



G-Cloud 15 | Lot 2b SaaS

Software licence agreement: Merlin (strategic issue management service)

January 2026

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Merlin software licence agreement

The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the Purpose.

BACKGROUND

- A. The Customer wishes to use the Supplier's service in its business operations.
- B. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

PARTICULARS OF CONTRACT

1. Date of the Agreement	[Insert the date that the agreement is signed]
2. The Supplier	[Insert correct Mott MacDonald entity name – Mott MacDonald Limited] incorporated and registered in England and Wales with company number [NUMBER - 1243967] whose registered office is at [REGISTERED OFFICE ADDRESS – 8-10 Sydenham Road, Croydon, Surrey, CR0 2EE, United Kingdom] (" Supplier ").
3. The Customer	[Insert Customer's company name] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the " Customer ")
4. Initial User Subscriptions	[NUMBER OF INITIAL USER SUBSCRIPTIONS]
5. Subscription Fees	Subscription Fees The Subscription Fees shall amount to a total of £[AMOUNT], based on £[AMOUNT] per User Subscription. Additional User Subscription Fees Additional User Subscriptions may be purchased by the Customer in accordance with Schedule 2, paragraph 2.2 at £[AMOUNT] per User Subscription. Excess Data Storage Fees The Supplier's excess storage fees current as at the Effective Date are set out below: [INSERT EXCESS STORAGE FEES]. Support Fees The Supplier's standard and enhanced support fees are set out below: [INSERT DETAILS]

6. Payment Terms	Payment to be made to the Supplier within 30 days of the date of the invoice.
7. Software	[The online software applications provided by the Supplier as part of the Services.] OR [OTHER DESCRIPTION OF THE SOFTWARE BEING PROVIDED]
8. Services	The subscription services, including the Software, provided by the Supplier to the Customer under this agreement via [INSERT WEB ADDRESS] or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
9. Documentation	The document made available to the Customer by the Supplier online via [INSERT WEB ADDRESS] or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
10. Notice Supplier (address)	[INSERT ADDRESS FOR RECEIPT OF NOTICES]
11. Notice Customer (address)	[INSERT ADDRESS FOR RECEIPT OF NOTICES]
12. Purpose	[DESCRIBE THE PURPOSE OF THE SOFTWARE]
13. Initial Subscription Term	[TERM]
14. Renewal Period	[AUTOMATIC RENEWAL PERIOD FOLLOWING THE INITIAL SUBSCRIPTION TERM]
15. Support Services Policy	The Supplier's policy for providing support in relation to the Services as made available at [INSERT WEB ADDRESS] or such other website address as may be notified to the Customer from time to time.
16. Mandatory Policies	[LIST THE MANDATORY POLICIES HERE] The Mandatory Policies are: • [Data and Privacy Policy]
17. Password Term	[Frequency of password changes]

1. This agreement consists of:
 - 1.1 the Particulars of Contract (as shown above); [and]
 - 1.2 [the Special Terms (below); and]
 - 1.3 the Schedules (below).
2. In the event of any conflict between the provisions of the Particulars of Contract. [the Special Terms] and provisions of the Schedules, the order of precedence shall be as set out above in paragraph 1.

The Parties hereto have caused this agreement to be executed on the 'Date of the Agreement' specified above.

Signed for and on behalf of the **Supplier**

Signed for and on behalf of the **Customer**

Signature

Signature

Name

Name

Role

Role

Date

Date

[THE SPECIAL TERMS

Amendments to the Schedules:

[INSERT ANY AGREED AMENDMENTS TO THE SCHEDULES – e.g. “*Schedule 2, paragraph 2.1 is amended as follows:*”]]

Schedule 1: Definitions and Interpretation

1.1 INTERPRETATION

1.1.1 The definitions and rules of interpretation in this paragraph apply in this agreement.

1.1.2 **Authorised Users:** the Customer and those employees, agents, suppliers, subcontractors and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Schedule 2, paragraph 2.1.2iv).

1.1.3 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.1.4 **Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

1.1.5 **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Schedule 2, paragraphs 2.11.6 or 2.11.7.

1.1.6 **Customer Data:** the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

1.1.7 **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to Personal Data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

1.1.8 **Documentation:** as defined in the Particulars of Contract.

1.1.9 **Effective Date:** the date of this agreement.

1.1.10 **Feedback** means any and all feedback or suggestions that Customer (including any of its personnel) provides to Supplier regarding the Software or Services.

1.1.11 **Initial Subscription Term:** as set out in the Particulars of Contract.

1.1.12 **Initial User Subscriptions:** as set out in the Particulars of Contract.

1.1.13 **Mandatory Policies:** the Supplier's business policies and codes listed in the Particulars of Contract, as amended by notification to the Customer from time to time.

1.1.14 **Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

1.1.15 **Payment Term:** as set out in the Particulars of Contract.

1.1.16 **Purpose:** as set out in the Particulars of Contract.

1.1.17 **Renewal Period:** the period described in the Particulars of Contract.

1.1.18 **Services:** as set out in the Particulars of Contract.

1.1.19 **Software:** as set out in the Particulars of Contract.

1.1.20 **Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Particulars of Contract.

1.1.21 **Subscription Term:** has the meaning given in Schedule 2, paragraph 2.14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

1.1.22 **Support Services Policy:** as set out in the Particulars of Contract.

1.1.23 **UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU)

- 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.1.24 **Usage Data:** means such data or information as Supplier may collect relating to Customer's installation, access or use of the Software, Software features and functionality, Services and other Supplier services.
- 1.1.25 **User Subscriptions:** the user subscriptions purchased by the Customer pursuant to Schedule 2, paragraph 2.9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
- 1.1.26 **Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 1.1.27 **Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 1.1.28 Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.1.29 Unless the context otherwise requires:
- i) words in the singular shall include the plural and in the plural shall include the singular;
 - ii) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - iii) a reference to one gender shall include a reference to the other genders; and
 - iv) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.1.30 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.1.31 References to paragraphs and Schedules are to the paragraphs and Schedules of this agreement.
- 1.1.32 The Schedules form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules.

Schedule 2: Agreed Terms

2.1 USER SUBSCRIPTIONS

2.1.1 Subject to:

- i) the Customer purchasing the User Subscriptions in accordance with Schedule 2, paragraph 2.2.3 and Schedule 2, paragraph 2.9.1;
- ii) the restrictions set out in this Schedule 2, paragraph 2.1; and
- iii) the other terms and conditions of this agreement,

the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.1.2 In relation to the Authorised Users, the Customer undertakes that:

- i) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- ii) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- iii) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly or

as otherwise indicated in the Particulars of Contract and that each Authorised User shall keep his password confidential;

- iv) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time;
- v) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- vi) if any of the audits referred to in Schedule 2, paragraph 2.1.2v) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Supplier shall be entitled to disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- vii) if any of the audits referred to in Schedule 2, paragraph 2.1.2v) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Particulars of Contract within 10

- Business Days of the date of the relevant audit; and
- viii) if any of the audits referred to in Schedule 2, paragraph 2.1.2v) reveal that the Customer has breached the terms of this agreement the Customer shall pay all the Supplier's costs of undertaking the audit within ten (10) Business Days of the date of the relevant audit.
- 2.1.3 The Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - ii) facilitates illegal activity;
 - iii) depicts sexually explicit images;
 - iv) promotes unlawful violence;
 - v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - vi) is otherwise illegal or causes damage or injury to any person or property;
 - vii) and the Supplier reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of this paragraph.
- 2.1.4 The Authorised Users shall not:
- i) except as may be allowed by any applicable law which is incapable of exclusion under this agreement between the parties and except to the extent expressly permitted under this agreement:
 - a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or
- distribute all or any portion of the Software or the source code and/or Documentation (as applicable) in any form or media or by any means; or
- b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- ii) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - iii) use the Services and/or Documentation to provide services to third parties; or
 - iv) subject to Schedule 2, paragraph 2.22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, novate, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - v) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Schedule 2, paragraph 2.1.1
- 2.1.5 The Authorised Users shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.1.6 The rights provided under this Schedule 2, paragraph 2.1.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

2.2 ADDITIONAL USER SUBSCRIPTIONS

2.2.1 Subject to Schedule 2, paragraph 2.2.2 and Schedule 2, paragraph 2.2.3 the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the Initial User Subscriptions and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

2.2.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.

2.2.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within the Payment Term, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Particulars of Contract and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

2.3 SERVICES

2.3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

2.3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, [seven days a week OR on a Business Day], except for:

- i) planned maintenance carried out during the maintenance window of [10.00 pm to 2.00 am UK time]; and
- ii) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

2.3.3 The Supplier will, as part of the Services and in consideration of the support fees set out in the Particulars of Contract, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

2.4 CUSTOMER DATA

2.4.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

2.4.2 In the event of any loss or damage to Customer Data caused by the Supplier, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data

maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

- 2.4.3 Customer agrees and acknowledges that the Supplier will from time to time collect Usage Data and that all Usage Data shall be owned by the Supplier and deemed Supplier intellectual property.

2.5 PERSONAL DATA

- 2.5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule 2, paragraph 2.4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- 2.5.2 The parties acknowledge that:

- i) if the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under this agreement, the Customer is the Data Controller and the Supplier is the Data Processor for the purposes of the Data Protection Legislation.
- ii) Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- iii) subject to Schedule 2, paragraph 2.5.4ii), the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.

- 2.5.3 Without prejudice to the generality of Schedule 2, paragraph 2.5, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.

- 2.5.4 Without prejudice to the generality of Schedule 2, paragraph 2.5, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- i) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- ii) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - a) the Customer and/or the Supplier has provided appropriate safeguards in relation to the transfer;
 - b) the Data Subject has enforceable rights and effective legal remedies;

- c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - iii) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - iv) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - v) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - vi) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 2, paragraph 2.4.
- 2.5.5 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the

nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

2.5.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule 2, paragraph 2.4. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Schedule 2, paragraph 2.4.

2.5.7 The Supplier may, at any time on not less than 30 days' notice, revise this Schedule 2, paragraph 2.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

2.6 THIRD PARTY PROVIDERS

2.6.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or

commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer (or other Authorised User) and the relevant third party, and not the Supplier. The Supplier recommends that the Customer (or any other Authorised User) refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

2.7 SUPPLIER'S OBLIGATIONS

2.7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

2.7.2 The undertaking at Schedule 2, paragraph 2.7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Schedule 2, paragraph 2.7.1.

2.7.3 The Supplier:

- i) does not warrant, accept any liability (to the fullest extent permitted by applicable law) or otherwise commit that:
 - a) the Customer's use of the Services will be available, uninterrupted, error-free secure, accurate, reliable or complete;
 - b) that the Services will meet any particular performance or availability criteria;
 - c) your content will not be lost or damaged;
 - d) errors will be corrected or any particular support requests will be resolved to meet your needs; or
 - e) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- ii) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including, but not limited to, the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

2.7.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

2.7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary

for the performance of its obligations under this agreement.

2.8 CUSTOMER'S OBLIGATIONS

2.8.1 The Customer shall:

- i) provide the Supplier with:
 - a) all necessary co-operation in relation to this agreement; and
 - b) all necessary access to such information as may be required by the Supplier;
- ii) in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- iii) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- iv) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- v) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement (including but not limited to Schedule, 2 paragraphs 2.1.3 to 2.1.5 above) and shall be responsible for any Authorised User's breach of this agreement;
- vi) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this

agreement, including without limitation the Services;

- vii) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- viii) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the data centres where the Supplier hosts the Services from time to time, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

2.9 CHARGES AND PAYMENT

2.9.1

The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions and any additional User Subscriptions in accordance with this Schedule 2, paragraph 2.9 and the Particulars of Contract and the support fees in accordance with Schedule 2, paragraph 2.3.3 and the Particulars of Contract.

2.9.2

The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- i) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

- b) subject to Schedule 2, paragraph 2.14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
 - ii) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - b) subject to Schedule 2, paragraph 2.14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
 - iii) and the Customer shall pay each invoice within the Payment Term.
- 2.9.3 If the Supplier has not received payment within the Payment Term, and without prejudice to any other rights and remedies of the Supplier:
- i) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - ii) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 2.9.4 All amounts and fees stated or referred to in this agreement:

- i) shall be payable in pounds sterling;
- ii) are, subject to Schedule 2, paragraph 2.14.3ii), non-cancellable and non-refundable;
- iii) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

2.9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in the Particulars of Contract.

2.9.6 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Schedule 2, paragraph 2.2.3, the support fees payable pursuant to Schedule 2, paragraph 2.3.3 and/or the excess storage fees payable pursuant to Schedule 2, paragraph 2.9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Particulars of Contract shall be deemed to have been amended accordingly.

2.10 PROPRIETARY RIGHTS

2.10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

2.10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

2.11 CONFIDENTIALITY AND COMPLIANCE WITH POLICIES

2.11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- i) is or becomes publicly known other than through any act or omission of the receiving party;
- ii) was in the other party's lawful possession before the disclosure;
- iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- iv) is independently developed by the receiving party, which independent development can be shown by written evidence.

2.11.2 Subject to Schedule 2, paragraph 2.11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

2.11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

2.11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to

be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Schedule 2, paragraph 2.11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

2.11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

2.11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

2.11.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

2.11.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

2.11.9 The above provisions of this Schedule 2, paragraph 2.11 shall survive termination of this agreement, however arising.

2.11.10 In performing its obligations under this agreement, the Customer shall comply with the Mandatory Policies.

2.11.11 The Customer shall procure the compliance of its employees, agents, suppliers, subcontractors and

independent contractors with the Mandatory Policies.

2.12 INDEMNITY

2.12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the use of the Services and/or Documentation by the Customer and/or the Authorised Users, provided that:

- i) the Customer is given prompt notice of any such claim;
- ii) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- iii) the Customer is given sole authority to defend or settle the claim.

2.12.2 Subject to paragraph 2.12.4, the Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- i) the Supplier is given prompt notice of any such claim;
- ii) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- iii) the Supplier is given sole authority to defend or settle the claim.

2.12.3 In the defence or settlement of any claim, the Supplier may procure the

right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

2.12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- i) a modification of the Services or Documentation by anyone other than the Supplier; or
- ii) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- iii) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

2.12.5 The foregoing and Schedule 2, paragraph 2.13.3ii) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

2.13 LIMITATION OF LIABILITY

2.13.1 Except as expressly and specifically provided in this agreement:

- i) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information,

- instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- ii) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - iii) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 2.13.2 Nothing in this agreement excludes the liability of the Supplier:
- i) for death or personal injury caused by the Supplier's negligence; or
 - ii) for fraud or fraudulent misrepresentation.
- 2.13.3 Subject to Schedule 2, paragraph 2.13.1 and Schedule 2, paragraph 2.13.2:
- i) the Supplier shall not be liable for loss of production, loss of profit (actual or anticipated, direct or indirect), loss of product, loss of anticipated savings, loss of use, loss of business and business interruption, loss of revenue, loss of contract, depletion of goodwill and/or similar losses or loss, damage or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising under this agreement; and
 - ii) notwithstanding any other term to the contrary in this agreement or any related document and whether the cause of action for any claim arises in connection with the performance or contemplated performance of this agreement in contract or in tort, in negligence or for breach

of statutory duty, under indemnity or otherwise, in relation to any and all causes of action as aforesaid the total liability of the Supplier in the aggregate for all claims shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 2.13.4 All dates supplied by the Supplier for the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

- 2.13.5 All references to the "Supplier" in this Schedule 2, paragraph 2.13 shall, for the purposes of this paragraph, be treated as including all employees, subcontractors and suppliers of the Supplier and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this paragraph.

2.14 TERM AND TERMINATION

- 2.14.1 This agreement shall, unless otherwise terminated as provided in this Schedule 2, paragraph 2.14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for a successive **Renewal Periods**, unless:

- i) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- ii) otherwise terminated in accordance with the provisions of this agreement;
- iii) and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

2.14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- i) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- ii) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- iii) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- iv) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- v) the other party commences negotiations with all or any class

of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- vii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- viii) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- ix) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- x) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- xi) any event occurs, or proceeding is taken, with respect to the other

- party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Schedule 2, paragraph 2.14.2iv) to Schedule 2, paragraph 2.14.2x) (inclusive);
- xii) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- xiii) there is a change of control of the other party; or
- 2.14.3 On termination of this agreement for any reason:
- i) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- ii) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- iii) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with Schedule 2, paragraph 2.5.4iii), unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses

incurred by the Supplier in returning or disposing of Customer Data; and

- iv) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

2.15 FEEDBACK

- 2.15.1 If the Customer provides the Supplier with any Feedback, Supplier is free to use the Feedback however it chooses. Supplier is not required to make any use of any Feedback and doing so is purely optional. If Supplier makes use of Customer's Feedback, Supplier is not required to credit or compensate Customer (including any Authorised User). Customer represents and warrants that it has sufficient rights in any Feedback that it provides to Supplier to grant Supplier and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

2.16 FORCE MAJEURE

- 2.16.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm

or default of suppliers or sub-contractors.

2.17 VARIATION

- 2.17.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

2.18 WAIVER

- 2.18.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

2.19 RIGHTS AND REMEDIES

- 2.19.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

2.20 SEVERANCE

- 2.20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 2.20.2 If any provision or part-provision of this agreement is deemed deleted under Schedule 2, paragraph 2.20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

2.21 ENTIRE AGREEMENT

- 2.21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings

between them, whether written or oral, relating to its subject matter.

- 2.21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

- 2.21.3 Nothing in this paragraph shall limit or exclude any liability for fraud.

2.22 ASSIGNMENT

- 2.22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

- 2.22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

2.23 NO PARTNERSHIP OR AGENCY

- 2.23.1 Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

2.24 THIRD PARTY RIGHTS

- 2.24.1 Except for Schedule 2, paragraph 2.13, this agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

2.25 NOTICES

- 2.25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Particulars of Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
- 2.25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

2.26 GOVERNING LAW

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

2.27 JURISDICTION

- 2.27.1 Each party irrevocably agrees 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 or its subject matter or formation including non-contractual disputes or claims).

Schedule 3: Processing, Personal Data and Data Subjects

Description	Details
Identity of the Data Controller and Data Processor	
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	

