

TERMS OF BUSINESS FOR THE PROVISION OF SERVICES BY SARD JV LIMITED

Together with the Engagement Letter, these terms of business apply to the performance and delivery of the Services by SARD JV Limited.

1. INTERPRETATION

1.1 Unless stated otherwise, the following definitions and rules of interpretation apply to these terms:

"Applicable Law"	in England any and all applicable laws, regulations and industry standards or guidance (including without limitation any applicable British Standard) and any applicable and binding judgment of a relevant court of law;
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
"Customer"	the customer named in the Engagement Letter;
"Customer's Equipment"	any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;
"Customer's Manager"	the Customer's manager for the Services, appointed in accordance with clause 4.1;
"Deliverables"	the report(s) produced by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services (including drafts);
"Toolkit / System(s)"	is the Supplier's proprietary toolkits and systems, designed for use by both the Supplier and/or the Customer to input, process, and analyse operational data. These tools are utilised for generating management reports and undertaking tasks as predetermined in the Engagement Letter;
"Document"	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
"Engagement Letter"	means the engagement letter attached to these terms, which includes details of the Customer, the scope of Services to be provided and timelines for delivery, the

Supplier's charges and other relevant information to the arrangement;

"Group"	for a party, all group undertakings of that party ("group undertaking" having the meaning given to it under section 1161(5) of the Companies Act 2006) and any reference to a "Group Company(ies)" means any such group undertaking;
"In-put Material"	all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications;
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Personal Data"	shall have the meaning set out in the Data Protection Act 1998 until the General Data Protection Regulation (Regulation (EU) 2016/679) comes into force and shall thereafter have the meaning set out in such regulation;
"Pre-existing Materials"	all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Services, including computer programs, data, reports and specifications;
"Services"	the services to be provided by the Supplier under this agreement as set out in the Engagement Letter, as the same may be varied by the parties in writing;
"Supplier"	SARD JV Limited;
"Supplier's Manager"	the Supplier's manager for the Services appointed under clause 3.3; and
"VAT"	value added tax chargeable under English law for the time being and any similar tax.

- 1.2 Clause headings shall not affect the interpretation of these terms.
- 1.3 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.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the date of this agreement shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax but not e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **these terms** is to these terms of business and a reference to **this agreement** is to these terms and the Engagement Letter.
- 1.12 References to clause(s) are to the clause(s) of these terms.
- 1.13 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.

2. TERMS OF ENGAGEMENT

- 2.1 The Customer shall return an executed copy of the Engagement Letter to confirm agreement and acceptance of these terms. In the event of the

Customer instructing the Supplier to commence the Services without returning the signed Engagement Letter, the Customer will be deemed to have accepted the Engagement Letter, these terms and will be bound by them.

2.2 The Supplier shall provide the Services to the Customer on the terms and conditions set out in this agreement.

2.3 The Supplier shall provide the Services to the Customer during the period set out in the Engagement Letter.

3. SUPPLIER'S OBLIGATIONS

3.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Engagement Letter in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

3.3 The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier may replace the Supplier's Manager from time to time where necessary in the interests of the Supplier's business on giving written notice to the Customer.

3.4 The Supplier shall use reasonable endeavours to procure that any Supplier personnel attending the Customer's premises observe all health and safety and security procedures that apply at such premises and that have been communicated to it under clause 4.1.4 provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1 co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services;

4.1.2 provide for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, and other facilities as required by the Supplier or any of them;

- 4.1.3 provide, in a timely manner, such In-put Material and other information and access to its data and systems as the Supplier may require to perform the Services, and ensure that it is accurate in all material respects;
- 4.1.4 inform the Supplier of all health and safety rules and regulations and any other reasonable security procedures that apply at the Customer's premises;
- 4.1.5 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- 4.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Customer's Equipment in relation to the Services, in all cases before the date on which the Services are to start;
- 4.1.7 in relation to any In-put Material which contains Personal Data, ensure that such data is fully and irreversibly anonymised before it is provided to the Supplier (unless otherwise agreed with the Supplier in advance).
- 4.1.8 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5. AUTHORITY TO ENTER INTO AGREEMENT.

Each of the parties to this Agreement hereby represents and warrants to the other that it is duly authorised and empowered to execute, deliver and perform this Agreement and that such action does not conflict with or violate any provision of law, regulation, policy, contract, deed of trust or other instrument to which it is a party or by which it is bound and that this Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms.

6. NON-SOLICITATION

- 6.1 Neither Party shall on its own account or in partnership or association with any person, whether directly or indirectly, during
 - (a) the term of this agreement; or
 - (b) six months after the last date of supply of the Services or termination of this agreement (whichever is the later), solicit or entice away from the other

any person who is, or has been, engaged as an employee, consultant or subcontractor of the other in the provision of the Services or attempt to authorise such action.

6.2 If the Customer or the Supplier breaches clause 6.1 in relation to an individual it shall pay to the other the greater of:

6.2.1 the relevant individual's gross annual salary inclusive of all benefits at the time of their resignation or departure, or in the case of a consultant or subcontractor, the total amount paid by the other party to such consultant or subcontractor during the 12 month period prior to the termination of their arrangement; or

6.2.2 the equivalent of 50% of the relevant individual's new annual salary inclusive of all benefits or total fees to be paid to a consultant or subcontractor, such sum being deemed by both parties to be fair compensation for the loss suffered as a result of such breach.

6.3 Employment as a result of a bona fide general recruitment campaign or advertisement shall not be a breach of the provisions of clause 6.1.

7. DATA PROTECTION

7.1 The parties acknowledge and agree that for the purposes of this agreement the Customer is the Data Controller and SARD JV is a Data Processor in respect of all Personal Data Processed pursuant to this agreement.

7.2 The Customer shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this agreement.

7.3 SARD JV shall only Process Personal Data for the purpose of performing the Services during the Term on documented instructions that the Customer may give to SARD JV from time to time concerning such Processing. The Customer shall ensure that any such instructions comply with all Applicable Laws. SARD JV may Process Personal Data otherwise than in accordance with the Customer's instructions if it reasonably considers that compliance with the Customer's instructions would or may breach any Applicable Laws. SARD JV shall inform the Customer of the requirements of Applicable Laws before any such Processing, unless the Applicable Laws

7.4 Notwithstanding any provision to the contrary within this clause 7, SARD JV may take any steps that SARD JV (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include SARD JV having the right to notify any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under the agreement to the extent that SARD JV (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.

7.5 SARD JV shall maintain appropriate technical and organisational security measures in accordance with Article 32 of the General Data Protection Regulation, including:

- 7.5.1 encryption of the Personal Data;
- 7.5.2 pseudonymisation of the Personal Data;
- 7.5.3 measures which ensure the confidentiality, integrity, availability and resilience of the systems Processing that Personal Data;
- 7.5.4 measures which enable SARD JV to restore the availability of and access to the Personal Data in a timely manner in the event of an incident which affects such availability and/or access;
- 7.5.5 a process for regularly testing, assessing and evaluating the effectiveness of such technical and organisational measures for ensuring the security of the Processing.

7.6 SARD JV shall ensure that the measures to be taken pursuant to clause 7.5 are appropriate having regard to:

- 7.6.1 the nature of the Personal Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed; and
- 7.6.2 the state of technological development and the cost of implementing such measures.

7.7 SARD JV shall:

- 7.7.1 maintain a record of its Processing activities which relate to this agreement in accordance with the requirements of Article 30(2) of the General Data Protection Regulation;
- 7.7.2 at any time upon request, and in any event upon termination or expiry of this agreement, (unless the Customer agrees otherwise in writing in each case) deliver up:
 - 7.7.2.1 all Personal Data Processed pursuant to this agreement; and
 - 7.7.2.2 all such records that SARD JV holds in accordance with clause 7.7.1.

Following such delivery up and in the event of termination or expiry of this agreement SARD JV shall promptly and securely delete or destroy all such Personal Data (except for any Personal Data which Data Protection Laws require to be stored).

7.8 Each party shall:

- 7.8.1 provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 7; and
- 7.8.2 allow the other party, its agents, representatives and external auditors access (on reasonable notice and during normal business hours) to its premises and/or any other location where Personal Data is Processed under this agreement to allow such other party to audit

its compliance with 7 and provide reasonable co-operation as requested by such other party in the performance of such audit.

7.9 SARD JV shall not cause or allow Personal Data to be transferred to and/or otherwise Processed in a Non-adequate Country without the Customer's prior written approval.

7.10 The Customer acknowledges and agrees that SARD JV shall be entitled to use sub-processors to Process Personal Data on SARD JV's behalf. If SARD JV wishes to appoint additional or replacement sub-processors during the term of the agreement, it shall inform the Customer of such proposed appointment in advance and give the Customer the opportunity to object to the appointment. The Customer shall take into account any objections communicated to SARD JV by the Customer when deciding whether to make the appointment, but the Customer shall not be bound by such objections.

7.11 SARD JV shall procure that any sub-processors who have access to Personal Data in connection with this agreement shall be subject to binding contractual obligations which are substantially similar to the terms of this clause 7 and SARD JV shall be liable for all acts and omissions of such sub-processors in relation to the Processing of such Personal Data.

7.12 SARD JV shall, to the extent reasonably practicable, provide the Customer with such assistance as the Customer reasonably requests in order to comply with its obligations and fulfil Data Subjects' rights under Data Protection Laws, including:

7.12.1 responding to requests or queries from Data Subjects in respect of their Personal Data (including the provision of Portable Copies);

7.12.2 cooperating with an investigation in connection with the Personal Data by a regulatory body; or

7.12.3 reconstructing and/or otherwise safeguarding the Personal Data within any reasonable timescales specified by the Customer.

7.13 SARD JV shall notify the Customer without undue delay if SARD JV becomes aware of a Personal Data Breach.

7.14 The Customer shall reimburse SARD JV for all reasonable costs that SARD JV in complying with clauses 7.7 and 7.15

7.15 SARD JV shall at the Customer's expense provide reasonable assistance, as requested by the Customer from time to time, in undertaking any data protection impact assessments and/or consultation with a Supervisory Authority that the Customer may reasonably undertake pursuant to Article 35 and/or 36 (as applicable) of the General Data Protection Regulation.

7.16 SARD JV shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with this

agreement, shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.

7.17 SARD JV' obligations under this clause 7 exclude any Personal Data relating to its personnel engaged in the performance of SARD JV's obligations under this agreement generated by SARD JV solely for the purposes of its internal human resources procedures and records.

7.18 For the purpose of this clause 7 only the following definitions apply:

"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation;
"Data Controller"	has the meaning given in the Data Protection Act 1998 or (as applicable) has the meaning given to "controller" in the General Data Protection Regulation;
"Data Processor"	has the meaning given in the Data Protection Act 1998 or (as applicable) has the meaning given to "processor" in the General Data Protection Regulation;
"Data Protection Directive"	Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
"Data Protection Laws"	before 25 May 2018, the Data Protection Act 1998 and the Data Protection Directive and from 25 May 2018 the General Data Protection Regulation;
"Data Subject"	has the meaning given in the Data Protection Act 1998 or (as applicable) the General Data Protection Regulation;
"General Data Protection Regulation"	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"Non-adequate Country"	a country or territory which is outside the European Economic Area and in respect of which there has not been an Adequacy Decision. For the purposes of this agreement, "Non-adequate Country" includes the United States of America;

"Personal Data"	has the meaning given in the Data Protection Act 1998 or (as applicable) the General Data Protection Regulation;
"Personal Data Breach"	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
"Portable Copy"	a copy of Personal Data in such form as to enable the Customer to comply with its obligations under Article 20 of the General Data Protection Regulation; and
"Processing"	has the meaning given in the Data Protection Act 1998 or (as applicable) the General Data Protection Regulation and "Process" and "Processed" have corresponding meanings.

7.19 The Customer shall indemnify SARD JV against all reasonable liabilities, costs, expenses, damages and losses suffered or incurred by SARD JV as a result of complying with the Customer's instructions in relation to Personal Data.

8. CHANGE CONTROL

8.1 If the Customer wishes to change the scope or execution of the Services, it shall submit details of the requested change to the Supplier in writing. Within a reasonable time of any such submission, the Supplier shall provide a written estimate to the Customer of:

- 8.1.1 the likely time required to implement the change;
- 8.1.2 any necessary variations to the Supplier's charges arising from the change; and
- 8.1.3 any other impact of the change on this agreement.

8.2 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 17. The Supplier will not unreasonably withhold consent to customer's request for change at any time.

8.3 The Supplier reserves the right to charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 9.

8.4 The Supplier reserves the right to make changes to the Service as required from time to time or as required by Applicable Law provided that:

- 8.4.1 such changes do not have a material adverse effect on the quality and/or performance of, the delivery terms and/or sums due in respect of the Services, in which case no notice is required; and
- 8.4.2 the Customer is notified of such material changes no later than 10 Business Days before the change is to be effected;
- 8.4.3 if such change does have a material adverse effect and is not required by applicable Law the Customer shall have the right upon written notice to the Supplier to request that this agreement is fulfilled in accordance with the original unchanged Services within 14 Business Days of being notified of such change; and

8.5 if the Customer does not exercise any of its rights in accordance with clause(s) 8.4.2 and/or 7.4.3 within the specified time periods then the change shall take effect.

9. CHARGES AND PAYMENT

9.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Engagement Letter, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 9.2 shall apply if the Supplier provides Services on a time and materials basis and clause 9.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 9 shall apply in either case.

9.2 Where Services are provided on a time and materials basis:

- 9.2.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time in accordance with clause 9.2.5;
- 9.2.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day on weekdays (excluding public holidays);
- 9.2.3 the Supplier shall be entitled to charge an overtime rate of 150% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2;
- 9.2.4 the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 9.2.6; and
- 9.2.5 the parties agree that the Supplier may review and increase its standard daily fee rates provided that such rates cannot be increased more than once in any six month period. The Supplier shall give the

Customer written notice of any increase three months before the proposed date the increase will take effect. If such increase is not acceptable to the Customer, it may terminate this agreement by giving two months' written notice to the Supplier; and

- 9.2.6 the Supplier shall invoice the Customer monthly in arrears for its charges for time and expenses (together with VAT where appropriate) for the month concerned, calculated as provided for in this clause 9.2 and clause 9.4.

9.3 Where Services are provided for a fixed price;

- 9.3.1 the fixed price for the Services shall be the amount set out in the Engagement Letter;
- 9.3.2 the Customer shall pay the fixed price to the Supplier (without deduction or set-off) at the time or times stated in the Engagement Letter.
- 9.3.3 upon the payment due dates specified in the Engagement Letter in respect of which a payment is due, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (together with VAT, where appropriate) calculated as provided in clause 9.4.

9.4 Any fixed price and daily rate contained in the Engagement Letter excludes:

- 9.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred in accordance with the Supplier's own expenses policy by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
- 9.4.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.

9.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.

9.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date:

- 9.6.1 the Customer shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 9.6.2 the Supplier may suspend all Services until payment has been made in full.

9.7 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 9.7 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

9.8 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.9 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

10. INTELLECTUAL PROPERTY RIGHTS AND USE OF THE TOOLKIT / SYSTEM(S)

10.1 All Intellectual Property Rights in the Deliverables, the toolkit / system(s) and the Pre-existing Materials and any other Intellectual Property Rights which are created by or on behalf of the Supplier or which otherwise arise during the course of performing the Services shall vest in the Supplier (collectively the "Supplier's IP") and the Customer hereby assigns to the Supplier with full title guarantee (free from all liens, charges and third party rights) all of its rights, title and interest (if any) in and to the same (including all rights of action and claims for damages and benefits arising due to past and present infringement). The Customer shall cooperate and assist the Supplier by executing, and causing its personnel to execute, all documents reasonably requested by the Supplier to give full effect to the provisions of this clause.

10.2 All Intellectual Property Rights and all other rights in the In-Put Material shall belong to the Customer and the Supplier hereby assigns to the Customer with full title guarantee (free from all liens, charges and third party rights) all of its rights, title and interest (if any) in and to the same (including all rights of action and claims for damages and benefits arising due to past and present infringement). The Supplier shall cooperate and assist the Customer by executing, and causing its personnel to execute, all documents reasonably requested by the Customer to give full effect to the provisions of this clause.

10.3 Subject to clause 10.4, the Supplier licenses the Customer to use Supplier's IP to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate. The

Customer shall not sub-license, assign or transfer the rights granted in this clause 10.3.

10.4 The Customer licenses the Supplier to use the Intellectual Property Rights in the In- Put Material free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Supplier to provide the Services. The Customer shall not sub-license, assign or transfer the rights granted in clause 10.3. If this agreement is terminated, this licence will automatically terminate save to the extent necessary for the Supplier to exercise its rights pursuant to clause 11.4.

10.5 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customers use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Customer to use such rights.

10.6 The Customer shall with respect to any use of the Supplier's Toolkit / System(s):

10.6.1 observe the Supplier's acceptable use policy (and such other guidance and policies (including in relation to security) as it provides from time to time) and any limit on the number of users set out in the Engagement Letter; and

10.6.2 Shall not:

10.6.2.1 distribute, provide access to, license, sell, rent, lease, deal in, encumber or modify the Toolkit / System(s)

10.6.2.2 (other than to the extent necessary to use the Toolkit / System(s) as contemplated by this agreement) copy the Toolkit / System(s) (or any part of it/them); or

10.6.2.3 except to the extent required to be permitted by law, decompile the code in the Toolkit / System(s);

10.6.3 be responsible for providing its own internet access and for ensuring that its IT systems meet the Supplier's minimum recommended specification as notified to it (or published on the Supplier's website) from time to time;

10.6.4 not use the Toolkit / System(s) in any way which:

10.6.4.1 is for the benefit of any third party or for any purposes except as permitted by Supplier in writing;

10.6.4.2 is abusive, harmful, threatening or defamatory or any other way that may cause offence;

10.6.4.3 could be harmful to end-users' or our systems or data (including uploading any material that otherwise contains a virus, trojan horse or other malicious code);

- 10.6.4.4 breaches any laws or any a legal duty to a third party (including a duty of confidentiality) or which infringes a person's right to privacy;
- 10.6.4.5 promotes discrimination or is likely to incite hatred;
- 10.6.4.6 infringes the Intellectual Property Rights of any third party.

11. CONFIDENTIALITY

- 11.1 The Customer and the Supplier each undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been received by it (the "Receiving Party"), its employees, agents, consultants or subcontractors and any other confidential information concerning the other's (the "Disclosing Party") business or its products (collectively "Confidential Information") which the Receiving Party may obtain, except as permitted by clause 11.2.
- 11.2 The Receiving Party may disclose the Disclosing Party's Confidential Information:
 - 11.2.1 with prior written consent;
 - 11.2.2 to its employees, officers, representatives or advisers who need to know such Confidential Information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 11;
 - 11.2.3 where the Confidential Information is already in the public domain or comes into the public domain in the same or substantially the same form in which it has been disclosed in connection with this agreement without breach of this agreement; and
 - 11.2.4 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 The Receiving Party shall not, without the prior consent of the Disclosing Party, dispose of or make use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under this agreement.
- 11.4 Unless otherwise agreed, any anonymised data provided to Supplier by Customer in connection with the provision of the Services may be retained by Supplier indefinitely (notwithstanding termination of this agreement) and may be used for benchmarking purposes.
- 11.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but

shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

12. ETHICS

12.1 The Supplier shall (and, as applicable, shall procure any Supplier subcontractor(s) in relation to the performance of the Services:

12.1.1 comply with all Applicable Laws relating to anti-bribery and anti-slavery including the Bribery Act 2010 and the Modern Slavery Act 2015 ("**Relevant Requirements**");

12.1.2 comply with the Supplier's policies relating to anti-bribery and anti-slavery and enforce them where appropriate ("**Relevant Policies**");

12.1.3 have and maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

12.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier; and

12.1.5 upon request certify to the Customer in writing that the Supplier complies with this clause 12 and provide such supporting evidence of compliance as the Customer may reasonably request.

12.2 The Supplier shall ensure that any person associated with the Supplier who performs Services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 12 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such person of any of the Relevant Terms.

12.3 For the purpose of this clause 12;

12.3.1 the meaning of "**adequate procedures**" and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under the Bribery Act 2010); and

12.3.2 a person associated with the Supplier includes the Supplier's employees (whether or not they are Supplier Personnel) and any of the Supplier's sub-contractors.

13. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these terms limits or excludes the Supplier's liability for:

- 13.1.1 death or personal injury caused by its negligence;
- 13.1.2 fraud or fraudulent misrepresentation; or
- 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- 13.2.1 loss of profits;
- 13.2.2 loss of sales or business;
- 13.2.3 loss of agreements or contracts;
- 13.2.4 loss of anticipated savings;
- 13.2.5 loss of or damage to goodwill;
- 13.2.6 loss of use or corruption of software, data or information;
- 13.2.7 any unlawful third party access to systems through the Toolkit / System(s);
- 13.2.8 any indirect or consequential loss;

13.3 Subject to clause 13.1 and clause 13.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the amounts paid by the Customer to the Supplier for Services performed under this agreement.

13.4 The Supplier is not liable for Customer data uploaded through the Toolkit / System(s). The Customer is responsible for its hardware, for the content and any other data uploaded through the Toolkit / System(s), for its access to the internet and for any and all liability that arises in connection with any unauthorised access to its systems or any activity using its usernames or passwords (whether authorised or not).

13.5 Neither the Supplier nor any of its suppliers gives any warranties nor makes any representations about its data or results to be obtained from using the Toolkit / System(s) and will not be liable (whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising) for any loss or damage arising out of any virus or other malicious code which is transmitted through the Toolkit / System(s).

13.6 The Supplier will use reasonable endeavours to ensure that the Toolkit / System(s) operates correctly and is available to the Customer. The Supplier does not warrant or represent that the Toolkit / System(s) will be:

- 13.6.1 available on an uninterrupted basis or error-free; or

13.6.2 compatible with third-party software or equipment.

13.7 To the extent permitted by law, this agreement excludes all warranties, terms and conditions, which may be implied by law, statute or otherwise. These terms of business apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

14. TERMINATION

14.1 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:

14.1.1 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;

14.1.2 the other party commits a material breach clause 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;

14.1.3 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;

14.1.4 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

14.1.5 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 (being a company) 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;

14.1.6 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 (being a company) 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;

14.1.7 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 (being a company);

14.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 14.1.9 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;
- 14.1.10 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;
- 14.1.11 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 clause 14.1.4 to clause 14.1.10 (inclusive); or
- 14.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15. CONSEQUENCES OF TERMINATION

15.1 On termination or expiry of this agreement:

- 15.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest (as applicable) and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 15.1.2 the Customer shall immediately cease all use of the Toolkit / System(s);
- 15.1.3 the Customer shall, within seven days, return all of the Supplier's Pre-existing Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 15.1.4 the following clauses shall continue in force: clause 6 (Non-solicitation), clause 10 (Intellectual property rights), clause 11 (Confidentiality and the Supplier's property), clause 13 (Limitation of liability), clause 15.1, clause 15.2, and clauses 18 to 29 inclusive.

15.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

16. FORCE MAJEURE

- 16.1 **"Force Majeure Event"** means any circumstance not within a party's reasonable control including, without limitation:

- 16.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 16.1.2 epidemic or pandemic;
 - 16.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 16.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 16.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 16.1.6 collapse of buildings, fire, explosion or accident;
 - 16.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - 16.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - 16.1.9 interruption or failure of utility service.
- 16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.4 The Affected Party shall:
- 16.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement; and
 - 16.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than eight weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.
- 16.6 If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate this agreement by giving four

weeks' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

17. VARIATION

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

18. WAIVER

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.

19. RIGHTS AND REMEDIES

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.

20. SEVERANCE

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

- 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.
- 21.2 Each party agrees that it 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 21.3 Nothing in this clause shall limit or exclude any liability for fraud.

22. CONFLICT

- 22.1 If there is an inconsistency between any of the clauses of these terms and the contents and the terms within the Engagement Letter, the clauses of these terms shall prevail.

23. ASSIGNMENT AND OTHER DEALINGS

- 23.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 23.2 The Supplier may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement, provided that the Supplier gives prior written notice to the Customer.

24. NO PARTNERSHIP OR AGENCY

- 24.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

26. NOTICES

26.1 A notice given to a party under or in connection with this agreement:

26.1.1 shall be in writing and in English or accompanied by an accurate translation into English;

26.1.2 shall be signed by or on behalf of the party giving it;

26.1.3 shall be sent to the party for the attention of the contact and at the address or email provided for that party in the Engagement Letter;

26.1.4 shall be sent by a method listed in clause 26.3; and

26.1.5 unless proved otherwise is deemed received as set out in clause 26.3 if prepared and sent in accordance with this clause.

26.2 A party may change its details for notice by giving notice to the other, the change taking effect for the party notified of the change at 9.00 am on the later of:

26.2.1 the date, if any, specified in the notice as the effective date for the change; or

26.2.2 the date five Business Days after deemed receipt of the notice.

26.3 This table sets out:

26.3.1 delivery methods for sending a notice to a party under this agreement; and

26.3.2 for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 26.4:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	11:00am on the second Business Day after posting or at the time recorded by the delivery service, whichever is earlier.
Pre-paid airmail providing proof of delivery.	11:00am on the fifth Business Day after posting or at the time recorded by the delivery service, whichever is earlier.
Fax.	At the time of transmission if sent during business hours. Any email sent outside of the

	hours of 9:00am and 5:00pm shall be deemed to have been delivered at 9:00am on the following Business Day after transmission.
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26.4 For the purpose of clause 26.3 and calculating deemed receipt:

26.4.1 all references to time are to local time in the place of deemed receipt;
and

26.4.2 if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

26.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26.6 A notice given under or in connection with this agreement is not valid if sent by e-mail.

27. COUNTERPARTS

27.1 The agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by an e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

27.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

28. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

28.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this agreement (including, without limitation, as provided at clause 28.3) the parties shall follow the procedure set out in this clause:

- 28.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Supplier's Manager and the Customer's Manager shall attempt in good faith to resolve the Dispute;
- 28.1.2 if the Supplier's Manager and the Customer's Manager are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the managing director of the Supplier and the managing director of the Customer, who shall attempt in good faith to resolve it; and
- 28.1.3 if the parties' managing directors are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.
- 28.2 If the Dispute is not resolved within 28 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 28 days, or the mediation terminates before the expiration of the said period of 28 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30 of these terms.
- 28.3 Claims for late payment, injunction and/or specific performance or where a party's rights would be lost due to any limitation period shall not be subject to the procedures set out in this clause 28.

29. GOVERNING LAW

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.

30. JURISDICTION

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).