thoughtworks

Master Services Agreement

DATE: 2023

PARTIES:

(1)   **THOUGHTWORKS, LTD.**, a company incorporated in England and Wales with registered company number 04091535, whose principal place of business is at 76-78 Wardour Street, London, W1F 0UR (**"Thoughtworks"**); and

(2)   [ ], a company incorporated in [ ] with registered company number [ ], whose registered office / principal place of business is at [   ] (**"Client"**).

RECITALS:

A.   Thoughtworks is in the business of computer software development and consulting services.

B.   Client desires to engage Thoughtworks to provide various consulting and software development services for Client, and Thoughtworks agrees to perform the services on the terms and conditions set forth in this Agreement.

C.   Thoughtworks and Client agree that this Agreement shall apply to all future services which the Parties may agree are to be provided and which are set out in a Statement of Work.

D.   Client or any of its Affiliates may request services from Thoughtworks or any of its local Affiliates, and in the event that Thoughtworks or any of its local Affiliates, is able to provide such services, the relevant parties will enter into a separate Statement of Work in accordance with this Agreement.

IT IS NOW AGREED THAT:

1.   DEFINITIONS AND INTERPRETATION

1.1   Definitions

In this Agreement the following definitions apply:

"**Acceptance Criteria**" has the meaning given in Clause 2.2 (Agile Software Delivery);

"**Affiliate**" means, in relation to any person (including either Party), any other person which from time to time Controls, is Controlled by, or is under common Control with, that person;

"**Anti-Bribery Requirements**" has the meaning set out in Clause 12.14 (Anti-bribery);

"**Assumptions**" means the assumptions upon which the delivery of the Services are based, as specified in the applicable Statement of Work (or otherwise agreed in writing);

"**Business Day**" means any day when clearing banks are open for business in the City of London for the transaction of normal banking business, other than a Saturday, Sunday, bank or public holiday recognised in England;

"**Client's Representative**" means a suitably qualified and experienced project manager nominated by the Client pursuant to Clause 3.2 (*Co-operation*);

"**Confidentiality Agreement**" means the confidentiality agreement signed between the Parties and dated _____.

"**Confidential Information**" has the meaning given in the Confidentiality Agreement;

"Control" means, in relation to any company, partnership or other entity, the beneficial ownership of more than fifty percent (50%) of the issued share capital of, or the legal power to direct or cause direction of, the general management of the company, partnership or other entity in question, or its holding company or parent undertaking and **"Controlling"** and **"Controlled"** shall be construed accordingly;

"Deliverables" means all deliverables agreed to be produced specifically for the Client by Thoughtworks in the course of providing the Services to the Client and listed in the Statement of Work, including without limitation, any software, source code and documentation, and all portions thereof;

"Dependencies" means the actions or events which need to be performed by or on behalf of Client, or need to occur, in order for Thoughtworks to be able to provide the Services, as identified in an applicable Statement of Work (or otherwise agreed in writing);

"**DPA**" means a Data Processing Agreement, the terms of which shall govern the Parties processing of personal data in accordance with applicable laws, further to this Agreement;

"Expenses" means the costs and expenses reimbursable by Client to Thoughtworks in accordance with Clause 6.2 (*Expenses*);

"Fees" means the fees payable by Client to Thoughtworks for the Services in accordance with Clause 6.1 (*Fees*);

"Force Majeure Event" has the meaning given in Clause 12.5 (Force Majeure);

"Intellectual Property Rights" means any UK intellectual property rights, including patents, trade marks, rights in designs, copyrights, database rights, and trade secrets and all embodiments thereof, whether tangible or intangible and whether or not registered or registrable;

"**Open Source Code**" has the meaning given in Clause 8.5 (Open Source);

"Party" means a party to this Agreement;

"Services" means the services to be provided by Thoughtworks pursuant to this Agreement, as described in an applicable Statement of Work;

"Statement of Work" means a statement of work duly executed by the Parties (and/or their respective Affiliates where applicable), detailing (amongst other things) the respective obligations of the Parties in relation to the services to be provided under this Agreement and the fees payable for the services, the template form of which is attached as Exhibit A and the first of which is attached as Exhibit A-1;

"Thoughtworks Tools" means any methodologies, techniques, frameworks, designs, processes, formulae, software, documentation or related materials owned by or licensed to Thoughtworks, and used by Thoughtworks to provide the Services to the Client; and

"**VAT**" has the meaning given in Clause 6.4 (VAT).

1.2   Interpretation

In this Agreement:

(a)   unless the context otherwise requires, all references to:

(i)   "this Agreement" includes references to this Agreement as amended between the Parties in accordance with this Agreement;

(ii)   "Clauses" and "Appendices" are references to clauses of and appendices to this document, as amended in accordance with this Agreement;

(iii) "a document" are to that document as varied, supplemented or replaced (with the agreement of the Parties);

(iv) "a person" includes any individual, form, corporation, unincorporated association, government, state or agency of state, association, partnership or joint venture (whether or not having a separate legal personality); and

(v) a statute or statutory provision includes any consolidation, re-enactment, modification or replacement of it, and any subordinate legislation in force under the same, from time to time, save that where any change to a statutory provision is non-mandatory (such that a Party is not legally bound to comply) the consolidation, re-enactment, modification or replacement provision shall not apply to this Agreement with the result of any increase in the liability of the relevant Party;

(b) the headings are for ease of reference only, and shall be ignored in construing this Agreement;

(c) words or phrases importing the singular shall be interpreted to include the plural and vice versa; and

(d) any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

1.3 Conflict or Inconsistency

Any conflict or inconsistency between the provisions of this Agreement and any executed Statement of Work shall be resolved by giving precedence to the executed Statement of Work under which the Services are to be performed and then to this Agreement.

2. SERVICES

2.1 Provision of Services

Subject to the terms of this Agreement and to the payment of the relevant Fees and Expenses, Thoughtworks agrees to perform Services for Client as described in one or more Statements of Work, the first of which is attached as Exhibit A-1.

2.2 Agile Software Delivery

Thoughtworks provides software development Services using an agile delivery approach and governance occurs throughout engagement(s) in near real time. Software delivery occurs in short duration iteration lengths that are appropriate given the situation (each an "iteration"). With an agile approach, working and tested software will be continuously delivered. The Parties agree to collaborate frequently in order to actively manage the risks, issues, and trade-offs that arise during delivery. The Parties will manage scope and prioritize features together. The Parties will define and agree to requirement(s) or specification(s) (the "**Acceptance Criteria**") for each set of functionality (a "story") to be developed. Each story developed by Thoughtworks will be developed in accordance with the Acceptance Criteria agreed for each story. When development of each story is complete, the previously defined Acceptance Criteria for that story will be evaluated and each story shall be accepted when the Acceptance Criteria for the applicable story are met. Due to the nature of the iterative delivery approach, Client shall review Deliverables when delivered or on an iterative basis consistent with the delivery schedule as documented by the delivery team, to determine whether or not such Deliverables substantially satisfy the applicable Acceptance Criteria. If Acceptance Criteria for the applicable story are not met, the issue will be discussed by the Parties and a decision will be made to either alter the Acceptance Criteria, add correction to the story list for a future iteration, or to prioritize correction to bring the story into compliance with the Acceptance Criteria as soon as practicable.

2.3   Assumptions and Dependencies.

The Services are dependent upon the correctness of the Assumptions and satisfaction of the Dependencies. The Client acknowledges that in the event that any of the Assumptions are incorrect or any of the Dependencies are not satisfied, the provision of the affected Services may be delayed and/or prevented and that the time and/or cost to perform those Services may be increased. Thoughtworks shall notify the Client as soon as reasonably practicable after it becomes aware that an Assumption is incorrect or a Dependency is not satisfied, and the Client shall use all reasonable endeavours to remedy the incorrect Assumption and/or satisfy that Dependency (if possible) as soon as possible. Without prejudice to Clause 7.5 (Termination for failure to meet Dependencies and Assumptions) if Thoughtworks' performance of its obligations under a Statement of Work is wholly or partially prevented or delayed by any act or omission (including any Assumption or Dependency) of Client, its agents, subcontractors, consultants or employees, Thoughtworks shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay. Where other risks (outside of any documented Assumptions or Dependencies) to the performance of the Services have materialised, the Client shall cooperate fully with Thoughtworks in good faith to reach agreement in relation to the impact on timescales, scope or the Fees.

2.4   Thoughtworks' Personnel

Unless otherwise stated in the applicable Statement of Work, Thoughtworks shall have sole discretion over the identity of its personnel used to provide the Services, provided that Thoughtworks shall ensure that the personnel are in all cases suitably qualified and experienced. Where specific personnel are specified by their roles in an applicable Statement of Work, Thoughtworks shall use reasonable endeavours to provide the Services through those roles in relation to personnel, provided that Thoughtworks is entitled to replace personnel identified through roles, with personnel of equivalent qualification and experience on no more than 30 days' notice to Client. Without limiting the foregoing, Client acknowledges that it is Thoughtworks' standard policy not to allocate the same personnel to any one client or engagement for periods exceeding twelve (12) months. Furthermore, Client acknowledges and agrees that Thoughtworks shall not be obliged to allocate individual personnel identified by name, to the provision of Services, in any Statement of Work, at any time during the Term.

2.5   Removal or Substitution of Personnel by Client

Subsequent to the commencement of the Services pursuant to any relevant Statement of Work, should Client wish to substitute Thoughtworks personnel who have been engaged in providing Services to Client with alternative Thoughtworks personnel, Client may provide notice of the request to Thoughtworks, together with a detailed description of the reasons for the request, and Thoughtworks shall use reasonable endeavours to accommodate the request within a reasonable timeframe having regard to Client's reasons for the request, the impact of the request on the provision of the Services to the Client, and Thoughtworks' reasonable operating requirements.

2.6   Work for Other Client Affiliates

Client may request that Thoughtworks provide Services under this Agreement to another Client Affiliate. In this event, if Thoughtworks agrees to provide Services, Thoughtworks or one of its own Affiliates which is local to the Client Affiliate shall enter into the relevant Statement of Work. If Services are provided by Thoughtworks' local Affiliate to Client Affiliate, all references in this Agreement (except the references in this clause 2.6 and clause 12.13) to "Thoughtworks" or "Client" or "Party" shall be then read as being to the relevant Affiliates who have signed the Statement of Work in question.

2.7   Evaluating Client Personnel

Client assumes full responsibility for all decisions that may result, directly or indirectly, from information or evaluations provided to Client by Thoughtworks with respect to the qualifications of Client employees or prospective employees or third party contract personnel during this engagement. Client agrees to indemnify, defend and hold harmless Thoughtworks, its officers,

directors, Affiliates and employees, from and against any all claims, demands, losses, liabilities, and costs and expenses (including reasonable legal fees), arising directly or indirectly, in whole or in part, out of any action taken by Client in connection with the information or evaluations in relation to employees, prospective employees or third party contract personnel, provided by Thoughtworks hereunder. The provisions of this paragraph shall survive completion of Thoughtworks services hereunder or any earlier termination of this Agreement, but shall be subject to the limitation of liability provision herein.]

3. CLIENT OBLIGATIONS

3.1 Co-operation

Client shall assist Thoughtworks in the performance of its obligations under this Agreement and shall undertake the Client responsibilities specified in the applicable Statement of Work and in this Clause 3.1 at its own expense, including without limitation, reviewing all specifications, technical materials and other documents submitted by Thoughtworks, requesting necessary corrections, and approving the documents; providing requested information and data; advising Thoughtworks of Client's change requests; providing Thoughtworks' staff with access to Client's staff, facilities and hardware; ensuring satisfaction of the Dependencies and correctness of the Assumptions, and performing or having performed other duties and requirements of Client as set forth in this Agreement or an applicable Statement of Work.

3.2 Client Representative

Client shall make available to Thoughtworks a qualified project manager (**"Client's Representative"**) who is authorised to make binding decisions for Client regarding the obligations which are the subject of this Agreement. Client understands that Thoughtworks is entitled to rely upon Client's Representative as having the authority specified in this Clause and that all formal communications from Thoughtworks to Client in accordance with this Agreement may be addressed to Client's Representative.

4. CONFIDENTIAL INFORMATION AND DATA PROTECTION

4.1 Confidentiality

The use and disclosure of confidential information is governed by the Confidentiality Agreement, which is affirmed and incorporated into this Agreement by reference.

4.2 Data Protection

In accordance with best industry practice, Thoughtworks prefers not to require access to Client customer or other personal data to perform its Services unless absolutely necessary for the provision of the Services. To the greatest extent possible the Client will provide Thoughtworks with fictional, obfuscated or anonymized data to use in the performance of the Services including but not limited to Thoughtworks's development or testing activities. Client shall not knowingly provide Thoughtworks with access to Client customer or other personal data without prior written notice to Thoughtworks. The Parties shall cooperate in good faith to make assessment of the impact on the security of the access to Client customer or other personal data in the event that said data is shared with Thoughtworks without prior written notice. To the extent personal data is processed by either Party the Parties shall enter into a separate data processing agreement which will govern the processing and transfer of data between the Parties.

5. WARRANTIES.

5.1 Authority; No Conflict

Each Party warrants that it is authorised to enter into this Agreement and to perform its obligations specified in this Agreement, and that its performance of its obligations under this Agreement shall not conflict with, limit or be contrary to any other agreement.

5.2 Quality of Services

Thoughtworks warrants that the Services will be performed with reasonable skill and care using appropriately qualified personnel.

5.3 No Infringement

The Parties represent and warrant that their disclosure and delivery of any information, documents, software and other materials, and use thereof, as contemplated by this Agreement, will not knowingly infringe or violate any UK Intellectual Property Right or right of confidentiality of any third party, including, without limitation, any copyright, known patent or trade secret right.

5.4 Exclusions

Except as otherwise stated above, all warranties, representations or guarantees of any kind or nature, whether express or implied by statute, common law, trade usage or otherwise and whether written or oral (including, but not limited to, warranties of satisfactory quality, warranties of fitness for a particular purpose or use, or warranties relating to any products or services provided by third party vendors) are hereby expressly excluded, except to the extent that they may not be excluded or limited by law.

6. FEES, INVOICES & PAYMENT

6.1 Fees

Client shall pay Thoughtworks on a time and materials basis at the rate set forth on the applicable Statements of Work ("**Fees**"). Thoughtworks' rates shall be subject to Thoughtworks' review in April and October of each year, save that no such review shall take place in the first six months of this Agreement. Unless the applicable Statement of Work expressly provides to the contrary, no review shall affect rates which have already been agreed between the Parties in an existing Statement of Work. Any estimate of Fees provided by Thoughtworks is an estimate only and is not contractually binding.

6.2 Expenses

Client shall reimburse Thoughtworks for all costs associated with the procurement of materials, licences, or equipment, specifically purchased for and in connection with performance of the Services, and reasonable out-of-pocket expenses it incurs in connection with the performance of its obligations under this Agreement ("**Expenses**").

6.3 Invoices/Payment

Thoughtworks shall invoice Client bi-weekly for Fees and Expenses. Any such invoice shall be payable by cheque or wire transfer net fifteen (15) days from the date of invoice(s). Late payments shall accrue interest after 15 days from the date of the invoice until payment (both before and after judgement) at an annual rate of 5% above the then current base rate of the National Westminster Bank plc or at the statutory judgement rate, whichever is higher. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein. Please refer to Schedule 2 for the respective AR/AP contacts.

6.4 VAT

All Fees and Expenses payable by Client under or in relation to this Agreement are exclusive of value added tax or any applicable sales or service tax or any similar, successor or supplemental taxes ("**VAT**"), and the Client shall pay such taxes, in addition to the amounts specified as payable to Thoughtworks under this Agreement, against delivery of a valid VAT, sales or service tax or comparable invoice.

6.5 No Set-off

Unless otherwise agreed in any relevant Statement of Work, all payments to be made under this Agreement shall be made in full, without any deduction, withholding or set-off.

7. TERM AND TERMINATION

7.1 Term

This Agreement shall commence on the date that it is signed by both Parties and shall remain in effect and govern Services provided to Client by Thoughtworks until this Agreement is terminated, or the Parties agree otherwise. Each Statement of Work shall come into effect on the date that it is signed by both Parties or the date when the Services to which it relates commenced (if earlier) and shall continue in effect for the period stated therein, until the relevant Services have been completed, or until terminated earlier in accordance with its terms (whichever is earlier).

7.2 Termination by Notice

Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. Either Party may terminate a Statement of Work upon sixty (60) days written notice to the other Party, unless otherwise specified in that Statement of Work.

7.3 Termination for Material Breach

With the exception of monetary breaches as described in Clause 7.4 (*Monetary Breach*), either Party may terminate this Agreement or any Statement of Work upon fourteen (14) days written notice to the other Party in the event of a breach of any material provision of this Agreement by the other Party, provided that, during such fourteen (14) day period, the breaching Party has failed to remedy such breach.

7.4 Termination for Monetary Breach

If a Party fails to make a monetary payment as specified in this Agreement, the non-breaching Party shall notify the other Party of such failure and if the breaching Party fails to cure such breach within three (3) Business Days thereafter, the non-breaching Party may terminate this Agreement or any Statement of Work.

7.5 Termination for failure to meet Dependencies and Assumptions

If Thoughtworks is prevented or materially delayed or restricted from providing the Services (or any of them) as a result of Client's failure to satisfy any of the Dependencies or the incorrectness of any of the Assumptions, Thoughtworks may notify Client of such failure or incorrectness (as applicable) and, if the Dependency remains unfulfilled or the Assumption remains incorrect for fourteen (14) days or more following such notice, Thoughtworks may terminate the applicable Statement of Work.

7.6 Actions upon Termination

Upon termination of this Agreement or any Statement of Work for any reason, Client shall immediately pay to Thoughtworks all amounts owed to Thoughtworks for Services performed and Expenses incurred up until the effective date of termination. Save as otherwise expressed in the Confidentiality Agreement each Party shall immediately cease all use of and return to the other Party all confidential information and materials of such other Party and all copies, portions and abstracts thereof, that are in its possession or under its control, other than any Deliverables for which Client has paid.

7.7 Effect of Termination

Unless expressly stated to the contrary at the time of notice of termination, termination or expiry of this Agreement shall not affect the continued existence of any Statement of Work which has been entered into between the Parties prior to such termination. Termination of this Agreement or any Statement of Work by Thoughtworks in accordance with this Clause 7 (*Termination*) shall not entitle Client to any compensation or damages whatsoever. Termination of this Agreement or

any Statement of Work shall not affect the rights of the Parties which have accrued in accordance with this Clause 7 (*Termination*) or which otherwise have accrued prior to termination.

8. INTELLECTUAL PROPERTY

8.1 Ownership of Existing Intellectual Property

Except as expressly stated in this Agreement the ownership of the Intellectual Property Rights of each of the Parties as at the date of commencement of this Agreement and/or an applicable Statement of Work shall remain vested in that Party. Where there are modifications or enhancements to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications or enhancements to such pre-existing material.

8.2 Ownership of Deliverables

Subject to Clause 8.1 *(Ownership of Existing Intellectual Property)* and except as expressly stated in this Agreement or the applicable Statement of Work, the ownership of the Intellectual Property Rights in the Deliverables vests in and shall be owned by Client. Title to the applicable Deliverables shall pass upon full payment of the relevant invoice(s) pursuant to the applicable Statement(s) of Work. Upon Client's full payment to Thoughtworks of all applicable invoices, Thoughtworks shall assign, and shall procure that its employees, officers, contractors and sub-contractors shall assign, all right, title and interest in and to any new Intellectual Property Rights in the applicable Deliverables to Client. Such license grant shall in no way affect Thoughtworks' ownership rights in Thoughtworks Tools, as defined below, and shall not apply to any programs, products or other materials that are made available to Client under separate license agreements.

8.3 Thoughtworks Tools

Subject to anything to the contrary in the applicable Statement of Work, nothing in this Clause 8 (*Intellectual Property*) shall assign or be deemed to assign to the Client any right title or interests in or to Thoughtworks Tools. Thoughtworks' Tools, and any modifications or enhancements to the Thoughtworks Tools which do not contain Client-specific functionality or embody Client Confidential Information shall remain the property of Thoughtworks or the applicable third party licensor, and the Client shall have no rights, title or interests to such materials except that, in the event (and to the extent) Client requires the Thoughtworks Tools to use the Deliverables for their envisaged purpose, Thoughtworks shall be deemed to have granted, or procured the grant, to Client an irrevocable, perpetual, non-exclusive, royalty-free and freely transferable licence to use the Thoughtworks Tools to the extent required in order to enable Client to use the Deliverables for their envisaged purpose.

8.4 No Rights in General Knowledge and Skills

Nothing in this Agreement or any Statement of Work will assign or be deemed to assign to Client any right, title or interest in or to, or otherwise prevent Thoughtworks from using and continuing to use, general knowledge, skills, experience or generic information arising from or relating to this Agreement or any Statement or Work, including but not limited to ideas, concepts, know-how, techniques, methodologies, generalised frameworks and designs and processes, but expressly excluding information which is specific to Client or embodies Client Confidential Information.

8.5 Open Source

Client acknowledges and agrees that during the process of developing Deliverables and after consultation with Client, Thoughtworks may use open source code (as defined by the Open Source Initiative) or "free" code (as defined by the Free Software Foundation), including, but not limited to, testing, tracking and assessment tools (collectively "**Open Source Code**") to develop Deliverables, as well as proprietary products or programs and that Client's rights to any open such source code or any of Thoughtworks or third party licensed programs or products shall be governed by the terms of the applicable license agreement and Client will only use such open source code or licensed products in accordance with the applicable license agreements governing their use.

9. NON-SOLICITATION

9.1 Non-Solicitation

Neither Party (either directly or indirectly through a third party) shall solicit for employment, employ, contract with, nor engage the services of, or solicit business from, or otherwise retain, any employees of the other Party who are or have been directly involved in the activities covered by an applicable Statement of Work governed by this Agreement: a) during the term of that applicable Statement of Work; and b) for twelve (12) months from the termination or expiry (whichever is earlier) of the applicable Statement of Work, other than by means of a national advertising campaign open to all applicants and not specifically targeted at any of the staff of the other Party. In the event that either Party employs, contracts, engages or otherwise retains an employee of the other Party in breach of this clause (or without the prior written consent of the other Party), the breaching Party agrees to pay the other Party, as liquidated damages for such breach an amount equivalent to one hundred percent (100%) of the employee's current annual salary (inclusive of bonuses, if any), plus the recruitment costs incurred by the claiming Party in replacing such person. Such liquidated damages shall be immediately payable by the breaching Party upon the earlier of: i) the date the employee accepts the breaching Party's (or its agent's) offer of employment, contract, or engagement; or ii) the date such employee commences employment, engagement or contracting with the breaching Party (or its agent). The liquidated damages set forth in this section are a reasonable pre-estimate of the damages that would result from a breach and are not a penalty. Breach by either Party of the foregoing shall constitute a material breach by that Party, entitling the non-breaching Party to terminate this Agreement and any applicable Statement of Work upon fourteen (14) days written notice to the breaching Party, provided that, during such period the breaching Party has failed to remedy such breach.

9.2 Material Breach

Breach by either Party of this Clause 9 shall constitute a material breach by that Party, entitling the other Party to terminate this Agreement and/or any Statements or Work in accordance with Clause 7.3 (*Termination for Material Breach*).

10. LIABILITY

10.1 Entire Liability

The provisions of this Clause 10 set out the maximum liability of the Parties under or in connection with this Agreement and any Statement of Work, and all other liability is excluded save that neither Party excludes or limits its liability for death or personal injury caused by its negligence, or which is caused by fraudulent misrepresentation or deceit, or any other liability to the extent the liability may not be excluded or limited by law.

10.2 Limitation of Liability

Save in respect of a claim referred to in Clause 10.1 (*Entire Liability*), neither Party's liability for damages from any cause of action whatsoever (including without limitation negligence), for any one event or series of connected events, shall exceed in aggregate the Fees paid by Client under the applicable Statement of Work, in the twelve (12) months prior to the occurrence of the event(s) causing the liability.

10.3 Exclusions

Subject to Clause 10.1 (*Entire Liability*), in no event shall either Party have any liability for any cause of action (including without limitation negligence) for any indirect or consequential loss, or for loss of use or corruption of software, data or information, loss of agreements or contracts , lost profits or revenue, loss of business or goodwill, loss of anticipated savings, or loss of chance, arising out of or related to this Agreement or any Statement of Work or the performance or breach thereof, whether or not such loss would arise in the ordinary course of events, was reasonably foreseeable or in the contemplation of the Parties, or otherwise.

10.4   Contribution

A Party's liability in contract, tort, negligence, and strict liability in tort or by statute or otherwise will be reduced by the extent, if any, to which the other Party contributed to the loss. Each Party agrees to use its reasonable endeavours to mitigate all loss, damage and expenses.

11.   DISPUTES

11.1   Escalation

Any controversy or claim between the Parties arising from or relating to this Agreement shall be attempted to be settled first by negotiation between the Parties' respective project managers. In the event the project managers are unable to resolve the dispute in a reasonable period of time, the Parties agree to escalate the dispute to their respective senior executive officer or equivalent officer.

11.2   Referral to Arbitration

If, after a reasonable period of time, the Parties are still unable to resolve the dispute in the manner referred to in Clause 11.1 (*Escalation*), the Parties agree to settle the dispute by arbitration before a single, mutually agreed upon arbitrator, or failing agreement within a reasonable time, a single arbitrator appointed by the then current President of the British Computer Society. Such arbitration shall be in accordance with the provisions of the Arbitration Act 1996. The place and the seat of arbitration shall be London and the law governing this agreement to arbitrate shall be the law of England and Wales. The arbitrator will have no authority to award punitive or other non-compensatory damages to either Party. No damages excluded by or in excess of any damage limitations set forth in this Agreement shall be awarded.   Where any dispute is to be referred to arbitration pursuant to this Clause, it shall be a condition precedent to the making of an award that the parties shall in the first instance have endeavoured to resolve the dispute in question in accordance with Clause 11.1 (*Escalation)*, unless the Party referring the dispute to arbitration has reasonable cause not to do so to protect any right or action it might have.

11.3   No Restriction of Equitable Relief under Confidentiality Agreement

Nothing in this Clause 11 (Disputes) shall bar the right of either Party to obtain equitable relief from a court of law or equity with regard to a claim under the Confidentiality Agreement.

12.   GENERAL PROVISIONS

12.1   Notices

All notices given by either Party to the other under this Agreement shall be in writing and must be delivered either by hand or by pre-paid first class post to the address given for such Party at the front of this Agreement, or to such other address as may be designated by the Parties from time to time in writing. Notices delivered by hand during normal business hours will be served on the day they are delivered. Notices sent by first class post will be deemed served at 9.00am on the second Business Day after they are posted. [Notices sent by email will be deemed delivered at the time of transmission.]

12.2   Severability

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provisions(s) held to be invalid or unenforceable.

12.3   Waiver

The waiver of a breach of this Agreement or the failure of a Party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

12.4   No Partnership or Agency

For all purposes of the performance of its obligations under this Agreement, Thoughtworks is and shall remain an independent contractor and nothing in this Agreement or in any Appendix or Statement of Work shall be deemed or construed to create an employer/employee, joint venture, agency or partnership relationship between Thoughtworks and Client. Nothing herein shall be deemed or construed to create an employment relationship between Client and any employee, agent or independent contractor of Thoughtworks. Neither Party shall have any authority to insure any obligations on behalf of the other Party or to make any promise, representation or contract of any nature on behalf of the other Party.

12.5   Force Majeure

Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement (other than an obligation of payment) where and to the extent that such a failure or delay results from causes outside the control of such Party. Such causes shall include, but not be limited to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, civil commotion and civil unrest (a "Force Majeure Event"). If either Party is delayed or prevented from or hindered in performing its obligations under this Agreement by a Force Majeure Event, such Party shall: i) give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration; ii) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and iii) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

12.6   Non-Exclusivity

Client recognises that Thoughtworks' personnel providing services to Client under this Agreement may perform similar services from time to time for other persons, and this Agreement shall not prevent Thoughtworks from using such personnel for the performance of such similar services for such other persons. Thoughtworks recognises that Client may engage other consultants to perform similar services from time to time, and this Agreement shall not prevent Client from using such consultants.

12.7   Timing

Thoughtworks shall use its reasonable endeavours to provide the Services in a timely manner and in accordance with the timeframes and milestones (if any) set out in the Statement of Work (or otherwise agreed between the Parties in writing from time to time). However, save as expressly stated in this Agreement or the applicable Statement of Work, time shall not be of the essence in the performance of either Party's obligations under this Agreement or any applicable Statement of Work.

12.8   Reference

Thoughtworks is entitled to reference the Client and describe works to be performed, in progress and works completed under this Agreement and any related Statements of Work in summary and general form, provided it does so without revealing any of the Client's Confidential Information, and in particular Thoughtworks may produce, publish and distribute the following containing the

Client's name and logo where appropriate: (i) a representative client list for marketing and promotion purposes (including but not limited to the posting of the same to a public facing website); (ii) case study documents, providing a high level overview of the engagement, including problems faced, chronologies employed, solutions and lessons learnt; iii) video testimonials and other audio/visual marketing materials providing a high level overview of the engagement, including problems faced, chronologies employed, solutions and lessons learnt iv) Press releases announcing our new partnership; and v) Thoughtworks earnings report or investor-related communications. The content of any case study or video testimonial produced shall be subject to the mutual written approval of the Parties, such approval not to be unreasonably withheld.

12.9 Survival

The provisions of Clauses 1, 4, 5.4, 7.5, 7.6, 8, 9, 10, 11 and 12 shall survive the expiration or termination of this Agreement. All other provisions of this Agreement, including any Appendices and Statements of Work hereto which by their terms or import are intended to survive such expiration or termination, shall also survive termination.

12.10 Entire Agreement

This Agreement supersedes all prior oral or written representations, communications, or agreements between the Parties, with the exception of the Confidentiality Agreement which is incorporated hereto, and, together with any appendices, constitutes the final and entire understanding of the Parties regarding the subject matter of this Agreement. Neither Party has relied on any such prior oral or written representations, communications, or agreements or shall have any liability in respect of any misrepresentation or other statement being false, inaccurate or incomplete unless it was made fraudulently.

12.11 Assignment

Neither Party may assign or transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other, save that Thoughtworks may assign its right to receive payment for collateral purposes.

12.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

12.13 Export Control

Each Party shall comply with all applicable laws, regulations and directives of applicable jurisdictions, including without limitation, the laws, regulations and directives, governing or controlling the transfer, export, retransfer or re-export of any hardware, software or technology, and any regulations promulgated or issued, and as amended from time to time, by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), and any successor organization ("OFAC Regulations"). Each Party shall take all necessary actions to obtain in a timely manner and diligently pursue any governmental export license, permit or other authorization that may be required when the transfer, export, import, retransfer or re-export any hardware, software or technology is necessary for the performance of the Services.

For any items that Client may provide to Thoughtworks, which are subject to the U.S. Export Administration Regulations (the "EAR") and not classified as EAR99, Client shall provide to Thoughtworks the following:

12.13.1   A description of the hardware, software or technology;
12.13.2   The Export Control Classification Number(s) ("ECCN") applicable to such hardware, software or technology;
12.13.3   Any license exceptions or exemptions that may be applicable to such hardware, software or technology; and

<div style="margin-left:2em">

12.13.4   Any additional conditions or riders contained in any export license Client has obtained for such hardware, software or technology.

</div>

A Party shall immediately notify the other Party if it is debarred or sanctioned by a U.S. or other relevant governmental entity in a manner that prohibits or requires a license, permit or other authorization in order to support the scheduled delivery of the Services in accordance with U.S. or other applicable law.

12.14 Anti-Bribery and Corruption

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 ("Anti-Bribery Requirements"). Further, the Parties shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including (but not limited to) adequate procedures under the Bribery Act 2010, to ensure compliance with the Anti-Bribery Requirements.

12.15 Third Party Rights

Thoughtworks may utilise its Affiliates in the provision of Services to Client, but unless such Affiliates are themselves a signatory to a Statement of Work in accordance with Clause 2.6, Client acknowledges that its relationship is solely with Thoughtworks and that any claim relating to the provision of the Services must be brought solely against Thoughtworks, and subject to the provisions of this Agreement. Save in respect of the enforcement of the above restriction, the Parties do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a Party to this Agreement, and they retain the right to agree amendments to it without the need to consult with any third person.

12.16 Execution

This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, the Parties have caused to be executed this Agreement as of the date first above written.

For and on behalf of Thoughtworks:	For and on behalf of [Client]:
Name:	Name:
Title:	Title:

Date: _____   Date: _____

Exhibit A

Form of Statement of Work
To
Master Services Agreement
Dated _____, 202[   ]

The terms and conditions of the Master Services Agreement between Thoughtworks, Ltd. and [*insert Client name*] shall apply to this Statement of Work.

Statement of Work Number:

Date:

Project Summary

Description of Services and Deliverables

Estimated Project Schedule/Term

Assumptions and Dependencies

Location of Work

Project Management (Roles & Responsibilities)

Number of employees/consultants assigned to project

Rate

This Statement of Work shall expire if not signed on behalf of both Parties by _____ 202_.

For and on behalf of   For and on behalf of
Client: Thoughtworks, Ltd.:

By: _____   By: _____

Title: _____   Title: _____

Date: _____

Date: _____

Schedule 1 - AR/AP Contact Information Form

The purpose of this form is to be a single repository for important contacts between Thoughtworks and the client to ensure the right people are contacted for any issues. This will lead in reducing the communication time and provide clarity on the responsible people between Thoughtworks and the client.

Thoughtworks	
Client Principal	
Name	
Email	
Telephone	
Finance Team (Accounts Receivables)	
Level 1	
Generic email	invoicing-uk@Thoughtworks.com
Level 2	
Name	Sarah Bamford
Designation	Financial Controller
Email	scastle@Thoughtworks.com
Telephone	
Level 3	

Client	
Client Contact	
Name	
Email	
Telephone	
Finance Team (Accounts Payable)	
Level 1	
Generic email	
Level 2	
Name	
Designation	
Email	
Telephone	
Level 3	

Name		Name	
Designation		Designation	
Email		Email	
Telephone		Telephone	
Level 4		**Level 4**	
Name		Name	
Designation		Designation	
Email		Email	
Telephone		Telephone	