

STANDARD TERMS AND CONDITIONS OF SALE



Recitals

Whereas:

- (A) Codestone is an established supplier of IT products and services.
- (B) The Customer wishes to procure IT-related products and services from Codestone as set forth in an Order referencing and incorporating these Conditions.

NOW, THEREFORE, the parties agree as follows:

Definitions

Wherever they occur in the Agreement, the terms defined below shall have the meanings applied to them as set out below:

- **Agreement** means the agreement between Codestone and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order and any documents incorporated by reference;
- **Applicable Law** means the laws of England and Wales and any other laws or regulations, regulatory policies, statutes or industry codes which have mandatory effect and are applicable and binding on either Party or the Deliverables from time to time;
- **Booking Cancellation Fee** means the price for which Codestone may invoice the Customer on the cancellation of a booking for allocated resources in accordance with Clause 3.4;
- **British Standards** means the standards produced by the BSI Group which is incorporated under a Royal Charter (and which is formally designated as the National Standards Body (NSB) for the UK);
- **Codestone** means Codestone Solutions Limited, a company incorporated and registered in England and Wales under registration number 3478376 and whose registered office is at 2 Nuffield Road, Nuffield Industrial Estate, Poole, Dorset, BH17 0RB;
- **Codestone Personnel** means all employees, agents, consultants, contractors, subcontractors and other representatives of Codestone, Codestone Group, or their respective subcontractors, who are involved, or proposed to be involved, in the provision of the Deliverables;
- **Codestone Intellectual Property** means Intellectual Property Rights owned by Codestone (including the Intellectual Property Rights in the Agreement) which is not the subject of a separate agreement between the Parties under which title passes to the Customer;
- **Codestone Software** means software programs owned and manufactured by Codestone (not specifically developed for the Customer) and their associated documentation;
- **Conditions** means Codestone's standard terms and conditions of sale set out in this document;
- **Confidential Information** means any and all confidential information and documents (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisors whether before or after the Order Effective Date relating to, and obtained pursuant to, the negotiating, entering into and/or performing of, the Agreement including, but not limited to:
 - Customer Data;
 - any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, personnel, customers and prospective customers, operators, suppliers, plans, intentions, market opportunities, operations, processes or initiatives, budgets, pricing policies, strategies, opportunities, developments, specifications, product information, technical or commercial know-how, designs, inventions, trade secrets or software of the disclosing Party (or of any member of the Group of companies to which the disclosing Party belongs) together with all information derived by the other Party from any such information and any other information which ought reasonably be considered to be confidential or proprietary having regard to the nature of the information and the circumstances of the disclosure (whether or not it is marked 'confidential');
 - any information developed by the Parties in the course of carrying out the Agreement; and
 - the Agreement;
- **Contract Year** means each consecutive period of 12 months commencing from the relevant Order Effective Date;
- **Controller, Data Subject, International Organisation, Personal Data, Personal Data Breach, Processor and processing** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processed** and **processes** shall be construed accordingly);
- **Customer** means the named party in the Agreement which has agreed to purchase the Deliverables from Codestone and whose details are set out in the Order;
- **Customer Data** means all data provided to Codestone Group by or on behalf of the Customer or the Customer Group or to which Codestone Group has access in connection with the provision of the Deliverables, and includes the Customer's Personal Data;
- **Customer Intellectual Property** means Intellectual Property Rights owned by the Customer which is not the subject of a separate agreement between the Parties under which title passes to Codestone;
- **Data Protection Laws** means, as applicable and binding on either Party or the Services (a) the Data Protection Act 2018 (b) the GDPR; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- **Data Protection Losses** means all liabilities, including all:
 - costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); andto the extent permitted by Applicable Law:
 - administrative fines, penalties, sanctions, liabilities or other remedies imposed by a supervisory authority responsible for administering Data Protection Laws (**Supervisory Authority**);
 - compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - the reasonable costs of compliance with investigations by a Supervisory Authority;
- **Deliverable(s)** means the Goods or Services or both as the case may be to be delivered by Codestone to the Customer as set out in an Order;
- **Disputed Sum** has the meaning given in Clause 9.8;
- **Force Majeure** means the occurrence, after the Order Effective Date, of any circumstances not caused by and is beyond the reasonable control of the affected party arising from:
 - war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo;
 - rebellion, revolution, insurrection, terrorism (including cyber terrorism), military or usurped power or civil war;
 - earthquake, tsunami, flood, fire, explosion, disease or medical epidemics or pandemics or outbreaks or other natural disaster except to the extent that any such event is caused, or its effects contributed to, by the Party claiming Force Majeure;
 - riot, commotion or disorder except where solely restricted to the Codestone Personnel or the employees of any of its subcontractors or sub-supplier;
 - a general industrial dispute not limited to the Codestone Personnel, or the employees of any of its subcontractors or sub-suppliers; or
 - non-performance by suppliers or subcontractors (other than companies in the same Group as the Party seeking to rely on the Clause);
- **GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
- **Goods** means the goods (including but not limited to Software and Hardware), related accessories, spare parts and documentation and other physical material set out in the Order and to be supplied by Codestone to the Customer;
- **Group** means in relation to any company, that company and every other company which is from time to time a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms 'subsidiary' and 'holding company' shall have the meanings given to them by [section 1159](#) and [Schedule 6](#) of the Companies Act 2006 but for the purposes of section 1159(1) a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company);
- **Hardware** means any physical computer, device or appliance;
- **Intellectual Property Rights** means copyright and related rights, know-how, Confidential Information, trade secrets, business name and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, moral rights, trademarks, service marks, trade names, patents, petty patents, utility models, design rights and database rights and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all 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;
- **License(d)** means having been granted a Software Licence;
- **Location** means the location for delivery of Goods and / or performance of the Services as set out in an Order;
- **Order** means the Customer's order for the Deliverables in the form of accepting a Sales Quotation from Codestone;
- **Order Effective Date** means the date on which the Customer signs the relevant Sales Quotation;

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- **Order Term** means the term of an Order starting on the Order Effective Date and continuing thereafter until terminated in accordance with the Agreement or until the Deliverables have been delivered, whichever is earlier;
- **Prevailing Rates** means those rates set out in the Service Rate Card;
- **Price** means the charges for the Deliverables to be supplied as set out in an Order;
- **Project Manager(s)** means the individuals appointed by the Customer and Codestone who are responsible for the management of each Parties' responsibilities under the Agreement;
- **Protected Data** means Personal Data received from or on behalf of the Customer in connection with the performance of Codestone's obligations under the Agreement;
- **Sales Quotation** means the quotation from Codestone to the Customer which, when accepted by the Customer, becomes a formal purchase Order from the Customer;
- **Scope** means a high-level summary of the requirements of the Customer, as set out in an Order;
- **Services** means the services to be provided by Codestone to the Customer as set out in an Order;
- **Service Rate Card** means Codestone's relevant service rate card that is in force at the date of the provision of the Service.
- **Software** means Codestone Software and Third Party Software to be delivered by Codestone to the Customer under an Order;
- **Software Licence** means the right granted by Codestone and/or a Third-Party Software manufacturer to the Customer to use the Software;
- **Sub-Processor** means any agent, subcontractor or other Third Party (excluding its employees) engaged by Codestone for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.
- **Third-Party** means a person or organisation other than the Parties to the Agreement;
- **Third-Party Software** means software programs that are manufactured and/or licenced by a Third-Party to be delivered by Codestone to the Customer as set out in an Order;
- **Working Days** means any day Monday through to Friday inclusive which is not a Bank or Public Holiday in the United Kingdom;

The interpretation and construction of the Agreement shall be subject to the following rules, except where the context makes it clear that a rule is not intended to apply:

- references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and
- reference to legislation includes any subordinate legislation issued under it;
- reference to a person includes a natural person and any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- reference to a Party to the Agreement includes its legal successors and permitted assignees;
- a singular word includes the plural, and vice versa and any gender includes others;
- if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- the headings in the Agreement are for reference purposes only and shall not affect the interpretation or construction of the Agreement;
- in the event of conflict between the documents, the provisions of the Agreement are to be read in the following order of precedence in relation to that conflict (with the first document listed taking first priority, the second having second priority, and so on): the relevant Order, these Conditions and any other document incorporated by reference into any of the above, and the document higher in the order of precedence will prevail to resolve the conflict.

Terms and Conditions

1. Application of these Conditions

- 1.1. Each Order is subject to these Conditions which are effective as of the Order Effective Date and are entered into between Codestone and the Customer.
- 1.2. These Conditions apply to and form part of the Agreement between Codestone and the Customer. They supersede any previously issued terms and conditions of purchase or supply in respect of the Deliverables.
- 1.3. No terms and conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Agreement except to the extent that Codestone otherwise agrees in writing.

- 1.4. No variation of these Conditions or to an Order or to the Agreement, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of both parties.

2. Delivery

- 2.1. Codestone will supply the Deliverables to the Customer in accordance with the terms of the Agreement.
- 2.2. The Deliverables may only be accessed and used by or specifically on behalf of the Customer and any members of the Customer Group unless otherwise defined in any Software Licence or any other provision of the Agreement.
- 2.3. Codestone is not responsible for delivering items that are identified as being out of Scope, the responsibility of the Customer or a Third Party responsible to the Customer.

3. Scope

- 3.1. The Scope of the Deliverables to be provided is defined in an Order.
- 3.2. It is the Customer's sole responsibility to ensure that the Scope satisfies the requirements of the Customer completely.
- 3.3. Any changes to the Scope can only be effected in writing by agreement of both Parties in accordance with clause 1.4.
- 3.4. Codestone allocates its resources according to the Services to be provided to the Customer, and these allocations constitute a firm booking of Codestone resources by the Customer. If the Customer gives Codestone 14 days or less notice of cancellation of a booking for any allocated days, then Codestone shall be entitled to invoice the Customer for a Booking Cancellation Fee. The Booking Cancellation Fee is an additional charge to the sums set out in an Order (including any related travel expenses incurred by Codestone) and is based on the Prevailing Rate for the cancelled booking of Services at a rate of 50% for 14 days or less notice, and 100% for 7 days' or less notice. For the avoidance of doubt, a cancellation of a booking does not constitute a cancellation of an Order or part of an Order for Services, and the cancelled booking for such Services will need to be re-scheduled at a future date.

4. Risk and Title

- 4.1. Risk in the Goods shall pass to the Customer on delivery.
- 4.2. Title to the Goods shall pass to the Customer once Codestone has received payment in full and cleared funds for the Goods.
- 4.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 4.3.1. hold the Goods as bailee for Codestone;
 - 4.3.2. store the Goods separately from all other material in the Customer's possession;
 - 4.3.3. take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 4.3.4. insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting Codestone's interest on the policy;
 - 4.3.5. ensure that the Goods are clearly identifiable as belonging to Codestone;
 - 4.3.6. not remove or alter any mark on or packaging of the Goods;
 - 4.3.7. inform Codestone immediately if it becomes subject to any of the events or circumstances set out in clause 19; and
 - 4.3.8. on reasonable notice permit Codestone to inspect the Goods during the Customer's normal business hours and provide Codestone with such information concerning the Goods as Codestone may request from time to time.
- 4.4. If, at any time before title to the Goods has passed to the Customer, the Customer informs Codestone, or Codestone reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 19, Codestone may:
 - 4.4.1. require the Customer, at the Customer's expense, to re-deliver the Goods to Codestone; and
 - 4.4.2. if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

5. Subcontracting

- 5.1. Either Party may subcontract its obligations under the Agreement providing that it remains solely responsible for the performance of its obligations under the Agreement. Each Party shall be responsible for the acts, defaults and omissions of its subcontractors as if they were its own.

6. Access to the Location and the Customer's Systems

- 6.1. The Customer shall at all times, a) provide Codestone with such remote access to the Customer's systems as may reasonably be requested by Codestone; and b) upon reasonable notice and during normal working hours (unless otherwise agreed between the Parties), provide Codestone with such access to the Location as may reasonably be requested by Codestone in order for Codestone to carry out its obligations under the Agreement
- 6.2. Whilst at the Location and/or in accessing the Customer's systems, Codestone shall:
 - 6.2.1. comply with:
 - 6.2.1.1. all Applicable Law;

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6.2.1.2. all applicable health and safety requirements and British Standards appropriate to the Location as notified to it by the Customer from time to time;

6.2.1.3. all reasonable safety, security and other office procedures, rules and regulations notified to it by the Customer from time to time; and

6.2.2. co-operate reasonably with the Customer, and any Third Party engaged by the Customer, to enable the Customer or any such Third Party to integrate other services, materials or equipment with the Deliverables, provided that such integration, in the opinion of Codestone, will not harm or does not pose a risk of harm to the Deliverables. Codestone shall have the right, at its discretion, to propose reasonable fees at Prevailing Rates for its services required in respect of such co-operation where the same is not provided for within an Order.

7. Personnel, Non-Solicitation and Non-Dealing

7.1. Codestone warrants that the Codestone Personnel involved in the provision of the Services a) are appropriately qualified and experienced to undertake their tasks; and b) comply with the obligations of confidentiality set out in the Agreement.

7.2. The Customer shall have the right to require Codestone to remove immediately from the Location, and/or the provision of the Services, any Codestone Personnel who it reasonably believes a) has failed to comply with any of the obligations in Clauses 6.2.1 or 7.1; or b) has been negligent or incompetent.

7.3. Codestone shall ensure that any Codestone Personnel removed from the Location and/or the provision of the Services under Clause 7.2 does not perform any further Services; and is replaced by a representative with appropriate qualifications and experience.

7.4. The Customer shall not be liable to Codestone for any additional costs or extension of time incurred by Codestone as a result of any removal or replacement of Codestone Personnel under Clause 7.2 or 7.3.

7.5. Throughout the duration of the Agreement and for a period of twelve (12) months after the termination of the Agreement, neither Party shall (except with the prior written consent of the other Party) directly or indirectly:

7.5.1. solicit or induce (or attempt to solicit or induce) from the employment of the other Party, any employee of the other Party who is or was directly involved in the provision or receipt of any Deliverables which are relevant to the Agreement. For the avoidance of doubt, neither Party shall contract any such person on an independent basis or under another agreement with a different supplier; or

7.5.2. solicit or induce (or attempt to solicit or induce) or deal with or accept business from any existing or prospective customer or end user of the other Party that a Party becomes aware of as a result of its involvement in the Agreement.

7.6. For the purpose of this Clause 'solicit' or 'induce' means the soliciting or inducing of such employee, customer or end user with a view to a) employing or engaging such employee as an employee, director, subcontractor or independent contractor or b) appropriating the customer's or end user's business or custom.

7.7. If either Party commits any breach of Clause 7.5, the breaching Party shall, without prejudice to any other rights or remedies of the claiming Party, on demand, pay to the claiming Party:

7.7.1. in respect of a breach of Clause 7.5.1, the employee's remuneration package for the last 12 months of that employee's employment, plus the recruitment costs incurred by the claiming Party in replacing such person; and

7.7.2. in respect of a breach of Clause 7.5.2 the greater of:

7.7.2.1. a sum equal to the total fees a) paid or payable by the relevant customer or end user to the claiming Party over the twelve months prior to the breach or b) in the case of a prospective customer or end user, quoted by the claiming Party to the prospective customer or end user for the provision of goods and / or services for the first 12 months of the quote, as appropriate; or

7.7.2.2. £20,000 (twenty thousand GB pounds);

and the Parties acknowledge that this represents a genuine pre-estimate of the loss likely to be suffered through breach of this Clause.

7.8. The rights and remedies given to the Parties in this Clause (including the liquidated damages provided for in this Clause) are in addition to, without prejudice to, and not exclusive of, any and all other rights or remedies given to them whether by the Agreement, by law or otherwise and all such rights and remedies are cumulative.

7.9. If the periods above are held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions will apply with such modification to the relevant wording and/or reduction in the length of the period as required to make them valid and enforceable.

8. Mistakes in Information

8.1. Codestone and the Customer shall each be responsible for the accuracy of any drawings, documentation and other information provided by them to the other Party under the Agreement and shall pay to the other Party

any reasonable extra costs incurred by that Party as a direct result of any discrepancies, errors or omissions therein subject to the limitation below.

8.2. Notwithstanding Clause 8.1 both Parties will use reasonable endeavours to ensure that any Third Party drawings, documentation and other information provided to the other Party are accurate, but (other than in respect of subcontractors used by a Party) will not be liable for any discrepancies, errors or omissions in such drawings, documentation and other information.

9. Price and Payment

9.1. Codestone shall use reasonable endeavours to deliver the Deliverables for the Price stated in an Order, but the Prices are target prices only and, therefore, may be subject to change if more products or services are required to deliver the Deliverables in accordance with the Order.

9.2. Codestone shall invoice for work performed under the Agreement at the intervals, and for the amounts, specified in an Order, and each of the sums will be payable by the Customer in full and in cleared funds strictly on the due dates shown.

9.3. Codestone shall be entitled to increase the Price, not more than once in any 12-month period (excluding any increases imposed under Clause 9.4), provided that any such increase does not exceed a percentage equal to the percentage increase in the Retail Price Index (RPI, published by the Office of National Statistics) from the date the Price was last increased under this Clause or the date the Customer has signed the Order, whichever is later.

9.4. Notwithstanding Clause 9.3, Codestone may increase the Price at any time with immediate effect where there is an increase in the direct cost to Codestone of supplying the Deliverables which is due to any factor beyond the reasonable control of Codestone (including but not limited to any increased cost of Third Party Software Licences).

9.5. Any Services that are chargeable at Codestone's Prevailing Rates will be charged in accordance with its Service Rate Card.

9.6. Codestone will charge and the Customer shall pay for all reasonable travel expenses incurred by Codestone in the performance of its obligations under the Agreement, including but not limited to car mileage charged at 45ppm, public and private transport fares including domestic economy flights, international business class flights, taxis, accommodation and subsistence at prevailing rates. Accommodation will be standard 3* or below where available. Entertainment or other non-essential expenses shall not be included.

9.7. All provisions for early termination in the Agreement shall be subject to the provision that Codestone shall, at the date of termination, invoice the Customer for all Deliverables delivered up to and including the date of termination. The Customer shall remain liable to pay such invoices within 30 days of receipt of that invoice.

9.8. If, acting in good faith, the Customer disputes any item within an invoice, it shall raise such dispute by written notice to Codestone within 14 days of receipt of the invoice (a **Disputed Sum**), provided always that any undisputed sum or part of an invoice shall be payable in accordance with this Clause 9. In the event of there being a Disputed Sum, the Parties shall negotiate in good faith to attempt to resolve the dispute promptly. If the dispute is not resolved within 30 days of the said notice being given, the Parties shall comply with the provisions of Clause 26 (Dispute Resolution) to resolve such dispute. For the avoidance of doubt, where the Parties agree or determine that the Disputed Sum is due in part or full, the Customer shall pay such agreed sum within 14 days of the date of the agreement or determination. Any amounts not disputed in accordance with this clause 9.8 shall be deemed accepted and must be paid by the Customer in accordance with clause 9.2. In relation to a Disputed Sum, interest under clause 9.9 is payable after the dispute is resolved on sums found or agreed to be due, from 14 days after the dispute is resolved until payment is made.

9.9. Codestone reserves the right to charge interest on late payments from the Customer at the rate of 4% per annum above the base rate at Barclays Bank for the time being. Such interest shall accrue on a daily compound basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.10. In the event that the Customer has failed to pay an invoice or part of an invoice that is not a Disputed Sum and has been validly invoiced, then Codestone shall have the right to suspend any and all Deliverables under the Agreement subject to 14 day's written notice to the Customer.

9.11. Where a discount is identified in an Order and payment is not received by the due date stated, the pricing shall automatically change to remove the discount, and Codestone shall additionally invoice the Customer for the value of the removed discount.

9.12. Codestone may at its discretion use surplus Deliverables budget within an Order from one activity to offset against a deficit for another activity.

9.13. In the case of a Third Party being nominated in an Order, the Customer is responsible for requesting the Third Party to issue invoice instructions to Codestone. If payment is not received from the Third Party within the stated payment terms Codestone may, at its sole discretion, invoice the Customer and the Customer shall pay the invoice directly to Codestone within 7 days of the invoice date.

10. Confidentiality

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- 10.1. Each Party shall keep the other Party's Confidential Information confidential and shall not a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Agreement; or b) disclose such Confidential Information in whole or in part to any Third Party, except as expressly permitted by this Clause 10.
- 10.2. Each Party may disclose the other Party's Confidential Information to those of its employees, agents, consultants, contractors and Codestone Personnel (**Representatives**) who need to know such Confidential Information in order to comply with its obligations under the Agreement, provided that:
- 10.2.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 10.2.2. it procures that such Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a Party to the Agreement;
- and at all times, each Party is liable for the failure of any of its Representatives to comply with its obligations set out in this Clause 10.
- 10.3. A Party may disclose Confidential Information where that information is required to be disclosed by Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and that the confidentiality of the information is maintained as far as is reasonable given the specific circumstances.
- 10.4. The obligations of confidence and non-use herein shall not apply to any part of the Confidential Information which:
- 10.4.1. is or becomes public knowledge (other than as a result of its disclosure by the receiving Party or its Representatives in breach of the Agreement), except that (a) any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information; and (b) it is agreed that publication of the Confidential Information on the Web, unless such publication is made by the disclosing Party or its duly authorised agent, shall not be deemed to be public knowledge as defined in this Clause;
- 10.4.2. is lawfully in the possession of or known to the receiving Party on a non-confidential basis at the time of disclosure as can be reasonably demonstrated from its written file material or other records;
- 10.4.3. was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
- 10.4.4. is developed by or for the receiving Party independently of the information disclosed by the disclosing Party, as can be reasonably demonstrated from its written file material or other records;
- 10.4.5. the Parties agree in writing is not confidential or may be disclosed.
- 10.5. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in the Agreement are granted to the other Party, or to be implied from the Agreement.
- 10.6. Subject to Clause 10.7, on the conclusion or termination of the Agreement, a Party shall, at the request of the other Party, promptly:
- 10.6.1. deliver to the other Party all documents and materials containing Confidential Information previously supplied (and all copies thereof and extracts therefrom); or
- 10.6.2. erase all of the other Party's Confidential Information from its computer systems; and
- 10.6.3. certify in writing to the other Party that it has complied with the requirements of this Clause,
- save that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by Applicable Law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the recipient Party to keep evidence that it has performed its obligations under the Agreement. The provisions of the Agreement shall continue to apply to any documents and materials retained by a recipient Party under this Clause, and the return of any documents and material shall not affect a Party's obligations hereunder.
- 10.7. In respect of the Customer's Confidential Information held by Codestone, the obligations set out in Clause 10.6 will only apply once all monies due to Codestone under the Agreement have been paid to Codestone.
- 10.8. The provisions in this Clause 10 shall remain in full force and effect notwithstanding any termination or expiry of the Agreement.

11. Processing of Personal Data

Compliance with Data Protection Laws

- 11.1. The Parties agree that the Customer is a Controller and that Codestone is a Processor for the purposes of processing Protected Data pursuant to

the Agreement. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Codestone in respect of Protected Data (including the terms of the Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

- 11.2. Codestone shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Agreement.

Instructions

- 11.3. Insofar as Codestone processes Protected Data on behalf of the Customer:

11.3.1. Codestone shall only process (and shall ensure Codestone Personnel only process) the Protected Data in accordance with the Customer's documented instructions as set out in the Agreement, as amended from time to time in accordance with clause 1.4 (**Processing Instructions**) except where otherwise required by Applicable Law (whereupon Codestone shall inform the Customer of that legal requirement before processing the Protected Data, unless Applicable Law prevents it doing so on important grounds of public interest); and

11.3.2. without prejudice to Clause 11.1, if Codestone believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws, it shall promptly inform the Customer and be entitled to cease to provide the relevant Deliverables until the Parties have agreed appropriate amended instructions which are not infringing, provided that, to the maximum extent permitted by Applicable Law, Codestone shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Processing Instructions following the Customer's receipt of that information.

- 11.4. Processing of the Protected Data by Codestone under the Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out below:

11.4.1. *Subject-matter of processing:* to the extent necessary for the performance of Codestone's obligations under the Agreement.

11.4.2. *Duration of the processing:* the term of the Agreement and the longer of such additional period as is specified in any provisions of the Agreement regarding data retention and as is required for compliance with Applicable Law.

11.4.3. *Nature of the processing:* to the extent necessary to enable Codestone to comply with its obligations and exercise its rights under the Agreement, including collection, recording, organisation, structuring, storage, adaptation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction and erasure or destruction.

11.4.4. *Purpose of the processing:* for the performance of Codestone's obligations and exercise of its rights under the Agreement, including the performance of functions required or requested by the Customer for the Customer's compliance with its statutory and / or contractual obligations.

11.4.5. *Type of Personal Data:* Personal Data provided to Codestone by or on behalf of the Customer, including Personal Data provided directly to Codestone by a Data Subject or Third Party on the instruction of the Customer, or on the request of Codestone where Codestone has been authorised to make such a request by the Customer or is legally required to make such a request. Personal Data processed under the Agreement will include (depending on the scope of the Deliverables); name, address, email address, telephone number, fax number, employ ID, employee cost centre, job title, employment location of the Customer's employees.

11.4.6. *Categories of Data Subjects:* Personal Data related to individuals associated with the Customer (including its past, current and future directors, officers, employees, agents, contractors, customers and suppliers).

Security

- 11.5. In accordance with Data Protection Laws, taking into account the state of technological development and the cost of implementing any measures and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Agreement, as well as the risks of varying likelihood and severity of the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Protected Data transmitted, stored or otherwise processed, Codestone shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

Sub-processing and personnel

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11.6. Codestone shall:

- 11.6.1. not permit any processing of Protected Data by any agent, subcontractor or other Third Party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;
- 11.6.2. prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Clause 11 that is enforceable by Codestone and ensure each such Sub-Processor complies with all such obligations;
- 11.6.3. remain fully liable to the Customer under the Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and
- 11.6.4. ensure that all persons authorised by Codestone or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

11.7. The Customer authorises the appointment of the Sub-Processors listed below:

Entity Name	Purpose / Applicable Services	Location
Equinix	To provide colocation services to Codestone Group in the applicable country locations	United Kingdom
Microsoft Azure	To provide infrastructure services to Codestone Group in the applicable country locations	United Kingdom
MS 365	To provide Collaboration and business tools to	United Kingdom
DocuSign	To provide e-signing capabilities to Codestone Group	United Kingdom
IT Glue	To provide online customer documentation storage and secure password services to Codestone Group	United Kingdom
SAP Business By Design	To provide financial accounting services to Codestone	United Kingdom
Sage Payroll	To provide payroll services to Codestone Group	United Kingdom
Basecamp	To provide online Project management tools and functionality to Codestone Group	United Kingdom
HubSpot	To provide online marketing and lead management tools to Codestone Group	United Kingdom

- 11.7.2. other members of the Codestone Group – in respect of any processing carried out to facilitate the performance of Codestone's obligations under the Agreement;
- 11.7.3. Codestone sub-contractors – in respect of the use of Protected Data to facilitate the provision of services Codestone has sub-contracted in order to supply the Deliverables under the Agreement; and
- 11.7.4. technology service providers to facilitate the performance of Codestone's obligations under the Agreement.

Assistance

11.8. Codestone shall (at the Customer's cost and expense):

- 11.8.1. assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Codestone; and
- 11.8.2. taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data; and
- 11.8.3. refer to the Customer all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be the Customer's responsibility to reply to all such requests as required by Applicable Law.

International transfers

- 11.9. The Customer agrees that Codestone may transfer Protected Data to countries outside the United Kingdom (including to countries in or outside the European Economic Area) or to any International Organisation(s) (an **International Recipient**), provided all transfers by Codestone of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time. The provisions of the Agreement shall constitute the Customer's instructions with respect to transfers in accordance with Clause 11.3.1.

Audits and processing

- 11.10. Codestone shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Codestone's compliance with the obligations placed on it under this Clause 11 and to demonstrate compliance with the obligations on each Party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this Clause 11.10).

Breach

- 11.11. Codestone shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

Deletion/return

- 11.12. At the Customer's cost and the Customer's option:

- 11.12.1. upon termination or expiry of the Agreement or,
- 11.12.2. on termination or expiry of part of the Agreement, at the end of the provision of the Deliverables relating to the processing of relevant Protected Data,

Codestone shall either return all the relevant Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires Codestone to store such Protected Data.

Liability, indemnities and compensation claims

- 11.13. The Customer shall indemnify and keep indemnified Codestone in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Codestone and any Sub-Processor arising from or in connection with any:

- 11.13.1. non-compliance by the Customer with the Data Protection Laws;
 - 11.13.2. processing carried out by Codestone or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or
 - 11.13.3. breach by the Customer of any of its obligations under Clauses 11.1 to 11.17 (inclusive),
- except to the extent Codestone is liable under Clause 11.14.

- 11.14. Codestone shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with the Agreement:

- 11.14.1. only to the extent caused by the processing of Protected Data under the Agreement and directly resulting from Codestone's breach of Clauses 11.1 to 11.17 (inclusive); and
- 11.14.2. in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of the Agreement by the Customer (including in accordance with Clause 11.3.2).

- 11.15. If a Party receives a compensation claim from a person relating to processing of Protected Data, it shall promptly provide the other Party with notice and full details of such claim. The Party with conduct of the action shall:

- 11.15.1. make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed); and
- 11.15.2. consult fully with the other Party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the Party that is responsible under the Agreement for paying the compensation.

- 11.16. The Parties agree that the Customer shall not be entitled to claim back from Codestone any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify Codestone in accordance with Clause 11.13.

- 11.17. Clauses 11.13 to 11.17 (inclusive) are intended to apply to the allocation of liability for Data Protection Losses as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

- 11.17.1. to the extent not permitted by Applicable Law (including Data Protection Laws); and
- 11.17.2. that it does not affect the liability of either Party to any Data Subject.

12. Statutory Regulations

- 12.1. Both Parties shall in all matters relating to the performance of the Agreement comply with all Applicable Law.

- 12.2. Subject to Clause 12.3 below the cost to each Party of meeting its obligations under this Clause shall be borne by that Party.

- 12.3. In the event that either Party incurs costs to which it would not otherwise be liable due to the other Party's failure to comply with any Applicable Law, the amount of such costs shall be reimbursed by the other Party, provided that the Party being reimbursed:

- 12.3.1. has taken reasonable steps to mitigate those costs being incurred; and
- 12.3.2. can demonstrate that those costs incurred were caused by the other Party's failure to comply with any Applicable Law.

13. Force Majeure

- 13.1. If either Party is prevented, hindered or delayed in or from performing its obligations under the Agreement by an event of Force Majeure, then it shall, as soon as is reasonably practicable after the start of the Force Majeure event (but no later than 5 days from its start) notify the other Party in writing to that effect, giving full details of the circumstances giving rise to the Force Majeure event, the likely duration of the delay, the effect of the Force Majeure event on its ability to perform any of its obligations

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- under the Agreement, the steps being taken to remedy it and a time estimate for the period required to remedy it.
- 13.2. Excluding the Customer's obligations to pay amounts due under the Agreement, neither Party shall be considered to be in default of its obligations under the Agreement to the extent that it can establish that the performance of such obligations is prevented by the circumstances of Force Majeure which arise after the date of the Agreement and which were not foreseeable at the date of the Agreement.
- 13.3. The Party seeking to exempt itself from liability under this Clause 13 shall use all reasonable endeavours to mitigate the effect of the Force Majeure event on the performance of its obligations and to remedy the failure, including using its disaster recovery facilities and insurance cover.
- 13.4. If the performance of the obligations of either Party is prevented by the event of Force Majeure, and continues to be prevented for a period of less than or equal to 30 days, then, during that period, the Agreement shall be considered as suspended insofar as it relates to the affected obligations in question, and that Party shall be granted an extension of time for the performance of its obligations equal to the period of the delay. Upon the ending of the Force Majeure event the affected obligations of the Parties shall be reinstated, together with such reasonable modifications to take account of the effects of the Force Majeure event as may be agreed between the Parties.
- 13.5. If the performance of the obligations of either Party is prevented by the event of Force Majeure and continues to be prevented for a period in excess of 30 days on any one occasion, or for more than 60 days in any period of 12 months, then the Agreement may be terminated by the Party not affected by the Force Majeure event on written notice to the affected Party, or by mutual consent.
- 13.6. If the Agreement is terminated in accordance with Clause 13.5 then, if requested by the Customer and, subject to receipt of payment as set out in Clause 13.7, Codestone shall transfer to the Customer the benefit of all work done by it in the performance of the Agreement up to the date of the Force Majeure notice.
- 13.7. Where the Customer makes a request pursuant to Clause 13.6, the Customer shall pay to Codestone a sum for such reasonable costs and commitments incurred by Codestone in respect of the benefits in question, less the amount of any payments already made to Codestone as at the date of the Force Majeure notice. Such sum will be reasonably agreed between the Parties.
- 13.8. If the amount of such advance payments made to Codestone by the Customer exceeds the sum due to Codestone under Clause 13.7, then Codestone shall repay the balance to the Customer.
- 14. Insolvency and Bankruptcy**
- 14.1. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate the Agreement immediately in writing (to the other Party or to the administrator, administrative receiver, liquidator or to any person in whom the Agreement shall have become vested) without liability to the other if:
- 14.1.1. the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
- 14.1.2. the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 14.1.3. the other Party becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- 14.1.4. the other Party becomes subject to a restructuring plan under Part 26A Companies Act 2006;
- 14.1.5. the other Party becomes subject to a scheme of arrangement under Part 26 Companies Act 2006;
- 14.1.6. the other Party has a freezing order made against it;
- 14.1.7. the other Party has a resolution passed for its winding up;
- 14.1.8. the other Party has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 14.1.9. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over all or any part of the other Party's undertaking, assets or income;
- 14.1.10. the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- 14.1.11. a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- 14.1.12. a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 7 days of that procedure being commenced;
- 14.1.13. any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 14.1.1 to 14.1.12 (inclusive); or
- 14.1.14. the other Party takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.1.1 to 14.1.13 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process
- 14.2. Alternatively the Party giving notice under clause 14.1 may, at its sole option, give such administrator, administrative receiver, liquidator or other person the option of carrying out the Agreement subject to its providing a guarantee for the due and faithful performance of the Agreement in such form and up to such amount as the Party giving notice may in its sole discretion decide.
- 14.3. The right of a party to terminate the Agreement pursuant to clause 14 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Agreement.
- 14.4. If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate the Agreement under this clause 14, it shall immediately notify the other party in writing.
- 15. Intellectual Property Rights**
- 15.1. All Intellectual Property Rights in Codestone Intellectual Property will remain vested in Codestone.
- 15.2. All Intellectual Property Rights in the Customer Intellectual Property will remain vested in the Customer, and Codestone acknowledges that Customer Data and any Intellectual Property Rights subsisting therein is proprietary to the Customer.
- 15.3. All Intellectual Property Rights in Third Party Software shall belong to the relevant Third Party owners.
- 15.4. Subject to Clauses 15.5 and 15.6, Codestone undertakes at its own expense to defend the Customer and members of the Customer Group or, at its option, settle any claim or action brought against the Customer or the Customer Group alleging that the possession or use of the Deliverables (or any part thereof) in accordance with the terms of the Agreement infringes the UK Intellectual Property Rights of a Third Party (**Claim**). Codestone shall be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against the Customer or the Customer Group as a result of or in connection with any such Claim.
- 15.5. Codestone shall not in any circumstances be liable under Clause 15.4 where the Claim in question:
- 15.5.1. is attributable to possession or use of the Deliverables (or any part thereof) by the Customer or Customer Group other than in accordance with the terms of the Agreement;
- 15.5.2. is attributable to use of the Deliverables (or any part thereof) in combination with any items not supplied or specified by Codestone, if the infringement would have been avoided by the use of the Deliverables not being so combined,
- 15.5.3. is attributable to the use of a non-current release of the Software,
- 15.5.4. arises directly or indirectly through the possession or use of any Third Party Software that is not Licensed to the Customer by Codestone, or through the breach of any such Third Party Software Licence terms by the Customer.
- 15.6. If any Third Party makes a Claim, or notifies an intention to make a Claim against the Customer, Codestone's obligations under Clause 15.4 are conditional on the Customer:
- 15.6.1. as soon as reasonably practicable, giving written notice of the Claim to Codestone, specifying the nature of the Claim in reasonable detail;
- 15.6.2. not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Codestone (such consent not to be unreasonably withheld or delayed);
- 15.6.3. at Codestone's request and expense, allowing Codestone to conduct and/or settle all negotiations and litigation;
- 15.6.4. giving Codestone and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents and representatives or advisors, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Codestone to examine them and to take copies (at Codestone's expense) for the purpose of assessing the Claim; and

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- 15.6.5. subject to Codestone providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as Codestone may reasonably request to avoid, dispute, compromise or defend the Claim.
- 15.7. If any Claim is made, or in Codestone's reasonable opinion is likely to be made against the Customer, Codestone may at its sole option and expense:
- 15.7.1. procure the right for the Customer to continue to use the Deliverables (or any part thereof) in accordance with the terms of the Agreement;
- 15.7.2. modify the Deliverables (or any part thereof) so that it ceases to be infringing, but without reducing its quality or ability to meet the Customer's requirements as specified in the Agreement;
- 15.7.3. replace the Deliverables (or any part thereof) so that it ceases to be infringing, but without reducing its quality or ability to meet the Customer's requirements as specified in the Agreement; or
- 15.7.4. if Codestone is unable, after reasonable efforts, to procure for the Customer the right to continue using the Deliverables, or to provide the Customer with a functionally equivalent non-infringing Deliverable, terminate the Agreement (in whole or in part) immediately by notice in writing to the Customer and refund any of the Price paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Deliverables to the date of termination) on return of the Deliverables and all copies thereof.
- 15.8. This Clause 15 constitutes the Customer's exclusive remedy and Codestone's only liability in respect of Claims and, for the avoidance of doubt, is subject to Clause 23 (Limitation and Exclusion of Liability).
- 16. Insurance**
- 16.1. Codestone shall maintain in full force and effect throughout the Order Term (and for three years thereafter) the following insurance cover with a reputable insurer with a rating of at least 'A' (Good) at Standard and Poor's:
- 16.1.1. professional indemnity insurance to a value of £2 million per occurrence and no cap on the aggregate liability;
- 16.1.2. product liability insurance of £5 million per occurrence and no cap on the aggregate liability;
- 16.1.3. public liability insurance of £5 million per occurrence and no cap on the aggregate liability.
- 16.2. Codestone shall, at the Customer's request, provide such evidence as the Customer may reasonably request, including but not limited to copies of any policy documentation and payment of premiums, to demonstrate that the insurance cover detailed in Clause 16.1 above has been maintained and is in force.
- 16.3. The Customer shall maintain in full force and effect throughout the Order Term, and provide such evidence as Codestone may reasonably request to demonstrate that it is in force, insurance cover with a reputable insurer for its liability for injury to persons or damage to property for at least £2 million per occurrence.
- 16.4. The obligations of either Party to effect insurances shall be without prejudice to its liabilities under or arising out of the Agreement, in tort or otherwise.
- 17. Software Licences**
- 17.1. All current versions of Software Licences for Third Party Software are either available at www.codestone.net/licensingeulas, or may be signed by the Customer directly with the Third Party Software manufacturer.
- 17.2. Unless the relevant Software Licence is signed by the Customer directly with the Third Party Software manufacturer, the version of each Software Licence available at www.codestone.net/licensingeulas valid at the relevant Order Effective Date is incorporated by reference into the Agreement and applies to the Third Party Software in that Order. It is the Customer's responsibility to ensure that it reviews and retains a copy of the relevant Software Licence for its own records.
- 17.3. Pursuant to Clauses 17.1 and 17.2 Customer shall use all Third Party Software in accordance with the relevant Software Licences granted by the manufacturers of such Software.
- 17.4. Codestone will comply with any usage or other applicable licence restrictions in relation to any software provided by the Customer and to which it has access which are notified to it by the Customer from time to time.
- 18. Duration, Termination and Effects of Termination**
- 18.1. The Agreement will become effective on the date the Customer signs the Sales Quotation and, unless terminated earlier in accordance with the Agreement, shall continue for the Order Term.
- 18.2. Both Parties may exercise their rights of termination under the Agreement in respect of one or more Order.
- 18.3. Following termination of the Agreement, neither Party shall have any further rights or obligations in relation to the other except for those contained in Clauses 7 (Personnel, Non-Solicitation and Non-Dealing); 10 (Confidentiality); 11 (Processing Personal Data); 15 (Intellectual Property Rights); 17 (Software Licences); 21 (Publicity); 23 (Limitation and Exclusion of Liability); 25.1 (Waiver); and 29 (Governing Law) which shall continue in full force and effect.
- 18.4. Termination, howsoever arising, shall not affect any rights of action, remedies, obligations or liabilities of the Parties which shall have accrued up to the date of termination or shall thereafter accrue, including the right to claim damages in respect of breach of any term of the Agreement which existed before, at or after the date of termination.
- 18.5. No action or proceedings under or in respect of the Agreement shall be brought against Codestone after a) the expiry of 1 year from the date of completion of the Services, or where such date does not occur, b) the expiry of 1 year from the date Codestone last performed Services in relation to an Order.
- 19. Termination for Default**
- 19.1. Either Party may, without prejudice to any other rights and remedies, and without liability to the other, terminate the Agreement forthwith by notice to the other effective from the date of service of such notice if:
- 19.1.1. the other Party fails to pay any amount due under the Agreement on the due date for payment and remains in default for more than 7 days after being notified in writing that the payment is overdue;
- 19.1.2. the other Party commits a material breach of any other term of the Agreement which breach is not remediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 19.1.3. the other Party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- 19.1.4. there is a breach by the other Party of any provisions of the Agreement which expressly entitle the Party not in breach to terminate the Agreement;
- 19.1.5. the other Party suspends or ceases, or threatens to suspend or cease carrying on all or a substantial part of its business that is relevant to the Agreement; or
- 19.1.6. the other Party is in breach of the terms of any Software Licence applicable to the Software supplied under the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within 30 days of receipt of notice thereof in writing.
- 19.2. For the purposes of Clause 19.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of the Agreement.
- 20. Warranty**
- 20.1. Codestone warrants that:
- 20.1.1. the Services shall be performed with reasonable care and skill; and
- 20.1.2. it will use reasonable endeavours, including by using up-to-date versions of firewall and anti-virus protection applications in accordance with good industry practice, to prevent the introduction into the Customer's systems or any Customer Data of any viruses, contaminants or any other disabling software;
- 20.2. Each Party warrants to the other that:
- 20.2.1. where relevant and appropriate, it complies with the current UK Government Covid-19 Secure guidelines (including but not limited to compliance at the Location and any other site where either Party may attend), and undertakes that it will continue to comply with such guidelines as they are updated and amended from time to time;
- 20.2.2. neither party warrants that it is Covid-19 free nor that there is zero risk of contracting Covid-19 from its staff or its premises;
- 20.2.3. it has full capacity and authority to enter into and to perform the Agreement;
- 20.2.4. the Order is executed by a duly authorised representative of that Party; and
- 20.2.5. there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under the Agreement.
- 20.3. In the event of any breach of the warranties set out in this Clause 20, in addition to (and not in lieu of) any other remedies available to each Party, the Party in breach agrees to promptly take reasonable steps to remedy such breach at no additional cost or expense to the other Party.
- 21. Publicity**
- 21.1. Neither Party shall without the written consent of the other (the giving of which consent shall not be unreasonably withheld) advertise, publicly announce or provide to any other person any further information relating to the existence or details of the Agreement or use the other Party's name in any format for any promotion, publicity, marketing or advertising purpose other than is provided for in the remainder of this Clause 21.

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- 21.2. Codestone may publicise to whom it may require that the Customer is a customer of Codestone and that Codestone is providing or has provided Deliverables to the Customer and that it may describe the Deliverables.
- 22. Interference**
- 22.1. Codestone shall ensure that, in the performance of its obligations under the Agreement, it shall use reasonable endeavours not to interfere with the operations of the Customer, the Customer Group, its employees, or any other supplier employed by the Customer, or with the Customer's systems for entry, security or data other than is, acting reasonably, necessary for the proper performance of an Order.
- 23. Limitation and Exclusion of Liability**
- 23.1. Nothing in the Agreement limits or excludes either Party's liability for:
- 23.1.1. death or personal injury caused by its negligence;
- 23.1.2. fraud or fraudulent misrepresentation; or
- 23.1.3. for any act, omission or matter, liability for which cannot be limited or excluded by Applicable Law.
- 23.2. Subject to Clause 23.1, Codestone shall not in any circumstances be liable to the Customer, whether in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent) or otherwise for:
- 23.2.1. loss of profits or revenue;
- 23.2.2. loss of sales, opportunity or contracts;
- 23.2.3. loss of anticipated savings;
- 23.2.4. loss of goods;
- 23.2.5. loss of use;
- 23.2.6. harm to reputation, loss of or damage to goodwill or similar losses;
- 23.2.7. loss of use or corruption of software, data or information;
- 23.2.8. wasted management time;
- 23.2.9. any increased costs of engaging a replacement service provider;
- 23.2.10. any special, indirect, consequential or pure economic loss, costs damages, charges or expenses.
- 23.3. Subject to Clauses 23.1 and 23.2, and except as otherwise set out in the Agreement, Codestone's total aggregate liability, whether arising in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with:
- 23.3.1. the Agreement, shall in all circumstances be limited to 100% of the Price paid or payable under the Agreement in each Contract Year in respect of all claims in the relevant Contract Year; and
- 23.3.2. an Order, shall in all circumstances be limited to 100% of the Price paid or payable under that Order in each Contract Year in respect of all claims in the relevant Contract Year.
- 23.4. Except as expressly stated in the Agreement, and subject to Clause 23.1, all conditions, and warranties, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 23.5. The Customer will not use the Deliverables to transmit data for any unlawful purpose, including without limitation fraud, money laundering, terrorism, invasion of privacy; obscenity; defamation; interruption or interference with other network users; the sending, storing reproduction or receipt of any offensive, obscene, menacing, abusive or defamatory material in a manner which or infringes the rights of any person, including intellectual property rights and rights of confidentiality. The Customer shall indemnify and hold Codestone harmless without limitation for all loss and damage arising out of the Customer's breach of this Clause 23.5.
- 23.6. Both Parties' liability for all loss and damage to the other Parties' property or a Third Party's property caused by any act or omission of the liable Party or any of its directors, officers, employees, representatives or subcontractors shall be limited to an aggregate limit of £1.5 million.
- 24. Notices**
- 24.1. Any notice or other communication which either Party is required to give to the other under the Agreement shall be made in writing and served on the other Party at its registered address (or at such other address specified by the relevant party by notice in writing to the other Party) either by:
- 24.1.1. hand – effective on delivery,
- 24.1.2. registered post with proof of receipt, postage prepaid – effective at 9.00 am on the second business day after posting,
- 24.1.3. commercial courier – effective on the date and at the time that the courier's delivery receipt is signed, or
- 24.1.4. email – effective on receipt of a read return mail from the correct address or within 24 hours from delivery if no notice of delivery failure is received or, where the recipient has acknowledged receipt, notice will be effective from the time of acknowledgement (for the purposes of this section an automatically generated receipt confirmation does not qualify as acknowledgement of receipt).
- 25. General**
- 25.1. Any failure, delay or omission by either Party to:
- 25.1.1. exercise any of its rights under the Agreement or provided by Applicable Law; or
- 25.1.2. insist at any time upon the performance of any of the terms, provisions or undertakings of the other Party under the Agreement or provided by Applicable Law,
- shall not constitute or be construed as a waiver or relinquishment of that Party's rights to require the future performance of any such term, provision or undertaking, but the obligations of the other Party with regard to the same shall continue in full force and effect.
- 25.2. The Agreement cannot be assigned by either Party without the prior written agreement of the other Party, acting reasonably.
- 25.3. If any provision of the Agreement is declared by a judicial or other competent authority to be unenforceable:
- 25.3.1. the authority should amend such provision, although only as much as is necessary to make it reasonable within the context of the Agreement, rather than strike it completely from the Agreement; and
- 25.3.2. the remaining provisions of the Agreement shall remain in full force and effect.
- 25.4. Nothing in the Agreement shall confer, nor is it intended to confer, any enforceable right or benefit on any Third Party under the Contracts (Rights of Third Parties) Act 1999 except as otherwise expressly so stated.
- 26. Dispute Resolution**
- 26.1. Any dispute arising out of or in connection with the Agreement (including any dispute as to the Price), shall be resolved in accordance with this Clause.
- 26.2. The Parties shall initially attempt to resolve any such dispute using the following procedure:
- 26.2.1. either Party shall notify the other Party that there is a dispute including reasonable information as to the nature of the dispute;
- 26.2.2. within seven days of receipt of the notice of dispute by the second Party, the Codestone Project Manager (or other suitable Codestone representative) and the Customer Project Manager shall communicate and attempt to resolve the dispute;
- 26.2.3. if, within seven days of their initial communication under Clause 26.2.2, the Project Managers are unable to resolve the dispute, the dispute shall be automatically escalated for resolution by a nominated Codestone Director and a nominated Customer Director; and
- 26.2.4. within seven days of such escalation, the nominated Codestone Director and the nominated Customer Director shall communicate and attempt to resolve the dispute.
- 26.3. Notwithstanding Clauses 26.2 above, either Party may at any time commence legal proceedings.
- 26.4. Without prejudice to Clause 26.2, and notwithstanding the existence of any dispute or the implementation of any of the procedures above, Codestone, subject to receiving payment for all invoices issued in respect of sums properly due under the Agreement, shall continue to provide the Services and to perform its obligations under the Agreement. Such continuation shall be without prejudice to any contention by either Party that it is entitled to terminate, or has terminated, the Agreement, whether pursuant to the terms of the Agreement or on any basis permitted at common law, and also without prejudice to either Party's right to seek redress in court.
- 27. Records and Audit**
- 27.1. Codestone shall make, keep and secure proper records and accounts in relation to all Deliverables and the performance of Codestone's obligations under the Agreement.
- 27.2. Subject to compliance with Applicable Law, Codestone will:
- 27.2.1. securely retain the records and accounts maintained in accordance with Clause 27.1 for the period up to the end of two years after the expiry or termination of an Order; and
- 27.2.2. provide the Customer (or its auditors) with copies of the records and accounts maintained in accordance with Clause 27.1 upon request from the Customer from time to time.
- 27.3. Codestone will manage the security measures in place relating to the Deliverables in accordance with good industry practice.
- 27.4. The Customer shall allow and procure for Codestone (and any authorised representatives of Codestone) access to its premises to audit (and take copies of) relevant records of the Customer to the extent necessary to verify that the Customer's use of Software is in accordance with the Agreement. Unless otherwise agreed in writing, such inspection shall be undertaken during the Customer's normal business hours on Working Days. At Codestone's option, the audit and inspection may be undertaken by way of remote access or by way of physical attendance at any premises where the Customer (or any person to whom use of the Software is sub-licensed) locates its computer equipment.
- 27.5. The Customer shall, at its own cost, provide all reasonable assistance and cooperation to Codestone in conducting any inspection or audit undertaken under this Clause 27. Codestone shall comply with the Customer's reasonable directions in order to minimise disruption to the

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Customer's business and to safeguard the confidentiality of the Customer's Confidential Information.

28. Entire Agreement

- 28.1. The Parties agree that the Agreement and any documents entered into pursuant to it constitutes the entire Agreement between Codestone and the Customer with respect to the Deliverables and supersedes all previous oral or written undertakings and agreements which may have subsisted.
- 28.2. Additions to or modifications of the Agreement will only be effective if made in accordance with clause 1.4.

29. Governing Law

The Agreement shall be governed by and construed in accordance with English law and the Parties hereby agree to submit to the exclusive jurisdiction of the English courts.

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