Insolvency Event; and/or
- (c) there is a Change of Control of the Client or the Client sells or otherwise disposes of all or a substantial part of its business and/or assets.

5 Survival

5.1 Termination or expiry of this MSA shall not affect any Project Agreement.

5.2 Termination or expiry of this MSA shall not affect any rights or obligations which may have accrued prior to termination or expiry of this MSA. The obligations of each party set out in any clause intended to survive such termination or expiry, including clauses 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 and this clause 5.2 shall continue in full force and effect notwithstanding termination or expiry of this MSA.

6 Relationship Management

6.1 Each of the parties shall nominate a Key Contact to be the principal point of contact between the parties in relation to issues or queries arising out of this MSA.

6.2 Either party may change its Key Contact from time to time by informing the other party.

Part B – Terms incorporated into all Project Agreements

7 Formation of Project Agreements

7.1 Part B, Part C and Schedule 1 (Definitions) of the MSA ("**Core Terms**") shall be incorporated into each Project Agreement, together with the SOW and any documents attached to the SOW.

7.2 Each Project Agreement shall form a separate contract between the Client and ECMS and shall take effect and be construed independently of each other.

7.3 In this Part B, in Schedule 1 (Definitions), the SOW and in any Schedule incorporated by reference into this Part B references to "this Agreement" shall be construed as referring to the Project Agreement unless the context otherwise required.

7.4 If and to the extent of any inconsistency or conflict between any sections of the Project Agreement, the order of priority for the purposes of construction, is in descending order:

- (a) any terms in an SOW which are expressly stated to take precedence over the Core Terms;
- (b) the Core Terms;
- (c) the SOW;
- (d) the Annexes to the SOW;

- (e) the Schedules other than Schedule 1 (Definitions) and the SOW
- (f) the Appendices to the Schedules; and
- (g) any other document incorporated by reference into this Agreement.

Where any conflict occurs between the provisions contained in two or more of the provisions listed in clause 7.4, the document lower in the order of precedence shall where possible be read in such a way as to resolve such conflict. If the conflict remains incapable of resolution by this means, the conflicting provisions shall be severed from the provisions in the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

8 Services and standards of performance

8.1 ECMS shall perform the Services and shall do so:

- (a) unless otherwise agreed, using ECMS's own equipment;
- (b) with due skill, care and diligence; and
- (c) in accordance with this Agreement.

8.2 ECMS shall use reasonable endeavours to perform the Services in accordance with the timescales set out in the relevant SOW. In the event of any delay, the Key Contacts shall meet to discuss and agree amended timescales, any amendments to the Services and any consequential amendments to the Charges which may be required.

8.3 ECMS may use any one or more Operatives to undertake the provision of the Services.

8.4 ECMS shall provide the Client with the identity and qualifications of any Operative undertaking the Services upon the Client's written request.

9 Client Obligations

9.1 The Client shall:

- (a) provide to ECMS such additional information as reasonably required to enable ECMS to comply with its obligations under this Agreement including the details of any rules and regulations applicable to external contractors relating to any Project Site.
- (b) comply with the Client Responsibilities;
- (c) promptly and in any event within five (5) Business Days report any deficiency in the Services to the Key Contact;
- (d) where performance of the Services will require work at a Project Site:
 - (i) on reasonable prior notice and at reasonable times, permit Operatives to gain such access to the Project Site as is necessary to enable the Services to be carried out in accordance with this Agreement;
 - (ii) ensure that the conditions at the Project Site comply with all applicable health and safety regulations;
 - (iii) inform the Key Contact of any health and safety risk that may exist at the Project Site; and
 - (iv) comply with all applicable statutory requirements that apply at any Project Site, including the provision of third party liability insurance in respect of external contractors.

- 9.2 The Client acknowledges and agrees that the SOW contains sufficient information and detail as is necessary to enable ECMS and its Operatives to fully understand the Client's objectives.
- 9.3 Where any information contained in the SOW is materially incorrect or ECMS becomes aware of information which materially changes the nature, scope, cost or length of the Project:
- (a) ECMS may propose a Change to the Charges or Service in accordance with clause 15; and
 - (b) if the parties are unable to agree the required Change, ECMS may terminate the Project Agreement immediately by written notice to the Client.
- 9.4 If on completion of any part of the Services, the Client considers that any part of the Services is materially defective, substandard or does not materially meet the required specification as a result of ECMS's failure to comply with its obligations under this Agreement ("**Defect**"), the Client shall provide the ECMS Key Contact with a service notice providing details of the Defect ("**Service Notice**") in the format set out in Annex 2 to the SOW and either if: (i) ECMS agrees that there is a Defect it shall rectify that Defect; or (ii) ECMS disagrees that there is a Defect the parties shall follow the Dispute Resolution Procedure. Any Service Notice under this provision may not be given after the Warranty Date. ECMS shall not be liable for any defect in the Services that is: (i) unreported by the Client by a Service Notice following the Warranty Date; or (ii) caused, or contributed to, wholly or partly by a breach of any term of this Agreement by the Client or its staff or agents including clause 9.2.

10 Intellectual Property Rights

- 10.1 Nothing in this Agreement shall operate to assign or otherwise transfer a party's Intellectual Property Rights in materials existing before the date of this Agreement except in relation to New Material.
- 10.2 All title, interest and Intellectual Property Rights in any New Materials shall belong to and vest in ECMS immediately on creation.
- 10.3 The Client hereby grants to ECMS a non-exclusive, royalty-free, worldwide licence to use, copy and maintain the Client Materials during the Term to the extent necessary and for the sole purpose of the proper performance of the Services, which shall terminate automatically at the end of the Term or earlier termination, or (if earlier) when such Client Materials cease to be required in connection with the performance of the Services.
- 10.4 ECMS hereby grants to the Client a non-exclusive, worldwide, non-transferable, royalty-free licence to use, copy and maintain, during the Term, all ECMS Materials and New Materials to the extent necessary for the purpose of enabling the Client to receive and obtain the benefit of the Services.

11 Charges and payment

- 11.1 In consideration of the performance of the Services, the Client shall pay ECMS the Charges and Expenses as set out in and/or as calculated in accordance with the SOW and Schedule 3 (Charging) without any deduction or set off of any kind, save only to the extent as provided for under this Agreement, which shall be invoiced at the times and in the manner specified in this clause 11.
- 11.2 Unless expressly agreed otherwise between the parties:
- (a) the Charges and Expenses shall be payable by the Client in pounds sterling; and
 - (b) shall be payable by the Client within fourteen (14) days from the date of the invoice to a bank account nominated in writing by ECMS.
- 11.3 ECMS shall maintain records in respect of each Project, such records will be used to calculate invoices for the Services calculated on the Charges at the intervals agreed between the parties or in the absence of any specified intervals, on a monthly basis.

- 11.4 In the event that the Client disputes any invoice in good faith ("**Invoice Dispute**") the Client shall advise ECMS of the dispute promptly and in any event within five (5) Business Days of the date of the invoice and pay to ECMS all undisputed sums in accordance with this Agreement pending the outcome of the Invoice Dispute.
- 11.5 ECMS shall provide such additional information and documentation as the Client may reasonably require in order to enable it to evaluate the Invoice Dispute.
- 11.6 In the event of any Invoice Dispute, the parties agree to negotiate in good faith in any attempt to resolve such dispute. If such Invoice Dispute has not been resolved to the parties' mutual satisfaction within fifteen (15) Business Days of the dispute arising the parties shall refer the Invoice Dispute to the Dispute Resolution Procedure.
- 11.7 All Charges and Expenses quoted in this Agreement are exclusive of value added tax which shall be paid by the Client in addition.
- 11.8 ECMS shall be entitled to charge interest on any payment not made when properly due under the terms of this Agreement calculated from day to day at the rate per annum of 2% per month calculated from the date of such notice of non-payment until the date of actual payment. Interest shall not accrue or be payable on any monies which are the subject of an Invoice Dispute.

12 Limitation of liability

- 12.1 Nothing in this Agreement excludes or limits the liability of either party in respect of:
- (a) death or personal injury caused by its negligence (including negligence of its employees, agents or contactors);
 - (b) fraud and/or fraudulent misrepresentation; or
 - (c) any liability which may not otherwise be limited or excluded under Relevant Law.
- 12.2 Subject to clause 12.1, the entire liability of ECMS to the Client arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited to 100% of the Charges paid or payable by the Client to ECMS under this Agreement.
- 12.3 Subject to clause 12.1, the entire aggregate liability of the Client to ECMS arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall not exceed 100% of the Charges paid or payable by the Client to ECMS under this Agreement.
- 12.4 ECMS shall not be liable for any actions, proceedings, demands, losses, costs, claims, damages or expenses to the extent that the same is caused, or contributed to, wholly or partly by a breach of any term of this Agreement by the Client or its staff or agents.
- 12.5 Subject to clause 12.1, neither party shall be liable to the other for loss of profit, revenue, anticipated savings, sales, business, data or goodwill or for any losses arising under and/or in connection with this Agreement which are indirect or consequential losses, even if such losses were foreseeable and notwithstanding that a party had been advised of the possibility that such losses were in the contemplation of the other party or any third party.

13 Insurance

- 13.1 ECMS shall take out and maintain at all times during the Term the following types of insurance policies:
- (a) professional indemnity insurance covering legal liability for an insured amount of not less than [£10 million];
 - (b) public liability insurance for an insured amount of not less than £10 million; and

- (c) employer's liability insurance as required by Relevant Laws of at least £10 million.

14 Termination and Expiry

Expiry

14.1 This Agreement shall terminate upon the earlier of:

- (a) the proposed date of completion as set out in the SOW; or
- (b) the actual date of completion of the Services.

Termination by the Client

14.2 The Client may terminate this Agreement immediately by written notice to ECMS if:

- (a) ECMS has committed a material breach of any of the provisions of this Agreement, which (i) is not capable of remedy or (ii) is capable of remedy and is not remedied within thirty (30) days of receipt by ECMS of the written notice of the breach;
- (b) ECMS is affected by an Insolvency Event or in the Client's reasonable opinion is likely to be affected by an Insolvency Event; or
- (c) clause 17.3 applies.

Termination by ECMS

14.3 ECMS may terminate this Agreement immediately by written notice to the Client if:

- (a) the Client has committed a material breach (which shall include, subject to any Invoice Dispute, any failure to make payment of an invoice within 28 days of the invoice) of any of the provisions of this Agreement, which (i) is not capable of remedy; or (ii) is capable of remedy and is not remedied within thirty (30) days of receipt by the Client of the written notice of the breach;
- (b) the Client is affected by an Insolvency Event or in ECMS' reasonable opinion is likely to be affected by an Insolvency Event;
- (c) there is a Change of Control of the Client or the Client sells or otherwise disposes of all or a substantial part of its business and/or assets;
- (d) in accordance with clause 9.3(b); or
- (e) clause 17.3 applies.

14.4 ECMS may terminate this Agreement or suspend the Services on giving seven (7) days' notice if the Client fails to provide ECMS with such information as ECMS reasonably requires for the proper performance of the Services.

Consequences of Termination

14.5 Termination of this Agreement in whole or in part for any reason shall be without prejudice to any rights which may have accrued up to the end of the Term.

14.6 On termination or expiry of this Agreement, ECMS shall:

- (a) within one (1) month deliver to the Client all completed Deliverables;

- (b) promptly deliver on receipt of a written request from the Client, all the Client Materials, and other property in its possession or under its control that belongs to or has been provided by the Client; and
- (c) in relation to the Client Confidential Information in its custody or control, at the Client's option;
 - (i) return such Client Confidential Information; or
 - (ii) destroy such Client Confidential Information and/or irretrievably delete the same if stored on electronic or magnetic media and certify to the Client that this has been done.

14.7 On termination or expiry of this Agreement, the Client shall:

- (a) cease the use of any ECMS Materials and provide any ECMS Materials which are in its control to ECMS;
- (b) return any ECMS equipment which remains at the Project Site;
- (c) in relation to the ECMS Confidential Information in its custody or control, at ECMS's option;
 - (i) return such ECMS Confidential Information; or
 - (ii) destroy such ECMS Confidential Information and/or irretrievably delete the same if stored on electronic or magnetic media and certify to ECMS that this has been done.
- (d) pay all outstanding unpaid invoices and any Charges and Expenses incurred by ECMS up to the date of termination in accordance with clause 11.

14.8 The Client shall not be entitled to any compensation or to claim any losses or damages in respect of Services which have not been completed as at the date of termination.

15 Change

15.1 If either the Client or ECMS wishes to suggest any change to this Agreement (including the Services) (**Change**) then it shall inform the other in writing (**Change Proposal**) setting out details of the proposed Change, and:

- (a) where ECMS submits a Change Proposal it shall include, as a minimum, details of the effect of the Change on the Charges and any agreed time frames for the performance of the Services. ECMS shall respond in writing as soon as reasonably practicable and in any event within five [(5)] Business Days to any requests from the Client (acting reasonably) for further information about the Change Proposal;
- (b) where the Client submits a Change Proposal, ECMS shall respond in writing as soon as reasonably practicable and in any event within five [(5)] Business Days setting out the effect of the Change on the Charges and any agreed time frames for the performance of the Services.

15.2 Following any Change Proposal and the receipt by the Client of any information to be provided by ECMS pursuant to clauses 15.1(a) and 15.1(b), the parties shall promptly discuss the Proposal in order to finalise their mutual agreement to proceed or not to proceed with the Change. Where the parties agree to proceed with the proposed Change then the party that submitted the Change Proposal shall draft a variation to this Agreement accordingly (**Variation**).

15.3 Signature by both Parties of a Variation shall constitute a formal amendment to this Agreement. Any changes specified in the Variation shall constitute the maximum cost of the Change.

15.4 Any dispute or disagreement between the parties concerning a Change, Change Proposal or Variation shall be resolved pursuant to clause 32 (Dispute resolution).

16 Data protection and Data Processing

16.1 The provision of the Services may require ECMS to Process Personal Information for and on behalf of the Client. In respect of such Processing, the parties acknowledge and agree that:

- (a) the Client shall be the Data Controller and ECMS shall be the Data Processor;
- (b) ECMS shall Process Personal Information as set out in the SOW; and
- (c) clauses 16.2 to 16.9 below shall apply.

16.2 The Client shall:

- (a) comply with all Data Privacy Laws;
- (b) obtain and maintain all relevant registrations (and similar) required by Data Privacy Laws; and
- (c) ensure that all instructions that it issues to ECMS comply with Data Privacy Laws.

16.3 When Processing Personal Information as part of the delivery of the Services, ECMS shall:

- (a) Process the Personal Information only on the documented instructions of the Client, except to the extent that any Processing of Personal Information is required by Relevant Laws;
- (b) where Processing of Personal Information by ECMS is required by Relevant Laws, ECMS shall inform the Client of the relevant legal requirement before processing, unless such law prohibits ECMS from doing so;
- (c) notify the Client where ECMS reasonably believes any documented instructions from the Client in respect of the Processing of Personal Information infringe any Data Privacy Laws or any other Relevant Laws;
- (d) ensure that its personnel who are authorised to Process the Personal Information have committed themselves to confidentiality;
- (e) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of Processing;
- (f) only appoint a third party to Process Personal Information on its behalf in accordance with clauses 16.5 and 16.6 below;
- (g) taking into account the nature of the Processing, assist the Client by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the Data Subject's rights under Data Privacy Laws;
- (h) notify the Client without undue delay after becoming aware of a Data Breach;
- (i) at the Client's expense assist the Client in its compliance with its obligations under Data Privacy Laws in respect of security of Processing, carrying out data protection impact assessments (as defined in Data Privacy Laws), remedial action to be taken in response to a Data Breach (including notifying Data Breaches to the ICO and affected Data Subjects) and consulting with the ICO regarding high risk Processing, in each case insofar as it is able taking into account the nature of the Processing and the information available to ECMS;
- (j) at the Client's discretion, delete or return to the Client all of the Personal Information Processed under the applicable SOW on completion of the applicable SOW, and delete any copies of such Personal Information unless any Relevant Laws require that copies are kept; and

- (k) make available to the Client all information necessary to demonstrate compliance with its obligations in this clause 16.3.
- 16.4 The Client hereby authorises ECMS to sub-contract its Processing of Personal Information to any Operative it appoints to undertake the provision of the Services.
- 16.5 Subject to clause 16.4, ECMS shall not sub-contract its Processing of Personal Information to a third party without the Client's prior specific or general written authorisation (not to be unreasonably withheld, conditioned or delayed). Where any sub-contracting of Processing of Personal Information is based on the Client's general written authorisation, ECMS shall inform the Client of any intended changes concerning the addition or replacement of any sub-contractors and the Client shall notify ECMS of any objections it has to any such changes in writing within five (5) Business Days, after which any such changes which the Client has not objected to in accordance with this clause 16.4 shall be deemed to be accepted.
- 16.6 Where ECMS sub-contracts its Processing of Personal Information to a third party in accordance with clause 16.5 above, ECMS shall:
- (a) ensure that any such third party is subject to the same data protection obligations as those set out in clause 16.3 above;
 - (b) obtain sufficient guarantees from any such third party that they will implement appropriate technical and organisational measures in such a manner that the Processing of Personal Information by such third party will meet the requirements of Data Privacy Laws; and
 - (c) remain liable to the Client for any Processing of Personal Information by any such third party.
- 16.7 Each party shall co-operate with the ICO on the request of the other party in respect of the performance of its tasks under this agreement and any SOW.
- 16.8 ECMS shall not transfer Personal Information to any country outside of the UK or the EEA without the prior written consent of the Client, such consent may be subject to and given on such terms as the Client may in its discretion prescribe (acting reasonably and in compliance with Data Privacy Laws).
- 16.9 In the event that the Client consents to the transfer of Personal Data from ECMS to a country outside of the UK or EEA under clause 16.8, ECMS shall confirm in writing details of how ECMS will ensure an adequate level of protection and adequate safeguards in respect of the Personal Information that will be processed in and/or transferred outside of the EEA so as to ensure compliance with the Data Privacy Laws.
- 17 Force Majeure**
- 17.1 No party shall be liable for any failure to perform, or delay in performing, any of its obligations if and to the extent that the failure or delay is caused by Force Majeure provided that such failure or delay could not have been prevented by reasonable precautions. The time for performance of an obligation which is affected by Force Majeure shall be extended by a period which reflects the impact of the delay caused by the Force Majeure.
- 17.2 A party shall only be entitled to claim relief under clause 17.1 if (and, in the case of clauses 17.2(b) to 17.2(d) inclusive, for the period during which) it:
- (a) gives notice as soon as reasonably practicable to the other of its wish to claim relief under clause 17.1 together with details of the Force Majeure, including the party's estimate of its duration and the way in which and extent to which the party considers that the performance of its obligations is likely to be affected;
 - (b) updates the information provided under clause 17.2(a) at least once every 5 Business Days throughout the period during which the performance of its obligations is affected;

- (c) takes all reasonable steps it to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance; and
 - (d) permits, and uses all reasonable efforts to facilitate, any efforts that the other party may make to obtain alternative supplies or services.
- 17.3 If a Force Majeure prevails for a continuous period in excess of [14] days after the date on which the Force Majeure begins, or for a period exceeding [14] days when aggregated then either party shall be entitled to terminate this Agreement immediately by providing notice in writing to the other party.

18 Non-solicitation

- 18.1 Except as expressly envisaged by this Agreement, the Client shall not, without ECMS's prior written consent, directly or indirectly solicit, interfere with or endeavour to entice away from ECMS or induce or cause a third party to induce any consultant, employee or agent of ECMS with whom the Client has had contact in connection with this Agreement, to enter into a contract for service or a contract of employment with the Client.
- 18.2 Except as expressly envisaged by this Agreement, ECMS shall not, without the Client's prior written consent, directly or indirectly solicit, interfere with or endeavour to entice away from the Client or induce or cause a third party to induce any employee of the Client with whom ECMS has had contact in connection with this Agreement, to enter into a contract for service or a contract of employment with ECMS.
- 18.3 It shall not be a breach of clauses 18.1 or 18.2 for the Client or ECMS to advertise publicly in good faith a position or vacancy to which a consultant, employee or agent of any such entity may or does respond and which directly results in that consultant, employee or agent being employed to fill that position or vacancy.
- 18.4 Unless otherwise agreed in writing, the restrictions referred to in clauses 18.1 and 18.2 shall apply in respect of a given consultant, employee or agent during the relevant period of the SOW and for a period of 6 months thereafter.
- 18.5 If the Client commits a breach of clause 18.1, the Client shall on demand pay to ECMS a sum of twenty thousand pounds (£20,000.00) in respect of each relevant consultant, employee or agent that is the subject of the breach. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of ECMS.
- 18.6 If ECMS commits a breach of clause 18.2, ECMS shall on demand pay to the Client a sum of twenty thousand pounds (£20,000.00) in respect of each relevant consultant, employee or agent that is the subject of the breach. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of the Client.

Part C – General Terms incorporated into the MSA and all Project Agreements

19 Interpretation

- 19.1 In this Part C references to "this Agreement" shall be construed as referring to the MSA or Project Agreement, as applicable;
- 19.2 In this Agreement the definitions in Schedule 1 (Definitions) shall apply.
- 19.3 Clause headings are for ease of reference only and do not form part of or affect the meaning, interpretation or construction of this Agreement.
- 19.4 References to the singular include the plural (and vice versa) and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.

- 19.5 A reference to a statute, statutory provision or any subordinate legislation shall unless otherwise stated be construed as including a reference to that statute, provision or subordinate legislation as in force at the Contract Date and as amended, extended, re-enacted or replaced from time to time.
- 19.6 The schedules and appendices form part of this Agreement and references to this Agreement include the schedules and appendices.
- 19.7 References to clauses, schedules and appendices are to clauses of and schedules and appendices to this Agreement; references in a schedule or an appendix to paragraphs are to the paragraphs of that schedule or appendix; and a reference to a clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs.
- 19.8 In this Agreement the words **other**, **includes**, **including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

20 Confidentiality

- 20.1 Subject to clause 20.3 and save as otherwise expressly provided for in this Agreement, neither party shall during the Term or thereafter disclose to any person or use for any purpose any Confidential Information obtained by it (**Recipient party**) from the other (**Disclosing party**) in connection with this Agreement but the Recipient party may:
- (a) disclose Confidential Information to such of its employees or professional advisers (including lawyers, accountants and auditors) who require such disclosure where necessary for the proper performance of their duties provided that the Recipient party has given prior written instructions to such employees and/or professional advisors as to the restrictions on use and disclosure contained in this Agreement; and
 - (b) use Confidential Information in the proper exercise of its rights and the performance of its obligations under this Agreement.
- 20.2 The Recipient party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use and undertakes to take all reasonable measures to protect the confidentiality of the Disclosing party's Confidential Information. Without limiting the generality of the foregoing, if so directed by the Client, ECMS shall require its Staff to execute a written undertaking in favour of the Client in similar terms to the provisions of this clause.
- 20.3 The restrictions on use and disclosure of Confidential Information under this clause 20 shall not apply to any Confidential Information which the Recipient party can prove:
- (a) was already known to it without any obligation of confidence prior to its receipt thereof from the Disclosing party;
 - (b) was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the Disclosing party;
 - (c) was in the public domain at the time of receipt by the Recipient party or subsequently entered into the public domain other than by reason of the breach of the provisions of this clause or any obligations of confidence owed by the Recipient party to the Disclosing party; or
 - (d) it is required to disclose by law, regulation, order or a regulator.
- 20.4 If ECMS is required to make a disclosure of Confidential Information as contemplated by clause 20.3(d), ECMS shall only disclose the minimum Confidential Information required and shall where possible, consult with the Client's Key Contact prior to any such disclosure.

21 Notices

21.1 The details for the service of notices in accordance with this clause 21 (**Notices**) are:

(a) in the case of ECMS:

Attention: Mark Weller Address: 7th Floor, 131 Finsbury Pavement, London EC2A 1NT

Email address: mark.weller@ecmanagedsolutions.com

(b) in the case of the Client:

Attention: ♦

Address: ♦

Email address: ♦

21.2 All notices to be given to a party under this Agreement shall be: in writing in English; marked for the attention of the person specified in clause 21.1; and delivered by hand or sent by prepaid registered post (or air mail if sent abroad) or sent by email to the email address detailed for the party in clause 21.1. A party may change the details recorded for it in clause 21.1 by notice to the other in accordance with this clause 21.

21.3 A notice shall be treated as having been received:

(a) if delivered by hand or by pre-paid registered post at the time of delivery; and

(b) if sent by email, upon receipt by the sender of the email transmission read receipt report that the email has been transmitted, received and read by the addressee.

22 Relationship of the parties

Neither ECMS nor the Client shall by virtue of this Agreement be, or for any purpose be deemed to be, an employee or agent of the Client or ECMS respectively, and no partnership or joint venture shall arise between ECMS and the Client as a consequence of this Agreement.

23 Beneficiaries to this Agreement

23.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23.2 If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the parties may rescind or vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person,

24 Entire Agreement

This Agreement sets out the entire agreement and understanding between the parties relating to its subject matter, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

25 Survival of rights

25.1 Termination or expiry of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

25.2 Without prejudice to the generality of clause 25.1 the following clauses shall continue in force on and after the termination or expiry of this Agreement: clause 12 (Limitation of Liability); clause 13 (Insurance); clause 14.5 to 14.8 (Consequences of Termination); clause 20 (Confidentiality); clause 23 (Beneficiaries to this Agreement); clause 32 (Dispute resolution); clause 33 (Governing law and jurisdiction).

26 Waiver

Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any other exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent or other breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed on behalf of the party granting it and is communicated to the other party in accordance with clause 21 (Notices).

27 Rights cumulative

The rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by this Agreement, law, equity or otherwise. Except as expressly stated in this Agreement (or in law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.

28 Costs

Except as otherwise stated in this Agreement each party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Agreement and all ancillary documents and any changes to this Agreement or such ancillary documents.

29 Severability

The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

30 Assignment and transfer

30.1 Save as provided for under this Agreement, neither party shall assign, transfer, novate, subcontract or otherwise deal with any right or obligation arising under or in connection with this Agreement (and/or any other document entered into pursuant to or in connection with it) (other than for factoring purposes) except with the express prior written consent of the other party.

31 Variation

Subject to clause 15 (Change), no variation to this Agreement shall be valid unless it is in writing and signed for and on behalf of each of the parties.

32 Dispute resolution

32.1 If a dispute arises out of or in connection with this Agreement (**Dispute**) between the Client and ECMS during the term of this Agreement in relation to any matter which cannot be resolved by operational management either party may refer the matter for determination in accordance with the procedure set out in clause 32.2.

32.2 A Dispute referred for determination under clause 32.1 shall be resolved as follows:

(a) by referral in the first instance to the decision of the Key Contacts of the Client and of ECMS;

- (b) if a Dispute is not resolved within 21 days (or such other period as may be agreed in writing between the parties) of its referral pursuant to clause 32.2(a), such Dispute shall be referred to senior personnel (as notified by each party to the other for this purpose) who shall have the power to resolve the Dispute; and

32.3 In the event that the Dispute is not resolved within 21 days of its referral under clause 32.2(b), the parties agree to enter into mediation in good faith to settle such a Dispute and will do so in accordance with [the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure]. Unless otherwise agreed between the parties within [14] days of notice of the Dispute, the mediator will be nominated by [CEDR].

32.4 In the event that the Dispute is not resolved by its referral under clause 32.3 to mediation proceedings, either party may commence court proceedings in accordance with clause 33 (Governing law and jurisdiction). Neither party may commence any court or arbitration proceedings in relation to the whole or part of the Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

32.5 Nothing in this clause 32 shall preclude a party from taking legal proceedings in the courts at any time:

- (a) to obtain an injunction (whether interim or final) to restrain the other party from doing any act or compelling the other party to do any act; or
- (b) to prevent a claim from becoming time-barred under any statute or rule of limitations.

33 Governing law and jurisdiction

33.1 This Agreement is governed by and shall be interpreted in accordance with English law.

33.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Agreement.

Signed by the parties or their duly authorised representatives on the date of this Agreement.

Schedule 1

Definitions

Business Day means any day (other than a Saturday) on which commercial banks are open for business in the City of London

Change has the meaning given in clause 15.1

Change of Control means a change in the control of a person where **Control** is defined as in section 1124 of the Corporation Tax Act 2010

Change Proposal has the meaning given in clause 15.1

Charges means the charges relating to this Agreement which are set out in or calculated in accordance with Schedule 3 (Charging) and the SOW and which are payable in accordance with clause 11 (Charges and payment)

Claim means any actual or threatened claim, action, proceeding, demand or allegation

Client Material means any material owned, licensed to or controlled by the Client and made available to ECMS in connection with this Agreement

Client Responsibilities means the specific deliverables and activities, as set out in the SOW, that ECMS requires the Client to provide and undertake to enable it to the Services

Confidential Information means all proprietary and confidential information of a party or Personal Data which by its very nature should be treated as confidential or which is designated as confidential by a party, including:

- (a) information relating directly or indirectly to the Client's business, including details of trade secrets, know-how, plans, strategies, ideas, operations, compliance information, processes, methodologies and practices;
- (b) information relating directly or indirectly to the Client's customers, suppliers or business partners (or potential customers, suppliers or business partners);
- (c) works of authorship, products and materials written and prepared by or on behalf of the Client software, data, diagrams, charts, reports, designs, specifications, inventions and working papers or similar materials of whatever nature and on whatever media; and
- (d) the provisions of this Agreement

Controller, Processor, Personal Data and Data Subject have the meanings given under the Data Protection Act 2018

Contract Date means the date of execution of a SOW by the last party to execute it

Data Breach means: (i) any unauthorised loss, corruption, damage, destruction, alteration, disclosure or access to any Personal Information; (ii) any unauthorised or unlawful Processing of Personal Information; or (iii) any breach of Data Privacy Laws.

Data Privacy Laws means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals and all laws implementing them, in each case as may be replaced, extended or amended, including, without limitation, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

Deliverables means the final product of the Services created for and on behalf of the Client identified as such in the SOW

Dispute has the meaning given in clause 32.1

Dispute Resolution Procedure means the procedure for resolving Disputes set out in clause 32

ECMS Materials means all materials created by for or on behalf of ECMS otherwise than in connection with or in the course of the performance or receipt of the Services required to be used by ECMS and/or the Client in connection with the performance or receipt of the Services

EEA means the member states of the European Union, Norway, Iceland and Liechtenstein.

Expenses means the expenses as agreed with the Client that are incurred by ECMS in its performance of the Services and supported by original receipts provided to the Client

Force Majeure means in relation to a party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supranational authority, war or national emergency, strikes and other industrial disputes (other than strikes or industrial disputes affecting Staff)

Holding Company has the meaning set out in section 1159 of the Companies Act 2006 and shall include parent and subsidiary undertakings as defined in section 1162 of the Companies Act 2006

ICO means the UK Information Commissioner's Office, or the equivalent national data protection authority in any relevant jurisdiction.

Insolvency Event means one or more of the following events affecting either party or a Holding Company of either party (**Affected party**):

- (a) the Affected party becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (assuming, if necessary, that section 123 aforesaid applies to the Affected party)
- (b) a winding-up petition is presented in respect of the Affected party
- (c) the Affected party enters into liquidation either compulsory or voluntary (save for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the other party) or a provisional liquidator is appointed in respect of the Affected party
- (d) notice of intention to appoint an administrator is served in respect of the Affected party or an application for an administration order in respect of the Affected party is filed at court
- (e) an administrator, administrative receiver, receiver or manager or similar officer is appointed in respect of the whole or any part of the Affected party's assets
- (f) the Affected party proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors
- (g) distress execution or other legal process is taken or steps are taken to enforce any encumbrance over all or part of the assets and/or undertaking of the Affected party or
- (h) the Affected party is subject to an event analogous to any of (a) to (g) above in any other jurisdiction

Intellectual Property Rights means all current and future copyright, patents, trade marks or rights in databases, inventions or trade secrets, Know-how, rights in designs, topographies, trade and business names, domain names,

marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any country of the world

Key Contact means the person appointed by a party to be that party's point of contact in relation to the management of this Agreement from time to time in accordance with clause 6

Know-how means trade secrets, manufacturing, engineering, technical, commercial and financial data and information and techniques in any form not in the public domain relating to the Services, including (without limitation) drawings, formulae, algorithms, instruction and training manuals, market forecasts and any such data and information relating to the use of the Services

Modify means to add to, enhance, detract, reduce, change, replace, vary, deprive or improve. **Modification** and **Modified** shall be construed accordingly

New Materials means all materials (including any specifications, designs, software, user guides and works) and any Modifications to such materials, conceived, designed, prepared or created by, for or on behalf of Client prior to or during the Term (whether directly or through third parties) pursuant to this Agreement or arising out of the provision of the Services including the Deliverables

Operative means an individual engaged or employed by ECMS as a consultant or employee to perform all or part of the Services

Personal Information means any information which: i) falls within the definition of "Personal Data" under the Data Protection Act 2018; and ii) in relation to which ECMS is providing the Services or which ECMS is required to Process (subject to the Data Privacy Laws) in connection with this Agreement

Project means the project described in the SOW in respect of which ECMS is providing the Services

Project Site means the site where the Services shall be performed as set out in the SOW (if applicable)

Proposal means the requirements in respect of the Services as set out in the SOW or as agreed between the parties from time to time

Relevant Law means:

- (a) any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a party is subject
- (b) the common law as applicable to the parties (or any one of them)
- (c) any binding court order, judgment or decree applicable to the parties (or any one of them) and
- (d) any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which the Client is subject

in each case, for the time being

Services means the services set out in the SOW

Staff means any person engaged by ECMS in connection with this Agreement including the ECMS' employees, Operatives, and any agents and contractors and their respective employees

Subsidiary has the meaning set out in section 1159 of the Companies Act 2006

Term means the period from the Contract Date to the termination or expiry of this Agreement

Total Cost means the total charge for the Services (if applicable) as set out in the SOW

Variation has the meaning given in clause 15.2

Warranty Date means the date that is 3 months after the date of termination of the relevant SOW

Schedule 2

Template Statement of Work

This Project Agreement is made on [📅]

Between

- (1) [Client Company Name] a company incorporated in [England] with registered number [Client's company number] whose registered office is at [Client's registered office address] (Client); and
- (2) **ECMS (Managed Solutions) Limited** a company incorporated in England with registered number 11356506 whose registered office is at 7th Floor, 131 Finsbury Pavement, London EC2A 1NT (**ECMS**).

It is agreed as follows

1 Proposal

Client Name	
Project Name	
Project description	
Services description	
Deliverables	
Proposed Start Date	
Proposed Completion Date	
Will Operatives require access to a Project Site	Yes / No
Address of Project Site (if relevant)	
Charges	
Total Cost (if applicable)	
Expenses (if applicable)	
Client Responsibilities	
Client Equipment to be provided (if applicable)	
Special Terms	
Additional Information	

2 Operatives

Role	Operative

--	--

3 [Data Processing

3.1 ECMS shall Process Personal Information as set out in Annex 1 (Data Processing Register) of the SOW]

4 [Additional Insurance

4.1 ECMS shall take out and maintain at all times during the Term [consultancy professional insurance covering legal liability for an insured amount of not less than [£1 million];

5 [Intellectual Property Rights

5.1 Clause 10 of this Agreement shall be deleted and replaced with the following:

10.1 Nothing in this Agreement shall operate to assign or otherwise transfer a party's Intellectual Property Rights in materials existing before the date of this Agreement except in relation to New Material.

10.2 Subject to clause 10.4, ECMS hereby assigns absolutely to the Client by way of present assignment of ECMS's existing and future property, rights, title, interest and Intellectual Property Rights in any Deliverables and other rights of whatever nature exercisable by any third party, together with the right to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such Intellectual Property Rights.

10.3 The Client hereby grants to ECMS a non-exclusive, royalty-free, worldwide, licence to use, copy and maintain the Deliverables and the Client Materials during the Term to the extent necessary and for the sole purpose of the proper performance of the Services, which shall terminate automatically at the end of the Term or earlier termination, or (if earlier) when such Deliverables and the Client Materials cease to be required in connection with the performance of the Services.

10.4 Nothing in this Agreement or in the SOW shall assign to the Client any rights, title or interest in any Know-how owned by ECMS or any of ECMS's licensors including any Know-how incorporated into the Deliverables.]

Signed for and on behalf of **[Client]**

Signature

Print Name

Position

Date

Signed for and on behalf of **ECMS (Managed Solutions) Limited**

Signature

Print Name

Position

Date

Annex 1

Data Processing Register

1 Subject- matter of processing

1.1 The Personal Data to be processed by ECMS pursuant to this Agreement concerns the following subject matter(s):

[INSERT DETAILS]

2 Duration of the Processing

2.1 The Personal Data to be Processed under this Agreement shall be Processed for the following duration:

[INSERT DETAILS]

3 Nature and purposes of the processing

3.1 The Personal Data to be Processed under this Agreement shall be Processed for the following nature and purpose:

[INSERT DETAILS]

4 Type of Personal Data

4.1 The Personal Data to be Processed by ECMS pursuant to this Agreement concerns the following type of Personal Data

[INSERT DETAILS]

5 Categories of Data Subjects

5.1 The Personal Data to be Processed under this Agreement concern the following categories of Data Subjects

[INSERT DETAILS]

6 Additional useful information (e.g. storage limits and other relevant information)

[INSERT DETAILS]

7 Contact details

7.1 For Personal Data queries arising from or in connection with this Agreement, the parties shall contact the following:

Client	ECMS
[Insert name]	[Insert name]

Annex 2

Template Service Notice

1 Service Notice

1.1 The Client considers the following matters in respect of the Services to be defective.

Date	
Defect	

Signed by
duly authorised for and on behalf of
[Client's Name]

)
)
)

Signed by
duly authorised for and on behalf of
ECMS (Managed Solutions) Limited

)
)
)

Schedule 3

Charging

1 Interpretation

- 1.1 Any charging provisions set out under the SOW take precedence over the provisions of this Schedule 3 (Charging).

2 Charging

- 2.1 The rates for the Operatives will be charged in accordance with the rate card provided.