

Template Master Service Agreement

Template Master Service Agreement for the provision of IT services

Purpose & Scope

Use this template where a MSA is required between CAE and the applicable customer.

Responsibilities

All Schedules to be populated by the applicable sales and/or service delivery colleague/colleagues.

Any proposed changes to Clauses 1 (Appointment) to 33 (Glossary of Terms and Construction of the Agreement) and/or the Data Sharing Agreement to be reviewed and approved by CAE's Contracts & Governance Manager.

This front page can be removed once the template has been completed.

Master Service Agreement between

(1) [CUSTOMER NAME]

(2) CAE Technology Services Limited

for the provision of IT services

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THIS AGREEMENT is made the [DAY] day of [MONTH] [YEAR]

BETWEEN: -

- (1) **CAE Technology Services Limited** a company registered in England and Wales (Company No.2685146) whose registered office is CAE House, Maylands Avenue, Hemel Hempstead Industrial Estate, Hemel Hempstead, HP2 7DE ("CAE"); and
- (2) **[CUSTOMER NAME]** a company registered in England and Wales ([CUSTOMER COMPANY NO.]) whose registered office is [CUSTOMER ADDRESS] ("**the Customer**")

each of CAE and the Customer being a Party and together CAE and the Customer are the Parties.

WHEREAS: -

- (A) CAE is an experienced provider of IT products and services.
- (B) The Customer wishes to appoint CAE to provide it with the Services (as defined below) and CAE accepts such appointment on the terms and conditions as set out in this Agreement.

1. APPOINTMENT

- 1.1 The Customer appoints CAE on a NON-EXCLUSIVE basis to provide the Services.

2. CAE'S OBLIGATIONS

- 2.1 CAE shall: -
- 2.1.1 provide the Services in accordance with the Agreement, the applicable Schedules and Good Industry Practice;
- 2.1.2 provide the Services in accordance with its warranties detailed in Clause 10; and
- 2.1.3 where CAE performs the Services on any premises on which the Customer (or any company within The Customer's Group) carries on its business, in accordance with the Customer's rules applicable to such premises and which are communicated to CAE in writing (including, without limitation, any health and safety and security rules).

3. SCHEDULES

- 3.1 Each Schedule contains a detailed description of a Service which CAE shall provide to the Customer in accordance with the terms of this Agreement. The key terms, including the associated Fees, bespoke

features and duration, shall be detailed in each Schedule and shall take precedence over the Clauses as detailed in Clause 32.1.

3.2 The Schedule for the initial Services to be provided from the Commencement Date is contained in this Agreement at Schedule 1. The Parties may agree and enter into additional Schedules and each such additional Schedule shall form part of this Agreement as from the date upon which it is executed on behalf of the Customer and CAE. Each Schedule shall be sequentially numbered for the purposes of identification.

3.3 Each Schedule may be terminated by the Customer giving no less than three months' notice (or such period specified in the relevant Schedule) in writing to CAE such notice to expire at the last day of the applicable final month. Applicable Fees will cease to apply from the date of termination of the applicable Schedule. For each terminated Schedule, CAE reserves the right to submit a written request to the Customer for payment of the actual, unrecovered, non-cancellable costs incurred by CAE up to the date of receipt of the written notice to terminate. This request shall be resolved in good faith by both Parties. Additionally, if termination of a Schedule negatively impacts CAE's performance of any other Schedule this shall be deemed as a Service Variation Request by the Customer, accordingly Clause 14 (Service Variations) shall be applicable. In any event, CAE will use reasonable endeavours to minimise the cost to the Customer of terminating the applicable Schedule.

3.4 If a given Schedule is terminated all other Schedules then in force under this Agreement will continue in full force and effect.

4. SERVICE DELIVERY

4.1 In consideration for payment of the Fees by the Customer, CAE shall provide the Services pursuant to the terms of this Agreement.

4.2 NOT USED.

4.3 Subject to the Customer fulfilling any agreed dependencies on a timely basis, CAE shall be solely responsible for all activities associated with the provision of such Services including the management of all CAE employees and contractors involved in the provision of the Services.

4.4 Unless there is an express provision in this Agreement or in a Schedule, CAE shall not: -

4.4.1 incur any liabilities on behalf of the Customer; or,

4.4.2 make any representations or give any warranty on behalf of the Customer; or,

4.4.3 enter into any contract or obligations on behalf of the Customer.

4.5 CAE shall provide sufficient information, in a format, medium and at times specified by the Customer, related to the performance of the Services, as may be reasonably required to fulfil the requirements of the Customer's management information.

5. HEALTH AND SAFETY

5.1 Accidents involving CAE employees and contractors occurring at the Customer's premises which are ordinarily required to be reported in accordance with the Health and Safety at Work Act, 1974, shall be reported to the Customer in sufficient detail such that the Health & Safety Executive or any other relevant person may be informed.

- 5.2 When at the Customer's premises, CAE shall at all times co-operate and adhere to the Customer's health and safety policy and any other policies and procedures that the Customer shall notify to CAE from time to time and CAE shall procure the co-operation of its employees and contractors with such policies and procedures.

6. CONTRACTORS

- 6.1 Except where a sub-contractor is identified in a Schedule, CAE shall not assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Customer.
- 6.2 Should CAE appoint any sub-contractor with the prior written consent of the Customer in accordance with Clause 6.1 or the sub-contractor is identified in a Schedule, CAE shall ensure that all such sub-contractors shall perform the Services in all respects as if they were a party to this Agreement owing to the Customer all those obligations and duties of CAE as provided in this Agreement. The Customer shall be a third party able to enforce the terms of CAE's contracts with such sub-contractors in accordance with the Contracts (Rights of Third Parties) Act 1999. CAE shall ensure that the terms of this Agreement are properly and reasonably reflected in the terms of any contract with such sub-contractors appointed by CAE and that each one of them shall at all times be bound by the obligations of CAE under this Agreement.
- 6.3 Wherever the Customer uses sub-contractors in connection with the Services, CAE shall work with such sub-contractors such that CAE's actions shall not prevent or inhibit any the Customer sub-contractor from providing the Customer with an optimum service. For the avoidance of doubt CAE shall have no liability for the actions or omissions of any of the Customer's sub-contractors.

7. REVIEW MEETING

- 7.1 All matters pertaining to Review Meetings shall be documented in the relevant Schedule.

8. RELATIONSHIP OF THE PARTIES

- 8.1 At all times in connection with the provision of the Services, CAE shall be an independent contractor and nothing in this Agreement shall create a relationship of agency or partnership or a joint venture as between the Parties and accordingly neither Party shall be authorised to bind the other save as expressly permitted by the terms of this Agreement.

9. PERFORMANCE MEASUREMENT

- 9.1 All matters pertaining to performance management shall be documented in the relevant Schedule.

10. WARRANTIES

- 10.1 Each Party warrants to the other that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of this Agreement.
- 10.2 Where a Party accepts an obligation or duty under this Agreement then, unless this Agreement clearly provides otherwise, that Party will do so in the manner required by this Agreement and there shall be an implied warranty that such Party is able to fulfil such obligation or duty.
- 10.3 CAE warrants that the Services shall be performed:
- 10.3.1 with all reasonable skill, care and diligence;

- 10.3.2 in accordance with Good Industry Practice;
- 10.3.3 by utilising employees and/or sub-contractors with suitable levels of skill and experience; and
- 10.3.4 in conformity with all applicable laws.

Note: Warranties relating to Data Protection are separately detailed in Clause 19.

11. LIMITATION OF LIABILITY

- 11.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract, under indemnity or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 11.
- 11.2 The parties agree that the limitations in this Clause 11 are reasonable given each Party's respective commercial positions and their ability to obtain insurance in respect of the risks arising under or in connection with this Agreement.
- 11.3 Subject to Clauses 11.6 and 11.7, in no event shall the aggregate liability of either Party in respect of any one claim or series of connected claims arising under or in connection with this Agreement exceed the total Fees paid to CAE in the 12 calendar months preceding the event giving rise to the claim.
- 11.4 Subject to Clauses 11.3 and 11.5, neither Party shall be liable for any consequential, indirect or special loss.
- 11.5 The limitations and exclusions of liability set out in this Clause 11 shall not apply in respect of any indemnities given by either Party under this Agreement in relation to Intellectual Property Rights.
- 11.6 Notwithstanding any other provision of this Agreement, the liability of the Parties shall not be limited or excluded in any way in respect of the following:
 - 11.6.1 death or personal injury caused by negligence;
 - 11.6.2 fraud or fraudulent misrepresentation;
 - 11.6.3 breach of any obligation as to title implied by:
 - (a) section 12 of the Sale of Goods Act 1979; or
 - (b) section 2 of the Supply of Goods and Services Act 1982;
 - 11.6.4 breach of section 2 of the Consumer Protection Act 1987;
 - 11.6.5 any other losses which cannot be excluded or limited by applicable law; and
 - 11.6.6 any obligation to pay the Fees (including any interest and expenses properly incurred).
- 11.7 In respect of any indemnity given by either Party under this Agreement, the Party which receives the benefit of the indemnity shall take all reasonable steps to reduce or mitigate the loss covered by the indemnity.

12. FEES AND PAYMENT

- 12.1 In consideration of CAE's proper performance of its obligations under this Agreement, CAE shall be entitled to invoice the Customer for the Fees in accordance with this Clause 12 and each Schedule.
- 12.2 Unless otherwise agreed in a Schedule, CAE shall invoice the Customer prior to the commencement date of the Services detailed in the applicable Schedule based on an annual and in advance billing pattern.
- 12.3 CAE shall ensure that any invoice submitted by it under Clause 12.2 contains the information required by standard accounts payable requirements (such as invoice number, amount payable, summary of service provided).
- 12.4 Unless any amount is disputed in good faith or an alternative payment period is specified in the applicable Schedule, the Customer shall pay any invoice submitted by CAE under Clause 12.2 within 30 days.
- 12.5 The Customer shall be entitled to deduct from any monies due or to become due to CAE any monies due to the Customer from CAE.
- 12.6 Except where otherwise stated in a Schedule, the Fees are exclusive of VAT which shall be payable, if applicable, by the Customer in addition to such Fees.

13. ADDITIONAL SERVICES

- 13.1 If the Customer requires an Additional Service from CAE, the Customer shall issue a formal request identifying the nature of the proposed Additional Service with a reasonable level of detail. CAE shall then decide and communicate to the Customer if it wishes to provide such Additional Service and if so on what terms (including the related fees).
- 13.2 Subject to 13.1, if the Parties agree in principle to the Additional Service, this Agreement shall be amended in accordance with Clause 14 (Service Variations).

14. SERVICE VARIATIONS

- 14.1 CAE agrees that the performance of its obligations under this Agreement shall apply where appropriate to any Service Variation agreed in accordance with this Clause.
- 14.2 Service Variation principles:
 - 14.2.1 Subject to the provisions of this Clause 14 (Service Variations), the Customer may request that CAE implements a Service Variation. Wherever practicable, the Customer shall ensure that its intention to make any such request shall have been discussed previously with CAE in a Review Meeting.
 - 14.2.2 Both Parties shall use reasonable endeavours to enhance the provision of the Services with such enhancements to be implemented via Service Variations. Accordingly, CAE may request that the Customer initiates a Service Variation in accordance with this Clause 14 (Service Variations).
- 14.3 Service Variation Requests:
 - 14.3.1 the Customer shall issue a request in writing for a Service Variation ('Service Variation Request') to CAE identifying the proposed Service Variation.

14.3.2 The Customer may withdraw the Service Variation Request with immediate effect by written notice to CAE at any time before the issue of a Service Variation Confirmation. Upon receipt of such notice, the rights and obligations of the Parties under this Agreement shall be construed as if the Service Variation Request had not been issued.

14.4 CAE's Service Variation Report:

14.4.1 Within such reasonable period as may be specified in a Service Variation Request, CAE shall issue to the Customer a Service Variation Report stating:

- (a) the impact of the Service Variation on the Services; and
- (b) the impact of the Service Variation on the Fees including, if applicable, implementation costs.

14.5 Service Variation Confirmation:

14.5.1 As soon as practicable after receipt of a Service Variation Report, the Customer and CAE shall seek to agree the terms of the relevant Service Variation. Once the terms of the Service Variation have been agreed or determined, the Parties shall execute, in accordance with Clause 14 (Service Variations), either (a) a corresponding amendment to this Agreement and/or to any relevant Schedule or (b) a new Schedule.

14.6 CAE must notify the Customer of its refusal of any Service Variation Request requested by the Customer within 5 Business Days of receipt. Such notice shall set out CAE's reasons for declining the Service Variation.

15. RESOLUTION OF DISPUTES

15.1 During any dispute, including a dispute as to the validity of this Agreement, it is mutually agreed between the Parties that CAE shall continue its performance of the provisions of this Agreement.

15.2 If a dispute arises between the Parties in relation to any matter which cannot be resolved by local operational management either Party may refer such dispute to the dispute resolution procedure outlined in this Clause 15. Each of the Parties shall arrange for a senior representative (being more senior than local operational management) to meet solely to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by a representative of the Party calling for the meeting. Such meeting(s) shall be conducted in such a manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question to the mutual satisfaction of the Parties.

15.3 Neither Party will commence legal proceedings against the other until five Business Days after the meeting referred to in Clause 15.2 has failed to resolve the dispute unless a Party reasonably considers that the other Party has failed to cooperate in good faith in the dispute resolution procedure (e.g. by failing to agree a time for a meeting or by failing to arrange a senior representative to attend such meeting).

16. TERM AND TERMINATION

16.1 This Agreement shall come into effect on the Commencement Date and shall, subject to Clause 16.2, continue until the last day of the Life of this Agreement.

16.2 Either Party may terminate this Agreement forthwith by notice in writing if:

- 16.2.1 the other Party is in breach of this Agreement and fails to remedy the breach (if capable of remedy) within 30 days of written notice of the breach being given by the Party not in breach; or
- 16.2.2 the other Party becomes subject to a voluntary arrangement under Section 1 of the Insolvency Act 1986, becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, passes a resolution for its winding up or has a petition presented to any court for its winding up or for any administration order; or
- 16.2.3 the other Party enters into any composition or arrangement (whether formal or informal) with its creditors, has a bankruptcy order made against it, is the subject of an application for an interim order under Section 253 of the Insolvency Act 1986, has an interim receiver of his property appointed under Section 286 of the Insolvency Act 1986.
- 16.2.4 Subject to Clause 3.3, either Party may terminate this Agreement for convenience giving no less than 6 months' written notice to the other Party. The non-terminating Party reserves the right to submit a written request to the terminating Party for payment of the actual, unrecovered, non-cancellable costs incurred by the non-terminating Party up to the date of receipt of the written notice to terminate. This request shall be resolved in good faith by both Parties.

17. ARRANGEMENTS ON TERMINATION

- 17.1 The Customer and CAE agree that termination or expiry of this Agreement shall not affect either Party's obligations accruing prior to the date of the termination or any rights or obligations of either Party hereto which the Agreement and/or any Schedule provides shall survive the expiration or termination of this Agreement.
- 17.2 After termination or expiry of the Agreement, the following will apply:
 - 17.2.1 All data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services shall be delivered by CAE to the Customer provided that CAE shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Services or to the extent that CAE was possessed of such data, documents and records prior to the Commencement Date;
 - 17.2.2 CAE shall co-operate fully with the Customer in the period prior to the termination of this Agreement. This co-operation includes all documents, reports, summaries and any other information required to achieve an effective transition without disruption to the Customer's routine operational requirements.
- 17.3 Notwithstanding termination of this Agreement for any reason, the following provisions in this Agreement shall continue in full force and effect: Clause 11 (Limitation of Liability), Clause 15 (Resolution of Disputes), Clause 17 (Arrangements on Termination), Clause 18 (Confidentiality) and Clause 20 (Intellectual Property).

18. CONFIDENTIALITY

- 18.1 Without prejudice to any existing confidentiality agreement between the Parties, CAE undertakes to keep secret and strictly confidential and shall not disclose Confidential Information to any third party, without the Customer's prior written consent **PROVIDED THAT: -**

18.1.1 CAE shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date or was independently developed or acquired for purposes other than the performance of the Agreement;

18.1.2 the provisions of this Clause shall not apply to any Confidential Information which: -

- (a) is in or enters the public domain other than by breach of the Agreement; or
- (b) is obtained from a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the Customer.

18.2 Nothing in this Clause shall prevent CAE from disclosing Confidential Information where it is required to do so disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

19. DATA PROTECTION

19.1 Each Party agrees to comply with its obligations as set out in Appendix 1 (Data Protection) of this Agreement;

19.1.1 CAE acknowledges that it acts as a data processor in respect of any Personal Data processed by it in connection with this Agreement;

19.1.2 CAE agrees and warrants to the Customer that:

- (a) it shall only process Personal Data in accordance with the Customer's consent and reasonable instructions from time to time;
- (b) it has up-to-date and adequate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, damage, destruction, theft, use or disclosure of Personal Data in accordance with the Customer's security policy (such policy, including subsequent updates, to be shared with CAE in writing) and all applicable legislation and regulations current at the time;
- (c) it shall not make any changes to its processes and procedures set out in Clause 19.1.2(b) without the prior written consent of the Customer, such consent not to be unreasonably delayed or withheld;
- (d) it shall ensure that all employees and contractors dealing with or having access to Personal Data relating to this Agreement have undergone training in the law and practice of data protection;
- (e) it will promptly assist the Customer with all notices, requests or other enquiries relating to a subject access request under the GDPR (as defined in Appendix 1) which may be received whether by the Customer or CAE;

19.1.3 unless the Customer requires or permits in writing otherwise, it will not disclose any Personal Data to a third party other than:

- (a) to the employees and contractors of CAE to whom that disclosure is necessary for the provision of the Services; or

- (b) where obliged to do so under applicable laws (in which case it shall use reasonable endeavours to advise the Customer in advance of such disclosure and in any event immediately thereafter); and

19.1.4 it has full legal authority to enter into this Agreement and commit to the data protection obligations in this Clause 19.

- 19.2 Where any notice, request or other enquiry relating to a subject access request is received by CAE it will forward such notice, request or other enquiry to the Customer's data protection compliance officer within two (2) Business Days of receipt by CAE.
- 19.3 CAE will allow its data processing facilities, procedures and documentation to be submitted to scrutiny by the Customer, by the Customer's auditors and/or legal advisers in order to ascertain compliance with the terms of this Agreement.
- 19.4 CAE shall, from time to time, comply with any reasonable request made by the Customer to ensure compliance with the measures in this Clause 19 and the GDPR.
- 19.5 On termination of this Agreement, howsoever caused, CAE shall immediately cease processing the Personal Data and, at the Customer's option or direction, arrange for the prompt and safe return and/or destruction of all Personal Data together with all copies in its possession or control and, where requested by the Customer, certify that such destruction has taken place.
- 19.6 CAE shall, before disclosing any Personal Data to any sub-contractor, in circumstances where the sub-contractor will process that Personal Data, enter into a contract with that sub-contractor under which the sub-contractor agrees to comply with terms equivalent to those set out in this Clause 19.
- 19.7 CAE shall indemnify the Customer against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Customer as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of CAE's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by CAE, its employees or agents.

20. INTELLECTUAL PROPERTY

- 20.1 From the Commencement Date, all Intellectual Property Rights created solely in connection with the Services and in all data generated or in connection with the Services ("New Intellectual Property Rights"), shall vest in the Customer and to the extent that any such rights exist in favour of CAE then CAE hereby assigns all of the same to the Customer absolutely and with full title guarantee.
- 20.2 If requested by the Customer, CAE shall forthwith do all such acts and execute all documents as may reasonably be required by the Customer to perfect its title to the New Intellectual Property Rights assigned to it under Clause 20.1.
- 20.3 Where CAE uses Intellectual Property in the provision of the Services and such Intellectual Property has not been created by CAE solely in connection with the Services or any other services provided by CAE to the Customer: -
 - 20.3.1 CAE hereby grants to the Customer an irrevocable, perpetual, world-wide royalty free licence to use such Intellectual Property as is owned by CAE and provided to the Customer in connection

with the Services or any other services provided by CAE to the Customer at any time before, on or after the Commencement Date, including the power to sub-licence; and

- 20.3.2 CAE shall (at its own cost) arrange for and provide to the Customer such licences to use third parties' Intellectual Property as the Customer shall require as a result of or in connection with the Services, or any other services provided by CAE to the Customer at any time before, on or after the Commencement Date or any software, documentation, data or material provided to the Customer by CAE at any time before, on or after the Commencement Date.

21. INSURANCE

CAE shall take out and maintain during the course of this Agreement an insurance policy, with an insurance company of repute, upon terms which are satisfactory to the Customer and sufficient to cover its liabilities under this Agreement (including, without limitation, its liability under Clause 11), such policy to provide cover, in any event, of no less than £5,000,000 per claim. CAE shall upon request produce to the Customer a copy of the insurance policy.

22. NON-SOLICITATION

- 22.1 The Parties agree that neither Party shall, without the prior written consent of the other, either during, or within 12 (twelve) months of the termination of this Agreement, engage, employ or otherwise solicit for employment whether directly or indirectly, any person who during the duration of this Agreement was an employee or contractor of the other Party and was involved in the provision of the Services.
- 22.2 If Clause 22.1 is breached the Party in breach shall pay the Introduction Fee to the other Party.

23. STATUS OF PARTIES

- 23.1 Nothing in this Agreement shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute either Party as the agent of the other or to allow either Party to hold itself out as acting on behalf of the other.

24. ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements and understandings between the Parties with respect hereto whether written or oral and whether express or implied. Nothing in this Clause 24 shall operate to exclude either Party's liability to the other for fraudulent misrepresentation.

25. VARIATIONS

- 25.1 This Agreement may not be modified except by an instrument in writing signed by duly authorised representatives of the Parties.

26. SEVERABILITY

- 26.1 If any term, condition, provision or Clause of this Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms conditions and provisions shall remain in full force and effect.

27. WAIVER

- 27.1 The failure of either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy consequent upon breach of any such provision shall not constitute a waiver of any such breach or any subsequent breach of such provision.

28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 28.1 A person who is not Party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

29. NOTICES

- 29.1 All notices pursuant to this Agreement shall be in writing and served by personal delivery, facsimile, e-mail, prepaid recorded delivery or registered post to the addressee at its registered office and shall be deemed to have been received: -

29.1.1 in the case of personal delivery, at the time of delivery;

29.1.2 in the case of facsimile or e-mail, twelve (12) hours after time of dispatch or if that time does not fall on a business day then 9.30am on the next Business Day; and

29.1.3 in the case of recorded delivery or registered post, upon delivery.

30. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of England and any dispute shall be subject to the exclusive jurisdiction of the courts of England.

31. ANNOUNCEMENTS

Save as required by law and/or the requirements of any relevant stock exchange, no publicity shall be made by any of the Parties relating to any matter in connection with this Agreement without the prior written consent of all of the other Parties and they shall not disclose details of this Agreement to any third Party without the prior written consent of all of the other Parties.

32. GENERAL

- 32.1 Unless expressly stated to the contrary, in the event and to the extent only of any conflict between the Clauses, Schedules and Appendices, the following order of precedence shall apply:

- a) Schedules;
- b) Clauses;
- c) Appendices.

33. GLOSSARY OF TERMS AND CONSTRUCTION OF THE AGREEMENT

- 33.1 Whenever the following terms begin with a capital letter in this Agreement, they shall have the following meanings:

EXPRESSION

MEANING

"Additional Service"	means a service required by the Customer to be provided by CAE which is not included in the Services provided by CAE pursuant to this Agreement
"Agreement"	means the terms and conditions as set out in this document and shall include the schedules and annexes hereto
"Associated Company"	As defined in section 416 of the Income and Corporation Taxes Act 1988
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday in England;
"Commencement Date"	means [DAY] [MONTH] [YEAR]
"Confidential Information"	means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers, employees and contractors of the Customer (or of any company within The Customer's Group) which CAE may receive or obtain in connection with the operation of this Agreement or otherwise [and which is expressly identified as confidential or which ought reasonably to be regarded as confidential];
"Fees"	means the fees payable for the Services as set out in a Schedule (or such other fees as the Parties may agree in writing from time to time);
"Good Industry Practice"	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as CAE under the same or similar circumstances;
"Intellectual Property"	means patents, trademarks, service marks, trade names, copyright (including rights in computer software and in websites), rights in databases, rights in designs, know-how, and all and any other intellectual property in any jurisdiction;
"Intellectual Property Rights"	means the right to exploit any Intellectual Property or any right which is similar or analogous to any of the Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any of the foregoing; any right to bring an action for passing off or any similar or analogous proceeding;

"Introduction Fee"	means 17.5% of the starting gross annual salary (or the pro rata equivalent) of the person referenced in Clause 22.1;
"Life of this Agreement"	subject to earlier termination as permitted by this Agreement or by general law, the period from the Commencement Date to [Insert Date of Expiry] ;
"New Intellectual Property Rights"	has the meaning given in Clause 20.1;
"Personal Data"	means data which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of, the Customer and includes any expression of opinion about the individual and any indication of the intentions of the Customer or any other person in respect of the individual;
"Performance Measures"	means (where applicable) the performance measures specified in the relevant Schedule;
"Review Meeting"	has the meaning given in Clause 7 (Review Meeting) (Review Meeting) and the relevant Schedule (as applicable);
"Schedule"	means a schedule to this Agreement signed by both Parties describing the Services together with any applicable service levels to be attained by CAE in the provision of the Services (as amended by agreement between the Parties from time to time in writing).
"Services"	means the services described in a Schedule and such other services as the Parties may agree in writing from time to time;
"Service Report"	has the meaning given in Clause 9 (Performance Measurement);
"Service Variation"	means a variation to the Services agreed by the Parties in accordance with Clause 14 (Service Variations);
"The Customer's Group"	means the group of companies comprising the Customer and any company which is from time to time its subsidiary, holding company or any subsidiary of such holding company. In this definition, "subsidiary" and "holding company" shall have the meaning given to them in Section 736 of the Companies Act 1985 (as amended by the Companies Act 1989);

- 33.2 All references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends consolidates or replaces the same and shall include any orders, regulations codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto.

- 33.3 The Schedules and Appendices are an integral part of this Agreement and shall be interpreted accordingly.
- 33.4 Any headings to Clauses, Paragraphs, Schedules and/or Appendices together with the front cover are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated references to: -
- 33.4.1 Schedules shall mean the schedules to this Agreement;
 - 33.4.2 Appendices shall mean the appendices to this Agreement;
 - 33.4.3 Clauses shall mean the clauses of this Agreement; and
 - 33.4.4 Paragraphs shall mean the paragraphs contained in the Schedule in question or (where the Schedule in question comprises more than one part) the part of the Schedule in which the reference occurs.
- 33.5 Unless otherwise expressly defined in this Agreement, the words used in this Agreement shall bear their natural meaning.
- 33.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting this Agreement. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 33.7 In this Agreement, words importing any particular gender include all other genders.
- 33.8 Words importing the singular only shall include the plural and vice versa.
- 33.9 The words **"in writing"** or **"written"** shall be interpreted to include manuscript, typescript and communication by electronic and digital text (e-mail) and facsimile but excluding mobile telephone text messages which are displayed visually but which cannot be printed on paper. Where an oral communication is made and subsequently but at the earliest available opportunity confirmed in writing then this shall be treated as having been made in writing at the time that the oral communication was made.
- 33.10 All monetary amounts are expressed in pounds sterling but if pounds sterling is replaced as legal tender in the UK by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the UK.
- 33.11 Except where an express provision of this Agreement states the contrary, each and every obligation of a Party under this Agreement is to be performed at that Party's cost.
- 33.12 Any negative obligation imposed on any Party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question.
- 33.13 All references to an agreement include (subject to all relevant approvals) a reference to that agreement as amended, supplemented, substituted, novated or assigned from time to time.
- 33.14 Any reference to time of day shall be a reference to London time.

- 33.15 If any term, condition, provision or Clause of this Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the Parties agree that they shall immediately commence in good faith negotiations to remedy such invalidity, unenforceability or illegality.

AS WITNESS whereof this Agreement has been signed on behalf of the Parties:

CAE Technology Services Limited

[CUSTOMER NAME]

By:

By:

[Position]

[Position]

Printed Name:

[CAE Signatory Name]

Printed

[[CUSTOMER NAME]

Name:

Signatory Name]

Date:

Date:

APPENDIX 1

Data Sharing Agreement

Version 1.2 Date: May 2021

The Parties are bound by the UK General Data Protection Regulation (“UK GDPR” as defined in the paragraph below) privacy regulations regarding personal data of the Customer’s employees, contractors, agents, customers, representatives. Personal data means any information concerning the personal or material circumstances of an identified or identifiable individual. Examples of personal data includes without limitation email addresses, phone numbers, names, postal addresses.

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

CAE’s declaration as a Sub-processor for the Customer:

As part of our obligations under the relevant data protection laws (“Laws”), we declare that we will at all times be compliant with applicable requirements under these Laws when providing goods and services to the Customer.

In the event we are acting as a data processor in the course of our engagement with the Customer, we will comply with relevant obligations under applicable Laws including the following:

1. We shall process the personal data shared by the Customer only on behalf of and in accordance with the Customer’s documented instructions.
2. We will not transfer this personal data across borders outside the EEA without the Customer’s prior written consent, or as identified within the Description of Data Processing, and such data will be covered by adequate safeguards and in any case by an approved agreement.
3. We will restrict access to this personal data to our employees or contractors who have a specific need to access such personal data and impose a duty of confidentiality on them.
4. We will sub-contract under this engagement only with the Customer’s prior written permission and ensure that the sub-contractor signs a contract containing equivalent provisions to meet GDPR requirements.

5. We will implement technical and organisational security measures to safeguard the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised access, disclosure and all other unlawful forms of processing.
6. We will promptly notify the Customer of:
 - a. Any security breach (actual or threatened) that affects this personal data and assist with subsequent investigation, mitigation and remediation.
 - b. Any data subject access request received from an individual regarding this personal data prior to responding to that request.
 - c. Any legally binding request for disclosure of this personal data by a regulatory or enforcement authority unless such notification to the Customer is expressly prohibited under the relevant regulations.
7. We will make available all relevant information regarding our data processing activities to the Customer and regulatory authorities where required to show compliance.
8. We will allow the Customer or its third-party auditors to access our data processing facilities to carry out an audit at the Customer's reasonable request.
9. We will, under written instruction from the Customer, destroy and/or return this personal data immediately upon expiry or termination of the agreement or earlier if the purpose for which such personal data was provided to us has been fulfilled. We will be liable for any claims that arise due to breach of our obligations as mentioned hereof and shall keep the Customer harmless against all such claims.
10. We will, at CAE's reasonable cost, provide full assistance to the Customer in conducting privacy and data protection impact assessments and related consultations with the relevant data protection authorities.

We confirm that this declaration is irrevocable and will form an integral part of our contractual obligation towards the Customer.

Description of Data Processing

Processing of Personal Data shall be in accordance with the following description of processing and the Customer hereby authorises CAE, on its own behalf, to process Personal Data in accordance with the Agreement as a Data Processor and solely for the purpose of the Agreement:

The subject-matter of the processing	Data including personal and (if applicable) sensitive personal data of customers required for the provision of products and services connection with information technology infrastructure.
Duration of the processing	The term of the related contractual agreement and for any period thereafter where the data is required to be retained by law or regulation or in the interests of the data subject.

The nature and purpose of the processing	<p>Collection of identity, address details, telephone and email contacts; in all cases to the extent reasonably required for the specification, quoting, delivery, and services relating to IT solutions;</p> <p>Where service engagement requires escalation to a manufacturer, data may be shared for this specific purpose and this may include such data being shared outside the EEA;</p> <p>Collection of identity, address details, telephone and email contacts; in all cases to the extent reasonably required to deliver updates on relevant products and services, events and to carry out customer satisfaction monitoring.</p>
The type of personal data	Name, address, telephone, email.
Categories of data subjects	Employees and system users relating to the provision of IT services.
The obligations and rights of the controller	As set out in this Agreement, subject and in accordance with Data Protection Laws.

SCHEDULE 1 [high level description of service]

This Schedule has been signed on behalf of the Parties:

CAE Technology Services Limited

By:

[Position]

Printed Name:

[CAE Signatory Name]

Date:

[CUSTOMER NAME]

By:

[Position]

Printed
Name:

[[CUSTOMER NAME]
Signatory Name]

Date:
