

Code Enigma Agreement

Client	
Client address	
Client Company no	
Client registered in	
Contract ID	

Structure of Agreement

This Code Enigma Agreement (referred to as this “Agreement”) consists of:

- I. any Service Descriptions agreed by Client and Code Enigma (including any Service Description Amendments);
- II. the General Terms;
- III. the Service Level Agreement (where applicable as specified in a Service Description);
- IV. the Third Party Security Policy;
- V. the Acceptable Use Policy; and
- VI. the Dignity at Work Policy;

which in the event of conflict shall apply in this decreasing order of precedence.

General Terms

1. Definitions

The following expressions shall have the following meanings:

- 1.1. “Acceptable Use Policy” means the document available online at <https://docs.google.com/document/d/1VxbrCO4DVYgAEEuz0Sj1DIDRH-D83IRNBoyhTPPPifl/edit?usp=sharing>
- 1.2. “ADR notice” has the meaning set out in Clause 14.3;
- 1.3. “Affiliate” means a subsidiary or holding company of either party to this Agreement and any subsidiary of such holding company (where “holding company” and “subsidiary” have the meanings set out in section 1159 of the Companies Act 2006).
- 1.4. “Applicable Law” means any law, regulation, binding code of practice, rule or requirement of any relevant government or governmental agency, professional or regulatory authority, sanctions, trade and export control laws each as relevant to (i) Code Enigma in the provision of Services; and/or (ii) Client in the receipt of the Services or the carrying out of its business;
- 1.5. “Business Day” means Monday through Friday, excluding public holidays in the United Kingdom;
- 1.6. “Charges” means the price for the Services (PAYG Rate, day rate, weekly, monthly

or annual fees) set out in the relevant Service Description (including all set-up charges, fixed costs and expenses) and any additional costs agreed in accordance with Clause 3.1 or 3.6 or in a Service Description Amendment, in each case plus Tax;

- 1.7. “Client” means the person or organisation that purchases Services from Code Enigma as set out on the cover page of these General Terms;
- 1.8. “Code Enigma” means Code Enigma Ltd - a company registered in England and Wales, number 7390130, at address: Smithfield Business Centre, 5 St John's Lane, London, EC1M 4BH; and/or Code Enigma SAS - a company registered in France, number 845340264, at address: 100 route de Nîmes, 30132 CAISSARGUES
- 1.9. “Confidential Information” means all information disclosed by one of the parties to the other, whether before or after the date of the Agreement, that the recipient should reasonably understand to be confidential, including:
 - 1.9.1. for Client, all information transmitted to or from, or stored on, Client’s Hosted System;
 - 1.9.2. for Code Enigma, unpublished prices and other terms of service, audit and security reports, product development plans, solution diagrams, data centre designs (including non-graphic information Client may observe on a tour of a data centre), and other proprietary information or technology, and
 - 1.9.3. for both parties, information that is marked or otherwise conspicuously designated as confidential.
- 1.10. “Contract Year” means a 12 month period beginning on the date of this Agreement or any anniversary of it;
- 1.11. “Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls or Controlled shall be interpreted accordingly;
- 1.12. “Dispute” has the meaning set out in Clause 14.1;
- 1.13. “Dispute Notice” has the meaning set out in Clause 14.2;
- 1.14. “Early Termination Charge” means the Charges which would have been payable during the remaining months of the Minimum Term had the Service Description or the Agreement not been terminated;

- 1.15. “General Terms” means the terms set out in this document;
- 1.16. “Hosted System” means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services Client is buying, the Hosted System may consist of a dedicated system for Client’s use only, or the right to use certain parts of a shared system that Code Enigma maintains for many clients, or a combination of some dedicated elements and some shared elements;
- 1.17. “Hosting Services” means Code Enigma’s provision for Client’s use of the Hosted System described in the relevant Service Description;
- 1.18. “Intellectual Property Rights” means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and 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;
- 1.19. “Minimum Term” means for each Service Description, the minimum period for which Client agrees to receive the Services described in that Service Description which shall be 12 months unless agreed otherwise in the Service Description;
- 1.20. “PAYG Rate” means the standard rate for Supplementary Support provided where there is no Minimum Term and which is set out in the Service Description;
- 1.21. “Services” means the services to be provided by Code Enigma as described in the Service Description(s);
- 1.22. “Service Commencement Date” means the date on which a Service Description commences as set out in the relevant Service Description;
- 1.23. “Service Level Agreement(s)” means the levels to which the Services will be provided; and any provision which provides a specified credit or financial remedy for an identified failure to deliver or provide the Services.
- 1.24. “Service Description” means a written description of the Services Client is buying

- from Code Enigma, and related Charges;
- 1.25. “Service Description Amendment” means an amendment to a Service Description entered into after the date of this Agreement;
- 1.26. “Supplementary Support” means those Services Client purchases from Code Enigma, including time and materials based professional or consulting services (such as database administration or “DBA” services), one-time or non-recurring services which are not part of the standard support included (such as support for the application that Client operates on its Hosted System) which Client has requested that Code Enigma performs, and any other services identified as “Supplementary Support” on the applicable Service Description;
- 1.27. “Tax” has the meaning set out in Clause 4;
- 1.28. “Term” has the meaning set out in Clause 11; and
- 1.29. “Third Party Security Policy” means the document available online at <https://docs.google.com/document/d/1OYRI8Lc1iWbJiNLOcaVIJWbA30suvzu2GjCznSmgru4/edit?usp=sharing>
- 1.30. “Dignity at Work Policy” means the document available online at <https://docs.google.com/document/d/1G6HX13U0ymcBWci0z0o2SO5cofnZjjUsep-yC3l4A0w/edit?usp=sharing>

2. Services and delivery

- 2.1. Code Enigma shall provide the Services in accordance with this Agreement.
- 2.2. Code Enigma shall perform the Services:
- 2.2.1. with all reasonable skill and care and industry standard best practice; and
- 2.2.2. in compliance with the description of the Services set out in the Service Description and the SLA, but Code Enigma does not promise that the Services will be uninterrupted, error-free, or completely secure.
- 2.3. Code Enigma will maintain security practices that are at least as stringent as required by Code Enigma’s ISO 27001 certification.
- 2.4. Code Enigma shall carry out the Services at the place of work of Code Enigma or Client or any other location that Code Enigma deems appropriate.
- 2.5. Dates given for the delivery of Services are estimates only and are not

guaranteed. Time is not of the essence for delivery of the Services and Code Enigma shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services.

- 2.6. Code Enigma shall provide support to Client's administrative or technical contacts listed on Client's account and provided by Client. Code Enigma will not provide support directly to Client's end users unless specifically agreed in writing.
- 2.7. Code Enigma's obligation to begin providing Services is contingent on Client's satisfaction of Code Enigma's credit approval criteria.
- 2.8. Code Enigma may from time to time recommend third party software or other products or services for Client's consideration. Code Enigma makes no representation or warranty whatsoever regarding such products and services and Code Enigma shall not be liable for any loss suffered by Client as a result of Client's use of such products or services.
- 2.9. Code Enigma provides a service management layer only and does not own or control any networks, hardware, property, or other physical aspects of the Hosting Services. All physical environments for Hosting Services are provided by Amazon Web Services or other third party selected by Code Enigma. Code Enigma exerts no direct control over these environments and Client acknowledges that Code Enigma is not responsible for interruptions due to service failures by other third parties providing the physical infrastructure for Hosting Services, but that Code Enigma shall use reasonable endeavours to find alternative providers in the event of service failures by such third parties.

3. Price and payment

- 3.1. Code Enigma shall invoice the Client for the Charges monthly in advance other than for Supplementary Support which has been charged at the PAYG Rate, time and materials based Services or metered expenses such as those associated with Hosting Services which shall be invoiced in arrears as set out in the Service Description. Client shall settle all invoices for Charges within 30 days from the invoice date. Cleared funds must be present in Code Enigma's bank account for the invoice to be deemed settled. Any costs not set out in the Service Description, other than those (if any) arising under clauses 3.2 and 3.3, shall be agreed in

- advance in writing by Code Enigma and Client and Client will be re-charged at cost on production by Code Enigma of the appropriate receipts.
- 3.2. If Client fails to make a payment due to Code Enigma under this Agreement by the due date, then, without limiting Code Enigma's remedies under Clause 12, Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest shall accrue at a rate of 5% per annum above the base lending rate of HSBC, or the statutory rate of 8% above the Bank of England base rate, whichever is the higher.
- 3.3. Code Enigma may also charge Client for all reasonable administration costs and expenses incurred in obtaining payment from Client where any payment due to Code Enigma is made after the due date.
- 3.4. If Client disputes any invoice:
- 3.4.1. Client shall notify Code Enigma in writing within 7 days of the date of receipt of the invoice, specifying the reason for disputing the invoice;
 - 3.4.2. Code Enigma shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
 - 3.4.3. Client shall pay to Code Enigma all amounts not disputed by Client on the due date;
 - 3.4.4. the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
 - 3.4.5. if the parties have not resolved the dispute within 30 days of Client giving notice to Code Enigma, the dispute shall be resolved in accordance with Clause 29.
- 3.5. Client is not entitled to withhold any monies due to Code Enigma, hold any payment in lien, or make any set-off or deduction.
- 3.6. Where agreed in writing the parties may amend the Charges where:
- 3.6.1. Code Enigma and Client agree to include additional Services in a Service Description Amendment; or
 - 3.6.2. Code Enigma and Client agree that additional work required is required to complete the Services set out in the Service Description which was not anticipated at the date of the Service Description;
- 3.7. Code Enigma:

- 3.7.1. shall, in January of each year apply an increase to its rates (which shall, other than in the circumstances set out in Clause 3.8, be reflected in an increase to the Charges) by the Retail Price Index published by the Office for National Statistics in January of that year. If the Retail Prices Index rate is a decrease, Code Enigma Charges will not be adjusted;
- 3.7.2. may amend this Agreement (including the Charges) on notification to Client:
 - 3.7.2.1. where required to comply with Applicable Law or regulation; or
 - 3.7.2.2. in the event of a change in Code Enigma's third party provider charges, operations or services.
- 3.8. Other than for Services carried out at the PAYG Rate, the Charges shall not be increased (whether by operation of Clause 3.7 or otherwise) before the expiry of the Minimum Term.

4. Tax

- 4.1. Sales Taxes - Unless otherwise expressly provided in the Agreement or included in the invoice for the Services, all amounts due to Code Enigma under this Agreement are exclusive of any value added, goods, services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, "Tax"). If Code Enigma is required by law to collect Tax on the provision of the Services, Code Enigma will invoice Client for such Tax and Client must pay Code Enigma the amount of the Tax that is due or provide Code Enigma with satisfactory evidence of Client's exemption from the Tax in accordance with the payment provisions set out in Clause 3 of these General Terms. The obligation to pay any Taxes that Client may be required to pay in connection with Client's use of Services or Client's payment of amounts due to Code Enigma under the Agreement shall be borne exclusively by Client. Client must provide Code Enigma with accurate factual and adequate information and documentation (as determined by Code Enigma), to help Code Enigma determine if any Tax is due with respect to the provision of the Services.
- 4.2. Withholding Taxes - All payments to Code Enigma shall be made without any withholding or deduction for any Taxes, except for any withholding (or similar)

taxes imposed on income that may be attributed to Code Enigma in connection with its provision of the Services that Client is legally required to withhold from such payment and remit to the applicable governmental or taxing authority (“Local Withholding Taxes”). Client agrees to provide Code Enigma with adequate and accurate factual information and documentation (as determined by Code Enigma), including tax receipts, of Client’s payment of any such Local Withholding Taxes in a timely manner. Code Enigma shall remit such cost to Client in the form of a credit on Client’s outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes as set out above.

5. Client obligations

- 5.1. Client agrees to cooperate with Code Enigma and provide any support, information and facilities to Code Enigma as may be reasonably required for Code Enigma to carry out the Services.
- 5.2. Client is responsible for obtaining all necessary permits or approvals to enable Code Enigma to provide the Services including any approvals or consent required for Code Enigma to Process Personal Data as set out in Clause 10 of these General Terms. Client shall provide to Code Enigma evidence of its compliance with this clause 5.2, promptly following a request from Code Enigma.
- 5.3. Client is responsible for making all necessary corrections to proofs, drafts, test sites and migrated data supplied by Code Enigma, and shall do so in a timely manner.
- 5.4. Client warrants that the display of and distribution of personal information, images, and multimedia files, which are provided to Code Enigma for online publication, comply with Applicable Law. Client shall provide to Code Enigma evidence of its compliance with this Clause 5.4, promptly following a request from Code Enigma.
- 5.5. Client shall not (without the prior consent of Code Enigma) directly or indirectly solicit or entice away from the employment of Code Enigma any person employed or engaged by Code Enigma in the provision of the Services at any time during the Term of this Agreement or for a period of six months following termination of this Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of Code Enigma. If Client

breaches this Clause 5.5, Client shall on demand, pay to Code Enigma a sum equal to one year's basic salary or the annual fee payable by Code Enigma to that employee, worker of independent contractor plus the recruitment costs incurred by Code Enigma in replacing such person.

- 5.6. Client agrees to adhere to the Third Party Security Policy with regard to the acceptable use of Code Enigma information assets and systems.
- 5.7. Client agrees to adhere to the Dignity at Work Policy with regard to the treatment of Code Enigma staff and subcontractors.
- 5.8. Client:
 - 5.8.1. will cooperate with Code Enigma to ensure that patches and/or security updates are applied within a timeframe relevant to the seriousness of the patch/update;
 - 5.8.2. accepts responsibility for the increased risk to the confidentiality, integrity or availability of their site(s) if they do not engage in testing and deploying patches/updates; and
 - 5.8.3. acknowledges that if Client does not provide Code Enigma with a confirmation to apply a patch/update Code Enigma will attempt to apply it to Client's site. If this causes any disruption to the site, Code Enigma will attempt to fix it. The time taken to resolve the issue will be chargeable to Client, either using contracted support hours or at the PAYG rate.
- 5.9. Client agrees that it will not interfere with any services management software agent(s) that Code Enigma installs on the Hosted System. Code Enigma agrees that its agents will use only a minimal amount of computing resources, and will not interfere with Client's use of the Hosted System. Code Enigma will use the agents to track the hardware and software that Code Enigma provides, so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Code Enigma may also use the software to identify security vulnerabilities. Code Enigma will not use the agents to view or capture Client's content or data. Client agrees that the Services will become "unsupported" if Client or any person acting on behalf of Client disables or interferes with Code Enigma's service management software agents.
- 5.10. Client must use reasonable security precautions in connection with Client's use of

the Services. Client must comply with Applicable Law in Client's use of the Services and with the Acceptable Use Policy and the Third Party Security Policy. Client must cooperate with Code Enigma's reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. Client is responsible for keeping account permissions, billing, and other account information up to date using our service management dashboard or via another Code Enigma defined process.

6. Software

- 6.1. General - Unless permitted by the terms of an open source software licence, Client may not reverse engineer, decompile or disassemble any software provided by Code Enigma except and to the extent that Client is expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Code Enigma.
- 6.2. Client Provided Licences - If Client uses any non-Code Enigma provided software on its Hosted System Client represents and warrants to Code Enigma that it has the legal right to use the software in that manner. If Code Enigma has agreed to install, patch or otherwise manage software for Client in reliance on Client's licence with a software vendor (rather than Code Enigma's licence with the software vendor), then Client represents and warrants that Client has a written licence agreement with the software vendor that permits Code Enigma to perform these activities. Promptly following Code Enigma's request, Client will certify in writing that Client is in compliance with the requirements of this Clause 6.2 and any other software license restrictions that are part of the Agreement, and will provide evidence of Client's compliance as Code Enigma may reasonably request. If Client fails to provide the required evidence of licensing, Code Enigma may, at its option, either:
 - 6.2.1. charge Client its standard fee for the use of the software in reliance on Code Enigma's licensing agreement with the vendor until such time as the required evidence is provided; or
 - 6.2.2. suspend or terminate the Agreement or individual Service Descriptions.
- 6.3. Client's licensed software may not be compatible with Code Enigma's standard

process for deploying and repairing Hosted Systems. In addition, in order to install the software, Code Enigma may require Client to send the physical or electronic media provided to Client by the software vendor, both for deployment, and again in the event of a failure of Client's Hosted System. Client agrees that Code Enigma will not be in breach of any Service Level Agreement or other obligation under this Agreement that would not have occurred but for the delay resulting from Code Enigma's agreement to use Client's licensed software.

7. Intellectual Property Rights

- 7.1. In respect of any material provided by Client or its agents for use in delivering the Services:
 - 7.1.1. Client, or its licensors, retains ownership of the Intellectual Property Rights in that material;
 - 7.1.2. Client grants (and warrants that it is able to grant) Code Enigma a non-exclusive, royalty- and payment free, non-transferable, sub-licensable, worldwide licence to those Intellectual Property Rights such that Code Enigma can perform its obligations and exercise its rights under this Agreement; and
 - 7.1.3. Client warrants that:
 - 7.1.3.1. this material belongs to Client or is licensed to Client for such purpose; and
 - 7.1.3.2. its use by Code Enigma for the purpose of providing the Services will not infringe the Intellectual Property Rights of any third party.
- 7.2. Code Enigma uses software made available under "open source" licences in the delivery of the Services and Client shall comply with such licences.
- 7.3. If Code Enigma performs for Client any graphic design work as part of the Services, Client shall own the Intellectual Property Rights in the resulting graphics, unless otherwise set out in the Service Description. Code Enigma shall, at the Client's expense, do all such things as the Client may reasonably request to vest ownership of these graphics to the Client.
- 7.4. Other than in respect of graphics which are subject to Clause 7.3, Code Enigma owns the Intellectual Property Rights in anything it creates as part of the Services.

8. Export control

Client represents, warrant and undertakes that Client will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by Code Enigma to Client under this Agreement in any manner which would cause Code Enigma or its Affiliates to breach any applicable export control laws, rules, or regulations of any jurisdiction (including without limitation those under UK and EU law). Without limitation, Client represents warrants and undertakes that Client will not provide administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under United Kingdom and European Union export laws, rules or regulations.

9. PCI

Code Enigma does not have knowledge of the data Client stores within Client's Hosted System, including the quantity, value or use of the data. Client is therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including loss of Client's data, including any Personal Data (as defined in Clause 10) or "cardholder data" as that term is defined in the Payment Card Industry-Data Security Standard. The Services that Code Enigma has agreed to provide to assist you to mitigate such loss (if required) are set out in the Service Description, which may include backup services and geographically redundant servers. Code Enigma does not promise to backup Client's data unless Client has purchased backup services as set out in the Service Description. If Client purchases backup services Code Enigma does not promise to retain any data backup(s) for longer than the agreed data retention period as set out in the Service Description. Code Enigma shall not be liable to Client for loss of data to the extent that the data has changed since the time that Code Enigma was last required to carry out a back-up in accordance with the relevant Service Description.

10. Data Protection

10.1. Interpretation

10.1.1. References in this Clause 10 to a Regulation are to regulation 2016/679/EC,

also known as the “GDPR”, for as long as the GDPR applies to Code Enigma’s Processing of Personal Data. If the GDPR ceases to apply to Code Enigma’s Processing of Personal data, references to a Regulation are to the Applied GDPR. References to the “Applied GDPR” are to the GDPR as amended by the UK’s Data Protection Act 2018.

10.1.2. References to an Article are to an Article of the Regulation and capitalised terms in this Clause 10 have the meaning defined by the Regulation unless otherwise defined in the Agreement.

10.1.3. “Data Protection Laws and Regulations” means all applicable data protection and privacy legislation including Regulation (EU) 2016/679 and the Data Protection Act 2018 (or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data, including the Regulation as incorporated into law in any part of the United Kingdom) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (in each case, as amended, updated or re-enacted from time to time). In the event of any inconsistency between the Data Protection Laws and Regulations, the strictest provision shall prevail.

10.1.4. “Standard Contractual Clauses” means such contractual terms as are currently approved by the European Commission for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of data protection, currently available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D008>

10.2. If, in respect of the Personal Data set out in Schedule 1, Client is a Data Controller, and Code Enigma Processes the Personal Data as Client's Data Processor, this Clause 10 and the provisions of Schedule 1 shall apply in respect of such Processing.

10.3. Schedule 1 sets out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of Data Subjects. Client shall notify Code Enigma promptly if it becomes aware that the information in Schedule 1 is incomplete or inaccurate, and shall provide with that

notification the necessary updated information.

Client obligations

- 10.4. Client shall, for the duration of the Processing, comply with its obligations under Data Protection Laws and Regulations. Without limiting the generality of this, Client shall, in particular:
 - 10.4.1. have a lawful basis for the Processing, and ensure that it is entitled to provide the Personal Data to Code Enigma for Processing, and shall notify Code Enigma promptly if either of these ceases to be true;
 - 10.4.2. notify its Data Subjects of the Processing, to the standard required by Data Protection Laws and Regulations;
 - 10.4.3. ensure that all Personal Data it provides to Code Enigma shall be accurate and up to date, and Client shall make promptly any amendments necessary to ensure that the Personal Data remain accurate and up to date.

Code Enigma obligations

- 10.5. Code Enigma shall:
 - 10.5.1. Process Personal Data in accordance with all applicable Data Protection Laws and Regulations;
 - 10.5.2. Process the Personal Data within either or both the UK and the European Economic Area and only on documented instructions from Client, including with regard to transfers of Personal Data to a third country or an international organisation;
 - 10.5.3. unless prohibited by law, notify Client before Processing the Personal Data, if Code Enigma is required to act other than in accordance with the instructions of the Client by:
 - 10.5.3.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and
 - 10.5.3.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.

- 10.5.4. from time to time, need to engage other processors (each a “Sub-Processor”). In respect of all Sub-Processors, Code Enigma shall respect the conditions referred to in paragraphs 2 and 4 of Article 28 for any such engagement. Code Enigma shall be liable for the acts and omissions of its Sub-Processors, and Code Enigma shall ensure that the Sub-Processor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this clause 10.
- 10.5.4.1. Client hereby specifically authorises Code Enigma to appoint as Sub-processors Affiliates; and those companies listed as Sub-Processors in Schedule 1.
- 10.5.4.2. Client hereby gives Code Enigma a general authorization to engage Sub-Processors. Code Enigma shall inform Client if it intends to appoint a Sub-Processor by posting the information via Code Enigma’s case tracking system or by electronic mail (including an electronic mail referring Client to a ticket posted on the case tracker). If Client objects to the intended Sub-Processor, Client shall notify Code Enigma within 5 Business Days of Code Enigma announcing its intention to appoint that Sub-Processor, and Code Enigma and Client shall discuss changes needed to the Services (which may entail an increase in the Charges) that might arise from this. If, acting reasonably, Client and Code Enigma cannot agree suitable changes to the Services (including, if relevant, increased Charges), Code Enigma may suspend Services or (at its discretion) terminate this Agreement on immediate written notice to Client, in each case without liability.
- 10.5.5. comply with Clause 15 in respect of such Processing, and the Personal Data shall be "Confidential Information";
- 10.5.6. take all measures required pursuant to Article 32;
- 10.5.7. taking into account the nature of the Processing, assist Client by appropriate technical and organisational measures, insofar as this is reasonably possible, for the fulfilment of Client's obligation to respond to

requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;

- 10.5.8. provide reasonable assistance to Client, at Client's cost and calculated in accordance with Code Enigma's standard hourly rates, on written request by Client in ensuring compliance with the Client's obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to Code Enigma;
- 10.5.9. at Client's choice, delete or return all the Personal Data to Client after the end of the provision of the Services relating to the Processing, and delete existing copies. If Code Enigma makes available to Client tools which enable Client to download its Personal Data, Code Enigma shall only be required to assist where those tools are unable to meet Client's reasonable needs. Code Enigma is not required to delete Personal Data if it is required to continue store those Personal Data by:
 - 10.5.9.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and
 - 10.5.9.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.
- 10.5.10. at Client's cost allow for and contribute to audits, including inspections, conducted by Client or another auditor mandated by Client. Any audit or inspection shall be carried out on reasonable notice and avoid causing damage, injury or disruption to Code Enigma's premises, equipment, personnel or business;
 - 10.5.10.1. at Client's cost provide reasonable assistance to Client with any data impact assessments; and
 - 10.5.10.2. in the event of an actual or suspected Personal Data Breach notify Client without undue delay.

Transfer of Personal Data outside the EEA

- 10.6. Code Enigma shall not transfer (within the meaning of Chapter V of the Regulation) Personal Data to recipients (including Sub-processors) in jurisdictions outside of

the European Economic Area unless Client provides its written consent.

- 10.7. In respect of any transfer of Personal Data subject to Chapter V of Regulation 2016/679 to which Client has given its consent, and which is not:
 - 10.7.1. to recipients in countries which ensure an adequate level of protection for the purposes of that Chapter V; or
 - 10.7.2. subject to any of the permitted derogations set out in that Chapter V;
- 10.8. Code Enigma and Client automatically enter into the standard contractual clauses for the transfer of personal data to processors established in third countries (controller to processor transfers) approved by the European Commission by Commission Decision 2010/87/EU, currently available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087> (the “Standard Contractual Clauses”), and, for the purposes of these clauses, Client shall be the “data exporter” and Code Enigma shall be the “data importer”.
- 10.9. If Code Enigma:
 - 10.9.1. Processes Personal Data in the United States of America, or transfers Personal Data to recipients (including Sub-processors) in the United States of America; and relies on Commission Implementing Decision (EU) 2016/1250 (Privacy Shield) to satisfy Chapter V of Regulation 2016/679 in respect of that transfer; and
 - 10.9.2. the Court of Justice of the European Union or other relevant authority finds that Commission Implementing Decision (EU) 2016/1250 is invalid or fails to ensure an adequate level of protection for the purpose of Chapter V of Regulation 2016/679, or else the European Commission withdraws or otherwise invalidates that Decision;

unless and until such time as the European Commission has decided that the United States of America ensures an adequate level of protection for the purposes of Chapter V of Regulation 2016/679, Code Enigma and Client shall, in respect of any transfer of Personal Data subject to Chapter V of Regulation 2016/679 which is not subject to any of the permitted derogations set out in that Chapter V, enter into the Standard Contractual Clauses. For the purposes of those clauses, Code Enigma shall be the “data importer” and Client shall be the “data exporter”.

11. Term

- 11.1. This Agreement shall commence on the date of Client's signature of the General Terms, which is the date Client accepts the Agreement as part of Code Enigma's order process and shall continue until all Service Descriptions have been terminated ("Term").
- 11.2. Each Service Description shall commence on the Service Commencement Date and shall continue for its specified Minimum Term and thereafter unless and until terminated in accordance with these General Terms.

12. Termination and suspension

- 12.1. Code Enigma may suspend Services provided under any or all Service Descriptions on immediate notice without liability if:
 - 12.1.1. Code Enigma reasonably believes that the Services are being used in breach of the Agreement;
 - 12.1.2. Client does not cooperate with Code Enigma's reasonable investigation of any suspected breach of the Agreement;
 - 12.1.3. there is an attack on Client's Hosted System or Client's Hosted System is accessed or manipulated by a third party without Client's consent;
 - 12.1.4. Code Enigma is required by law or a regulatory or government body to suspend the Services;
 - 12.1.5. there is another event for which Code Enigma reasonably believes that the suspension of Services is necessary to protect the Code Enigma network or other clients; or
 - 12.1.6. in accordance with Clause 6.2.2.
- 12.2. Either Party may terminate a Service Description at any time after expiry of the Minimum Term for that Service Description by giving the other party no less than 30 days' notice in writing, such notice to expire no earlier than the end of the Minimum Term.
- 12.3. Code Enigma may terminate any or all Service Descriptions on immediate written notice if:
 - 12.3.1. Code Enigma believes that the information Provided by Client for the purpose of establishing the Services is materially inaccurate or incomplete;
 - 12.3.2. the individual signing the Agreement did not have the legal right or

- authority to enter into the Agreement;
- 12.3.3. Client is in breach of Section 8 (Export Matters) of these General Terms;
- 12.3.4. any Service Description is terminated due to Client's breach of the Acceptable Use Policy; or
- 12.3.5. in accordance with Clause 6.2.2, 10.5.4.2 or 20.1.
- 12.4. Either party may terminate the Agreement by notice in writing to the other if:
 - 12.4.1. the other party commits a material breach of these General Terms or a Service Description and, in the case of a breach capable of being remedied, fails to remedy it within 14 days of being given written notice from the other party to do so;
 - 12.4.2. the other party commits a material breach of these General Terms or a Service Description which cannot be remedied under any circumstances;
 - 12.4.3. the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
 - 12.4.4. the other party ceases to carry on its business or substantially the whole of its business; or
 - 12.4.5. the other party is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

13. Effect of Termination

- 13.1. In the event of termination by Client after expiry of the Minimum Term, or where Client pays a PAYG Rate only, Client shall pay to Code Enigma the Charges due up to the date of termination, along with any other sums due under this Agreement, in accordance with the payment provisions set out in Clause 3.
- 13.2. In the event of termination by Client, or by Code Enigma under Clause 12.3 or 12.4, before expiry of the Minimum Term Client shall pay to Code Enigma the Early Termination Charge, along with any sums (if any) arising under clauses 3.2 and 3.3,

in accordance with the payment provisions set out in Clause 3.

- 13.3. In the event of termination by either party in accordance with Clause 20.1, Client shall pay to Code Enigma the Charges due up to the date of termination in accordance with the payment provisions set out in Clause 3.
- 13.4. Client shall ensure that it promptly provides Client's payment and contact details to any third parties from which it will continue to procure Services following termination of this Agreement. If Code Enigma is invoiced for or makes any payments to third party service providers in respect of Services used by Client following termination of this Agreement, Code Enigma shall immediately invoice Client for such Charges, and Client shall pay such invoice within 7 days of receipt.
- 13.5. Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.
- 13.6. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (in whole or in part) will continue in force.

14. Dispute Resolution

- 14.1. Subject to Clause 14.6, if a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute"), then the parties shall follow the procedure set out in this Clause 14.
- 14.2. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, a member of Code Enigma's management team and a senior manager of Client shall attempt in good faith to resolve the Dispute.
- 14.3. If the member of Code Enigma's management team and the senior manager of Client are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a

party must serve notice in writing (“ADR notice”) to the other party to the Dispute, referring the dispute to mediation. The serving party must also send a copy of the ADR notice to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

- 14.4. No party may commence any court proceedings under Clause 29 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 14.5. If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 60 day period, or the mediation terminates before the expiry of that 60 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 29 in these General Terms.
- 14.6. The parties agree that the dispute mechanism set out in Clause 14.1-14.5 shall not apply to disputes in relation to the Charges.

15. Confidentiality

- 15.1. Subject to Clause 15.2 each party undertakes that it shall not at any time during this Agreement, and for a period of one year after termination of this Agreement, disclose to any person any Confidential Information, except as permitted by Clause 15.2.
- 15.2. Each party may disclose the other party's Confidential Information:
 - 15.2.1. to its employees, officers, representatives, sub-contractors, service providers, Affiliates or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, sub-contractors, service providers, Affiliates or advisers to whom it discloses the other party's Confidential Information comply with this 15; and
 - 15.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that each party agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information, unless giving such notice is prohibited by law.

- 15.3. Subject to Clause 15.4 no party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 15.4. Client agrees that Code Enigma shall be permitted to use the name, logo and the existence of the relationship between Code Enigma and Client in marketing and promotional materials including press releases. Client shall also permit Code Enigma to use information about Client and the services that Code Enigma provides in case studies which are used for marketing and promotional purposes, subject to Client's approval of the materials produced, such approval not to be unreasonably withheld, conditioned, or delayed. Code Enigma agrees not to use Client's name or logo in a manner that suggests an endorsement or affiliation.
- 15.5. Information that is independently developed by one of the parties, without reference to the other's Confidential Information, or that becomes available to one of us other than through breach of the Agreement or Applicable Law, shall not be "Confidential Information" of the other party.

16. Property and risk

- 16.1. Risk in any property or materials used to provide the Services shall pass from Code Enigma to Client when the property or materials leave the premises of Code Enigma or on delivery if Code Enigma is transporting the items.
- 16.2. The parties agree that each shall hold adequate insurance to protect any property or materials that are within their care.

17. Warranty

- 17.1. Each of the parties warrants to the other that it:
- 17.1.1. has full power and authority to enter into and perform this Agreement;
 - 17.1.2. has obtained all necessary approvals to do so; and
 - 17.1.3. shall comply with Applicable Law in relation to its performance of its obligations under this Agreement.
- 17.2. Any warranty other than those set out in Clause 5.4, 7.1, 8 and 17.1 are expressly excluded from this Agreement.
- 17.3. Code Enigma disclaims any and all warranties not expressly stated in the

Agreement to the maximum extent permitted by law, including any implied warranties relating to satisfactory quality and fitness for a particular purpose. Client is solely responsible for determining the suitability of the Services chosen.

18. Limitation of liability

- 18.1. Neither party excludes any liability which cannot be excluded by applicable law or regulation.
- 18.2. Subject to Clause 18.1, neither party is liable under this Agreement, whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise for:
 - 18.2.1. any loss (whether direct or indirect) of profit, revenue, anticipated savings or goodwill;
 - 18.2.2. any loss of or corruption to data (except to the extent that such loss or corruption is a direct result of a party's breach of the Regulation in relation to the performance of its obligations under this Agreement or a breach of its back-up obligations if set out in a Service Description);
 - 18.2.3. any regulatory fines;
 - 18.2.4. any legal costs;
 - 18.2.5. any loss arising from business interruption or reputational damage;
 - 18.2.6. any indirect or consequential losses, regardless of whether any of these types of losses were contemplated by either of the parties when they entered into these General Terms or any Service Description.
- 18.3. Subject to Clauses 18.1, 18.2, and 18.9, each Party's aggregate liability under or in connection with this Agreement in each Contract Year shall not exceed the amount of the Charges paid by the Client in that Contract Year.
- 18.4. Any services that are not included in a Service Description and which Code Enigma provides at its discretion and without additional charge are provided on an 'AS IS' basis and Code Enigma shall not be liable to Client for any losses suffered by Client as a result of Code Enigma providing such services.
- 18.5. Code Enigma is not responsible to Client or any third party for unauthorised access to Client's data or the unauthorised use of the Services unless the unauthorised access or use results from Code Enigma's failure to meet its security

obligations stated in Clause 2.3 of these General Terms. Client is responsible for the use of the Services by any employee of it, any person it authorises to use the Services, any person to whom Client has given access to the Services, and any person who gains access to Client's data or the Services as a result of Client's failure to use reasonable security precautions, even if such use was not authorised by Client.

- 18.6. Client acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Client's privacy, Confidential Information and property and that Code Enigma shall not be liable to the Client for any loss incurred other than where Code Enigma is liable as a direct result of a breach of Clause 2.3.
- 18.7. The service credits stated in the Service Level Agreement (where applicable) are Client's exclusive remedy for Code Enigma's failure to meet those obligations for which service credits apply.
- 18.8. The parties agree to have valid insurance cover in place for its own legal liability to the other under this Agreement.
- 18.9. The liability cap set out in Clause 18.3 shall not apply to the non-payment of the Charges.

19. Indemnity

- 19.1. If Code Enigma, its Affiliates, or any of its or their respective employees, agents, or suppliers (the "Indemnitees") is faced with a legal claim by a third party arising out of Client's actual or alleged negligence, breach of Applicable Law, failure to meet the security obligations required by the Agreement, breach of the AUP, breach of Client's agreement with Client's clients or end users, or breach of Clause 8 or Clause 6 of the General Terms then Client will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Client's obligations under this Clause 19 include claims arising out of the acts or omissions of Client's employees or agents, any other person to whom Client have given access to the Services, and any person who gains access to the Services as a result of Client's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorised by Client. Client must also pay reasonable legal

fees and other expenses Code Enigma incurs in connection with any dispute between persons having a conflicting claim to control Client's account with Code Enigma, or any claim by Client's client or end user arising from an actual or alleged breach of Client's obligations to them.

- 19.2. Code Enigma will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to Client. Client must comply with Code Enigma's reasonable requests for assistance and cooperation in the defence of the claim. Code Enigma may not settle the claim without Client's consent, although such consent may not be unreasonably withheld, delayed or conditioned. Client must pay reasonable legal fees and expenses due under this clause as Code Enigma incurs them.
- 19.3. If Code Enigma or any of its clients is faced with a credible claim that the Services infringe the Intellectual Property Rights of a third party, and Code Enigma is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Code Enigma may terminate the Services, and will not have any liability on account of such termination except to refund any Charges which have been paid in advance for Services which have not used as of the time of termination.

20. Force majeure

- 20.1. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, pandemics, epidemics, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.
- 20.2. Clause 20.1 does not apply to Client's obligation to pay any sums due under this Agreement.

21. Variation

- 21.1. Unless otherwise expressly permitted in this Agreement, the General Terms, Service Descriptions and Service Level Agreement may be amended only by a formal written agreement signed by both parties. In respect of the Service Descriptions, any amendments shall be agreed in a Service Description Amendment.
- 21.2. Code Enigma may amend the Third Party Security Policy and/or the Acceptable Use Policy at its discretion and such updated Third Party Security Policy or Acceptable Use Policy shall apply to this Agreement on being made available on Client's website.
- 21.3. Any pre-printed terms on Client's purchase order or other business forms will not become part of this Agreement.

22. Assignment and sub-contractors

- 22.1. Neither party may novate, assign, sub-license or otherwise transfer its obligations under the Agreement without the prior written consent of the other party except that;
 - 22.1.1. Code Enigma may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganisation or a sale of its business; and
 - 22.1.2. Code Enigma may use third party service providers to perform all or any part of the Services, provided that, subject to Clause 2.9 in relation to Hosting Services, Code Enigma remains responsible to Client under this Agreement for Services performed by its third party service providers to the same extent as if Code Enigma had performed the Services itself.

23. Entire Agreement

The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

24. Relationship of parties

The parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, not shall represent that they have, any authority to make any commitments on the other party's behalf.

25. Third party rights

Any party who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.

26. Severance

If any term or provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

27. Waiver

The failure by either party to enforce at any time or for any period any one or more of the General Terms herein shall not be a waiver of them or of the right at any time subsequently to enforce all General Terms.

28. Notices

- 28.1. Client's routine communications to Code Enigma regarding the Services, should be sent to Client's Code Enigma account team using the case tracker system.
- 28.2. Code Enigma's routine communications regarding the Services will be posted via Code Enigma's case tracking system or sent to the individual(s) Client has designated as its security contact(s) on Client's account either by electronic mail (including an electronic mail referring Client to a ticket posted on Client's case

tracker project).

- 28.3. All notices regarding termination, breach, indemnification or other non-routine legal matter should be sent:

If to Code Enigma:

by electronic mail to accounts@codeenigma.com;

If to Client:

by electronic mail to the address set out on the cover of these General Terms.

- 28.4. Notices are deemed received when receipt has been acknowledged in writing (including by email) by the recipient. If the recipient has not acknowledged receipt within 1 Business Day of sending, the sender may send notice by first class post to the physical address of the recipient, as set out in this Agreement and notice shall be deemed received on the following Business Day.
- 28.5. Notices must be given in the English language.

29. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts in respect of any claim, dispute or matter arising out of or in connection (including non-contractual claims) with it.

Schedule 1

Details of processing of client personal data

This Schedule includes certain details of the Processing of Client Personal Data as required by Article (3) GDPR.

Subject matter and duration of the Processing of Client Personal Data

The subject matter and duration of the Processing of the Client Personal Data are set out in the Agreement.

The nature and purpose of the Processing of Client Personal Data

Provision of backup and disaster recovery services, specifically:

- local server snapshots; and/or
- encrypted offsite backups; and/or
- syncing of data to remote disaster recovery zones; and/or
- migration of data to other hosting services for the purposes of disaster recovery; and
- logged events on managed computers which may potentially contain personally identifiable data.

Provision of development and other services, including but not limited to:

- taking of copies of databases and files for the purposes of developing functionality of an application in another environment; and
- storing information required for efficient project management, such as Client staff contact details.

Provision of user management services, specifically the storage of Client staff names, email addresses, job titles, telephone numbers and other relevant metadata in our directory. Recording of key Client staff contact details within a CRM system.

The types of Client Personal Data to be Processed

- contact and employment information of Client staff members; and

- backups and/or copies of live website application data, which in some cases may contain personal information of those outside of the Client for which the Client is responsible, either as a Controller or a Processor.

The categories of Data Subject to whom the Client Personal Data relates

- Client staff who interact with Code Enigma systems; and
- Users of systems belonging to Client or its customers for which Code Enigma has been instructed to provide hosting and/or support.

Sub-Processors

A list of our contractors providing remote system administration, development services, design services as well as our hosting providers can be viewed here:

<https://docs.google.com/spreadsheets/d/1Gzu8VJyXMScxeZFWNMEXPrMHOM-aHEM-24rdwJ3lCWo/edit?usp=sharing>.

AGREED by the parties on the date below

Signature on behalf of Client	Signature on behalf of Code Enigma
Name:	Name:
Date:	Date:
Signature:	Signature:

Document Control

The owner of the document is the Code Enigma management team and this document will be reviewed annually.

Version	Date	By	Change Details
1	06/07/2015	ISC	Approved by ISC
2	02/06/2016	QM	Corrected spelling of Code Enigma address and changed title
3	15/06/2018	IO	Altering date of the Data Protection Act
4	30/01/2019	GH	Making a more generic business-wide template
5	10/05/2019	GH	Updated 2.3 to be reciprocal with STEM contract. Updated 6.1 to include the word 'reasonably'. Updated 7.2. Added 7.4
6	12/11/2019	DG	Added 6.7, 6.8 and 6.8.1 related to applying security updates/patches
7	22/06/2020	Decoded/DG	Review and major new revision
8	16/10/2020	DG	Removed fields for Project and Internal ID, replaced with Contract ID field
9	18/12/2020	DG	Added link to active Sub-processors list
10	17/10/2022	DG	Fixed typo in 18.4
11	29/06/2023	MS	Added SAS company details to clause 1.8
12	18/09/2023	GH	Included the Dignity at Work Policy to protect staff