

# Master Services Agreement

(1) [Customer]

and

(2) MyProteus Limited

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THIS AGREEMENT is made on [date]

## PARTIES

- (1) [insert name of **Customer**] [of OR a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at] [insert address] (**Customer**); and
- (2) MyProteus Limited (trading as “Proteus”), a company incorporated in England and Wales under number 07304983 whose registered office is at 9 Quay Court, Colliers Lane, Stow-Cum-Quay, Cambridge, CB25 9AU (**Proteus**),

(each of Proteus and the Customer being a **party** and together Proteus and the Customer are the **parties**).

## BACKGROUND

- A Proteus is a provider of change, programme and project management services via:
- (a) consultancy services from one or more of Proteus’ Assurance, Capability and Partner offerings (as more particularly described in an Order); and
  - (b) its proprietary internet-based Learning Hub (which includes know-how, information resources and interactive materials) on a software-as-a-service basis; and
  - (c) additional associated services (including implementation services).
- B The Customer wishes [to enable its own staff to have access to the Learning Hub Service and] to be able to contract for Consultancy Services and associated services, if required, from time to time.
- C The parties contemplate that Proteus shall supply services to the Customer on a call-off basis by agreeing Orders with the Customer under this Agreement.

## THE PARTIES AGREE:

### 1 Definitions and interpretation

#### 1.1 In this Agreement:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another entity;
<b>Bribery Laws</b>	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 [and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption] [and any similar or equivalent laws in any other relevant jurisdiction];
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday in England;
<b>Change</b>	means any change to this Agreement including to

	any of the Services or to any of the Orders;
<b>Change Control Procedure</b>	means the process by which any Change is agreed as set out in clause 7;
<b>Charges</b>	means the charges payable by the Customer in respect of any of the Services determined under clause 10;
<b>Commencement Date</b>	means [the date of this Agreement OR <i>[insert date]</i> ];
<b>Confidential Information</b>	has the meaning given in clause 17;
<b>Consultancy Services</b>	has the meaning given in Schedule 1B (Consultancy Services Terms);
<b>Contract Manager</b>	is the person appointed by each party to represent it in relation to day to day matters arising in relation to the Services and this Agreement;
<b>Contract Year</b>	means each consecutive period of 12 months commencing from the Commencement Date;
<b>Control</b>	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 <b>Controls</b> and <b>Controlled</b> shall be interpreted accordingly;
<b>Customer Materials</b>	any material owned by the Customer or its Affiliates relating to the Services (and any modifications to that material);
<b>Deliverables</b>	means the goods ancillary to the supply of the Services to be supplied by Proteus to the Customer;
<b>Force Majeure</b>	has the meaning given in clause 21;
<b>Implementation Services</b>	means those implementation services described in an Order;
<b>Intellectual Property Rights</b>	means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights

or applications, (iv) whether vested, contingent or future and (v) wherever existing;

**Know-how**

means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);

**Learning Hub**

means the Proteus' proprietary online learning portal located at [insert URL];

**Learning Hub Services**

means the [online product services] as more particularly described in an Order;

**Milestone**

means an activity, process or outcome described in an Order relating to the Services to be provided under that Order;

**Milestone Payment**

means the percentage of the Charges described in the corresponding Order as being payable by the Customer when the corresponding Milestones have been achieved by Proteus;

**MSA Offence**

has the meaning given in clause 19.1.1;

**Order**

has the meaning given in clause 3;

**Performance Location**

means the location set out in an Order at which Proteus shall perform, or procure the performance of, the Services;

**Restricted Period**

means the Term [and a period of *[insert period, eg six months]* thereafter];

**Restricted Person**

means any person employed or engaged by either party at any time during the Term in relation to the provision or receipt of the Services who has or had material contact or dealings with the other party;

**Services**

means, as the context permits, (i) the services listed in Schedule 2, or (ii) the services supplied to the Customer by Proteus pursuant to an Order, together with the Deliverables (where the context permits);

**Services Commencement Date**

means the first date on which Proteus provides the Services to the Customer;

**Services Termination Date**

means the final date on which Services are supplied to the Customer by Proteus under this Agreement;

<b>Specification</b>	means the description of the Services set out in an Order;
<b>Supplier Personnel</b>	means all employees, officers, staff, other workers, agents and consultants of Proteus, its Affiliates and any of their subcontractors who are engaged in the performance of the Services from time to time;
<b>Term</b>	has the meaning set out in clause 2;
<b>VAT</b>	means value added tax, as defined by the Value Added Tax Act 1994.

1.2 In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a gender includes each other gender;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and
- 1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement.

## 2 Commencement and term

This Agreement commences on the Commencement Date and shall continue in force unless and until terminated in accordance with clause 15 or clause 21.3 (the **Term**).

## 3 Agreement Structure and Ordering Process

- 3.1 This Agreement creates a contractual framework between Proteus and the Customer under which the Customer may order, and Proteus may deliver, Services and Deliverables.
- 3.2 Schedule 1 (Services) sets out the Services which are available for the Customer to order under this Agreement, and which (as at the date hereof) comprise:
  - 3.2.1 [Consultancy Services;]

- 3.2.2 [Learning Hub Services;]
- 3.2.3 [other associated services (including Implementation Services).]
- 3.3 Subject to clause 3.6, the Customer may provide Proteus with a written order for Services substantially in the form set out in Schedule 4 (an **Order**). Each Order shall specify the Services which the Customer wishes to receive and which Proteus has agreed to provide.
- 3.4 Where the Services specified in an Order include:
  - 3.4.1 Learning Hub Services, the terms of Schedule 1A (Learning Hub Terms) shall apply to the provision of such Services and those terms shall be deemed to form part of this Agreement;
  - 3.4.2 Consultancy Services, the terms of Schedule 1B (Consultancy Services Terms) shall apply to the provision of such Services, and those terms shall be deemed to form part of this Agreement; and
  - 3.4.3 both Learning Hub Services and Consultancy Services, the terms of Schedule 1A (Learning Hub Terms) shall apply to the provision of Learning Hub Services and the terms of Schedule 1B (Consultancy Services Terms) shall apply to the provision of the Consultancy Services and those terms shall be deemed to form part of this Agreement.
- 3.5 In the event of any conflict between any of the documents that make up this Agreement, such conflict shall be resolved by giving prevalence to the documents in accordance with the following order of precedence:
  - 3.5.1 In respect of Learning Hub Services, Schedule 1A (Learning Hub Terms) (if applicable in accordance with clause 3.4.1);
  - 3.5.2 In respect of Consultancy Services, Schedule 1B (Consultancy Services Terms) (if applicable in accordance with clause 3.4.2);
  - 3.5.3 the terms and conditions in the main body of this Agreement and Schedule 5;
  - 3.5.4 the other Schedules, appendices and annexes (of any) to this Agreement;
  - 3.5.5 the Order.

Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 3.6 An Order shall not constitute a binding obligation on Proteus to supply the Services until such time as Proteus has acknowledged, accepted and executed the Order in writing. Proteus may accept or reject each Order in its absolute discretion.
- 3.7 No variation to an Order shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Proteus, or otherwise in accordance with the provisions of clause 7.
- 3.8 No Orders shall be placed following the date on which a termination notice is validly served pursuant to clauses 15 or 21.3.
- 3.9 Each Order shall form part of and be interpreted in accordance with the provisions of this Agreement.



#### **4 Customer obligations**

- 4.1 During the Term, Proteus agrees to supply, and the Customer agrees to purchase, Services on the terms set out in this Agreement.
- 4.2 The Customer shall at all times and in all respects:
  - 4.2.1 perform its obligations in accordance with the terms of this Agreement;
  - 4.2.2 comply with any additional or special responsibilities and obligations of the Customer specified in each Order;
  - 4.2.3 pay the Charges for the Services and the Milestone Payments in accordance with the provisions of clause 11 and the terms of the Order;
  - 4.2.4 co-operate with Proteus in all matters arising under this Agreement or otherwise relating to the performance of the Services;
  - 4.2.5 make the Performance Location accessible to Proteus and Proteus Personnel as may be necessary for Proteus to perform the Services and otherwise comply with its obligations under this Agreement;
  - 4.2.6 provide the Customer Materials, and all other information, documents, materials, data or other items necessary for the provision of the Services, to Proteus in a timely manner;
  - 4.2.7 inform Proteus in a timely manner of any matters (including any health, safety or security requirements) which may affect the provision of the Services or the performance of any Order;
  - 4.2.8 ensure that all tools, equipment, materials or other items provided to Proteus for the provision of the Services are suitable for the performance of the Services, in good condition and in good working order; and
  - 4.2.9 obtain and maintain all necessary licences, permits and consents required to enable Proteus to perform the Services and otherwise comply with its obligations under this Agreement.

#### **5 Performance of the services**

- 5.1 Time of performance shall not be of the essence. Proteus shall use its reasonable endeavours to perform the Services in accordance with any commencement or end dates specified for performance in the corresponding Order. Services which do not have specified commencement or end dates shall be performed by Proteus within a reasonable period of time.
- 5.2 Proteus shall not be liable for any delay or failure in its provision of the Services caused by:
  - 5.2.1 the Customer's failure to make the Performance Location available;
  - 5.2.2 the Customer's failure to prepare the Performance Location in accordance with Proteus's instructions;
  - 5.2.3 the Customer's failure to provide Proteus with adequate instructions for the supply and completion of the Services;
  - 5.2.4 the Customer's failure to supply the Customer Materials in a timely manner; or

#### 5.2.5 Force Majeure.

### **6 Contract management and reporting**

- 6.1 Each party shall appoint a Contract Manager to act as the main point of contact for the other party in respect of all day-to-day matters relating to the supply of the Services and this Agreement.
- 6.2 The parties shall ensure that the Contract Managers meet at [*describe regularity, eg weekly or monthly*] intervals to discuss the progress being made in relation to the provision of the Services and any disagreements which may arise.
- 6.3 [Proteus shall ensure that its Contract Manager also provides a status report for submission to the Customer on a [*describe regularity, eg weekly or monthly*] basis detailing [*describe the required contents of the status report*].]

### **7 Change control procedure**

- 7.1 Where the Customer or Proteus sees a need to change this Agreement (or any of the provisions therein, including the Services or the Orders), whether in order to include an additional service, function or responsibility to be performed by Proteus for the Customer under this Agreement, to amend the Services or the service levels as set out in the Services or otherwise in an Order, Proteus may at any time request, and the Customer may at any time recommend, such Change and a Change request shall be submitted by the party requesting/recommending (as applicable) the Change to the other. The Parties shall discuss each Change request in good faith. No Change to this Agreement shall be binding unless and until agreed in writing and signed by both parties.
- 7.2 Until such Change is made in accordance with clause 7.1, the Customer and Proteus shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.
- 7.3 Any discussions which may take place between the Customer and Proteus in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 7.4 Any Services or other work required by the Customer which have not been agreed in accordance with the provisions of clause 7 shall be undertaken entirely at the expense and liability of the Customer.

### **8 Warranties**

- 8.1 The Customer warrants that:
  - 8.1.1 it has the right, power and authority to enter into this Agreement and grant to Proteus the rights (if any) contemplated in this Agreement; and
  - 8.1.2 the Customer Materials and all other information, documents, materials, data or other items provided by the Customer pursuant to this Agreement do not infringe the Intellectual Property Rights of any third party.
- 8.2 Proteus warrants that:
  - 8.2.1 the Services shall be performed with reasonable care and skill;
  - 8.2.2 the Services performed and the Deliverables supplied shall materially comply with the applicable specification set out in the relevant Order (if any).

- 8.3 Subject to the provisions of clause 8.4, Proteus shall, at its option, remedy, re-perform or refund the Charges in respect of any Services or Deliverables that do not comply with clause 8.2, provided that the Customer serves a written notice on Proteus that some or all of the Services or Deliverables (as the case may be) do not comply with clause 8.2, and identifying in sufficient detail the nature and extent of the defects within [5] Business Days of completion of the Services.
- 8.4 Proteus shall not be liable for any failure of the Services or the Deliverables to comply with the provisions of clause 8.2 where the same arises directly or indirectly and whether in whole or in part as a result of:
- 8.4.1 a breach by the Customer of any of its obligations under this Agreement;
  - 8.4.2 an event of Force Majeure;
  - 8.4.3 any design, specification or requirement of the Customer; or
  - 8.4.4 use of the Customer Materials.
- 8.5 Except as set out in this clause 8 and clause 13.4.1:
- 8.5.1 Proteus gives no warranty and makes no representations in relation to the Services;
  - 8.5.2 Proteus shall have no liability for any non-compliance with the warranty in clause 8.2; and
  - 8.5.3 the conditions implied by the Supply of Goods and Services Act 1982 ss 12–16 are expressly excluded.
- 8.6 The Customer acknowledges that Proteus is not and cannot be aware of the extent of any potential loss or damage to the Customer resulting from any failure of the Services to conform to the Specification or any failure by Proteus to discharge its obligations under this Agreement.
- 8.7 The provisions of this clause 8 set out the Customer's sole and exclusive remedies (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach of clause 8.2 or for any other error or defect in the Deliverables or defective performance of the Services.

## **9 Suspension of services**

- 9.1 If, in relation to an Order, the Customer is in breach of any of its obligations under this Agreement or if Proteus is prevented or delayed in performing the Services for any reason attributable to the Customer, its Affiliates, employees, agents, representative or subcontractors, then Proteus (without prejudice to its other rights):
- 9.1.1 may suspend performance of the Services under the Order until such time as the Customer fully remedies its breach or default;
  - 9.1.2 shall not be liable for any losses, damages, costs and expenses incurred by the Customer as a result of such suspension; and
  - 9.1.3 shall recover from the Customer all losses, damages, costs and expenses incurred by Proteus arising from the Customer's breach or default.

## **10 Charges**

- 10.1 The Charges payable by the Customer in respect of each Order are contained in Schedule 3, subject to the terms of clause 10.5.
- 10.2 The Charges are exclusive of VAT (or equivalent sales tax).
- 10.3 Where the Charges are calculable on a time and materials basis, Proteus will keep time sheets showing the hours worked by each of Proteus Personnel in respect of the provision of the corresponding Services and will if so requested produce them to the Customer for accounting purposes.
- 10.4 Proteus will be entitled to be reimbursed by the Customer for all out-of-pocket expenses (including travelling and entertainment expenses but not parking fines or road traffic offence fines) incurred by Proteus and Proteus Personnel in the proper provision of the Services, subject to the production of such receipts or other evidence as the Customer may reasonably require and will include any such expenses on invoices rendered.
- 10.5 Unless otherwise agreed in the Order, the Charges payable under an Order shall be set out in the Order and fixed for the term of that Order. Proteus may increase the Charges set out in Schedule 3 (Charges) no more than once per Contract Year by giving the Customer not less than [30] days' notice in writing.

## **11 Payment**

- 11.1 Proteus may issue its invoice in respect of an Order at any time after the Order is placed or, where the Order specifies Milestone Payments, Proteus may issue its invoices for Milestone Payments upon the achievement of the corresponding Milestone.
- 11.2 The Customer shall pay all invoices:
  - 11.2.1 in full in cleared funds within [thirty (30)] days of the date of each invoice; and
  - 11.2.2 to the bank account nominated by Proteus in the Order.
- 11.3 The Customer shall pay any applicable VAT (or equivalent sales tax) to Proteus on receipt of a valid VAT invoice.
- 11.4 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
  - 11.4.1 Proteus may, without limiting its other rights, charge interest on such sums at [four (4)] percentage points a year above the base rate of [Barclays Bank] from time to time in force; and
  - 11.4.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

## **12 Data protection**

- 12.1 Each party agrees that, in the performance of their respective obligations under this Agreement, it shall comply with the provisions of Schedule 5.

## **13 Intellectual property rights**

- 13.1 In relation to the Deliverables:

- 13.1.1 Proteus and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
  - 13.1.2 Proteus grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free during the term of the applicable Order to use the Deliverables for the purpose of receiving the Services, solely for its internal business purposes; and
  - 13.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 13.1.2 to its Affiliates, customers or any other third party.
- 13.2 The Customer acknowledges that whilst Proteus may in the course of providing the Services make available to the Customer (including for demonstration or presentation purposes) access to or outputs from the Learning Hub, the Customer shall have no right of any kind to use or access the Learning Hub (or any outputs therefrom) unless it has entered into a valid Order for Learning Hub Services under this Agreement (subject always to the applicable licence terms applicable to the Learning Hub Services, as more particularly set out in Schedule 1A (Learning Hub Terms)).
- 13.3 In relation to the Customer Materials, the Customer:
  - 13.3.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 13.3.2 grants to Proteus a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.
- 13.4 Proteus:
  - 13.4.1 warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe the Intellectual Property Rights of any third party;
  - 13.4.2 shall, subject to clause 13.6, indemnify the Customer against all liabilities, costs, expenses, damages and losses professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights, arising out of, or in connection with, the receipt or use of the Services and Deliverables;
  - 13.4.3 shall not be in breach of the warranty at clause 13.4.1, and the Customer shall have no claim under the indemnity at clause 13.4.2 to the extent the infringement arises from:
    - (a) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
    - (b) any modification of the Services or any Deliverable, other than by or on behalf of Proteus; and
    - (c) compliance with the Customer's specifications or instructions.
- 13.5 The Customer:
  - 13.5.1 warrants that the receipt and use in the performance of this agreement by Proteus, its agents, subcontractors or consultants of the Customer Materials shall not infringe any rights (including Intellectual Property Rights) of any third party; and
  - 13.5.2 shall indemnify Proteus against all liabilities, costs, expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other

professional costs and expenses) suffered or incurred or paid by Proteus arising out of or in connection with any claim brought against Proteus, its agents, subcontractors or consultants for actual or alleged infringement of a third party's rights (including Intellectual Property Rights) arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

13.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 13, the Indemnified Party shall:

13.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 13.4.2 or clause 13.5.2 (as applicable) (**IPRs Claim**);

13.6.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

13.6.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

13.6.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

13.7 Except as expressly agreed above, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

13.8 If any IPRs Claim is made or is reasonably likely to be made which may give rise to liability under clause 13.4.2, Proteus may at its option:

13.8.1 procure for the Customer the right to continue receiving the relevant Services or using and possessing the relevant Deliverables; or

13.8.2 re-perform the infringing part of the Services or modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Services or Deliverables remain in conformance to the Specification.

13.9 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 so as to reduce or mitigate the loss covered by the indemnity.

## **14 Limitation of liability**

14.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.

14.2 Subject to clause 14.5, the total liability of Proteus, howsoever arising under or in connection with this Agreement, shall not exceed:

14.2.1 in respect of each Order, the lesser of:

- (a) the amount paid by the Customer under the relevant Order; or
  - (b) in the case of an Order under which Services or Deliverables are provided over a period exceeding three (3) months, the maximum amount paid by the Customer during the continuous three (3) month period of that Order prior to the default giving rise to the liability; and
- 14.2.2 in the aggregate, the sum of 100% of all Charges paid or payable by the Customer under all Orders or £[x], whichever is the greater.
- 14.3 Subject to clause 14.5, neither party shall be liable for consequential, indirect or special losses.
- 14.4 Subject to clause 14.5 neither party shall be liable for any of the following (whether direct or indirect):
  - 14.4.1 loss of profit;
  - 14.4.2 loss of or corruption to data;
  - 14.4.3 loss of use;
  - 14.4.4 loss of production;
  - 14.4.5 loss of contract;
  - 14.4.6 loss of opportunity;
  - 14.4.7 loss of savings, discount or rebate (whether actual or anticipated);
  - 14.4.8 loss of or damage to tangible property;
  - 14.4.9 harm to reputation or loss of goodwill.
- 14.5 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
  - 14.5.1 death or personal injury caused by negligence;
  - 14.5.2 fraud or fraudulent misrepresentation; or
  - 14.5.3 any other losses which cannot be excluded or limited by applicable law.

## **15 Termination**

- 15.1 Either party may terminate this Agreement and/or any Order at any time by giving notice in writing to the other party if:
  - 15.1.1 the other party commits a material breach of this Agreement and such breach is not remediable;
  - 15.1.2 the other party commits a material breach of this Agreement which is not remedied within [thirty (30)] days of receiving written notice of such breach.
- 15.2 Either party may terminate this Agreement and/or any Order at any time by giving notice in writing to the other party if that other party:

- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
  - 15.2.3 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 15.2.4 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 15.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 15.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 15.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.2.8 has a resolution passed for its winding up;
  - 15.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 15.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [*seven*] days of that procedure being commenced;
  - 15.2.11 has a freezing order made against it;
  - 15.2.12 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.11 in any jurisdiction; or
  - 15.2.13 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.12 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 15.3 Proteus may terminate this Agreement and/or any Order at any time by giving not less than [*four weeks*] notice in writing to the Customer if the Customer undergoes a change of Control [or if it is realistically anticipated that the Customer will undergo a change of Control within [*two months*]].
- 15.4 On termination of this Agreement and/or any Order for any reason:
- 15.4.1 Proteus shall immediately stop the performance of all Services;
  - 15.4.2 Proteus shall promptly invoice the Customer for all Services performed but not yet invoiced;
  - 15.4.3 without prejudice to any additional obligations under Schedule 5, the parties shall within [*five*] Business Days return any materials of the other party then in its possession or control. If Customer fails to do so, Proteus may enter the Customer's premises and take possession of any media containing such materials and copies (**Unlicensed Proteus Materials**) and Customer shall be solely responsible for any unauthorised use or disclosure of the Unlicensed Proteus Materials until they have been returned to Proteus;



- 15.4.4 if the Customer continues to use or resumes use of any Unlicensed Proteus Materials, such use shall incur an immediate liability to pay for the first year of an annual licence fee applicable to the Unlicensed Proteus Materials used, without prejudice to any other rights or remedies Proteus may have to restrain unlicensed use and irrespective of the extent of use by the Customer, and such first year annual licence fee shall be a minimum of £50,000, payable on written demand from Proteus accompanied by reasonable evidence of use or distribution by the Customer; and
- 15.4.5 all rights granted to the Customer under this Agreement or any Order (including all rights to use and access the Learning Hub and to make use of any outputs of the Learning Hub) shall immediately cease.
- 15.5 The following clauses of this Agreement shall survive termination, howsoever caused:
  - 15.5.1 clause 8 (warranty);
  - 15.5.2 clause 12 (data protection);
  - 15.5.3 clauses 13.1.1, 13.2 and 13.5.2 (intellectual property rights);
  - 15.5.4 clause 14 (limitation of liability);
  - 15.5.5 clause 15.4 (consequence of termination);
  - 15.5.6 clause 16 (non-solicitation)
  - 15.5.7 clause 17 (confidential information);
  - 15.5.8 clause 20 (dispute resolution);
  - 15.5.9 clause 23 (notices);
  - 15.5.10 clause 34 (third party rights);
  - 15.5.11 clauses 35 and 36 (governing law and jurisdiction); and
  - 15.5.12 Schedule 5 (data protection)

together with any other provision of this Agreement which expressly or by implication is intended to survive termination.

## **16 Non-solicitation**

- 16.1 In order to protect the legitimate business interests of each party, during the Restricted Period neither party shall, either directly or indirectly, by or through itself, its affiliate, its agent or otherwise, or in conjunction with its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:
  - 16.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other party with a view to employing or engaging the Restricted Person, or
  - 16.1.2 employ or engage, or offer to employ or engage a Restricted Person of the other party,
 without the prior written consent of the other party.

- 16.2 Notwithstanding clause 16.1 each party may employ or engage a Restricted Person of the other party who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the recruiting party or via an advertisement placed publicly by the recruiting party (either in the press, social media, online or in trade and industry publications).
- 16.3 In the event of a breach of clause 16.1 which results in a Restricted Person leaving either party and being employed or engaged by the other party, that party employing or engaging the Restricted Person shall pay to the other party by way of liquidated damages an amount equivalent to *[insert figure]*.
- 16.4 The provisions in clause 16.3 shall be without prejudice to a party's ability to seek damages or claim injunctive relief.

## **17 Confidential information**

- 17.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party and its Affiliates including, any details of its business, affairs, customers, clients, suppliers, plans or strategy (**Confidential Information**) confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 17.2.
- 17.2 A party may:
- 17.2.1 subject to clause 17.5, disclose any Confidential Information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party ensures that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with clause 17 as if it were a party;
  - 17.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
  - 17.2.3 subject to clause 17.5, use Confidential Information only to perform any obligations under this Agreement.
- 17.3 Each party recognises that any breach or threatened breach of clause 17 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 17.4 Clause 17 shall bind the parties during the Term [and [for a period of *[insert number: eg five]* years] following termination of this Agreement].
- 17.5 To the extent any Confidential Information is Personal Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of Schedule 5.

## **18 Anti-bribery**

- 18.1 For the purposes of clause 18 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.
- 18.2 Each party shall ensure that it and each person referred to in clauses 18.2.1 to 18.2.3 (inclusive) does not, by any act or omission, place the other party in breach of any Bribery Laws. Each party shall

comply with all applicable Bribery Laws, ensure that it has in place adequate procedures to prevent any breach of clause 18 and ensure that:

18.2.1 all of its personnel and all direct and indirect subcontractors, suppliers, agents and other intermediaries of that party;

18.2.2 all others associated with that party; and

18.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 18.2.1 and/or 18.2.2,

involved in connection with this Agreement, so comply.

18.3 Without limitation to clause 18.2, neither party shall make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

18.4 Each party shall immediately notify the other party as soon as it becomes aware of a breach of any of the requirements in this clause 18.

18.5 Any breach of clause 18 by either party shall be deemed a material breach of this Agreement that is not remediable and shall entitle the other party to immediately terminate this Agreement by notice under clause 15.1.1.

## **19 Modern slavery**

19.1 Each party undertakes, warrants and represents that:

19.1.1 neither that party nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

19.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and

19.1.3 it shall notify the other party immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of its obligations under Clause 19, such notice to set out full details of the circumstances concerning the breach or potential breach of the its obligations.

19.2 Any breach of clause 19.1 by either party shall be deemed a material breach of the agreement and shall entitle the other party to terminate the Agreement in accordance with clause 15.1.1.

## **20 Dispute resolution**

20.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of clause 20.

- 20.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 20.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 20.3.1 within [seven] days of service of the notice, the [contract managers] of the parties shall meet to discuss the dispute and attempt to resolve it; and
- 20.3.2 if the dispute has not been resolved within [seven] days of the first meeting of the [contract managers], then the matter shall be referred to the [chief executives] (or persons of equivalent seniority). The [chief executives] (or equivalent) shall meet within [seven] days to discuss the dispute and attempt to resolve it.
- 20.4 The specific format for the resolution of the dispute under clause 20.3.1 and, if necessary, clause 20.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 20.5 If the dispute has not been resolved within [14] days of the first meeting of the [chief executives] (or equivalent) under clause 20.3.2 then the matter [shall OR may] be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 20.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 20.3 to 20.5 have been completed.

## **21 Force majeure**

- 21.1 In this clause 21, **Force Majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Inability to pay is not Force Majeure.
- 21.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 21.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 21.2.2 uses reasonable endeavours to minimise the effects of that event.
- 21.3 If, due to Force Majeure, a party:
- 21.3.1 is or is likely to be unable to perform a material obligation; or
- 21.3.2 is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than sixty (60) Business Days,
- the other party may terminate this Agreement on not less than thirty (30) days' written notice.

## **22 Entire agreement**

- 22.1 The parties agree that this Agreement and the Orders entered into pursuant to it 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.

22.2 Each party acknowledges that it has not entered into this Agreement and the Orders entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement and the Orders entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

22.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

## **23 Notices**

23.1 Any notice given by a party under this Agreement shall:

23.1.1 be in writing and in English;

23.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

23.1.3 be sent to the relevant party at the address set out in clause 23.3.

23.2 Notices may be given, and are deemed received:

23.2.1 by hand: on receipt of a signature at the time of delivery;

23.2.2 by [Royal Mail Recorded Signed For] post: at 9.00 am on the [second] Business Day after posting;

23.2.3 by [Royal Mail International Tracked & Signed OR Royal Mail International Signed] post: at 9.00 am on the [fourth] Business Day after posting; and

23.2.4 by email [provided confirmation is sent by first class post]: on receipt of a [delivery OR read receipt] email from the correct address.

23.3 Notices shall be sent to:

23.3.1 myProteus Limited [for the attention of [insert name and/or position]] at:

[insert address]

[insert fax number]

[[insert email address]]; and

[copied to [insert name] at [insert address]; and]

23.3.2 [insert name of Customer] [for the attention of [insert name and/or position]] at:

[insert address]

[insert fax number]

[[insert email address]]]; and OR .]

[copied to [insert name] at [insert address].]

23.4 Any change to the contact details of a party as set out in clause 23.3 shall be notified to the other party in accordance with this clause 23 and shall be effective:

- 23.4.1 on the date specified in the notice as being the date of such change; or
- 23.4.2 if no date is so specified, [five (5)] Business Days after the notice is deemed to be received.
- 23.5 All references to time are to the local time at the place of deemed receipt.
- 23.6 This clause does not apply to notices given in legal proceedings or arbitration.
- 24 Announcements**
- 24.1 Subject to clause 24.2, no announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult on the form and content of any such announcement or other public disclosure, as well as the manner of its release.
- 24.2 If a party is required to make an announcement or other public disclosure concerning this Agreement or any of the matters contained in it by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction, it may do so. Such a party shall:
- 24.2.1 notify the other party as soon as is reasonably practicable upon becoming aware of such requirement to the extent it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;
- 24.2.2 make the relevant announcement or public disclosure after consultation with the other party so far as is reasonably practicable; and
- 24.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of the other party as to its form and content and the manner of its release, so far as is reasonably practicable.
- 25 Further assurance**
- The Customer shall at the request of Proteus, and at the cost of the Customer, do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 26 Variation**
- No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
- 27 Assignment**
- 27.1 The Customer may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without Proteus's prior written consent, such consent not to be unreasonably withheld.
- 27.2 Proteus may not assign or transfer this Agreement whether in whole or in part without the Customer's prior written consent, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Proteus may sub-licence or sub-contract this Agreement whether in whole or in part in its absolute discretion, provided that Proteus remains responsible for all acts, errors or omissions of its subcontractors as if they were the acts, errors or omissions of Proteus. Without prejudice to the

foregoing generality Proteus may perform any of its obligations and exercise any of its rights granted under this Agreement through any Affiliate.

**28 No partnership or agency**

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, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

**29 Equitable relief**

Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

**30 Severance**

30.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

30.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

**31 Waiver**

31.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

31.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

31.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

**32 Counterparts**

32.1 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

32.2 Each party shall evidence their signature of this Agreement by transmitting by DocuSign (or such other electronic signature technology as Proteus may specify) a signed signature page of this Agreement in

PDF format together with the final version of this Agreement in PDF format, which shall constitute an original signed counterpart of this Agreement.

**33 Costs and expenses**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

**34 Third party rights**

- 34.1 Except as expressly provided for in clause 35, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

**35 Governing law**

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

**36 Jurisdiction**

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

AGREED by the parties on the date set out at the head of this Agreement:

Signed by <i>[insert full name of director/authorised signatory]</i>	.....
for and on behalf of	[Director OR Authorised signatory]
myProteus Limited	

and

Signed by <i>[insert full name of director/authorised signatory]</i>	.....
for and on behalf of	[Director OR Authorised signatory]
<i>[insert name of the Customer]</i>	



**SCHEDULE 1A  
LEARNING HUB TERMS**

**1 Definitions**

In this Schedule 1A (Learning Hub Terms):

<b>Acceptable Use Policy</b>	means the Proteus acceptable use policy set out at Annex 1 to this Schedule 1A, as may be updated by Proteus from time to time;
<b>Back-Up Period</b>	has the meaning given in paragraph 3.7;
<b>Business Hours</b>	means between the hours of 9 am and 5 pm on Business Days.
<b>Proteus IPRs</b>	has the meaning given in paragraph 6.2;
<b>Proteus Information</b>	has the meaning given in paragraph 6.8;
<b>Proteus Permitted Content</b>	means anything downloaded and any content derived from the Learning Hub by any User or the Customer or received by them through any service that is provided by Proteus;
<b>Service Package</b>	means the mix of content in one or more configurations and pre-defined packages, as may be provided by Proteus from time to time through the Learning Hub, specified in an Order detailing the Charges payable;
<b>Software</b>	has the meaning given in paragraph 6.6;
<b>Subscription</b>	means the period during which the Customer has the right to access the Learning Hub and use and receive the Learning Hub Services in accordance with paragraphs 3 and 4, as such period is specified in the relevant Order (and as maybe extended in accordance with paragraph 5.5);
<b>Subscription Charge</b>	means the Charge payable in respect a Subscription, as specified in the relevant Order;
<b>User</b>	means a person designated by the Customer in writing as authorised to be provided a unique identifier to access the Learning Hub in the course of their duties for and on behalf of the Customer.

**2 Application of these terms**

- 2.1 The terms set out in this Schedule 1A (Learning Hub Terms) shall apply in relation to the provision of Learning Hub Services under any Order.

### 3 Provision of the Learning Hub Services

- 3.1 Unless otherwise specified in the relevant Order, Proteus shall commission the Service Package within five (5) Business Days of execution of the agreed Order by both parties.
- 3.2 The Learning Hub offers Users diagnostic tools and online or interactive surveys to use. The Customer and Users may, where the Learning Hub allows, incorporate their own information, including logos, graphics, documents, textual and other information created by Users.
- 3.3 The Learning Hub Services are supplied subject to all limitations of the communications network used by the Customer including the risk of impaired or no connectivity to the Learning Hub. Proteus shall use reasonable endeavours to maintain the availability of the Learning Hub and the Learning Hub Services within Business Hours but Proteus shall not be liable for any failure to maintain the availability of the Learning Hub and/or Learning Hub Services whether this arises from a technical or other failure of Proteus, the communications network or otherwise. Proteus does not warrant that the Services will be fault free or free of interruptions. In the event of any fault, breakdown or interruption in the Services the Customer should notify Proteus as soon as possible.
- 3.4 The Customer acknowledges that the Learning Hub Services do not include:
  - 3.4.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Learning Hub Services);
  - 3.4.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all data comprised in Customer Materials); or
  - 3.4.3 legal, accounting or other professional or regulated services and that, except as expressly stated in our Agreement, no assurance is given that the Learning Hub Services will comply with or satisfy any legal or regulatory obligation of any person.
- 3.5 Proteus shall be entitled to:
  - 3.5.1 change the content and technical specification of the Learning Hub (provided that such changes do not materially affect the performance of the Service Package); and
  - 3.5.2 suspend the Services for operational reasons or in case of emergency; and
  - 3.5.3 give the Customer instructions which Proteus believes (acting reasonably) to be necessary for security reasons or for maintaining the quality of the Service Package (and the Customer shall comply with such instructions).
- 3.6 Proteus does not guarantee that all Users will experience uninterrupted access to the Learning Hub at all times.
- 3.7 Proteus does not retain back-up data records to enable recovery and reconstitution of data comprised in the Learning Hub for longer than thirty (30) days on a rolling basis (the **Back-Up Period**), unless otherwise agreed with the Customer in writing in the relevant Order. Proteus will, at the Customer's expense, use reasonable endeavours to assist the Customer in retrieving any of the Customer's data from the historical data records during the Back-Up Period. Proteus shall not be liable for inability to reconstitute any data and or Customer Material contained in the Learning Hub in respect of any period after the Back-Up Period.

- 3.8 Proteus shall use reasonable endeavours to provide the Customer with access to the Learning Hub during Business Hours (or such other hours as may be specified in relevant Order). Due to the need to maintain and update the Learning Hub on a regular basis, the availability of the entirety of the features and functions of the Learning Hub for access by Users is not guaranteed at all times. Proteus will use reasonable endeavours to Banking out all planned maintenance outside of Business Hours but reserves the right in unforeseen circumstances to carry out maintenance on the Learning Hub during Business Hours, in which case Proteus shall not be liable for any consequential interruption to the Service Package.
- 3.9 The Customer shall ensure that all its Users accept and at all times comply with Proteus' online terms relating to the use of the Learning Hub. Proteus reserves the right to refuse or suspend access to the Learning Hub to any User who is in breach of, or does not accept, those terms.
- 3.10 Proteus reserves the right to retain anonymised data in relation to User's own evaluations and performance assessments for the purpose of analysing effectiveness of such tools and, on an unattributable basis, to provide sector and industry measures of such evaluations and performance assessments to the Customer, Users and other parties interested in Proteus' services.

#### **4 Customer Responsibilities**

- 4.1 The Customer undertakes, represents and warrants (for itself, and on behalf of its Users) that it (and each User) shall at all times:
- 4.1.1 comply with any reasonable directions or instructions (including requests for assistance or information) issued from time to time by Proteus in connection with the Learning Hub;
  - 4.1.2 not be entitled by reason of any set-off, counter claim, abatement or analogous deduction to withhold payment of any amount due to Proteus without the written agreement of Proteus;
  - 4.1.3 acknowledge that Proteus will co-operate fully with any relevant authorities in connection with any misuse or suspected misuse of the Learning Hub and the Customer consents to Proteus co-operating with any communications operators in connection with any suspected criminal activity related to or connected with the Learning Hub and agrees that if requested to do so Proteus shall be entitled to divulge the name and address and account information relating to the Customer's Users to relevant state law enforcement officers;
  - 4.1.4 indemnify and hold Proteus harmless against all liabilities, claims, damages, losses, costs and proceedings howsoever arising from any improper use of any Services;
  - 4.1.5 take appropriate security measures to safeguard the Customer's and Customer's Users' use of or access to the Service by unauthorised persons;
  - 4.1.6 comply with all applicable laws and regulations concerning the Learning Hib Services and the Learning Hub and the Customers' and Customer's Users' access and use of the Learning Hub Services and the Learning Hub, including Data Protection laws and any other applicable regulations relating to the Customer's and its User's use of the Learning Hub.
- 4.2 The Customer's access to the Learning Hub shall be limited to the number of Users specified in the Order. The Customer is responsible for its Users who access the Learning Hub Service and must bring to the attention of Users, and when requested by Proteus, take action to ensure that the Customer's and Customer's Users' use of the Learning Hub complies with, the Proteus Acceptable Use Policy and this Agreement. Customer shall assume responsibility for any personal data and uploaded content accessible to and managed by Customer's own administrative Users.

## **5 Charges and payment**

- 5.1 The first payment of any Subscription Charge and any other up-front Charges (as specified in the Order) shall be payable on execution of the agreed Order. Subscription Charges are payable in advance at the commencement of each Subscription and are non-refundable. If an alternative payment schedule is specified in the agreed Order, such schedule shall apply to the relevant payments.
- 5.2 The Customer shall pay the Subscription Charge and any other applicable Charges specified in the Order in accordance with clause 10 (Charges) of this Agreement and the terms of the applicable Order.
- 5.3 Subscriptions for the Service Package are provided for the period specified in the relevant Order; in the three (3) month period prior to the expiration of a Subscription Proteus will provide the Customer with pricing for renewal of the relevant Subscription.
- 5.4 The Customer agrees and acknowledges that additional Charges (in addition to the Subscription Charge) may be payable by the Customer in respect of any request to:
  - 5.4.1 change the specification of the Service Package;
  - 5.4.2 change the number of Users set out in the Order;
  - 5.4.3 implement new services within or make modifications to the existing Service Package;
  - 5.4.4 provide Implementation Services, Consultancy Services and/or any other additional services for the Customer and/or its Users.
- 5.5 The Customer acknowledges that each Subscription shall automatically renew for a further period of twelve (12) months at the end of the Subscription, unless the Customer gives Proteus not less than twelve (12) months' prior notice in writing (such notice to expire no later than the end of the original Subscription). Proteus will notify the Customer of any adjustment to the Subscription Charge in accordance with paragraph 5.3. The Subscription Charge (as adjusted) shall become due and payable on the commencement of the Subscription renewal.

## **6 Intellectual Property Rights**

- 6.1 The provisions of this paragraph 6 shall apply in respect of the Learning Hub Services in addition to the provisions of Clause 13 of this Agreement. In the event of any conflict between this paragraph 6 and Clause 13 of this Agreement, the provisions of this paragraph 6 shall prevail.
- 6.2 The Learning Hub and the Learning Hub Services are a combination of materials in different forms, including graphics, images, text and software. All Intellectual Property Rights comprised in the Learning Hub and the Learning Hub Services (**Proteus IPRs**) will at all times remain the property of Proteus or of its licensors (as applicable).
- 6.3 To the extent that it is so entitled, Proteus grants the Customer a non-exclusive, non-transferable, limited licence to use the Proteus IPRs for the purpose of allowing its authorised Users to access the Learning Hub and make use the Learning Hub Services, solely during the period of its Subscription, and solely for the Permitted Purpose. **Permitted Purpose** means use solely for the Customer's internal business operations and in accordance with the applicable Documentation and the terms of this Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:
  - 6.3.1 copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third

parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of the Learning Hub Services;

- 6.3.2 permitting any use of any Learning Hub Services in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Learning Hub Service (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing);
  - 6.3.3 combining, merging or otherwise permitting any of the Learning Hub Services (or any part thereof) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
  - 6.3.4 attempting to reverse engineer, observe, study or test the functioning of or decompile the Software or the Learning Hub Services (or any part).
- 6.4 A Service Package is non-transferable and personal to the Customer for which it is provided. If the Customer entity is divested out of the Customer's group, or the scope of the business or Control of the receiving client entity is changed from that which it had at the date the agreed Order was executed, the Customer agrees that an additional Subscription Charge shall in Proteus' sole discretion become payable for continued use of the Service Package by the divested or changed Customer entity.
- 6.5 The Customer hereby agrees that any and all information and content uploaded to the Learning Hub by the Customer and/or its Users shall be deemed to be "Customer Materials" for the purposes of this Agreement. Without prejudice to the generality of Clause 13 of this Agreement (Intellectual Property Rights), the Customer hereby grants to Proteus a non-exclusive, non-transferable licence to hold within the Learning Hub all Customer Materials uploaded by or on behalf of the Customer and/or its Users to the Learning Hub. The Customer shall ensure it (and its duly authorised administrator Users) shall only upload Customer Material to the Learning Hub which is Customer owned or licensed content, and shall ensure that Users maintain only such content and their own original content in the Learning Hub on behalf of the Customer, at all times in accordance with Proteus' Acceptable Use Policy. The Customer may submit to Proteus exemplars of projects and other materials, combining Proteus and Customer content, for use by Customer's Users and, where such exemplars and materials are approved by Proteus for general adoption by Customer's Users, such use shall be limited to the duration of the Customer's Subscription. The Customer shall not make any use of any such exemplars and materials after the expiry of the relevant Subscription without Proteus's prior written permission and payment of any applicable licence fee which Proteus may reasonably stipulate. Upon expiry or termination of the Subscription all rights granted to the Customer under this Schedule 1A and/or any Order (including all rights to use and access the Learning Hub and to make use of any outputs of the Learning Hub) shall immediately cease.
- 6.6 The Customer shall not (and shall ensure that its Users shall not) reproduce, modify, adapt, translate, reverse engineer, decompile or disassemble any software provided through or comprised in the Learning Hub (the **Software**), or create any derivative work based on the Software or merge or include Software with or in any other software.
- 6.7 The Customer shall not (and shall ensure that its Users shall not):
- 6.7.1 make the whole or any part of the Learning Hub available to any party other than its duly authorised Users in accordance with the terms of this Agreement;
  - 6.7.2 provide a copy of any Software to any other person;

- 6.7.3 use the Learning Hub and any Software as an integral part of any product which is supplied to any other person; or
  - 6.7.4 seek to support the Software itself or contract with any third party to support or maintain the Software.
- 6.8 All Intellectual Property Rights comprised in: (i) the Proteus IPRs; (ii) the Software; and (ii) all information relating to the operation of the Learning Hub (including the terms of this Agreement and any access codes supplied to the Customer in connection with the Learning Hub (together referred to as **Proteus Information**) shall at all times remain vested in Proteus or its licensor. The Customer acknowledges that the Software and the Proteus Information are Confidential Information and the Customer shall not (and shall ensure that its Users shall not) copy, disclose or use (except for the purpose for which they were supplied) the same without Proteus' express prior written consent.
- 6.9 Where a User or Customer extracts or reproduces any element of Proteus Permitted Content for their own use in presentations, or any other kind of communication made with third parties, the Customer agrees to ensure a clearly visible and legible attribution is clearly contained on such Proteus Permitted Content as "Powered by myProteus". Any failure by the Customer (and/or its User) to observe and perform this condition shall be a material breach of this Agreement incapable of remedy within the meaning of clause 15.1.1 and require delivery up to Proteus of all Proteus Permitted Content in accordance with clause 15.4.3.

**ANNEX 1**  
**ACCEPTABLE USE POLICY**

**[TO BE INSERTED]**

**SCHEDULE 1B**  
**CONSULTANCY SERVICES TERMS**

**1 Definitions**

In this Schedule 1B (Consultancy Services Terms):

<b>Commencement Date</b>	means the date on which the Consultancy Services shall commence, as specified in the Order;
<b>Consultancy Services</b>	means those consultancy services to be performed by the Individual under the Engagement, being one or more of Proteus' Assurance, Capability and/or Partner offerings, as more particularly set out in the Order;
<b>Engagement</b>	means the engagement by the Customer of Proteus to provide services of the Individual on the terms set out in the Agreement (including this Schedule 1B);
<b>Engagement Period</b>	means the duration of the Engagement Period as specified in the Order;
<b>Individual</b>	means the individual made available by Proteus to provide the Consultancy Services or his or her Substitute;
<b>Substitute</b>	means the individual appointed in substitution for the Individual pursuant to paragraph 4.1.4.

**2 Application of these terms**

- 2.1 The terms set out in this Schedule 1B (Consultancy Services Terms) shall apply in relation to the provision of Consultancy Services under any Order.

**3 Term of Engagement**

- 3.1 Proteus shall make available to the Customer the Individual to provide the Consultancy Services on the terms of Schedule 1B (Consultancy Services Terms).
- 3.2 The Engagement shall commence on the Commencement Date and shall cease on the Expiry of the Engagement Period unless terminated earlier in accordance with the terms of clause 15 (Termination) of this Agreement.
- 3.3 Each Order shall specify the Performance Location and the Customer shall make such premises fully available for Proteus and Proteus Personnel.

**4 Proteus Obligations**

- 4.1 During the Engagement Proteus shall, and (where appropriate) shall procure that the Individual shall:
- 4.1.1 provide the Consultancy Services with all due care, skill and ability and use its or his best endeavours to promote the interests of Proteus;



- 4.1.2 devote as much time as is reasonably necessary for their proper performance of the Consultancy Services; and
- 4.1.3 If the Individual is unable to provide the Consultancy Services due to illness or injury or ceases to be employed or engaged by Proteus or is otherwise unavailable for an extended period of time, Proteus shall advise the Customer of that fact as soon as reasonably practicable. For the avoidance of doubt, no Charge shall be payable in accordance with paragraph 5 (Charges and Expenses) in respect of any period during which the Consultancy Services are not provided.
- 4.1.4 If the Individual is unavailable pursuant to paragraph 4.1.3 Proteus may propose a suitably qualified and skilled substitute (at the same or a similar level of seniority as the Individual) to perform the services in place of the Individual. If the Customer agrees the Substitute, such agreement not to be unreasonably withheld, Proteus:
- (a) shall procure that the Substitute shall commence performance of the Consultancy Services in place of the Individual as soon as reasonably practicable; and
  - (b) shall be entitled to continue to invoice the Customer in respect of the Charges in accordance with paragraph 5 (Charges and Expenses).
- 4.1.5 Proteus shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such reasonable assistance or information as the Customer may require.
- 4.1.6 Unless it or he has been specifically authorised to do so by the Customer in writing (including in the Order):
- (a) neither Proteus nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Customer; and
  - (b) Proteus shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Customer.
- 4.1.7 Proteus shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Consultancy Services are provided and report to the Customer any unsafe working conditions or practices of which it becomes aware during the Engagement.
- 4.1.8 Proteus shall procure that the Individual shall comply with the Customer's internal policies which are relevant to the provision of the Consultancy Services insofar as they are applicable to independent contractors and provided they are made available to the Customer and the Individual.
- 4.1.9 Proteus may use a third party to perform any functions which are reasonably incidental to the provision of the Consultancy Services provided that the Customer will not be liable to bear the cost of such functions.
- 4.1.10 Each party shall comply, and Proteus shall procure that the Individual shall comply, with the terms of clause 18 (Anti-bribery).
- 4.1.11 Proteus shall, and shall procure that the Individual shall:
- (a) not engage in any activity, practice or conduct which would constitute either:

- (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
    - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
  - (b) have and shall maintain in place throughout the term of this Agreement such policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including without limitation employees of Proteus and any Substitute), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;
  - (c) promptly report to the Customer any request or demand received by Proteus or the Individual from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement; and
  - (d) within thirty (30) days of the date of the Order, and annually thereafter, certify to the Customer in writing signed by an officer of Proteus compliance with this paragraph 4.1.11 by Proteus and the Individual. Proteus shall provide such supporting evidence of compliance with this paragraph 4.1.11 as the Customer may reasonably request.
- 4.2 The Customer shall have no right to, nor shall seek to, exercise any direction, control, or supervision over the Proteus in the provision of the Consultancy Services. Proteus shall endeavour to co-operate with the Customer's reasonable requests within the scope of the Consultancy Services, however it is acknowledged that Proteus shall have autonomy over their working methods.

## **5 Charges and Expenses**

- 5.1 The Customer shall pay Proteus the Charges set out in the Order in accordance with clause 10 (Charges) and this paragraph 5.
- 5.2 On the last Business Day of each month during the Engagement Proteus shall submit to the Customer an invoice which gives details of the hours which the Individual has worked, the Consultancy Services provided and the Charges payable for the Consultancy Services during the preceding month.
- 5.3 In consideration of the provision of the Consultancy Services, the Customer shall pay each invoice submitted by the Proteus in accordance with clause 10 (Charges).
- 5.4 Expenses incurred by the Individual shall be reimbursed by the Customer in accordance with clause 10.4, save where otherwise agreed in writing with the Customer (including as set out in the Order).

## **6 Other Activities**

- 6.1 Nothing in this Agreement shall prevent Proteus or the Individual from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of Proteus obligations under this Agreement.
- 6.2 Nothing in this Agreement shall prevent Proteus or the Individual from providing similar services to the Consultancy Services to any other third party either during or after the continuation of the Engagement, unless otherwise agreed in the Order.

## **7 Intellectual Property Rights**

- 7.1 Clause 13 of this Agreement shall apply in respect of the Consultancy Services.

- 7.2 The Customer acknowledges that whilst Proteus may in the course of providing the Consultancy Services make available to the Customer (including for demonstration or presentation purposes) access to or outputs from the Learning Hub, the Customer shall have no right of any kind to use or access the Learning Hub (or any outputs therefrom) unless it has entered into a valid Order for Learning Hub Services under this Agreement (subject always to the applicable licence terms applicable to the Learning Hub Services, as more particularly set out in Schedule 1A (Learning Hub Terms)).

## **8 Status**

- 8.1 The relationship of Proteus (and the Individual) to the Customer will be that of independent contractor and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Customer and Proteus shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
- 8.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly Proteus shall be fully responsible for and shall indemnify the Customer for and in respect of:
- 8.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection any payment or benefit received by the Individual in respect of the Consultancy Services, where such recovery is not prohibited by law. Proteus shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Customer's negligence or wilful default;
- 8.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Customer arising out of or in connection with the provision of the Consultancy Services, except where such a claim is as a result of any act or omission of the Customer.
- 8.3 Proteus warrants that it is not nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

## **SCHEDULE 2 SERVICES**

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- 1      [Learning Hub Services;]**
- 2      [Consultancy Services**
  - 2.1      Assurance Offering;
  - 2.2      Capability Offering;
  - 2.3      Partner Offering;]
- 3      [Implementation Services.]**

**SCHEDULE 3**  
**CHARGES**

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*[Insert price list]*

**SCHEDULE 4**  
**FORM OF ORDER**

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**Order date:**

**Order reference:**

Customer

Name: *[insert full registered company name and trading name (if any) and registered number]*

Address: *[registered office address]*

Contact:

Supplier

Name: myProteus Limited, registered company number 07304983

Address: 9 Quay Court, Colliers Lane, Stow-Cum-Quay, Cambridge, CB25 9AU

Contact: [●]

Bank details *[name, address, sort code, account no., account name, special instructions]*

**1 Services Ordered**

1.1 The Services included within this Order are indicated in the table below: *[DN: second column to be completed]*

Services	Included in this Order?	Sections to be completed
Learning Hub Services	[Yes][No]	Sections 2 and 3
Consultancy Services	[Yes][No]	Sections 2 and 4
Implementation Services	[Yes][No]	Sections 2 and 5
[Other Services]	[Yes][No]	Sections 2 and 6

**2 General Service Particulars**

Services Commencement Date:	
Performance Location:	
Deliverables:	
Milestones and Milestone dates:	
Customer Responsibilities:	

<b>Customer Materials:</b>	
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### 3 *Learning Hub Services*

Service Package	Subscription			
	Licence Scope	Subscription Charge/ Any other Charges	Subscription Period	Payment Terms
<ul style="list-style-type: none"> <li>[NB: PROTEUS TO COMPLETE]</li> </ul>	<p>Up to [xxx] users</p> <p>For [Name of Xxx business unit/division or project] of Customer</p>	<p>[Cost agreed commensurate with the service package]</p>	<p>[36 months]</p>	<p>£xxxxxx to be invoiced at start of the subscription.</p> <p>£xxxxxx to be invoiced on each subsequent anniversary.</p> <p>OR</p> <p>£xxxxxxx to be invoiced at the start of the subscription</p> <p>£xxxxxx to be invoiced on a monthly basis starting xxxxxx</p>
<b>Scope of Permitted Use</b>	<p>For use by employees of the Customer (each being defined in this Customer Order Form as a "User") authorised by the Customer, only in the Customer's [name of business unit/division] business unit/division and under the Customer's name</p>			

### 4 *Consultancy Services*

<b>Specification of Consultancy Services:</b>	
<b>Engagement Period:</b>	
<b>Person to whom the consultant should liaise with:</b>	
<b>Any Milestones/ Milestone dates for</b>	

<b>completion of particular projects:</b>	
<b>Charges:</b>	<i>[£ per including VAT, excluding expenses. RATE IN WORDS Pounds per day, including VAT, excluding expenses.]</i>
<b>Payment terms:</b>	

**5      *Implementation Services***

<b>Specification of Implementation Services:</b>	
<b>Milestones/ Milestone dates</b>	
<b>Charges:</b>	
<b>Payment terms:</b>	

**6      *[Other Services]***

<b>Specification of Services:</b>	
<b>Charges:</b>	
<b>Payment terms:</b>	

**7      *Order Confirmation***

Ordered by the Customer:	Accepted by the Proteus:
Signature	Signature
Name	Name
Title	Title
Date	Date



**SCHEDULE 5**  
**DATA PROTECTION**

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**Part A**  
**Operative provisions**

**1 Definitions**

1.1 In this Schedule 5:

<b>Controller</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Data Protection Laws</b>	means, as binding on either party or the Services: <ul style="list-style-type: none"><li>(a) the GDPR;</li><li>(b) the Data Protection Act 2018;</li><li>(c) any laws which implement any such laws; and</li><li>(d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;</li></ul>
<b>Data Subject</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>International Organisation</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>processing</b>	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of Proteus's obligations under this Agreement; and

**Sub-Processor**

means any agent, subcontractor or other third party (excluding its employees) engaged by Proteus for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.

**2 Customer's compliance with data protection laws**

The parties agree that the Customer is a Controller and that Proteus is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Proteus in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

**3 Supplier's compliance with data protection laws**

Proteus shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.

**4 Instructions**

4.1 Proteus shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with [*Section 1 of*] Part B of this Schedule 5 and this Agreement (including when making any transfer to which paragraph 9 relates), except to the extent:

4.1.1 that alternative processing instructions are agreed between the parties in writing; or

4.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

4.2 Without prejudice to paragraph 2 of this Part A, if Proteus believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

**5 Security**

Taking into account the state of technical development and the nature of processing, Proteus shall implement and maintain the technical and organisational measures set out in [*Section 2 of*] Part B of this Schedule 5 to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

**6 Sub-processing and personnel**

6.1 Proteus shall:

6.1.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;

6.1.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the

same obligations as under this Schedule 5 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by Proteus and ensure each such Sub-Processor complies with all such obligations;

6.1.3 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

6.1.4 ensure that all natural persons authorised by Proteus or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

## **7 List of authorised sub-processors**

The Customer authorises the appointment of the Sub-Processors listed [below: *[insert]* OR *[insert where listed]*].

## **8 Assistance**

8.1 Proteus shall (at the Customer's cost) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Proteus.

8.2 Proteus shall (at the Customer's cost) taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

## **9 International transfers**

Proteus shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the *[United Kingdom]* or to any International Organisation without the prior written authorisation of the Customer.

## **10 Audits and processing**

Proteus shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Proteus's compliance with the obligations placed on it under this Schedule 5 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of *[one]* audit request in any 12 month period under this paragraph 10).

## **11 Breach**

Proteus shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

## **12 Deletion/return and survival**

On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, Proteus shall either return all of the Protected Data to the

Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Proteus to store such Protected Data. This Schedule 5 shall survive termination or expiry of this Agreement.

## **Part B**

### **Data processing and security details**

#### **Section 1—Data processing details**

Processing of the Protected Data by Proteus under this **Agreement** shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this [Section 1 of this] Part B.

**1 Subject-matter of processing:**

[Insert]

**2 Duration of the processing:**

[Insert]

**3 Nature and purpose of the processing:**

[Insert]

**4 Type of Personal Data:**

[Insert]

**5 Categories of Data Subjects:**

[Insert]

**6 [Specific processing instructions:**

[Insert]]

#### **Section 2—Minimum technical and organisational security measures**

7 Proteus shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

7.1 [In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Proteus shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

7.2 OR [insert relevant measures]]