DATED_____2024

_____

MASTER SERVICES AGREEMENT

_____

(1) ELSEWHEN LTD

and

(2) [CLIENT]

_____

THIS AGREEMENT is made the [DAY] [MONTH] 2024 ("**Effective Date**")

BETWEEN:

(1)   **Elsewhen Ltd** a company incorporated and registered in England and Wales with company number 07608360 whose registered office is at 86-90 Paul Street, London, England, EC2A 4NE ("**Elsewhen**"); and

(2)   **[   ]** a company incorporated and registered in England and Wales with company number [   ] whose registered office is at [   ] (the "**Client**").

individually a "**Party**" and together the "**Parties**".

WHEREAS

(A)   Elsewhen is an IT company that supplies the technology consultancy services, as further described in Schedule A.

(B)   The Client wishes to obtain and Elsewhen wishes to provide the services on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1   Definitions and Interpretation

1.1   The following definitions shall have the following meanings:

"Agreement"	means this agreement its schedules and the applicable SoW from time to time in force, which together constitute the agreement between Elsewhen and the Client;
"Applicable Legislation"	means all applicable legislation, regulations, any and all directives and/or guidelines of any applicable regulatory or governmental authority, including without limitation the Data Protection Legislation;
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
"Client Materials"	means any information, specifications, designs, goods, documents or other materials provided by the Client (or on its behalf) to Elsewhen;
"Confidential Information"	means data and any information of each of the Parties by its nature confidential, or that the other Party knows or ought to know is confidential, or designated by the first Party as confidential, relating the business, products, affairs, developments, finances, trade secrets, know-how, and personnel, and third parties, including all Intellectual Property Rights, together with

	all information derived from any of the above, of the relevant Party, including the contents of this Agreement;
"Data Protection Legislation"	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
"Deliverables"	means information, data, documents, text, drawings, images, sound and other materials that are produced and developed exclusively by Elsewhen for the Client, which are delivered to the Client under the Agreement, and which exclude Elsewhen Pre-existing Materials, the Working Materials, the Third Party Materials and any know how generated by Elsewhen during the performance of the Agreement;
"Expenses"	means reasonable costs, expenses, out-of-pocket expenses or other items that Elsewhen may incur as a result of providing the Services;
"Fees"	means the fees set out in the relevant SoW, in Schedule C (Rate Card) and any other fees agreed by the Parties in writing payable by the Client to Elsewhen for the provision of Services under this Agreement;
"Force Majeure"	means the following to the extent that they are outside the affected Party's reasonable control: acts of God, fire, floods and natural disasters; acts of terrorism; strikes, lock-outs and labour disputes; civil commotion; riots and acts of war; delays, interruptions or failures of telecommunication networks or services or internet service providers; or interruption or failure of utility service;
"G-Cloud 14 Framework Agreement"	means G-Cloud 14 Framework Agreement by Crown Commercial Service as amended from time to time;
"Intellectual Property Rights"	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case

whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Losses**" means all losses, liabilities, fines, and reasonable costs (including reasonable legal fees actually incurred);

"**Services**" means the services to be provided by Elsewhen to the Client as set out in this agreement and in the relevant SoW (and any other services agreed by the Parties in writing) and may include the provision of any Deliverables as agreed by the Parties;

"**Software**" means the software program to be provided by Elsewhen to the Client as part of the Services as set out in the relevant SoW;

"**Good Industry Practice**" means the use of the standards, resources, practices and methods, and exercising the due skill, care, diligence, attention and judgment, which would reasonably be expected from a skilled, qualified and experienced person engaged in services which are the same as or similar to the Services;

"**Statement of Work**" or "**SoW**" means each of the documents setting out the Services, Fees and other commercial and technical aspects of the Services, a template of which is appended as Schedule A;

"**Third Party Materials**" means any materials (including software and data) owned or licensed by a third party, used or made available by Elsewhen to the Client or procured by the Client directly in connection with the Services;

"**UK Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

"**Working Materials**" means working materials generated by Elsewhen when providing the Services to the Client including papers, materials and correspondence in electronic form or otherwise and any work in progress, software

development, generated by Elsewhen or its sub-contractors for the purpose of providing the Services and carrying out Elsewhen' obligations under the Agreement.

1.2 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.3 A reference to any Party shall include that Party's personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 References to clauses and Schedules are to the clauses and Schedules of this Agreement.

1.7 Where there is a conflict between the Schedules and the main body of this Agreement, the main body of this Agreement shall take precedence unless the relevant Schedule expressly states to the contrary.

1.8 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2   COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement or in accordance with Clause 15 (Termination) or Clause 17 (Force Majeure) of this Agreement (the "**Term**").

2.2 The Services supplied by Elsewhen shall continue to be supplied until the completion of those Services unless this Agreement or the relevant SoW is lawfully terminated in accordance with Clause 15 (Termination) or Clause 17 (Force Majeure) of this Agreement.

3   OBLIGATIONS OF ELSEWHEN

3.1 Elsewhen will provide the Services in accordance with the Agreement.

3.2 Elsewhen shall use all reasonable endeavours to provide the Services by the dates specified in this Agreement or in the relevant SoW.

3.3 Elsewhen shall not be responsible for any delays to provide the Services caused by the Client's (its sub-contractors or suppliers) actions or omissions or caused by reasons out of Elsewhen reasonable control.

3.4 Elsewhen shall use reasonable endeavours to:

(a)   perform the Services in accordance with Good Industry Practice and in compliance with all Applicable Legislation;

(b)   promptly deal with and respond to reasonable queries from the Client about any part of the Services and any material developed from the Service; and

(c)   take good care of any Client Materials and to protect them from damage so far as it is consistent with the performance of the Services.

3.5   Elsewhen shall be entitled throughout the Term and for a period of 7 years thereafter, or longer if required by law, to keep full, accurate and contemporaneous records of all work undertaken in relation to the Services.

4   OBLIGATIONS OF CLIENT

4.1   In order to enable Elsewhen to provide the Services, the Client shall comply with all its obligations under this Agreement including:

(a)   providing any information and documentation that may be necessary for the provision of the Services;

(b)   promptly granting any approvals that may be needed from time to time for the provision of the Services;

(c)   fully cooperating with Elsewhen timely in all matters relating to this Agreement to enable Elsewhen to comply with its obligations under this Agreement (and provide any reasonable assistance to Elsewhen that may be necessary for the performance of the Services);

(d)   ensuring no measure is taken by the Client (its subcontractors, suppliers and Affiliates) that could interfere with the provision of the Services by Elsewhen or its subcontractors; and

(e)   ensuring that Elsewhen' staff has reasonable access to the Client's premises (where this is necessary for the provision of the Services) and to the Client's Materials and any other information reasonably requested by Elsewhen, including information or materials from the Client's subcontractors or other suppliers (where this is necessary for the provision of the Services).

4.2   Elsewhen shall not be liable for its failure to perform any of its obligations under this Agreement and will not be treated as being in breach of this Agreement if this is due to the Client's breach of any of its obligations under this Agreement or to any actions or omissions of its subcontractors or suppliers.

5   ELSEWHEN WARRANTIES

5.1   Elsewhen undertakes that the Services will be performed with all reasonable skill, care and diligence in accordance with Good Industry Practice and that they will be provided substantially in accordance with the requirements set out in the relevant SoW and the terms and conditions of this Agreement.

5.2   The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by the Client or use of the Services contrary to Elsewhen's instructions, or modification or alteration of the Services by any party other than Elsewhen or Elsewhen's duly authorised contractors or agents.

5.3 If the Services do not conform with the foregoing undertaking, Elsewhen will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.

5.4 Notwithstanding the foregoing, Elsewhen:

(a) shall provide the Software "as-is";

(b) does not warrant that the Client's use of the Services will be uninterrupted or error-free; or that the Client's use of the Services will be compatible with any other software used by the Client; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements;

(c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

(d) shall not be liable for any failure to meet its obligations under this agreement to the extent that such failure arises from a failure of the Client to meet any of its obligations arising under this Agreement or otherwise.

6 MUTUAL WARRANTIES

6.1 Each Party warrants and represents for the benefit of the other Party that:

(a) it has the requisite power and authority to enter into this agreement and to carry out the obligations contemplated in this Agreement;

(b) this Agreement constitutes a binding obligation on it in accordance with its terms;

(c) it shall comply with all statutes, laws, regulations and by-laws as are applicable to it; and

(d) it shall obtain and maintain all necessary licences, consents, and permits to enter into and to perform its obligations under this Agreement.

7 ACCEPTANCE

7.1 The Client agrees to accept any Deliverables that meet the requirements set out in the relevant Statement of Work. If no requirements have been agreed by the Parties for all or part of the Deliverables, the Client agrees to accept any Deliverables or part thereof that are in line with Good Industry Practice.

7.2 All Deliverables will be deemed as accepted by the Client in any of the following circumstances, whichever occurs first:

(a) operative use of the Deliverable by the Client for its business activities. If the Client decides to delay commencement of use of the Deliverable, the Deliverable will be

deemed as accepted once ten (10) days have elapsed since it was handed over to the Client, without the Deliverable having been used; or

(b) if ten (10) days have elapsed since the Deliverable was made available to the Client, without the Client expressly rejecting such Deliverable in writing.

8 CHANGE REQUEST PROCEDURE

8.1 If either Party at any time during the Term wishes to change the scope or execution of the Services (including Client requests for additional services) ("**Change Request**"), it shall submit details of the requested change to the other by email. The Change Request shall not be effective or binding unless the parties agree the necessary variations to the relevant terms of this Agreement to take account of the change ("**Project**").

8.2 If either Party submits a Change Request to the other Party, Elsewhen shall, within a reasonable time, provide a written estimate to the Client of:

(a) the likely time required to implement the change;

(b) any fees arising from the change;

(c) the likely effect of the change on the timetable for delivering the Services and/or the Deliverables; and

(d) any other impact of the change on the terms of this Agreement.

8.3 If the Client wishes Elsewhen to proceed with the Change Request, Elsewhen has no obligation to do so unless and until the parties have agreed in writing the Project, including the necessary variations to its charges, the implementation plan and any other relevant terms of this Agreement to take account of the change.

8.4 Elsewhen undertakes to offer to the Client, and the Client may at any time before the relevant delivery date of the Services and/or the Deliverables and at its sole discretion choose to obtain from Elsewhen, any item of software in substitution for any corresponding item of Software where the substitute item contains new technology or has better performance characteristics than such Software. As part of the offer, Elsewhen shall notify the Client of any change in the Fees which would result from such substitution. If the Client chooses to obtain any such substitute item, the Parties shall use best endeavours to agree in writing a Project in accordance with Clause 8.2 and 8.3.

8.5 Any delay or failure of the Client to deliver the Dependencies to Elsewhen in accordance with Table 1 of the SOW (Schedule A) may result in a Change Request being submitted by Elsewhen to the Client.

9 PAYMENT TERMS

9.1 In consideration for the provision of the Services, the Client shall pay Elsewhen the Fees and Expenses.

9.2 If the SoW does not outline when a Fee is payable, Elsewhen may invoice the Client for the Fees at the end of each calendar month in respect of the Services provided during that calendar month.

9.3　Invoices for the Fees shall be submitted together with any incurred Expenses and VAT at the prevailing rate, where applicable.

9.4　The Client shall pay each invoice within thirty (30) days of the date of the invoice.

9.5　If the Client disputes any invoice or any other amounts due under this Agreement the Client will always do so acting reasonably and in good faith.

9.6　If the Client has a bona fide dispute in relation to the whole or any part of an invoice submitted by Elsewhen, the Client shall notify Elsewhen of the amount in dispute and the nature of the dispute within ten (10) days from receipt of the invoice. After such period the invoice shall be deemed to be accepted by the Client.

9.7　If the Client fails to pay any due amounts under the Agreement, Elsewhen may charge interest on the overdue amount, from the due date up to the date of actual payment, at a rate of five percentage (5%) per annum above the base rate of Barclays Bank PLC from time to time until the recovery is made in full.

9.8　Nothing in this Agreement shall limit or exclude Client's liability to pay the Fees under the Agreement.

9.9　The Fees will not be deemed to include any applicable taxes or duties, which will be charged separately.

9.10　Unless the Parties agree otherwise in the relevant SoW, the Fees shall not include any costs derived from the acquisition or pass-thru of software licences, sale and purchase of hardware, network connections and communications that are necessary to execute the Services, including data migrations, implantations or integrations.

9.11　Elsewhen shall be entitled to increase any element of the Fees listed in Schedules A and C at any time from the 1st anniversary of the Effective Date by giving the Client not less than 90 days' prior written notice of the variation and this Clause 9**Error! Reference source not found.** shall be deemed to have been amended accordingly. Any increase will be in line with the UK Consumer Price Index (CPI) fluctuations.

10　EMPLOYEES

10.1　It is not intended that the provision of the Services pursuant to this Agreement will give rise to a relevant transfer for the purposes of:

(a)　the Transfer of Undertakings (Protection of Employment) Regulations 2006; or

(b)　any equivalent legislation dealing with the safeguarding of employees' rights in the event of transfers of undertakings or businesses, or a service provision change, in whole or part whether enacted pursuant to or in accordance with the principles of the EU Acquired Rights Directive [2001/23/EC] (and/or the Regulations or otherwise, in each case as amended, repealed or replaced from time to time) (hereinafter, the "Regulations").

10.2　The Regulations shall not apply on commencement of the Services or this Agreement.

10.3 Elsewhen shall have no liability for any current or former employees, staff, contractors, consultants, agents, officers and workers of the Client or any third party engaged by the Client (hereinafter, a "Relevant Person") on the commencement of the Services or this Agreement.

10.4 The Client shall indemnify Elsewhen against all employment liabilities suffered or incurred by Elsewhen (or any Elsewhen Affiliate, subcontractor or supplier engaged by Elsewhen) as a result of:

(a) any claim or demand made or brought against Elsewhen (or any Elsewhen Affiliate, subcontractor or supplier engaged by Elsewhen) by any Relevant Person or any claim submitted on behalf of a Relevant Person by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment, its termination or cessation howsoever arising (including for the avoidance of doubt as a result of its termination or non-acceptance into employment by Elsewhen, any Elsewhen Affiliate, subcontractor or supplier) have or should have transferred to Elsewhen (or to any Elsewhen Affiliate, subcontractor or supplier engaged by Elsewhen) pursuant to the Regulations, and

(b) any claim or demand made or brought by any person whomsoever on the grounds that there has been a failure in whole or in part to inform and/or consult under Regulation 13 of the Regulations on the part of Elsewhen or the Client (or any third party engaged by either of them) in connection with any relevant transfer under the Regulations.

10.5 In order to protect Elsewhen confidential information, business interests and business connections the Client agrees that it shall not, without the prior written consent of Elsewhen, during the Term and for a period of six (6) months thereafter, directly or indirectly, and whether on its own behalf or in connection with any other firm, company or person, offer to employ or engage or otherwise endeavour to entice away any employee, worker, consultant or contractor of Elsewhen or any of its Affiliates who is, or has been, engaged in the provision of the Services ("Restricted Elsewhen Personnel").

10.6 The Client agrees that:

(a) any consent given by Elsewhen in accordance with clause 10.5, shall be subject to the Client paying to Elsewhen for each Restricted Elsewhen Personnel who is hired by the Client, an amount equivalent to 6 months' gross salary of the relevant member of staff hired, or 6 months (VAT inclusive) of the professional fees paid or contractually payable by Elsewhen to the relevant consultant or contractor hired; and

(b) the Parties hereby agree that in the absence of any prior written agreement to the contrary between them, if the Client breaches the recruitment prohibition referred to in clause 10.5 above, it shall pay to Elsewhen for the Restricted Elsewhen Personnel who is hired by the Client, an amount equivalent to 6 months' gross salary of the relevant member of staff hired, or 6 months (VAT inclusive) of the professional fees paid or contractually payable by Elsewhen to the relevant consultant or contractor hired.

10.7 The Parties agree that the amounts specified in clause 10.6 are reasonable and proportionate liquidated damages to protect Elsewhen' rights and interest specified in clause 10.5.

11   INTELLECTUAL PROPERTY

11.1 The Client represents, warrants and undertakes that it has, and shall, at all times maintain all licences, authorisations, consents and approvals necessary from third parties (including any licensors of software) or required by applicable law in respect of the tools or programmes, software, material, documentation or other output provided to Elsewhen by or on behalf of the Client under or in connection with this Agreement.

11.2 Each Party retains ownership of any Intellectual Property Rights owned by it prior to the Effective Date or which are or have been developed independently of this Agreement (whether prior to the Effective Date or not) ("**Pre-Existing IPRs**").

11.3 The Parties agree that the Intellectual Property Rights in any derivative works, improvement, enhancements or modifications to such Pre-Existing IPRs carried out during the course of this Agreement are to vest in the Party which owns such Pre-Existing IPRs, regardless of who carried out such improvement, enhancement or modification.

11.4 To the extent that any Intellectual Property Rights in such derivative works, modifications, enhancements or improvements do not vest in the Party which owns such Pre-Existing IPRs by operation of law, the other Party will assign ownership of both present and future Intellectual Property Rights in such derivative works, modifications, enhancements or improvements to give effect to clause 11.3. The Client shall not be permitted to use any of Elsewhen' Pre-Existing IPRs for the benefit of any person other than the Client without the prior written consent of Elsewhen, which may be withheld or withdrawn at Elsewhen' sole discretion.

11.5 All Intellectual Property Rights subsisting in the Deliverables shall vest in Elsewhen (the "**Developed IPRs**"). Subject to full payment by the Client of any amounts due to Elsewhen under the Agreement, Elsewhen hereby grants (or shall procure the grant of) to the Client a non-exclusive, non-transferable, royalty-free licence to use the Developed IPRs to the extent necessary and for the sole purpose of:

(a)   receiving the Services; and

(b)   using the Deliverables for its business purposes to the extent the Developed IPRs are embedded in the Deliverables.

11.6 The Client undertakes that it will not resale the Developed IPRs or use all or part of the Developed IPRs to provide services that are the same or similar to the Services.

   OR

11.7 Subject to clauses 11.2, 11.3, 11.4, 11.8 and 11.9, all Intellectual Property Rights subsisting in the Deliverables shall vest in the Client upon delivery from Elsewhen to the Client and full payment by the Client of any amounts due to Elsewhen under this Agreement and the Client shall own all such Intellectual Property Rights (the "**Developed IPRs**"). Elsewhen hereby irrevocably assigns (or shall procure the assignment of) to the Client with full title guarantee

and including by present assignment of future rights, all right, title and interest in the Developed IPRs.

11.8   Notwithstanding clause 11.7, the Client undertakes that it will use the Developed IPRs for its business purposes only and that it will not use all or part of the Developed IPRs to provide services that are the same or similar to the Services.

11.9   Elsewhen shall retain ownership of the Working Materials which shall be the sole property and solely belong to Elsewhen and shall not be provided to the Client or to any third party.

11.10   To the extent that the Client acquires any title to Intellectual Property Rights that is inconsistent with the allocation of title set out in this Clause 11, then the Client hereby irrevocably assigns to Elsewhen with full title guarantee and including by present assignment of future rights, its whole right, title and interest in and to such Intellectual Property Rights. The Client undertakes (and shall procure that its relevant subcontractors and suppliers shall undertake), to the extent necessary, to execute all such documents and perform all such acts as may be required by Elsewhen to perfect the assignment to Elsewhen of all Intellectual Property Rights as provided for in this Clause 11**Error! Reference source not found.**.

11.11   The Client hereby grants to Elsewhen (and to its subcontractors if applicable) a royalty-free, non-exclusive, non-transferable licence to use the Client's Pre-Existing IPR and Client Materials (and any derivative works, modifications, enhancements or improvements to such Pre-Existing IPR or Client Materials) solely to the extent necessary and for as long as it is necessary in order for Elsewhen to provide the Services and perform its obligations under this Agreement. Elsewhen may only sublicense its rights under this Clause to its subcontractors to the extent necessary and for as long as is necessary in order for such subcontractors to provide any Services and perform any obligations under this Agreement.

11.12   Elsewhen hereby grants to the Client a non-exclusive, non-transferable, non-sublicensable, royalty free licence to use the Elsewhen' Pre-Existing IPRS and any derivative works, modifications, enhancements or improvements to such Pre-Existing IPR only for as long as necessary, to the extent necessary and for the sole purpose of:

(a)   receiving the Services; and

(b)   using the Deliverables for internal business purposes to the extent the Elsewhen' Pre-existing IPRs are embedded in the Deliverables.

11.13   The Client shall not be permitted to use any of the Elsewhen' Pre-existing IPRs for the benefit of any person other than the Client, without the prior written consent of Elsewhen.

11.14   Unless the Parties agree otherwise in writing, if the Client requires the use of any Third Party Materials in order to benefit from the provision of the Services the Client shall enter directly into a licence agreement with the applicable third party licensor.

11.15   Elsewhen shall indemnify the Client from and against any Losses suffered or incurred by the Client as a result of or in connection with any claim that the provision, use or receipt of the Services by the Client, in accordance with the provisions of this Agreement infringes the Intellectual Property Rights of a third party.

11.16 The Client shall indemnify Elsewhen from and against any Losses suffered or incurred by Elsewhen as a result of or in connection with any claim that Elsewhen' use of the Client Pre-existing IPRS or Client Materials in accordance with the provisions of this Agreement infringes the Intellectual Property Rights of a third party (with such claims under Clauses 11.15 or 11.16 each being an "**IPR Claim**").

12   CONFIDENTIALITY

12.1 Subject to clause 12.7(e) below, each Party undertakes that it shall not disclose any Confidential Information received from the other Party for the purposes of the Agreement, except as permitted by Clause 12.5.

12.2 Once the Services have been completed, each Party shall return to the other any Confidential Information in its possession or those of its employees, or destroy it at the other Party's express request and in the manner established by the latter, irrespective of the means in which this information is registered.

12.3 The Parties may not use registered trade marks, logos, commercial names, Internet domain names or any other distinctive sign of the other Party without its prior written consent.

12.4 Each Party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other Party of the provisions of this clause. Accordingly, it is agreed that either Party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this clause, without prejudice to any other rights and remedies which that Party may have.

12.5 The receiving Party may disclose Confidential Information to its own officers, directors, employees, contractors, sub-contractors (which in Elsewhen' case includes any of its Affiliates involved in the provision of the Services), agents and advisers to the extent that it is strictly necessary for the purposes of this Agreement (each a "**Permitted Third Party**"), provided that the Permitted Third Party is bound by confidentiality obligations equivalent to those specified in this clause 12 and that the receiving Party shall remain liable to the disclosing Party for the acts, omissions of, and for the compliance with the terms of this Clause 12, by such Permitted Third Party.

12.6 If a receiving Party is required by Law or by any regulator to which it is subject to disclose any Confidential Information of the disclosing Party, then it shall be entitled to do so provided that it promptly informs the disclosing Party (if permitted by Law).

12.7 The confidentiality obligations under this Clause 12 shall not apply to any Confidential Information received by one Party from the other which:

(a)   is or becomes public knowledge (unless by breach of this Agreement);

(b)   was already in the possession of the receiving Party without restriction as to its disclosure;

(c)   is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d)   is information independently developed without access to the other Party's Confidential Information; or

(e)   must be disclosed under a statutory or legal obligation.

12.8   The confidentiality obligations under this Clause 12**Error! Reference source not found.**, will remain in force during the term of this Agreement, and for a period of three (3) years after its termination.

13   DATA PROTECTION

13.1   Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

13.2   In those cases where the provision of Services by Elsewhen involves processing Client's personal data, the Parties shall comply with Schedule B of this Agreement.

14   LIMITATION OF LIABILITY

14.1   Nothing in this Agreement shall exclude or restrict either Party's liability for death or personal injury caused by its negligence, fraudulent misrepresentation or fraud or any other liability that cannot be excluded or limited by law.

14.2   Subject to clause 14.1, neither Party will be liable to the other for any of the following types of loss or damage arising under or in relation to this Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, liability under any indemnities or otherwise:

(a)   any loss of profits (whether direct or indirect) or contracts; or

(b)   loss of business, business opportunities, loss of sales, loss of revenue or turnover; or

(c)   loss of revenue; or

(d)   loss or damage to goodwill or reputation; or

(e)   loss of the use of money or anticipated savings; or

(f)   any indirect, special or consequential loss or damage of any kind howsoever arising, whether caused by tort (including negligence), breach of contract or otherwise or, whether any such losses could be reasonably foreseen by a Party or not or whether a Party has been advised of the possibility of such damages or not.

Each of the sub-clauses 14.2(a) to 14.2(i) shall be deemed to be independent of the other.

14.3   To the extent that the Services provided by Elsewhen to the Client are based on inaccurate, incorrect or incomplete data provided by the Client (or its sub-contractors or suppliers), or instructions or information provided by the Client (or its sub-contractors and suppliers) to Elsewhen, Elsewhen shall not be liable or responsible for any Losses suffered by the Client as a result of Elsewhen providing the Services to the Client relying on such inaccurate, incorrect or incomplete data, instructions or information.

14.4   Subject to clause 14.1 above, the total aggregate liability of each Party to the other under or in connection with this Agreement in each 12-month period during the Term, whether arising from tort (including negligence), breach of contract, or otherwise, shall not exceed in aggregate an amount equal to the lower of: (i) in respect of any SoW, one hundred twenty five per-cent (125%) of the Fees paid or payable by the Client to Elsewhen pursuant to the applicable SoW; and (ii) £ [INSERT AMOUNT].

14.5   This clause 14 shall survive and shall not be rendered ineffective by the completion of the Services or the expiry or termination of this Agreement for any reason whatsoever.

15   TERMINATION

15.1   Both parties may terminate this Agreement, or any SoW, without cause, on giving thirty (30) days' written notice to the other party of such termination.

15.2   Elsewhen may suspend any of the Services provided under this Agreement, if the Client fails to pay the Fees in accordance with this Agreement within 14 days of the due date for payment.

15.3   Elsewhen may terminate this Agreement or any SoW if the Client fails to pay any amount under this Agreement on the due date for payment and remains in default for more than thirty (30) days after being notified in writing by Elsewhen to make such payment.

15.4   If either Party commits a material breach of this Agreement and (in the case of a remediable breach) fails to remedy the breach within thirty (30) days of receipt of the other Party's written notice requiring it to do so, the other Party may terminate this Agreement with immediate effect on written notice to the Party in breach.

15.5   If an Insolvency Event occurs in respect of a Party, the other Party may terminate this Agreement with immediate effect on written notice to the Party to whom the Insolvency Event relates. An "**Insolvency Event**" means, in relation to a person (a "**Relevant Entity**"):

(a)   when the Relevant Entity becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;

(b)   a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Relevant Entity;

(c)   an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Relevant Entity and/or over all or any part of the assets of the Relevant Entity;

(d)   the Relevant Entity enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or

(e)   anything equivalent to any of the events or circumstances stated in 15.5 inclusive occurs in any applicable jurisdiction.

15.6   Termination or expiry of any SoW shall not affect the continuing validity or operation of any other SoWs entered into pursuant to this Agreement (nor the continuing application of the

terms of this Agreement to such other SoWs), or this Agreement itself. Termination or expiry of this Agreement as a whole shall not affect any outstanding SoWs then in force and the provisions of this Agreement shall be deemed to apply to any such outstanding SoWs for the duration of each applicable SoWs, until the termination or expiry of such outstanding SoWs.

15.7   If this Agreement is terminated for any reason the Client shall pay Elsewhen all Fees and Expenses in relation to Services already provided, or due to Elsewhen under this Agreement until the date of termination of this Agreement.

15.8   Elsewhen may submit an invoice to cover the payments set-out in clause 15.7 above, which shall be payable by the Client within thirty (30) days of the date of the invoice.

15.9   Termination or expiry of this Agreement or any SoW shall be without prejudice to the respective rights and liabilities of each of the Parties accrued prior to such termination or expiry.

15.10 All Elsewhen licences shall be terminated, with the exception that the termination of this Agreement or any SoW shall not affect the licences specified in clauses 11.11 and 11.12 which shall continue in full force and effect notwithstanding the termination of this Agreement or the relevant SoW.

15.11 All rights and obligations of the Parties under this Agreement or the relevant SoW (as applicable) shall cease to have effect immediately upon termination or expiry of this Agreement or the relevant SoW (as applicable) save that the clauses of this Agreement which are expressed to survive its termination or expiry, or which from their nature or context it is contemplated that they are to survive termination or expiry shall continue in force following termination or expiry of this Agreement or any SoW.

16   ASSIGNMENT

16.1   The Client may not assign its obligations derived from this Agreement without Elsewhen's prior written consent. Elsewhen may assign the provision of the Services to any of its Affiliates, or use subcontractors to provide the Services.

16.2   Elsewhen shall remain responsible for the acts and omissions of all its subcontractors in each case as if they were the acts and omissions of Elsewhen, to the extent that Elsewhen would be liable under this Agreement or a SoW.

16.3   The Client shall remain responsible for the acts and omissions of all its subcontractors in each case as if they were the acts and omissions of the Client, to the extent that the Client would be liable under this Agreement or a SoW.

17   FORCE MAJEURE

17.1   If any Party is totally or partially prevented or delayed in the performance of any of its obligations under or pursuant to this Agreement by Force Majeure for more than 60 consecutive Business Days, and gives written notice thereof to the other Party specifying the matters constituting Force Majeure and the period for which it is estimated that such prevention or delay will continue, together with such evidence as it reasonably can give, the

Party so prevented or delayed shall, subject to the provisions of clause 17.2, terminate this Agreement with immediate effect by written notice.

17.2 If any Party gives to the other Party such notice as is referred to in clause 17.1, both Parties shall attempt so far as reasonably within their power to mitigate the effect of such notice and, in particular, but without limitation, shall endeavour to agree a reasonable and cost effective solution to the consequences of the matters constituting Force Majeure.

18 WAIVER

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

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

19 ANTI-BRIBERY AND ANTI-CORRUPTION

Each of the Parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

20 RIGHTS AND REMEDIES

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

21 SEVERANCE

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, the relevant provision or part-provision shall be deemed deleted. Any deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

21.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22 THIRD PARTY RIGHTS

A person who is not a Party to this Agreement (including any SoW) may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

23 NO PARTNERSHIP OR AGENCY

23.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party**Error! Reference source not found.**.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24 NOTICES

24.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address specified below:

Elsewhen	Client
FAO: Leon Gauhman	FAO: [NAME]
Email: leon@elsewhen.com	Email: [EMAIL ADDRESS]

25 ENTIRE AGREEMENT

25.1 If there is any conflict between the provisions of this Agreement and G-Cloud 14 Framework Agreement, then the provisions of the G-Cloud 14 Framework Agreement shall prevail.

25.2 Subject to clause 25.1, this Agreement together with any documents referred to in it constitute the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Secondment.

25.3 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

25.4 The only remedy available to either party for breach of this Agreement shall be for breach of contract under the terms of this Agreement.

25.5 Each Party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject-matter of this Agreement at any time before their signature (together "**Pre-Contractual Statements**"), other than those which are set out in this Agreement.

25.6 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements. Nothing in this clause 25 shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

26 VARIATION

26.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

27 COUNTERPARTS

27.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

28 GOVERNING LAW AND JURISDICTION

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

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

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

Signed by **Leon Gauhman** for and on behalf of **Elsewhen Ltd**	.... Director
Signed by [NAME OF DIRECTOR] for and on behalf of [**CLIENT**]	.... Director

SCHEDULE A

ELSEWHEN STATEMENT OF WORK

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STATEMENT OF WORK

This Statement of Work ("**SoW**") is made by and between Elsewhen and the Client and is part of the Agreement. This SoW, together with the Agreement and the documents referred to in it comprise the Agreement (into which this SoW is incorporated) and sets out your contractual obligations. Please ensure that you understand and agree with all of the provisions set out in them prior to signature.

This SoW incorporates the terms and conditions that appear in the Agreement.

By signing this SoW the Client and Elsewhen confirm their acceptance of the terms of the Sow. The signatories of this SoW represent and warrant that they are duly authorised to execute this SoW behalf of the Client and Elsewhen respectively and to authorise the initiation of the services listed below.

Capitalised terms not defined herein shall have the meaning ascribed to them in the Agreement.

The following additional terms shall also apply to this SoW:

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<tr><td></td><td></td></tr>
<tr>
<td>1. Services and deliverables</td>
<td>[description of Services and Deliverables, if necessary referring to appendix setting out or referring to statement of requirements]</td>
</tr>
<tr>
<td>2. Roadmap</td>
<td>[reference to roadmap for production of Deliverables (if any), setting out or referring to milestones]</td>
</tr>
<tr>
<td>3. Fees</td>
<td>[see clause 9 of the Agreement. Set out the basis of charging: either an agreed upon fixed price for the Services, or for the Services billed on a time and materials basis at pre-negotiated Rate Card rates as set out in Schedule C. Where payment is contingent on performance (e.g. achievement of Acceptance of Deliverables) appropriate additional provisions need to be added]</td>
</tr>
<tr>
<td>4. Expenses</td>
<td>[see clause 9 of the Agreement. Set out the basis on which expenses will be reimbursed - referring to the Rate Card where necessary.]</td>
</tr>
<tr>
<td>5. Invoice date(s)</td>
<td>[see clause 9 of the Agreement. Where payment is not made on a monthly basis - see Fees - care needs to be taken to ensure that invoicing is contingent on achievement of milestones - inserting dates can contradict that principle]</td>
</tr>
<tr>
<td>6. Service Start Date ("**Commencement Date**")</td>
<td>[DATE]</td>
</tr>
<tr>
<td>7. Service End Date (if applicable)</td>
<td>[DATE]</td>
</tr>
<tr>
<td>8. Governance</td>
<td>[If the Services in a SoW are such as to require a degree of project management on the part of Elsewhen and Client then they should be set out in more detail here (by reference to an appendix if necessary)]</td>
</tr>
</table>

9. [Client] Dependencies	The dependencies listed in table 1 below that have a significant impact on the delivery of Services and/or Deliverables to which this SoW relates and which are due to be delivered by [Client] in accordance with the Roadmap and this SOW.
10. Acknowledgements	Elsewhen acknowledges that it has received copies of, or has otherwise been given access to, the following documents and that it is aware of their terms: [insert reference to all internal Client policies and procedures that Elsewhen is intended to observe - e.g. IT security policies, site safety policies (where applicable, etc.]

Table 1 – Client Dependencies

Dependency Ref	Dependency Title	Description of Dependency including Dependency Date	Service or Deliverable Affected

Signed by the Parties:

Elsewhen Ltd	**[Client Legal Name]**
("**Elsewhen**")	("**Client**")
By:	By:
Name: Leon Gauhman	Name:
Title:	Title:
Date:	Date:

SCHEDULE B

PERSONAL DATA PROCESSING CONDITIONS

This Schedule B is made by and between Elsewhen and the Client and is part of the Agreement.

Capitalised terms not defined herein shall have the meaning ascribed to them in the Agreement.

1 Definitions and Interpretation

1.1 In this Schedule:

"**Client Personal Data**" means all Personal Data processed by Elsewhen on behalf of the Client under or in connection with this Agreement.

"**Data Protection Legislation**" means (i) the UK's Data Protection Act 2018 (as applicable); (ii) the General Data Protection Regulation 2016/679 (the "**GDPR**"), until such time as it is repealed or ceases to apply in the UK; and (iii) any UK data protection legislation replacing or adopting the GDPR in the UK as applicable;

"**Sub-Processor**" means any entity engaged by Elsewhen or by any other sub-processor of Elsewhen who receives Client Personal Data for processing activities to be carried out on behalf of the Client;

For the purposes of this Agreement, the terms "**Data Controller**", "**Data Processor**", "**processing**" and "**Data Subject**" have the meanings ascribed to them in the Data Protection Legislation. The term "Personal Data" shall mean all personal data processed by Elsewhen as Data Processor in relation to the provision of the Services; and

"**Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Client Personal Data transmitted, stored or otherwise processed by Elsewhen.

2 Scope

2.1 This Schedule applies to the processing of Personal Data by the Parties under the Agreement. Elsewhen processes Client Personal Data for the purpose of providing the Services under the Agreement. Elsewhen will process the Client Personal Data for the duration of this Agreement (or for as long as is reasonably required and to the extent permitted by European Union law or the law of any EEA member state).

3 Data Protection Legislation

3.1 Each Party shall comply with their obligations under Data Protection Legislation.

4 Data Processor's Obligations

4.1 Elsewhen agrees:

(a) to only process the Client Personal Data in accordance with the Client's instructions or as provided in writing by the Client from time to time;

(b)   that it will process the Client Personal Data in compliance with Data Protection Legislation;

(c)   notwithstanding the foregoing, to process Client Personal Data as required under Data Protection Legislation, provided that Elsewhen informs the Client of such a requirement before processing the data, unless the law prohibits this on grounds of public interest;

(d)   to ensure only staff who are contractually bound to respect the confidentiality of Personal Data shall have access to the same;

(e)   to implement and maintain appropriate technical and organisational measures to protect the Client Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of the Client Personal Data and having regard to the nature of the Client Personal Data which is to be protected;

(f)   at the Client's request and cost, to provide reasonable assistance to the Client in the Client's assessment and implementation of appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the Personal Data;

(g)   not without the written consent of the Client engage any Sub-Processors to, where the Client does consent, ensure the Sub-Processor enters into written agreements with Elsewhen requiring that the Sub-Processor comply with terms no less protective than this Schedule B. The Client consents to the processing of Client Personal Data by any Elsewhen Affiliates engaged in the provision of the Services which shall be deemed as Sub-processors;

(h)   to inform the Client, as soon as reasonably practicable, if it receives a request notice or other communication from a Data Subject seeking to exercise his or her rights under Data Protection Legislation in respect of Personal Data, and, at the Client's request, shall assist the Client with respect to that communication, request or notice (at Client's cost and expense);

(i)   to assist the Client by providing such information to the Client as the Client may reasonably require, and within the timescales reasonably specified by the Client to allow the Client to comply with the rights of the Data Subject, including subject-access rights, or with notices served by the relevant supervisory authority or any other law enforcement or regulatory authority. Elsewhen shall be entitled to charge the Client for its assistance under this paragraph at Elsewhen's current hourly rates;

(j)   to allow the Client and its respective auditors or authorised agents to conduct audits or inspections once in every 12 month period during the term of the Agreement. Such audit shall be at the cost of the Client. The purpose of an audit pursuant to this clause will be verifying that Elsewhen are processing personal data in accordance with the obligations under this Agreement and applicable Data Protection Legislation;

(k) on termination of this Agreement and at the request of the Client, to return or destroy Personal Data, unless European Union law or the law of any EEA member state to which Elsewhen is subject requires storage of the Personal Data;

(l) to, without undue delay after discovering a Data Breach, notify the Client about the Data Breach and provide to the Client as soon as reasonably practicable, details of the Data Breach and the likely consequences of the Data Breach in accordance with the information requirements specified in Article 33 of the GDPR. Elsewhen will co-operate with the Client and provide the Client with all relevant details of the Data Breach without undue delay; and

(m) Elsewhen shall be entitled to charge the Client for its assistance: (i) with a Data Subject Request; (ii) during a Data Breach (unless the Data Breach is directly attributable to Elsewhen), at Elsewhen standard rate card; and (iii) to the Client to allow the Client to comply with its obligations under Data Protection Legislation.

5 Indemnity

5.1 Elsewhen will indemnify the Client in respect of any Losses to the extent incurred by the Client as a direct result of any act or omission of Elsewhen in breach of Data Protection Legislation.

5.2 The Client will indemnify Elsewhen in respect of any Losses to the extent incurred by Elsewhen as a direct result of any act or omission of the Client in breach of Data Protection Legislation.

SCHEDULE C

RATE CARD

This Schedule C is made by and between Elsewhen and the Client and is part of the Agreement.

Capitalised terms not defined herein shall have the meaning ascribed to them in the Agreement.

The Services will be performed at / delivered to the address outlined in the relevant SoW, subject to change from time to time by agreement in writing of the Parties.

The rate of the Service provision will be subject either to the Rate Card outlined in Table 1 below if applicable, or to the rates or Fee outlined in the relevant SoW. For all SoWs issued under this Agreement, the Client agrees to pay Elsewhen (either an agreed upon fixed price for the Services, or for the Services billed on a time and materials basis at pre-negotiated Rate Card rates).

Value Added Tax charges will be added to UK and other foreign fees, where appropriate. In addition to fees above, the Client agrees to pay for Elsewhen's reasonable and customary out of pocket expenses, including but not limited to any required travel, lodging and meals providing Elsewhen takes reasonable measures to ensure expenses are kept to a minimum.

Table 1

Role Type	Hour Rate	Day Rate
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

Note: Rates are quoted in pounds sterling (GBP) and are exclusive VAT.