

Master Services Agreement

For [Client Name]

Agreement: HERD-XXX_0001

Version: DRAFT v0.1



1 Governance

1.1 Parties

1.1.1 This Agreement, herein referred to as the “**Agreement**”, is entered into between

1.1.2 Herd It Consulting Limited whose registered office is Herd Consulting, Wizu Workspace, 32 Eyre Street, Sheffield, S1 4QZ, registered in United Kingdom under registration number 14226083 herein referred to as “**Herd Consulting**”; and

1.1.3 [Client Legal Entity Name] whose registered office is [insert here], registered in United Kingdom under registration number [insert here] herein referred to as “**Client**”.

1.2. Introduction

1.2.1 The Client wishes to engage Herd Consulting to provide Consultancy Services from time to time. This Agreement sets out the terms upon which Herd Consulting will provide such Consultancy Services to the Client.

1.2.2 Details of the Consultancy Services to be provided by Herd Consulting to the Client may be agreed between Herd Consulting and the Client from time to time and recorded in a Statement of Work that complements this Agreement.

Agreement number	HERD-XXX_0001
Version	DRAFT 0.1

Signature for and on behalf of [Client Legal Entity Name]

Signature for and on behalf of Herd Consulting

Print Name

Print Name

Title

Title

Date

Date

2 Definitions

2.1 Unless the context otherwise requires, the following expressions shall apply throughout this Agreement and any Statements of Work:

Expression	Definition
"Acceptance"	The formal acceptance of delivery of Solutions or any part thereof.
"Applicable Law"	All applicable laws, statutes and regulations in force from time to time.
"Agreement"	This agreement as amended, restated, novated, varied and/or supplemented from time to time.
"Business Days"	A day, other than a Saturday, Sunday or public holiday, when banks in London are open for business.
"Change Request"	A mutually agreed change to Consultancy Services or Solutions to be provided in the form described at clause 3.5 (Provision of Solutions).
"Charges"	The sum payable for Consultancy Services as set out in the relevant Statements of Work.
"Commitment Date"	The date stated in the Statement of Work and/or Change Request when such Statement of Work or Change Request shall be deemed to have commenced.
"Confidential Information"	Information of a confidential nature, in whatever form or medium, including technical and commercial know-how, technology, information pertaining to business operations and strategies, and information pertaining to Clients, pricing and marketing.
"Consultancy Services"	The services described in a Statement of Work.
"Data Breach"	A breach of security leading to the accidental or unlawful destruction, loss, alternation, unauthorised disclosure of, or access to Personally Identifiable Information.
"Data Controller"	has the same meaning given to the term "controller" in the Data Protection Law.
"Data Processor"	has the same meaning given to the term "processor" in the Data Protection Law.
"Data Protection Law"	All legislation and regulatory requirements in force from time to time relating to the use of Personally Identifiable Information including, without limitation: the General Data Protection Regulation (EU Regulation 2016/679) (GDPR), the GDPR and LED Implementing Regulations 2018 and any other regulations, order or other secondary legislation made under the Data Protection Act 2018 and the Data Protection Act 2018 (an Act of Parliament).
"Data Protection Supervisory Authority"	An independent body set up to monitor data protection compliance in an EU member state, or country to which the Data Protection Laws apply.
"Data Subject"	A living natural person who can be directly or indirectly identified by the Data Controller or a third party using

	reasonably likely means, from their Personally Identifiable Information held by, or on behalf of, the Data Controller.
"Due Payment Period"	The period of time designated for payment of invoices to be paid.
"EEA"	The European Economic Area.
"Intellectual Property Rights"	Patents, rights to inventions, copyrights and related rights, Trade Marks, trade names, domain names, right in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
"Location"	The location(s) designated in the relevant Statement of Work and/or Change Request where Consultancy Services are performed.
"Over and Above Expenses"	Expenses for items outside of the agreed Charges for the Solutions provided to the Client, for example: hotel expenses, travel to locations not contracted, out of hours working not agreed as part of the Solution, additional Man-power/ materials/ equipment.
"Over and Above Charges"	Charges for items outside of the agreed charges for the Consultancy Services provided to the Client.
"Party"	A party to this Agreement.
"Personally Identifiable Information"	Is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.
"Processing"	Any operation or set of operations which is performed on Personally Identifiable Information or on sets of Personally Identifiable Information, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
"Programme of Work"	The timetable for completion of the Consultancy Services agreed between the Client and Herd Consulting.
"Solution"	Any Consultancy Service, or other Service provided by Herd Consulting.
"Statement of Work"	A Statement of Work to this Agreement detailing the supply of Consultancy Services and any other specific terms or details agreed between the Parties relating to the supply of Consultancy Services, signed by the Parties.
"Third Party"	A person who is not a Party to this Agreement other than a member of Herd Consulting.
"Third Party Products or Services"	Any Software and/or Services created or provided by a Third Party.

"Trade Marks"	Any brands, products or names clearly identified with the universal trade mark symbols; ® or TM.
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2.2 In this Agreement, unless the context otherwise requires:

- a) A reference to a "Clause" or "Statement of Work" is a reference to a clause or Statement of Work of this Agreement;
- b) Any Statements of Work and/or Change Requests agreed between the Parties form part of this Agreement. Any reference to this "Agreement" includes the Statements of Work and Change Requests (unless the context dictates otherwise);
- c) references to any Party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective lawful successors, assigns or transferees;
- d) a reference to a "holding company" or a "subsidiary" means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 (an Act of Parliament);
- e) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended and any subordinate legislation made from time to time under it, unless otherwise stated;
- f) references to a "person" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- g) references to one gender shall include all genders and references to the singular shall include the plural and vice versa;
- h) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- i) this Agreement shall be binding on, and endure to the benefit of, the Parties to this Agreement and their respective successors and permitted assigns, and references to any Party shall include that Party's successors and permitted assigns;
- j) in the event of any conflict between the terms of this Agreement and the terms of any Statement of Work or Change Request, the terms of a Change Request shall take precedence over any Statement of Work and this Agreement, and the terms of any Statement of Work shall take precedence over the terms of this Agreement.

3 Provision of Consultancy Services

3.1 This Agreement shall commence on the date of signature of the last Party to sign this Agreement and shall continue, unless terminated in accordance with clause 14 (Termination).

3.2 Herd Consulting shall provide Consultancy Services to the Client as agreed between Herd Consulting and the Client from time to time in accordance with the terms of this Agreement.

3.3 The Parties may agree from time to time that Herd Consulting shall provide Consultancy Services (as recorded in Statements of Work and Change Requests) to other members of the Client's Group under the terms of this Agreement, without requiring the other member of the Client's Group to enter into a master services agreement with Herd Consulting. In such circumstances, any reference in this Agreement to the Client shall extend to the Client's Group and the Client agrees to procure that members of the Client's Group abide by the terms of this Agreement.

3.4 The Parties may agree Statements of Work and/ or Change Requests in respect of Consultancy Services which shall be signed by each of the Parties and shall form part of this Agreement from the Commitment Date of such Statement of Work or Change Request.

3.5 The Client may, by giving notice to Herd Consulting, at any time where Herd Consulting are delivering Consultancy Services, request a change to the Consultancy Services to be provided. In such instances, Herd Consulting shall prepare a written estimate of the relevant Charges and, if relevant, any impact the requested changes would have on the Programme of Work. Herd Consulting will not make the change to the Consultancy Services to be provided until both Parties have agreed and signed a written agreement ("Change Request") specifying the Charges and, if relevant, any changes to the Programme of Work.

3.6 Herd Consulting shall not provide any Consultancy Services to the Client other than as recorded in a Statement of Work and/or Change Request unless otherwise agreed between the Parties.

3.7 The Client acknowledges and agrees that Consultancy Services may be provided or performed by any member of Herd Consulting or, with prior notification to the Client, by a Third Party.

3.8 The Client shall provide Herd Consulting with all information concerning the Client's operations and activities which may be required by Herd Consulting to provide the Consultancy Services and will use all reasonable endeavours to respond quickly and positively to requests for decisions, approvals and consultations.

3.9 Where participation by, or access by Herd Consulting to the Client's own staff is necessary for the provision of the Consultancy Services, the Client agrees that such staff shall be available at the times agreed by the Parties. In reaching such agreement the Client shall endeavour to meet any reasonable timetable proposed by Herd Consulting.

3.10 If at any time during the provision of Consultancy Services, the Client notices or suspect that the wrong assumptions have been made or wrong directions have been taken by Herd Consulting, it shall immediately inform Herd Consulting. The Parties may take such further actions as they mutually deem necessary and appropriate to address such wrong assumptions or wrong directions to allow the continued delivery of the Consultancy Services, which may include entering into a Change Request.

4 Prices and Payment

4.1 In consideration for Herd Consulting providing Consultancy Services, the Client shall pay the Charges.

4.2 The Charges for Consultancy Services are listed in the relevant Statement of Work and/or Change Requests. Unless otherwise indicated all prices exclude Value Added and any other Sales Taxes where applicable.

4.3 All sums due under this Agreement shall be paid in Great British Pounds Sterling and made within 30 (thirty) days from the date of the invoice (the “Due Payment Period”).

4.4 In the case of Consultancy Services supplied to a Location situated outside of the United Kingdom the Client agrees to pay all import levies, duties or taxes of whatever nature in relation to those Consultancy Services.

4.5 Invoices shall be paid by the Client in full without any deduction, withholding, counterclaim or set-off.

4.6 The Client is responsible for the payment of any and all bank charges incurred when making a payment to Herd Consulting. For the avoidance of doubt, the amount of money that Herd Consulting receive must equal the amount that has been invoiced and is due for payment.

4.7 Without prejudice to Herd Consulting’s other rights, at its sole option Herd Consulting reserves the right to:

1. a) charge interest on any overdue invoice amounts payable by the Client to Herd Consulting at a rate of 4% (four per cent) per annum above the Bank of England Base Rate; or
2. b) claim interest and statutory compensation from the Client in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (an Act of Parliament) as if the provisions of such Act were incorporated into this Agreement.

Such charges will be levied to the Client upon written notification that current invoices have exceeded the Due Payment Period. Interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable by the Client on demand.

4.8 In the case of complete non-payment of overdue sums, which have exceeded the Due Payment Period and any further mutually agreed time frames for payment, Herd Consulting reserves the right to take all legal actions necessary to collect the debt and any reasonable costs incurred by Herd Consulting during this process.

4.9 In the case of payments becoming more than 15 (fifteen) Business Days overdue, Herd Consulting reserves the right to suspend any and all work. Upon receipt of payment, Herd Consulting will agree to review current Statement of Work and/or Change Requests and amend or replace them as mutually agreed. Any additional costs resulting from the delays in payment by the Client shall be borne by the Client.

4.10 All Charges for Consultancy Services are exclusive of all Over and Above Expenses and Over and Above Charges that Herd Consulting reasonably incur except where specifically stated. Herd Consulting will notify the Client as soon as is reasonably possible and invoice these expenses and charges to the Client as and when they occur.

4.11 In the event of any dispute in connection with any invoice rendered by Herd Consulting, the Client agrees to notify Herd Consulting of such dispute within 10 (ten) Business Days of date of invoice. The Parties agree to use reasonable endeavours to resolve such dispute promptly in accordance with the procedures set out in clause 18 (Disputes). The Client shall pay the whole or relevant part of the undisputed amount agreed between the Parties on the due date.

4.12 Unless agreed otherwise pursuant to the dispute resolution procedures set out in clause 18 (Disputes), if the Client disputes a part or the entire invoice due and the dispute is resolved in favour of Herd Consulting, the Client shall pay the disputed amount:

4.12.1 if the Due Payment Period for the invoice payment has been exceeded since the date of the invoice, within 5 (five) Business Days of the date the dispute is resolved; or

4.12.2 if the Due Payment Period has not been exceeded, within the Due Payment Period.

4.13 Unless agreed otherwise pursuant to the dispute resolution procedures set out in clause 18 (Disputes), if the Client disputes a part or the entire invoice due and the dispute is resolved in favour of the Client, Herd Consulting shall credit or waive the disputed amount within 5 (five) Business Days of the date the dispute is resolved.

5 Copyright and Intellectual Property Rights (IPR)

5.1 Title to Solution, including any Intellectual Property Rights, shall remain vested in Herd Consulting, or Herd Consulting's Third Party suppliers (as the case may be). Where the terms of the relevant Statement of Work and/or Change Request provide for title to any Solution to pass to the Client, such title and any Intellectual Property Rights may not pass to the Client until the invoices in respect of the relevant Solutions have been paid in full.

5.2 Whilst invoices in respect of Solutions remain wholly or partially unpaid:

5.2.1 Herd Consulting shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Solutions;

5.3 Irrespective of whether title to the Solutions remains vested in Herd Consulting, risk in the Solutions shall pass to the Client upon delivery.

5.4 Unless otherwise specified in the relevant Statement of Work, any and all Intellectual Property Rights to Solutions shall remain vested in Herd Consulting or Herd Consulting's Third Party suppliers (as the case may be).

5.5 The copyright and all other Intellectual Property Rights provided by the Client or its designate Third-Party suppliers shall remain vested in the Client or the Client's Third-Party suppliers (as the case may be).

5.6 The Client shall not reverse engineer, decompile, disassemble or otherwise attempt to derive the guidance or artefacts of any Intellectual Property Rights belong to Herd Consulting, other than as permitted by Applicable Law.

5.7 Any and all Intellectual Property Rights in and to any Trade Marks applicable to the Solutions are the exclusive property of Herd Consulting or Herd Consulting's Third Party supplier (as the case may be). The Client shall not use, register, attempt to register (or assist or procure any third party to undertake the foregoing) any mark, device, logo, name, trade mark or similar which is the same or confusingly similar (including, without prejudice to the generality of the foregoing, phonetically similar) to the Trade Marks.

5.8 Each Party hereby acknowledges that it shall not use any Intellectual Property Rights of the other Party, other than in accordance with the terms of this Agreement.

6 Confidentiality

6.1 The Client shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by a member of the Herd Consulting or its agents, and any other confidential information concerning the business or products of Herd Consulting which the Client may obtain. The Client shall restrict the disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purposes of this Agreement, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

6.2 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- a) is or becomes publicly known other than through any act or omission of the receiving Party;
- b) was in the other Party's lawful possession before the disclosure;
- c) is lawfully disclosed to the receiving party by a Third Party without restriction on disclosure;
- d) is independently developed by the receiving Party, which independent development can be shown by written evidence.

6.3 Subject to clause 6.5 (Confidentiality), each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any Third Party or use the other's Confidential Information for any purpose other than the implementation and performance of this Agreement.

6.4 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

6.5 A Party may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed by Applicable Law, any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legal permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 6.5 (Confidentiality), it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

6.6 Unless provided otherwise in the relevant Statement of Work or Change Request, all materials, equipment and tools, drawings, specifications and data supplied by Herd Consulting to the Client shall at all times be and remain the exclusive property of Herd Consulting, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Herd Consulting, and shall not be disposed of or used otherwise than in accordance with Herd Consulting's written instructions or authorisation.

6.7 Without prejudice to any other rights or remedies that either Party may have, the Parties acknowledge and agree that damages alone may not be an adequate remedy for any breach of the terms of this clause 6.7 (Confidentiality). Accordingly, either Party shall be entitled to the remedies of injunction, specific performance or equitable relief for any threatened or actual breach of the terms of this clause 6 (Confidentiality).

6.8 This clause 6.8 (Confidentiality) shall survive remain in full force and effect, despite any termination of this Agreement.

7 Data Protection

7.1 For the purposes of this Agreement:

- a) The Client shall be considered to be the Data Controller;
- b) Herd Consulting shall be considered to be the Data Processor; and
- c) The Data Protection Officer for each Party is as follows:

	[Client Name] DPO	Herd It Consulting Ltd DPO
Name	[INSERT HERE]	Jamie Toyne
Title	[INSERT HERE]	Founder & CEO
Tel	[INSERT HERE]	+44 (0) 7974402579
E-mail	[INSERT HERE]	jamie.toyne@herd.consulting
Postal Address	[INSERT HERE]	Herd Consulting, Wizu Workspace, 32 Eyre Street, Sheffield, S1 4QZ.

- d) Each Party will immediately notify the owner in writing if any of the above information changes.

7.2 This Agreement shall apply to:

- a) all Personally Identifiable Information sent by the Data Controller to the Data Processor for Processing;
- b) all Personally Identifiable Information accessed by the Data Processor on the authority of the Data Controller for Processing; and
- c) all Personally Identifiable Information otherwise received by the Data Processor for Processing on the Data Controller's behalf;

in relation to the Solutions or otherwise under the terms of this Agreement.

7.3 Obligations of Herd Consulting

7.3.1 Herd Consulting agrees to the Processing of the Personally Identifiable Information to which this Agreement applies by reason of clause 7.2 (Data Protection) in accordance with the terms and conditions set out in this Agreement, and in particular Herd Consulting warrants that it:

- a) Shall at any time provide any all assistance necessary to the Client, in order to provide the Client with sufficient guarantees that Herd Consulting has implemented appropriate technical and organisational measures to ensure that their processing meets the requirements of the Data Protection Law;
- b) Shall continue to implement any appropriate technical and organisational measures identified in clause 7.3.1 (a) (Data Protection) throughout the life of this Agreement so that its Processing continues to meet the requirements of the Data Protection Law and safeguards the Personally Identifiable Information from unauthorised or unlawful Processing, protects the integrity of the Personally Identifiable Information, prevents the inadvertent or deliberate destruction or damage of the Personally Identifiable Information, and that having regard to the state of technological development and the cost of implementing any measures. Such measures shall ensure a suitable level of security, agreed by the Client and Herd Consulting that is considered appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, loss of Personally Identifiable Information integrity, destruction or damage and to the nature of the Personally Identifiable Information that is to be protected;
- c) Shall Process the Personally Identifiable Information at all times in accordance with the relevant Data Protection Law and solely for the purposes identified by the Client and in the manner specified from time to time by the Client in writing and for no other purpose or in any manner except with the express prior written consent of the Client. The nature, purpose, type of data and the categories of Data Subject which are to be processed shall be defined in the relevant Statements of Work;
- d) Shall Process the Personally Identifiable Information in a manner consistent with the relevant Data Protection Law, and in accordance with any guidance issued by the relevant Data Protection Supervisory Authority;
- e) Shall not appoint a successor or subcontract any of its obligations with respect to Personally Identifiable Information under this Agreement without the express prior written consent of the Client. Following agreement, should a sub-processor be appointed, Herd Consulting shall ensure that it reflects the same contractual obligations it has with the Client in a contract with any sub-processors and remains liable to the Client for the actions or inactions of any sub-processor;
- f) Shall not divulge the Personally Identifiable Information whether directly or indirectly to any person, firm or company or any other party without the express prior written consent of the Client except:
 - i. to those of its employees, agents or approved sub-processors, who are engaged in the Processing of the Personally Identifiable Information;
 - ii. as may be required by any other law or regulation;
 - iii. as instructed by a court of law.

Should Herd Consulting be required to divulge Data under item i or ii of this clause, then it must notify the Client prior to doing so unless prevented by Applicable Law;

- g) Shall ensure that all persons receiving Personally Identifiable Information and/or taking part in the Processing of Personally Identifiable Information are bound by a duty of confidentiality and have agreed in writing not to disclose any Personally Identifiable Information to any other person other than in accordance with the terms of this Agreement;
- h) Shall undertake, any mutually agreed, reasonable steps to ensure the reliability of all its employees who have access to the Personally Identifiable Information.
- i) Shall co-operate, upon request, with the Data Protection Supervisory Authority in the performance of any of its duties under this Agreement;
- j) Shall, in the event of the exercise by Data Subjects of any of their rights under the Data Protection Law in relation to the Personally Identifiable Information, inform the Client within twenty-four (24) hours of the request, and Herd Consulting further agrees to assist the Client with all subject access requests which may be received from any Data Subject in relation to any Personally Identifiable Information;
- k) Shall notify the Client without undue delay and in all circumstances within a maximum twenty-four (24) hours, upon becoming aware of a Data Breach. It is noted that, should the fault for the Data Breach be determined to reside with the Herd Consulting, that the Data Processor will be liable for any fines imposed by the Data Protection Supervisory Authority and any compensation claims from the Data Subjects, independent of any action levied upon the Client by the Data Protection Supervisory Authority;
- l) Shall, in the event that Herd Consulting receives a request for any information contained in the Personally Identifiable Information pursuant to the Freedom of Information Act 2015, not respond to the person making such request but inform the Client within two (2) Business Days, so that the Client can respond themselves to the request. Herd Consulting further agrees to assist the Client, where practicable, with such requests;
- m) Shall provide all reasonable assistance to the Client in order to assist them in meeting their obligations under the law including, but not limited to breach notification and privacy impact assessment completion;
- n) Shall ensure that each of its employees, and agents are made aware of its obligations under this Agreement with regard to the security and protection of the Personally Identifiable Information in order to maintain the levels of security and protection provided for in this Agreement;
- o) Shall not Process in, or transfer any Personally Identifiable Information to, a third country outside of the EEA, unless the country of destination has an adequacy agreement in place with the European Commission in respect of data protection. Should transfers be required outside of this parameter Herd Consulting will take all steps required by the Data Protection Law to ensure that Personally Identifiable Information is protected, such as placing the recipient of the Personally Identifiable Information under contractual obligations to protect it to adequate standards;

p) Has no reason to believe, at the time of entering into this Agreement, that any local laws exist which would have a substantial adverse effect on the guarantees provided for under this clause 7 (Data Protection), and that it will inform the Client (which will pass such notification on to any applicable Data Protection Supervisory Authority where required) if it becomes aware of any such laws;

q) Has the legal authority to give the warranties and fulfil the undertakings set out in this clause 7 (Data Protection);

r) Shall maintain written records regarding all categories of Processing of Data carried out on behalf of the Client. This must include details of the Client and any sub-processors and of any relevant Data Protection Officers (DPOs), the categories of Processing carried out, details of any transfers to third countries outside of the EEA and a general description of the technical and organisational security measures in place; and

s) Agrees that from time to time, upon reasonable request from the Client, submit their data processing facilities, procedures and documentation for scrutiny by the Client or its representatives, or a Data Protection Supervisory Authority in order to ascertain compliance with the Data Protection Law and / or the terms of this Agreement. Any such request is not to be unreasonably rejected by Herd Consulting.

7.4 Obligations of the Client

7.4.1 The Client agrees that it shall ensure that it complies at all times with the requirements set out in the Data Protection Law.

7.4.2 The Client shall ensure that any disclosure of Personally Identifiable Information made by it to Herd Consulting is made with the Data Subject's express consent or is, through another means, considered to be a lawful disclosure.

7.4.3 The Client shall undertake all reasonable efforts to determine that Herd Consulting is able to satisfy its legal obligations under this clause 7 (Data Protection).

7.4.4 The Client shall respond to enquiries from Data Subjects and / or the Data Protection Supervisory Authority concerning Processing of the Personally Identifiable Information by Herd Consulting, unless the Parties have agreed that Herd Consulting will so respond, in which case the Client will still respond to the extent reasonably possible and with the information reasonably available to it if Herd Consulting is unwilling or unable to respond. Responses will be made within a reasonable time.

7.4.5 Provide to Herd Consulting, when so requested, copies of relevant Data Protection Law or references to them of the jurisdictions to which the Client is required to adhere, and as such requires Herd Consulting to also adhere.

7.5 Suspension of Processing or Termination

7.5.1 In the event Herd Consulting is in breach of its obligations under this clause 7 (Data Protection), the Client may temporarily suspend the Processing of Personally Identifiable Information by Herd Consulting until the breach is repaired or the contract is terminated.

7.5.2 If either of the following situations occur, they are to be considered a material breach of this Agreement:

- a) the Processing of Personally Identifiable Information by Herd Consulting has been temporarily suspended by the Client for longer than 30 (thirty) days pursuant to Clause 7.5.1 (Data Protection);
- b) Herd Consulting receives a notification or request from a Data Protection Supervisory Authority that they cease the processing of Personally Identifiable Information Data, resulting in their inability to deliver any Solutions they have been contracted to perform by the Client under this Agreement.

7.5.3 Upon termination of this Agreement, in accordance with Clause 14 (Termination), Herd Consulting shall forthwith irrevocably destroy, or return to the Client, at the Client's sole option, all of the Client's Personally Identifiable Information in its possession or under its control, including any data that is in the possession of any sub-processors.

7.6 Upon termination of any Statement of Work or Change Request, provided that Herd Consulting is not required to Process any Personally Identifiable Information of the Client under the terms of any other Statement of Work or Change Request, Herd Consulting shall forthwith irrevocably destroy, or return to the Client, at the Client's sole option, all of the Client's Personally Identifiable Information in its possession or under its control, including any data that is in the possession of any sub-processors.

8 Staff Resources

8.1 Where any of one Party's staff are located at the premises of the other Party, the other Party shall ensure that:

8.1.1 all staff are provided with any required Health and Safety training;

8.1.2 the same level of obligation to the staff as is required to its own staff in terms of health, safety and personal security is extended to such staff;

8.1.3 all staff are provided with any required passes or security access to provide the Solutions; and

8.1.4 the normal office services will be extended to such staff at no cost.

- a) All staff shall at all times remain under the direction and control of the providing Party.
- b) Herd Consulting staff shall be entitled to work on Consultancy Services either at client's premises or not, at Herd Consulting's discretion.

9 Information Security

9.1 Where either party is granted access to the others information or systems:

- a) The accessing party agrees to follow such aspects of the other parties Information Security Management System or equivalent security guidelines as shall be communicated to them as being applicable.
- b) Either party will have the right to revoke or limit that access authorisation at any time.
- c) The accessing party agrees that only those persons who have been identified and authorised will access that information and any extension of access rights will be requested from the other party before the individual attempts to access the information or system.
- d) The parties will report any security incident or potential security incident to other immediately it is discovered and agrees to implement any reasonable corrective action identified as a result of that breach.
- e) Either party will comply with any reasonable requests from the other with regard to security.
- f) All parties will at all times comply with all Applicable Law relating to information and systems security.
- g) The accessing party shall not be liable for any loss of integrity, confidentiality or availability of the others information which is caused by any failure of the other to maintain appropriate security precautions and standards in respect of such information.

10 Limitation of Liability

10.1 Except as expressly provided in this Agreement and to the fullest extent permitted by Applicable Law:

- a) The Client shall be solely responsible for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Client, any client of the Client, or any Third Party based (wholly or in part) on the results obtained from the use of Consultancy Services by the Client;
- b) Herd Consulting shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Herd Consulting by the Client in connection with the Consultancy Services; and
- c) All warranties, representation, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this Agreement.

10.1.1 Subject to Clause 10.3 (Limitation of Liability), total aggregate liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the performance or

contemplated performance of this Agreement and all Statements of Work and Contract Requests, shall be limited to the price paid for the Consultancy Services during the 12 months preceding the date on which the claim arose, or if the claim arose during any period before 12 months elapsed from the commencement of this Agreement, during that shorter period.

10.2 Notwithstanding any other provision of this Agreement and to the extent permitted by Applicable Law:

10.2.1 Neither Party shall be liable for any loss of turnover, sales, revenue or profits, loss of contracts, business interruption, loss of goodwill or reputation or any indirect, consequential, or special loss suffered by the other; and

10.2.2 Neither Party shall be liable for any loss or corruption (whether direct or indirect) of data or information;

10.3 Neither Party shall exclude nor limit liability against fraud, wilful misconduct or gross negligence by it or its employees, agents or officers, or for death or personal injury, or in respect of any circumstances in which at law, such exclusion or limitation would not be permissible.

11 Force Majeure

11.1 Neither Party shall be in breach of this Agreement nor liable for any delay or non-performance of any of its obligations under this Agreement, including any Statement of Work or Change Request, to the extent such delay or failure results from events, circumstances or causes beyond its reasonable control.

11.2 In such circumstances, the affected Party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for 180 days, the other Party may terminate this Agreement by giving 30 days' written notice to the affected Party.

12 Termination

12.1 This Agreement will continue in full force and effect until terminated in accordance with this clause 12 (Termination). Upon termination of this Agreement, unless agreed otherwise between the Parties, the terms of each Statement of Work and Change Request shall also terminate and Herd Consulting shall cease providing Consultancy Services to the Client.

12.2 Herd Consulting shall at its sole option, be entitled to terminate this Agreement immediately by written notice to the Client for overdue sums exceeding 15 (fifteen) Business Days from notification of the Client's breach of the payment terms of this Agreement.

12.3 Either Party may terminate this Agreement without liability to the other:

12.3.1 upon giving 1 months' written notice to the other Party (or such shorter period as may be mutually agreed between the Parties);

12.3.2 immediately by written notice to the other Party if the other Party commits a material breach of any other term of this Agreement which is not capable of remedy or, if such breach is capable of remedy, fails to remedy the breach within 15 (fifteen) Business Days

after being notified in writing to do so or an otherwise mutually agreed timeframe permitted;

12.3.3 Immediately by written notice to the other Party if 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (an Act of Parliament);

12.3.4 Immediately by written notice to the other Party if the other Party shall have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of solvent amalgamation or reconstruction) or a Court shall make an order to that effect or if the other Party shall enter into any composition or arrangement with its creditors; or Immediately by written notice to the other Party if any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an analogous effect to any of the events mentioned in 12.3.3 or 12.3.4 (Termination).

12.4 Prior to invoking the formal procedure set out in Clauses 12.2 and 12.3 (Termination) above both Parties shall follow the provisions set out in Clause 16 (Disputes). If the Parties then remain unable to resolve the dispute, Clauses 12.2 and 12.3 (Termination) may then be invoked.

12.5 Any termination of this Agreement or any Statement of Work howsoever caused shall not affect any of either Parties accrued rights or liabilities arising from this Agreement or any such Statement of Work.

12.6 The termination of a Statement of Work or Change Request shall not affect the continuation of this Agreement.

12.7 For the avoidance of doubt, in the event of termination notwithstanding the foregoing of any items purchased or manufactured by Herd Consulting on behalf of the Client these shall be re-charged to the Client at cost price. For items ordered by Herd Consulting or items in production at a third party on behalf of the Client, at the Client's sole option to progress with continued production to fulfil the order or terminate the order. Any costs incurred with such third party for cancellation of production shall be borne by the Client.

12.8 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clauses 2 Definitions, 5 (Copyright and Intellectual Property Rights (IPR)), 6 (Confidentiality), 7.5.3 (return or destruction of Personally Identifiable Information), 11 (Limitation of Liability), 14 (Non-Solicitation) and 20 (Law), shall remain in full force and effect.

13 Assignment and Sub-Contracting

13.1 Herd Consulting shall be entitled to sub-contract any part of the provision of the Solutions to any Third Party, with the prior written agreement of the Client.

14 Non-Solicitation

14.1 In order to protect the legitimate business interests of Herd Consulting, the Client covenants with Herd Consulting for itself that it shall not (and shall procure that no member of the Client Group shall) (except with the prior written consent of Herd Consulting):

- a) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person; or
- b) solicit or entice away, or attempt to solicit or entice away, from the employment or service of a member of Herd Consulting the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of any member of the Herd Consulting.

14.2 The Client shall be bound by the covenant set out in Clause 14.1 during the term of this Agreement, and for a period of 12 (twelve) months after termination of this Agreement.

14.3 For the purposes of this Clause 14 (Non-Solicitation), a “**Restricted Person**” shall mean any person employed or engaged by any member of Herd Consulting during the term of this Agreement who has been engaged in the provision of Consultancy Services to the Client or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

14.4 If the Client commits any breach of this Clause 14 (Non-Solicitation), the Client shall, on demand, pay to Herd Consulting a sum equal to 12 (twelve) months’ worth of fees that the Client would have paid Herd Consulting for the supply of the resource. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of Herd Consulting in performance.

15 Publicity

15.1 Either Party may include the name and/or logo of the other Party on its Client/ supplier lists and disclose and summarise generally the nature of any work being performed under this Agreement, provided that:

- a) no such disclosure shall result in the breach of the disclosing Party’s confidentiality obligations under this Agreement;
- b) the other Party shall be entitled to have sight of and approve (insofar as they relate to the other Party) all copy marketing and other materials prior to release by the disclosing Party; approval shall not be unreasonably withheld;
- c) use of either Party’s name and logo shall be in accordance with the other Party’s Trade Marks including TM and ® legends where applicable;
- d) the disclosing Party shall remove the other Party’s name, logo and any other relevant content from any marketing materials, client lists or summaries in the event that, in the reasonable opinion of the other Party, such publication damages or may potentially damage the image or reputation of that Party.

15.2 In all cases any publicity or use of either Party's logo or name in any marketing or publicity information shall be with the full written consent and agreement of the other Party, which shall not be unreasonably withheld.

16 Disputes

16.1 Any dispute arising under, or in connection with this Agreement shall be dealt with in accordance with this Agreement, and neither the Client nor Herd Consulting shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this Clause 16 (Disputes) have been exhausted.

16.2 This Clause 16 (Disputes) shall be without prejudice to the rights of termination set out in this Agreement and shall not prevent the Client or Herd Consulting from applying for injunctive relief.

16.3 All disputes between the Parties arising out of or relating to this Agreement shall be referred to a director of the Client and to a director of Herd Consulting for resolution.

16.4 If any dispute cannot be resolved pursuant to the provisions of Clause 16.3 (Disputes) within 10 (ten) Business Days, that dispute shall be escalated and referred to the managing director, or equivalent, of the Client and the managing director, or equivalent, of Herd Consulting for resolution within 10 (ten) Business Days. Each Party shall use its best endeavours to resolve a dispute under the terms of Clause 16.3 or 16.4 (Disputes).

16.5 Any dispute which cannot be resolved pursuant to the provisions of Clause 16.3 or 16.4 (Disputes) within 20 (twenty) Business Days or such longer period as the Parties mutually agree, shall be finally resolved by arbitration under the UNCITRAL Arbitration Rules in force at the date of this Agreement. It is agreed that:

- a) The Party seeking to initiate the arbitration shall give a written notice of arbitration ("Notice of Arbitration") to the other Party. The Notice of Arbitration shall specifically state:
 - i. that the dispute is referred to arbitration;
 - ii. the particulars of this Agreement; and
 - iii. a brief summary of the subject of the dispute.
- b) the tribunal shall consist of one arbitrator (who both Parties consider to be suitably qualified);
- c) in default of the Parties' agreement as to the arbitrator(s), the appointing authority shall be the president for the time being of the Law Society of England and Wales;
- d) the seat of the arbitration shall be London, England;
- e) the language of the arbitration shall be English; and
- f) Herd Consulting and the Client shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the arbitrator.

17 Miscellaneous Provisions

17.1 The rights of each Party under this Agreement

- a) May be exercised as often as necessary; and
- b) Are cumulative and not exclusive of rights or remedies provided by law.

17.2 No breach of any provision of this Agreement will be waived except with the express written consent of the Party not in breach.

17.3 The waiver by either Party of any breach of this Agreement by the other Party in a particular instance shall not operate as a waiver of subsequent breaches of the same or a different kind. Any delay in exercising any right shall not be considered to be a waiver of that right. The failure of either Party to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of that Party's right to exercise the same or different rights in subsequent instances.

17.4 If any provision of this Agreement shall be held to be invalid, unlawful or unenforceable by any court or other competent authority, it shall be severed from this Agreement, and the remainder of this Agreement shall remain in full force and effect. However, if the provision is essential the Parties shall promptly negotiate in good faith with the view to agreeing a replacement provision that reasonably reflects the Parties' original intentions.

17.5 Unless otherwise agreed in writing, the Client will not set-off any monies due to Herd Consulting under any Statement of Work or Change Request to this Agreement against any amount claimed by or due to the Client from Herd Consulting under any other Statement of Work or Change Request to this Agreement or any other agreement with Herd Consulting.

17.6 Unless expressly stated otherwise within this Agreement, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

17.7 At Herd Consulting's sole discretion in the unlikely event that the Consultancy Services as set out within the Statement of Work or Change Request are no longer economically viable for Herd Consulting to provide, Herd Consulting shall in the first instance contact the Client. Herd Consulting and the Client shall negotiate in good faith with a view to mutually agreeing a process of change or, where all other avenues are exhausted, Herd Consulting reserves the right to terminate the Consultancy Services set out in that Statement of Work upon giving written notice to the Client.

17.8 Each Party undertakes, at the request of the other, to sign all documents and do all other acts promptly and use commercially reasonable efforts to ensure that any third parties promptly sign all documents and does all other acts, which may be necessary to give full effect to this Agreement.

17.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, or authorise either Party to make or enter into any commitments for on or behalf of the other Party unless expressly provided for in the Statement of Work.

17.10 This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

18 Entire Agreement

18.1 This Agreement, together with any Statements of Work and Change Requests, represents the entire agreement between the Client and Herd Consulting with respect to Consultancy Services and Solutions, and supersedes any and all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the same.

18.2 An amendment or waiver of any of the terms or conditions of this Agreement shall only be binding if it is made in writing and duly signed by authorised representatives of both Parties.

19 Notices

19.1 All notices under this Agreement must be addressed to a Party as specified below and sent by one of the following methods:

- a) Delivered by hand, and deemed delivered upon receipt;
- b) Sent by prepaid post, certified or registered mail, or other next day delivery service, and deemed delivered at 9am on the second Business Day after posting;
- c) sent by electronic mail and deemed delivered at the time of transmission.

Each Party will immediately notify the other in writing if any of the information in the address and contact information section of the Agreement changes.

	[Client Name] Point of Contact	Herd It Consulting Limited Point of Contact
Name	[INSERT HERE]	Jamie Toyne
Title	[INSERT HERE]	Founder & CEO
Tel	[INSERT HERE]	+44 (0) 7974402579
E-mail	[INSERT HERE]	jamie.toyne@herd.consulting
Postal Address	[INSERT HERE]	Herd IT Consulting Limited Sheffield Technology Park Cooper Buildings Arundel Street Sheffield S1 2NS

20 Law

Any dispute or difference arising between the Parties out of or in connection with this Agreement shall be governed and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the Courts of England and Wales to adjudicate any such dispute or difference.

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www.linkedin.com/company/herdconsulting/

www.twitter.com/Herd_Consulting

www.instagram.com/herd.consulting/

Sheffield Head Office:

Herd Consulting
Wizu Consulting
32 Eyre Street
Sheffield
S1 4QZ

Herd Consulting is a trading name of Herd It Consulting Limited.

Company Number: 14226083. Registered in England and Wales.

VAT Registration: 424378100.

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