

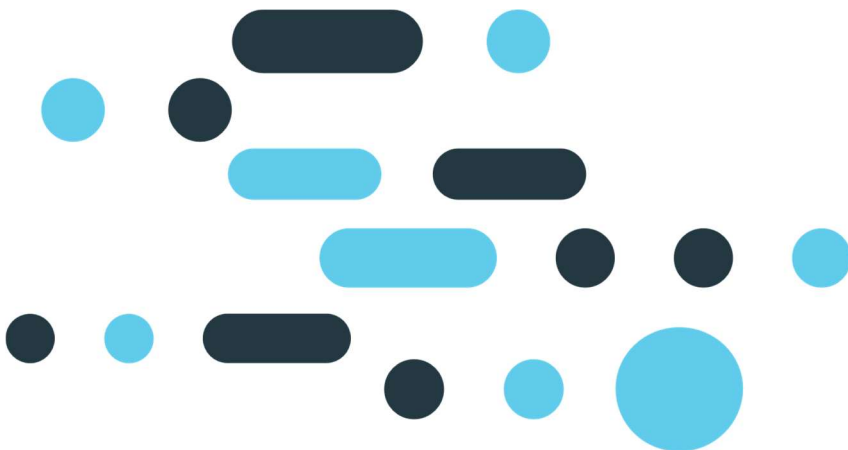
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# Service Definition Terms and Conditions

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For the Provision of Services  
Provided via G Cloud 14

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**THIS AGREEMENT** is made \_\_\_\_\_

**BETWEEN:**

- (1) Nimbus Digital & Technology Innovations Ltd of The Design Hub Coventry University Technology Park, Puma Way, Coventry, United Kingdom, CV1 2TT (“the Service Provider”) and
- (2) \_\_\_\_\_ (“the Client”).

**WHEREAS:**

- (1) The Service Provider provides IT services and has reasonable skills, knowledge, qualifications, and experience in that field.
- (2) The Client wishes to engage the Service Provider to provide IT services subject to, and in accordance with, the terms and conditions of this Agreement.
- (3) The Service Provider wishes to accept such engagement and shall provide IT services to the Client subject to and in accordance with the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Business Day”</b>	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“Data Protection Legislation”</b>	means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;

<b>“Equipment”</b>	means the Client’s IT equipment in relation to which the Service Provider is to provide the Services
<b>“Fees”</b>	means the fees payable by the Client to the Service Provider in consideration of the Services
<b>“Intellectual Property”</b>	means patents, trademarks (registered and unregistered), utility models, all components of copyright (including rights of transcription, distribution, publishing and moral rights) and other exclusive rights of utilisation, rights in service marks, get-up, logos, designs (whether registered or unregistered) and inventions, trade and business names, rights in goodwill or reputation, database rights (including extraction and re-utilisation rights), rights in compilations, any rights similar to any of the above that come into existence (whether by introduction of a new right through legislation or by some other means), applications for any such rights and interests in any of the above and all rights or forms of protection of a similar nature to any of the above or having equivalent effect anywhere in the world;
<b>“Software”</b>	means the computer software operating on the Equipment in relation to which the Service Provider is to provide the Services
<b>“Services”</b>	means the services to be provided by the Service Provider to the Client, these services will be fully detailed by The Service Provider as per Schedule 1

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
  - 1.2.1 “Writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means.
  - 1.2.2 A statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.
  - 1.2.3 “This agreement” is a reference to this Agreement and each of the schedules as amended or supplemented at the relevant time.
  - 1.2.4 A schedule is a schedule to this Agreement; and
  - 1.2.5 A clause or paragraph is a reference to a clause of this Agreement (other than the Schedules) or a paragraph of the relevant schedule.
  - 1.2.6 A "party" or the "parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## **2. Service Provider's Obligations**

- 2.1 The Service Provider shall use reasonable endeavours to provide the Services requested as set out via Schedule 1
- 2.2 The Service Provider shall provide the Services with reasonable skill and care.
- 2.3 The Service Provider shall use reasonable endeavours to meet deadlines agreed from time to time with the Client, but any such dates shall be estimates only. Time for performance shall not be of the essence of this Agreement.
- 2.4 The Service Provider shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Client, provided such instructions are compatible with the scope of the Services as requested,
- 2.5 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, bylaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.6 The Service Provider shall use reasonable endeavours to comply with any and all end user licence agreements which relate to any Software that the Service Provider is required to interact with in the course of providing the Services.
- 2.7 The Service Provider shall use reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any reasonable changes to the Fees that may be due as a result of such changes.
- 2.8 The Service Provider will accept no responsibility whatsoever for any such information which has been prepared by a third party. Where a problem resides in a third-party system or Software used to deliver the Services, the Service Provider is only responsible for managing the problem through the relevant third-party support organisation, and any target resolution times do not apply.
- 2.9 The Service Provider has no responsibility for restoring content or for disaster recovery except to the extent expressly set out as part of the Services.

## **3. Client's Obligations**

- 3.1 The Client shall:
  - 3.1.1 Allow the Service Provider access to the Equipment and all relevant Software as reasonably required by the Service Provider in the course of providing the Services.
  - 3.1.2 Provide adequate working space and facilities for the Service Provider, its agents, subcontractors, consultants, and employees as reasonably required by the Service Provider and
  - 3.1.3 Co-operate with the Service Provider upon the Service Provider's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
- 3.2 The Client shall allow the Service Provider the use of any Equipment that is reasonably necessary to enable the Service Provider to provide the Services.
- 3.3 The Client shall make freely available to the Service Provider:

- 3.3.1 Any and all documentation associated with the Software.
- 3.3.2 Any and all documentation associated with the Equipment.
- 3.3.3 Original Software installation media.
- 3.3.4 Current data backups.
- 3.4 The Client shall use reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 3.5 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Services. Any such instructions must be compatible with the scope of the Services.
- 3.6 In the event that the Service Provider requires the decision, approval, consent or any other form of authorisation or communication from the Client in order to continue providing the Services (or any part thereof), the Client shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 3.7 The Client shall use reasonable endeavours to inform the Service Provider of all health and safety rules and regulations that apply at its premises.
- 3.8 The Client shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.9 The Client shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.
- 3.10 The Client shall not permit any changes or modifications to be made to the Software or the Equipment by any party other than those authorised by the Service Provider.
- 3.11 The Client is not permitted to sell, resell, sublicense, lease, rent, supply or make the Services available to any third party but may use the Services to provide its own services to its customers.
- 3.12 The Client shall pay or reimburse to the Service Provider (on the production of vouchers and/or other evidence) all reasonable and proper expenses incurred in connection with the provision of the Services, including, but not limited to, travel and accommodation expenses. Car mileage allowances will be payable by the Client to The Service Provider in accordance with AA guidelines.;

#### **4. Insurance**

- 4.1 The Service Provider shall have in place, in relation to the Services, public liability insurance with a minimum limit of indemnity of £5,000,000 in any one occurrence.
- 4.2 The Service Provider shall have in place, in relation to the Services, professional indemnity insurance with a minimum limit of indemnity of £2,000,000 in any one occurrence.
- 4.3 The Service Provider shall procure that any sub-contractors engaged by it to provide all or any part of the Services have in place the same limit of indemnity in any one occurrence.

## 5. Fees and Payment

- 5.1 In consideration of the Services, the Client shall pay the Fees to the Service Provider in accordance with the provisions of the Services and this Clause 5.
- 5.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Services provided
- 5.3 The Client shall pay the Fees due within 30 days of receipt of the relevant invoice from the Service Provider.
- 5.4 All payments to be made by the Client under this Agreement shall be made £GBP, in full and in cleared funds.
- 5.5 Where any payment under this Agreement falls due on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.6 Without prejudice to sub-Clause 10.4.1 and any other rights or remedies open to it, if the Client fails to pay the Service Provider within the period set out in sub-Clause 5.3:
  - 5.6.1 The Client shall pay interest on the overdue sum at the rate of 4% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until payment is made in full to the Service Provider of the overdue sum, whether before or after judgment. The Client shall pay the interest due together with the overdue sum.
  - 5.6.2 The Service Provider shall have the right to suspend the Services until payment of the overdue sum (together with any interest due) is made in full.
- 5.7 All sums due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (except such amount (if any) of tax that is to be deducted or withheld by law).

## 6. Limitation of Liability

- 6.1 Neither Party shall be liable – whether in contract, tort (including negligence), breach of statutory duty or otherwise – to the other if it breaches any of its obligations under this Agreement (or arising therefrom) for any loss suffered by the other Party in the form of lost revenue or profit or failure to achieve any benefit expected to be derived from this Agreement, loss of use of any asset, loss of data recorded on any computer or other Equipment, the loss which is not the direct and immediate consequence of the breach, business interruption or management time, or any other loss which is otherwise indirect, commercial, economic, special or consequential.
- 6.2 The total liability of the Service Provider – whether in contract, tort (including negligence), breach of statutory duty or otherwise – for any and all breaches and/or non-performance of its obligations or liability under this Agreement shall be limited to £5,000,000 or the total Fees payable by the Client, whichever is the greater sum.
- 6.3 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury or any other liability which cannot be excluded by law.



## 7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 12 months after its termination:
- 7.1.1 Keep confidential all Confidential Information.
  - 7.1.2 Not disclose any Confidential Information to any other party.
  - 7.1.3 Not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement.
  - 7.1.4 Not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 7.1.5 Ensure that none of its directors, officers, employees, agents, sub-contractors, or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
- 7.2.1 Disclose any Confidential Information to:
    - 7.2.1.1 Any sub-contractor or Supplier of that Party.
    - 7.2.1.2 Any governmental or other authority or regulatory body or
    - 7.2.1.3 Any employee or officer of that Party or of any of the aforementioned persons, parties, or bodies.

To such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the services) or as required by law. In each case, that Party shall first inform the person, Party or body in question that the confidential information is confidential and (except where the disclosure is to any such body under sub-clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the Party in question. Such undertaking should be as nearly as practicable in the terms of this clause 7, to keep the confidential information confidential and to use it only for the purposes for which the disclosure is made and
  - 7.2.2 Use any confidential information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date, becomes public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the confidential information which is not public knowledge.
- 7.3 No public announcements concerning the existence or contents of this Agreement shall be made by either Party without the prior written consent of the other Party.
- 7.4 The provisions of Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

## **8. Assignment and Sub-Contracting**

- 8.1 Subject to sub-Clause 8.2, this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence any of its rights hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 8.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

## **9. Force Majeure**

- 9.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to, power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 9.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 12 months, the other Party may, at its discretion, terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

## **10. Term, Termination and Suspension**

- 10.1 This Agreement shall come into force upon signed approval from the Client and shall continue indefinitely from that date unless a timeframe is specified by the Client subject to the provisions of Clause 10.
- 10.2 Either Party shall have the right, exercisable by giving not less than 30 days written notice to the other at any time prior to the expiry of the term specified in sub-Clause 10.1 (or any further period for which this Agreement has been extended pursuant to this provision) to extend this Agreement for a further period of 12 months.
- 10.3 Either Party may terminate this Agreement by giving to the other not less than 90 days written notice.
- 10.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 10.4.1 Any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 90 Business Days of the due date for payment.

- 10.4.2 The other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 10.4.3 An encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party.
- 10.4.4 The other Party makes any voluntary arrangement with its creditors or, being a company becomes subject to an administration order (within the meaning of the Insolvency Act 1986).
- 10.4.5 The other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
- 10.4.6 Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party.
- 10.4.7 That other Party ceases or threatens to cease, to carry on business, or
- 10.4.8 Control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122, respectively, of the Corporation Tax Act 2010.
- 10.5 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.6 The rights to terminate this Agreement given by Clause 10 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 10.7 The Service Provider may suspend the Services:
  - 10.7.1 For any reason that would give the Service Provider the right to terminate the Agreement, giving at least 10 days’ notice.
  - 10.7.2 If required, to do so by a third party with relevant statutory authority.
  - 10.7.3 To deal with any DDOS attack or other malicious attempts to disrupt the Service Providers' normal operations. The Service Provider will give the Client as much notice as practically possible.
  - 10.7.4 To carry out emergency maintenance
- 10.8 The Client will not be entitled to access any Content during a suspension period.

## 11. Effects of Termination

Upon the termination of this Agreement for any reason:

- 11.1 Any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable.
- 11.2 All Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect.
- 11.3 Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 11.4 Subject as provided in this Clause 11 and except in respect of any accrued rights, neither Party shall be under any further obligation to the other; and
- 11.5 Each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## 12. Data Protection

- 12.1 All personal information that the Service Provider may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Client's rights under the GDPR.
- 12.2 For complete details of the Service Provider's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Client's rights and how to exercise them, and personal data sharing (where applicable), please refer to the Service Provider's Privacy Notice available upon request.

## 13. Data Processing

- 13.1 In Clause 13, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation ("GDPR").
- 13.2 All personal data to be processed by the Service Provider on behalf of the Client under this Agreement shall be processed in accordance with the terms of the Data Processing Agreement entered into by the Parties on confirmation of this Agreement.  
  
OR
- 13.2 The Parties hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 13 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.

- 13.3 For the purposes of the Data Protection Legislation and for Clause 13, the Service Provider is the “Data Processor” and the Client is the “Data Controller”.
- 13.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing will be set out within the ordered Services.
- 13.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in this Agreement.
- 13.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:
- 13.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
  - 13.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage, or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures.
  - 13.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential and
  - 13.6.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:
    - 13.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data.
    - 13.6.4.2 Affected data subjects have enforceable rights and effective legal remedies.
    - 13.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred and
    - 13.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of personal data.
  - 13.6.5 Assist the Data Controller at the Data Controller’s cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner’s Office);

- 13.6.6 Notify the Data Controller without undue delay of a personal data breach.
- 13.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain any of the personal data by law; and
- 13.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with Clause 13 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 13.7 The Data Processor shall not sub-contract any of its obligations to a sub-processor with respect to the processing of personal data under Clause 13 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-processor, the Data Processor shall:
  - 13.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor by this Clause 13 and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
  - 13.7.2 Ensure that the sub-processor complies fully with its obligations under that Agreement and the Data Protection Legislation.
- 13.8 Either Party may, at any time and on at least 30 days' notice, alter Clause 13, replacing it with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to this Agreement.

## **14. No Waiver**

- 14.1 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **15. Further Assurance**

- 15.1 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

## **16. Costs**

- 16.1 Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

**17. Set-Off**

- 17.1 Neither Party shall be entitled to set off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

**18. Relationship of the Parties**

- 18.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

**19. Non-Solicitation**

- 19.1 Neither Party shall, for the term of this Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party.
- 19.2 Neither Party shall, for the term of this Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any customer or Client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

**20. Third Party Rights**

- 20.1 No part of this Agreement is intended to confer rights on any third parties, and accordingly, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 20.2 Subject to this Clause 20, this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

**21. Notices**

- 21.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 21.2 Notices shall be deemed to have been duly given:
- 21.2.1 When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient or
  - 21.2.2 When sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated, or
  - 21.2.3 On the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid, or
  - 21.2.4 On the tenth business day following mailing, if mailed by airmail, postage is prepaid.

21.2.5 In each case, notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **22. Entire Agreement**

22.1 This Agreement contains the entire Agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **23. Counterparts**

23.1 This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts, each of which, when so executed and delivered, shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **24. Severance**

24.1 In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid, or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

## **25. Dispute Resolution**

25.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

25.2 If negotiations under sub-Clause 25.1 do not resolve the matter within 30 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

25.3 If the ADR procedure under sub-Clause 25.2 does not resolve the matter within 90 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

25.4 The seat of the arbitration under sub-Clause 25.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

25.5 Nothing in this Clause 25 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.



- 25.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under Clause 25 shall not be final and binding on both Parties.

## **26. Law and Jurisdiction**

- 26.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by and construed in accordance with the laws of England and Wales.
- 26.2 Subject to the provisions of Clause 25, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## **27. Intellectual Property Rights and Indemnity**

- 27.1 All Intellectual Property created or developed during the supply of the Services will remain the property of The Service Provider. The Client will not remove, modify, or obscure any copyright, trademark or any other property rights that appear on any Service provided by The Service Provider. The Client may not attempt to copy, reverse engineer, decompile or disassemble such Software.
- 27.2 On payment in full for the Services to be paid under the relevant Service Schedule, the Client will be granted a non-exclusive and non-transferable, royalty-free licence to use the product of such Services and any associated documentation in accordance with these terms and conditions. The Service Provider will be entitled to terminate the licence forthwith should the Client breach the terms of this Agreement. No sub-licences may be granted without the Service Provider's written prior written consent.
- 27.3 Unless stated otherwise stated within the Service schedule all Intellectual Property created or developed during the Services or Software Development will remain the property of The Service Provider.
- 27.4 The Service Provider will defend, at its own expense, any legal action brought against the Client to the extent that it is based on a claim that the Services, Consultancy Services or any Software (or any part thereof), when used in accordance with any documentation that accompanies the Services, Consultancy Services or Software, infringes a copyright of a third party, and the Service Provider will pay any final judgement awarded to the third Party against the Client PROVIDED THAT: Client shall (i) notify the Service Provider promptly in writing of any such claim; (ii) permit the Service Provider to have sole control of the defence, compromise or settlement of such claim, including any appeals; (iii) not make any prejudicial statements or settlement offers without the prior written consent of the Service Provider; and (iv) fully co-operate with the Service Provider in the defence or settlement of such claim. The Service Provider will pay such reasonable costs, damages or fees incurred by the Client in connection with such action or claim.

## **28. Entire Agreement**

- 28.1 The Client confirms that, in agreeing to enter into this Agreement, it has not relied

on any representation save insofar as the same has expressly in this Agreement been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement, save that the Agreement of the Client contained in this Clause 28.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Agreement.

- 28.2 The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

**29. Signatures**

**SIGNED for and on behalf of the Service Provider by:**

Name:

Position:

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

**SIGNED for and on behalf of the Client by:**

Name:

Position:

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

## **30. SCHEDULE 1**

### **Provision of Services/Service Schedule**

- 1.1. At any time during the duration of this Agreement, the Client may request the supply of IT Service from the Service Provider.
- 1.2. Either the Service Provider will provide the Client with a detailed proposal, or the Client will request a quote for specific services from the Service Provider.
- 1.3. A signed proposal or quote will constitute a complete Order Form.
- 1.4. The Order Form must be completed in such a way as to make clear the type and quantity and all other material details of the services requested, including the price in accordance with the Supplier's quotation and in particular for each distinct element or set of services are requested, any other details or conditions not outlined within this document must be specifically stated.
- 1.5. Only an Order Form signed and dated by both parties will constitute a valid agreement.
- 1.6. The Service Provider must not commence any IT Service without having a valid agreement in place.
- 1.7. Once a valid agreement is in place, the Service Provider will perform the services detailed within the Order Form and both the Service Provider and Client will perform their duties as specified within this Agreement.