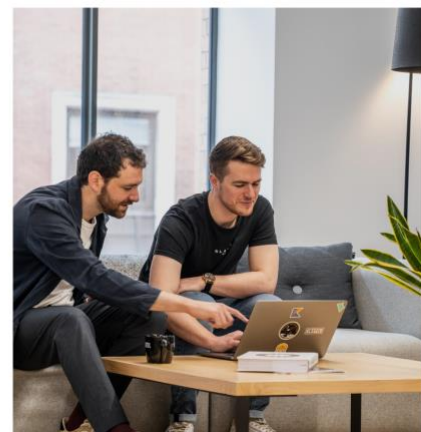
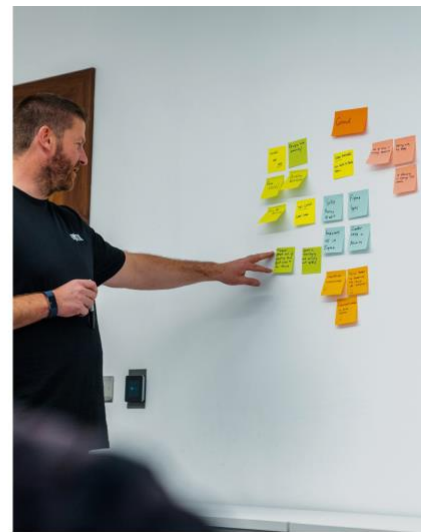


instil

Terms and Conditions

G-Cloud 15 Framework



Party	Supplier	Client
Name:	Instil Software Ltd	[CLIENT NAME]
Incorporation Location:	Northern Ireland	[LOCATION]
Company Reg Number:	NI054248	[COMPANY REG NUMBER]
Address:	Linen Loft 27-37 Adelaide Street Belfast BT2 8FE	[CLIENT ADDRESS]

IN CONSIDERATION of the mutual covenants and undertakings contained in this document, and intending to be legally bound, Supplier and Client (as designated above) agree as follows:

1. DEFINITIONS

- 1.1 **Specific Words or Phrases:** For purposes of this Agreement, each word or phrase listed below has the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used.

Acceptance shall mean acceptance of each Deliverable by Client as determined by the Acceptance Tests;

Acceptance Tests shall mean the tests agreed between the Parties which tests are designed to show that the Services and each Deliverable have been supplied in accordance with the agreed Specifications and otherwise

meet the applicable requirements set out in this Agreement;

Affiliate	means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with Client. As used herein, “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of the entity;
Agreement	the provisions of this Master Services Agreement and any schedule hereto;
Applicable Laws	means all laws, statutory instruments, regulations, orders and other legislative provisions which in any way relate to this Agreement and the provision of the Services;
Business Day	a day other than a Saturday, Sunday or public holiday in Northern Ireland when banks in Belfast are open for business;
Charges	the charges (excluding VAT) for the Services as set out in any SOW and any other charges which may be payable pursuant to the terms of this Agreement or any SOW;
Client Data	means any data that is provided by Client an Affiliate, User or Personnel (in each case, as such terms are defined herein) to Supplier (including through the Services)

	or processed (as defined herein) by Supplier on behalf of Client, an Affiliate, User or Personnel, including any Personal Data;
Client's Systems	means any data that is provided by Client an Affiliate, User or Personnel (in each case, as such terms are defined herein) to Supplier (including through the Services) or processed (as defined herein) by Supplier on behalf of Client, an Affiliate, User or Personnel, including any Personal Data;
Data Protection Laws	has the meaning given in Schedule 1;
Defect	any material defect, non-conformity or malfunction of any Service provided by Supplier;
Deliverable	means any deliverable (in any medium and in any stage of development or completion) provided by Supplier to Client or created by Supplier (including any of its employees, agents or subcontractors), alone or jointly with others, in connection with performing the Services;
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a software company;
Intellectual Property Rights	copyright, database rights, patents, patent applications, patent rights, rights in designs, trademarks, trademark applications, trademark registrations, trademark rights, trade secrets and all other intellectual property and proprietary information rights as may exist now or

	hereafter come into existence, all modifications, continuations, renewals and extensions of the foregoing, and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries and remedies relating to any past, present or future infringement of any of the foregoing, arising under the laws of any country, state or jurisdiction in the world;
ITEPA	the Income Tax (Earnings and Pensions) Act 2003;
NICs Legislation	the Social Security Contributions (Intermediaries) Regulations 2000;
Open Source Materials	software or other material that is distributed as “open source software” or under similar licensing or distribution terms (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache Software License, any of the Creative Commons suits of licenses, and any other licenses identified as open source licenses at www.opensource.org ;
Party	means either Supplier or Client individually, as the context so requires and “ Parties ” means Supplier and Client collectively;
Pre-Existing Intellectual Property	means any material that was developed by Supplier prior to rendering any Services under this Agreement;
Restrictive Open Source Materials	software or other materials that is subject to a “copyleft” license or other agreement that requires as a condition of use,

modification or distribution of such code, that such code or other software code combined or distributed with such code, be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributed at no licence fee;

Services

means the services described in the applicable SOW that are to be provided by Supplier to Client (including the provision of Deliverables, and any related services, information or materials to be provided by Supplier under this Agreement);

SOW

a statement of work for Services in a form agreed in Schedule 2 and executed by an authorised representative of each of the Parties, and which incorporates the terms of this Agreement and any additional terms set out therein;

Specification(s)

in relation to a SOW, the specification for any Deliverable to be provided under that SOW;

Subcontractor

means a contractor, agent, service provider, third party or consultant retained by Supplier pursuant to a written Agreement, or otherwise used by Supplier, including any person (whether a natural person or a corporation), directly or indirectly employed by or otherwise retained by that contractor, agent, service provider, third party or consultant;

Third Party Service Provider

means any of Supplier's contractors, Subcontractors, authorised agents, vendors and third party service providers

with access to Client Data or Client Systems;

Third Party Materials

means any Deliverable that is not the sole property of Supplier;

User

means a past, present or prospective end user or customer of Products and Services offered by Client or an Affiliate, whether such end user or customer is an individual or entity.

- 1.2 Clause and schedule headings do not affect the interpretation of this Agreement. Words in the singular include the plural and, in the plural, include the singular. A reference to a clause or a schedule is a reference to a clause or a schedule of this Agreement. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. References to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation. If the terms in any SOW conflict with the terms of this Agreement, the terms of this Agreement shall take precedence unless the SOW terms expressly dis-apply the terms of this Agreement.

2. TERM AND TERMINATION

- 2.1 This Agreement begins on the Effective Date and continues in effect unless superseded or otherwise terminated by either party. For the avoidance of doubt, the termination of the Agreement does not result in the termination of any previously issued SOW, each SOW being terminable only in accordance with its own provisions.
- 2.2 Either Party may terminate this Agreement if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, or if

any such proceeding is instituted against such Party (and is not dismissed within sixty (60) days thereafter). In addition, either Party may terminate this Agreement at any time when there is no SOW in effect upon thirty (30) days advance written notice to the other Party.

- 2.3 Each duly executed SOW will commence as of the Effective Date designated thereon, and will continue in effect thereafter until the earliest of (i) the expiration date designated thereon (if any), (ii) the date the Services have been satisfactorily completed and have been accepted and all applicable warranty and license periods have expired or otherwise terminated, or (iii) the date of termination specified by either Party in accordance with the following conditions:
 - 2.3.1 Supplier may, by providing written notice of termination to Client, terminate (in whole or in part) a SOW if Client breaches a material obligation (including, without limitation, its payment obligations under clause 13) under such SOW or this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach;
 - 2.3.2 Client may, by providing written notice of termination to Supplier, terminate (in whole or in part) any or all SOWs if Supplier: (a) breaches a material obligation under a SOW and fails to cure such breach within thirty (30) days after written notice of the breach; or (b) violates any Applicable Law.

For the avoidance of doubt, notice of termination for any one SOW is not a notice of termination for any other SOW.

3. SCOPE OF AGREEMENT

- 3.1 This Agreement does not commit Client or any Client Affiliate to purchase any services, deliverable or products, nor does it preclude or limit Client (or any Client Affiliate) from independently acquiring or developing competitive products or services for itself or its customers, or from providing competitive products or services to its customers, provided that Client does not breach its confidentiality obligations under this Agreement in doing so. This Agreement sets forth the terms and conditions that will govern the provision of Services as a result of the execution of a SOW by Supplier (or a Supplier Affiliate) and Client (or a Client Affiliate), save to the extent such terms are disappplied by Agreement in a SOW.
- 3.2 Either the entity designated above as Supplier (or any Affiliate of Supplier) and either the entity designated above as Client (or any Affiliate of Client) may enter into a SOW under this Agreement. The entity that executes (or

is deemed to have executed) a SOW is considered "Supplier" and "Client" (respectively) for all purposes of the SOW and the SOW is considered a two party agreement between those entities that incorporates the provisions of this Agreement as if those provisions were set forth in their entirety. Each SOW shall be in the form of a written document substantially in the form of Schedule 2.

4. DELIVERY

- 4.1 Supplier acknowledges that Client and its Affiliates, as well as their respective Personnel, clients and service providers, may use or benefit from the use of any Services or any information or materials provided by Supplier.
- 4.2 Each Party will designate a suitably qualified relationship manager who will be responsible for oversight of all SOW. Each Party will also designate a suitably qualified project manager who will represent that Party and be responsible for assigning, scheduling and supervising that Party's Personnel for each SOW. During a project, Supplier's project manager will provide Client project manager with status and other reports at intervals and with all information as Client may reasonably request.
- 4.3 Supplier will provide all Services as an independent contractor. Neither this Agreement nor Supplier's provision of Services will create an association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee, between Client and Supplier, and neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party.
- 4.4 Supplier's obligation to provide the Services shall be performed by personnel of the Supplier as the Supplier may consider appropriate (Supplier Personnel), subject to the Client being reasonably satisfied that the Supplier Personnel have the required skills, qualifications and resources to provide the Services to the required standard. The Client may reject Supplier Personnel at its sole discretion at any time, in the event that the Client rejects such Supplier Personnel the Supplier shall promptly provide an alternative suitable replacement.
- 4.5 Supplier will provide Client with Personnel who are trained and familiar with delivering the type of Services contemplated. Supplier will use adequate numbers of individuals with suitable training, education, experience and skill

to perform the Services in the most effective and cost efficient manner (determined in the Supplier's sole judgement) consistent with the terms of this Agreement.

- 4.6 Supplier has the right, at its own expense, to enlist additional or substitute Supplier Personnel in the performance of the Services, provided that Supplier provides details of the proposed substitute(s) in advance of the planned substitution and subject to Client being reasonably satisfied that such Supplier Personnel have the required skills, qualifications and resources to provide the Services to the required standard.
- 4.7 Where Supplier provides a substitute pursuant to clause 4.6 above, Supplier shall be responsible for paying the substitute and shall ensure that any agreement between the Supplier and any such substitute shall contain obligations which correspond to the obligations of the Supplier under the terms of this Agreement and the Supplier shall remain responsible for the acts or omissions of any such substitute.
- 4.8 Supplier is solely responsible for all employer related responsibilities with respect to its Personnel including but not limited to maintaining all required insurance coverages, filing all applicable tax returns and making all required payments and deposits of taxes in a manner consistent with Supplier's status as an independent contractor.
- 4.9 Save as otherwise stated in this Agreement, Client acknowledges and accepts that the Supplier is in business on its own account and Supplier shall be entitled to seek, apply for, accept and perform contracts to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment to the performance of the Services.
- 4.10 Supplier will not directly or indirectly solicit any Client employee for employment or services while a SOW is in effect and for the twelve (12) month period following the date the SOW terminates or expires.
- 4.11 Client will not directly or indirectly solicit or hire any Supplier Personnel for employment or services who has been assigned by Supplier to provide Services to Client under a SOW at any time while a SOW is in effect and for the twelve (12) month period following the date the SOW terminates or expires.
- 4.12 For the purposes of clauses 4.10 and 4.11, the advertisement of employment opportunities by a Party in any public forum (including magazines, trade journals, publicly accessible internet sites, classified

advertisements, or job fairs open to the public) will not be considered solicitation, and the hiring of the other Party's Personnel as a result of his or her response to a general employment advertisement or in response to his or her unsolicited employment inquiry will not constitute a breach of this Agreement by the hiring Party.

5. EQUIPMENT

- 5.1 Supplier shall provide at its own cost, subject to any agreement to the contrary specified in a SOW, all such necessary equipment as is reasonable for the satisfactory performance by the Supplier Personnel and any substitutes of the Services.
- 5.2 If as a matter of convenience, Supplier is provided with equipment by Client or a Client Affiliate for the purposes of a SOW, Supplier shall be responsible for ensuring that the security and condition of such equipment is preserved. If and to the extent that any equipment is lost or damaged while in the Supplier's possession, Supplier shall be responsible for the cost of any necessary repairs or replacement.

6. METHOD OF PERFORMING SERVICES

- 6.1 Supplier's Personnel are professionals who will use their own initiative as to the manner in which the Services are delivered provided that in doing so Supplier shall co-operate with Client and comply with all reasonable and lawful instructions of Client.
- 6.2 Supplier may provide the Services at such times and on such days as Supplier shall decide but shall ensure that Services are provided at such times as are necessary for the proper performance of the Services.
- 6.3 Supplier may provide the Services from such locations as are appropriate in Supplier's sole judgment. When necessary, Client will provide Supplier with appropriate access to the Client's facilities as is necessary for the effective conduct of the Services.
- 6.4 Upon completion or termination of a SOW, Client shall be under no obligation to offer the Supplier further work, nor shall the Supplier be under any obligation to accept any offer of further work made by Client.

7. RELATIONSHIP BETWEEN CLIENT AND SUPPLIER

- 7.1 The relationship between the parties is between independent companies acting at arm's length and nothing contained in this Agreement shall be construed as constituting or establishing any partnership or joint venture or relationship of employer and employee between the Parties or their personnel.
- 7.2 Neither Client nor its Affiliates are under an obligation to offer work to Supplier and Supplier is under no obligation to accept any work that may be offered by Client or an Affiliate. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of, or between, any performance of the Services under this Agreement.

8. ACCEPTANCE

- 8.1 After Services have been provided to Client, Client may test the Services to determine if the Services conform to the Acceptance Criteria in all material respects. Supplier will provide any assistance as Client reasonably requires to conduct acceptance testing.
- 8.2 If Client determines that the Services operate in accordance with and otherwise conform to, the Acceptance Criteria in all material respects, then Client will notify Supplier that Client accepts the Services. If Client determines that the Services do not operate in accordance with, or otherwise conform to, the applicable Acceptance Criteria in all material respects, then Client will provide Supplier with a notice describing the Defect. Supplier will have ten (10) Business Days following the date it receives Client's notice of Defect to correct the Services, at no additional cost to Client. If Supplier delivers a corrected version of the Services, then Client may repeat the Acceptance Testing process. If through no fault of Client Supplier fails to deliver within the ten (10) Business Day period a corrected version of the Services that conforms substantially to the Acceptance Criteria, in all material respects then Client may reject the Services and terminate the applicable SOW (in whole or in part) upon notice to Supplier.

9. CHANGE CONTROL

- 9.1 If either Party identifies a requirement for a change in this Agreement and/or any SOW including any requirement for services additional to those

set out in any SOW, a change request will be sent to the other party detailing the change requirements. If sent by Supplier the change request shall state the effect such a change shall have on the provision of the Services. If sent by Client, the receipt of the change request by Supplier will constitute a request to Supplier to state in writing the effect such a change shall have on the provision of the Services. Supplier shall use all reasonable endeavours to supply the necessary details within ten (10) Business Days from receipt of the change request or such other period as may be agreed.

9.2 Where a change to the Charges is required, the rates used as the basis for the additional costs for the change request shall be Supplier's standard daily rates prevailing at the time of the request. The Parties will then decide whether or not to implement the change.

9.3 Supplier shall not implement any changes unless requested to do so by Client.

10. THIRD PARTY MATERIALS AND PRE-EXISTING INTELLECTUAL PROPERTY

10.1 Supplier shall not incorporate into, embody in or provide with any Deliverable any Third Party Materials or Pre-Existing Intellectual Property, unless Supplier (i) has specifically identified such Third Party Materials or Pre-Existing Intellectual Property in the applicable SOW or otherwise obtained Client's prior written consent and (ii) has obtained any third-party rights necessary to provide the license to Client as set forth in clause 10.3 below.

10.2 The obligations set forth in clause 10.1 apply to any use of Open Source Software in connection with any Deliverable (excluding the obligation to obtain a license under clause 10.3). In addition, if Client approves use by Supplier of particular items of Open Source Software in connection with a Deliverable, Supplier shall include with such Deliverable a document identifying each such item of Open Source Software and including the full text of the related license. Client acknowledges that its license to any such Open Source Software shall be the Open Source Software license applicable to such code provided by Supplier. Notwithstanding anything to the contrary in this Agreement, Supplier may not incorporate into any Deliverable any Open Source Software which is Restricted Open Source Materials.

10.3 Supplier hereby grants Client a non-exclusive, royalty-free, irrevocable, worldwide, perpetual right and license (with right to sublicense through multiple tiers) to make, have made, sell, use, import, export, execute, reproduce, distribute, modify, adapt, publicly display, publicly perform, make derivative works of, and disclose any Third Party Materials or Pre-Existing Intellectual Property incorporated into, embodied in or provided with any Deliverable in connection with Client's use or exploitation of such Deliverable and the Services and as otherwise necessary to enable Client to exercise all of the rights assigned to Client under this Agreement.

11. WARRANTIES

11.1 Supplier warrants to Client that:

- (a) It has full right and power to enter into and perform this Agreement without the consent of any third party, and its performance under this Agreement will not conflict with any other obligation Supplier may have to any other party;
- (b) it shall perform the Services with reasonable care and shall in accordance with Good Industry Practice;
- (c) it shall ensure that the Services (including all Deliverables) and Supplier's performance of its obligations under this Agreement are in compliance at all times with all Applicable Laws;
- (d) it shall use all reasonable endeavours in accordance with Good Industry Practice to ensure that the Services and all Deliverables shall be free of any: (i) viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; (ii) software disabling devices, time-out devices, counter devices and devices intended to collect data regarding usage of the software without the knowledge of Client and (iii) Open Source Software (except as expressly authorized by Client in writing in accordance with Clause 10 (Third Party Materials and Pre-Existing Intellectual Property));
- (e) each Deliverable is and will be an original work of Supplier, except for any Third Party Materials and Pre-Existing Intellectual Property incorporated therein. Neither the Services nor Deliverables will (i) infringe the Intellectual Property Rights of any third party or incorporate any third party's confidential information or (ii) be subject to any restrictions or to any mortgages, liens, pledges, security interests, encumbrances or encroachments;

- (f) it has and will have all necessary rights to grant the licenses and make the assignments set forth in this Agreement (including having all necessary assignment agreements or other proprietary rights agreements in place with employees and subcontractors); and
- (g) Client's (and its licensees') exercise of all rights assigned and granted under this Agreement will not require any third party consents or clearances or any payment of fees, residuals or other amounts of any kind to any third party.

11.2 Supplier shall, without charge, correct any Defect in any Deliverable reported by Client within thirty (30) days of receipt of written notice from Client, or if Supplier is unable to make the Deliverable operate as warranted within such 30-day period, then Client may immediately terminate the applicable SOW, and Supplier shall refund to Client all fees paid for the corresponding Services within ten (10) days of termination.

11.3 EXCEPT FOR SUPPLIER'S WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY SOW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. OWNERSHIP OF DELIVERABLES

12.1 Supplier agrees that all Deliverables will be the sole and exclusive property of Client. Supplier shall and hereby does irrevocably assign to Client all right, title and interest in and to the Deliverables and all related Intellectual Property Rights save that Supplier (or its licensors) shall retain ownership of any Pre-Existing Intellectual Property and Third Party Materials.

12.2 If Supplier has any rights in a Deliverable that cannot be assigned to Client (including any moral rights, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation), Supplier hereby unconditionally and irrevocably waives the enforcement of such rights and waives any and all claims and causes of action of any kind against Client, its Affiliates, and its licensees with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights. Supplier further agrees to and hereby does license such rights under the same terms as the license grant in clause 10.3.

- 12.3 At Client's request and expense, during and after the term of this Agreement, Supplier shall assist and cooperate with Client in all respects and shall execute documents and, subject to the reasonable availability of Supplier, shall give testimony and take such further acts reasonably requested by Client to enable Client to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Deliverables.
- 12.4 In the event that Client is unable for any reason, after reasonable effort, to secure Supplier's signature on any document needed in connection with the actions specified in this clause 12, Supplier hereby irrevocably appoints Client as Supplier's attorney (for as long as Supplier's obligations under this Agreement remain undischarged), to act for and on its behalf to execute, verify and file any such documents and to do all other lawfully permitted acts reasonably necessary to further the purposes of this clause 12 with the same legal force and effect as if executed by Supplier.

13. CHARGES AND PAYMENT

- 13.1 Client shall pay the Charges for the Services as detailed in the relevant SOW in accordance with the SOW's terms.
- 13.2 Save as otherwise agreed in a SOW, Client will pay all invoiced Charges (including expenses) within thirty (30) days of receipt of invoice. Subject to any expenses being agreed in advance prior to being incurred.
- 13.3 All Charges shall be exclusive of value added tax or any other tax, duty, levy, fee or charge which shall be added to invoices at the rate applicable at the date of invoice and which shall be payable by Client.
- 13.4 If Client fails to make any payment due to the Supplier under this Agreement or a SOW by the due date for payment, then without limiting the Supplier's remedies under clause 2, Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis from the due date of payment until actual payment of the overdue amount. Client shall pay interest together with the overdue amount.
- 13.5 Supplier reserves the right to re-negotiate the Charges for the Services as detailed in any SOW during the term of such SOW to take account of any additional tax liability incurred by the Supplier as a result of any proceedings, claims or demands by any third party (including specifically, but without limitation, HM Revenue and Customs and any successor,

equivalent or related body) pursuant to the ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto) which result from Supplier being treated as making to a Subcontractor (and a Subcontractor as receiving) a payment which is to be treated as earnings from employment. In such event, the Charges shall be re-negotiated by the Parties in good faith. If the Parties fail to reach agreement on the new Charges within thirty (30) days, either Party shall have the right to terminate the SOW on thirty (30) day's written notice to the other Party. Client shall pay Supplier the Charges due under the SOW with respect to Services provided by Supplier up to and including the date of termination.

14. CONFIDENTIALITY

- 14.1 In relation to either Party, Confidential Information as used in this Agreement shall mean any and all information relating to that Party (or to any parent undertaking and/or subsidiary undertaking of that Party, as those terms are defined by section 1162 of the Companies Act 2006 (as amended)) which is disclosed before or after the Effective Date by that Party (Discloser) to the other Party (Recipient), and which is provided, either directly or indirectly, in writing, orally or by inspection, and being any and all information which is specified as confidential or which a reasonably prudent person should know is expected to be treated as confidential.
- 14.2 Each Party agrees that it will not use any Confidential Information of the other Party for any purpose, nor disclose any such Confidential Information to any third party without the other Party's prior written consent (and in the event that such consent is given Recipient will ensure, prior to such disclosure, that each such third party is made aware of the confidential nature of the Confidential Information and agrees in writing to be bound by conditions of secrecy no less strict than those set out in this Agreement).
- 14.3 Each Party agrees that, without affecting any rights or remedies that Discloser may have, damages would not be an adequate remedy for any breach by Recipient of the provisions of this Agreement and Discloser shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this letter by Recipient and that no proof of special damages shall be necessary for the enforcement of this Agreement.

14.4 Information shall not be deemed to be Confidential Information to the extent that it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser; it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or the communication was in response to a valid order by a court or other governmental body or was otherwise required by law.

15. DATA PROTECTION

15.1 Each Party shall at all times comply with the Data Protection Laws and its obligations under the Data Processing Schedule set out in Schedule 1.

16. ACCESS TO CLIENT'S SYSTEMS & FACILITIES

16.1 Access if any, to Client's System is granted solely to allow Supplier to provide the Services and is limited to those specific Client Systems, time periods, and personnel as are separately designated in the applicable SOW or otherwise by Client in writing from time to time. In connection with access to Client's Systems, Supplier will comply with all data security and business control and information protection policies, standards, obligations, and guidelines as may be provided by Client. Supplier will not use Client's Systems during other time periods or by individuals not authorised by Client's. Any other use of any Client's System is expressly prohibited. Without limiting the foregoing, Supplier warrants that it has adequate security measures in place to comply with the above obligations and to ensure that access granted hereunder will not impair the integrity and availability of Client's Systems. Upon reasonable notice, Client may audit Supplier to verify its compliance with these obligations. To the extent Supplier is granted access to Client's facilities, Supplier will comply with any safety control, protection and other policies and guidelines as Client may provide from time to time and will be solely liable for its acts or omissions while at any site, including without limitation those resulting in personal injury or property damage.

17. LIMITATION OF LIABILITY

- 17.1 Neither party excludes or limits liability to the other party for;
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any matter for which it would be unlawful for the parties to exclude liability.
- 17.2 Subject to clause 17.1, neither party shall in any circumstances be liable whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 17.3 Subject to clause 17.1 and clause 17.2, Supplier's total aggregate liability to Client in contract, tort (including without limitation, negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any SOW shall be limited to the Charges paid or payable by Client in the 12 months immediately preceding the date of the event giving rise to the claim.

18. **FORCE MAJEURE**

- 18.1 Neither Party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control including without limitation acts of God, fire, explosion, war, terrorism, embargo, and any governmental action (Force Majeure Event). Either Party may terminate this Agreement or a SOW in the event that a Force Majeure Event has occurred preventing either Party from performing or continuing to perform its obligations for a period of more than eight (8) weeks.
- 18.2 Neither Party may rely upon this clause 18 and may not be relieved of the performance of any of its obligations under this Agreement if a Force Majeure Event is proven reasonably by the other Party to be caused by the deliberate, direct or indirect instigation of the Party so intending to rely upon this clause as aforesaid. The Party claiming a Force Majeure Event shall take all action which is reasonable under the circumstances

to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder. Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other Party by the Party claiming the benefit of clause 18.1.

19. DISPUTE RESOLUTION

19.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation.

19.2 If the dispute is not resolved within 14 days of the reference in accordance with clause 19.1, the parties may attempt to resolve the dispute by mediation in accordance with clause 19.3.

19.3 Either Party may refer any dispute for mediation pursuant to this clause. The following provisions shall apply to any such reference to mediation:

19.3.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;

19.3.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

19.3.3 to the extent not provided for by such agreement of the MMP:

- (i) the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator; and
- (ii) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

- 19.4 Notwithstanding the provisions of clauses 19.1, 19.2 and 19.3, any technical dispute, including interpretation of any Specification or relating to the functions or capabilities of any Deliverable, shall be handled as follows:
- 19.4.1 the dispute shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either Party's written request to the other, as determined, at the written request of either Party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the Parties;
- 19.4.2 the parties are entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision; and
- 19.4.3 each Party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.
- 19.4.4 Neither discussions, mediation or expert determination in accordance with this clause 19 shall be a condition precedent to the commencement of any court proceedings, and either Party may issue and commence court proceedings prior to or contemporaneously with the commencement of discussions, mediation or expert. Nothing in this clause 15 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

20. **INSURANCE**

- 20.1 Supplier is solely responsible for maintaining such adequate and appropriate insurance required by law or as is common practice in Supplier's business. Upon request Supplier shall provide Client with

certificates of insurance of evidence of coverage before commencing performance under this Agreement. Supplier shall provide adequate coverage for any Client property under the care, custody or control of Supplier or Supplier's Personnel.

21. EFFECT OF TERMINATION

- 21.1 Upon any expiration or termination of this Agreement for any reason, or upon earlier request by Client, Contractor will promptly deliver to Client all Deliverables (in whatever state of completion) and return or (if directed by Client) destroy all Confidential Information and derivatives thereof. Termination of this Agreement is not an exclusive remedy and the exercise of either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. Client will not have any liability resulting from termination of this Agreement in accordance with its terms. Clauses 7, 10.3, 11, 12, 14, 17, 22 and 23 and the provisions of this clause 21 will survive any expiration or termination of this Agreement.

22. GENERAL

- 22.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the Parties. Save as expressly provided in this Agreement, no amendment or variation of this Agreement and/or any SOW shall be effective unless in writing and signed by a duly authorised representative of each of the Parties.
- 22.2 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each Party acknowledges and agrees that in

entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.

22.3 Neither Party may transfer, assign or novate the whole or any part of the Agreement and/or any SOW or the benefit of it or any right under it without the other Party's prior written approval (not to be unreasonably withheld or delayed)

22.4 In addition to the foregoing, Supplier shall have the right to include Customer's name, logo, and other identifying information in Supplier's marketing materials, including case studies, website content, and promotional materials, subject to Customer's prior written approval on a case-by-case basis. Such approval shall not be unreasonably withheld. Once approved, Supplier may continue to use the agreed-upon materials in its marketing efforts unless Customer withdraws its consent in writing. This does not extend to any new or altered materials, which will require separate approval.

23. GOVERNING LAW AND JURISDICTION

23.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England and Wales.

23.2 The Parties irrevocably agree that the Courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

SIGNED BY:

SIGNED BY:

ENTER NAME

ENER NAME

Paddy O'Hagan (COO)

For and on behalf of

INSTIL SOFTWARE LIMITED

[CLIENTSIGNATORYNAME]

For and on behalf of

[CLIENT NAME]

THIS AGREEMENT IS ENTERED INTO on the date which first appears above:

Schedule 1

Data Processing Agreement

1. DEFINITIONS

1.1 In this Schedule

Controller	has the meaning given in applicable Data Protection Laws from time to time;
Data Protection Laws	means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including: (a) the GDPR; (b) the Data Protection Act 2018 (DPA 2018); (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (d) any laws which implement any such laws; (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (f) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);
Data Protection	means any regulator, authority or body responsible for administering Data Protection Laws;

Supervisory Authority	an independent public authority responsible for monitoring GDPR/DPA application to protect rights and facilitate data flow;
Data Subject	has the meaning given in applicable Data Protection Laws from time to time;
EEA	the European Economic Area;
EU GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
International	has the meaning given in applicable Data Protection Laws from time to time;
Organisation	
Personal Data	has the meaning given in applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in applicable Data Protection Laws from time to time;
Processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly);

Processor	has the meaning given in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Client, or otherwise obtained in connection with the performance of Supplier's obligations under this Agreement; and
Sub-processor	means any agent, subcontractor or other third party engaged by Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data.

- 1.2 Unless otherwise expressly stated in this Agreement Supplier's obligations and the Client's rights and remedies under this Schedule are cumulative with, and additional to, any other provisions of this Agreement.

2. Compliance with data protection laws

The Client is the Controller and the Supplier is the Processor in respect of Protected Data. The Supplier shall (and shall ensure its Sub-processors shall) at all times comply with all Data Protection Laws in connection with the processing of Protected Data and provision of the Services.

3. Instructions

- 3.1 Supplier shall only process the Protected Data in accordance with Section 1 of this Schedule, this Agreement and the Client's documented written instructions, except where otherwise required by applicable law.
- 3.2 Supplier shall immediately inform the Client if, in its opinion, any instruction relating to the Protected Data infringes any Data Protection Law.
- 3.3 Supplier must comply promptly with the Client's written instructions requiring the Supplier to amend, transfer, delete or otherwise process the Protected Data, or to stop, mitigate or remedy any unauthorised processing.

- 3.4 Supplier will maintain the confidentiality of the Protected Data and will not disclose the Protected Data to third parties unless the Client or this Agreement specifically authorises the disclosure, or as required by law, court or regulator (including the Data Protection Supervisory Authority). If a domestic law, court or regulator (including the Data Protection Supervisory Authority) requires the Supplier to process or disclose the Protected Data to a third-party, the Supplier shall notify the Client in advance (unless prohibited by law).

4. Security

- 4.1 Supplier shall implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate:

1. Encryption of data at rest and in transit;
2. Pseudonymisation or anonymisation where feasible;
3. Measures ensuring ongoing confidentiality, integrity, availability, and resilience of processing systems;
4. Regular testing, assessment and evaluation of security measures, including penetration testing;
5. Incident response and disaster recovery planning and testing;
6. Access controls and least-privilege user access;
7. Multi-factor authentication for administrative access;
8. Secure disposal and media sanitisation procedures.

- 4.2 Supplier shall maintain an information security management system (ISMS) certified to ISO 27001 (or equivalent) and provide evidence of certification on request.

- 4.3 Supplier shall provide written evidence of security measures and the results of independent audits (including SOC 2 reports, where available) to the Client on reasonable request.

5. Sub-processing

- 5.1 Supplier shall not appoint any Sub-processor without the prior written consent of the Client.

- 5.2 Supplier shall provide at least 30 days' written notice of any intended addition or replacement of a Sub-processor.
- 5.3 Supplier shall maintain a publicly available register of Sub-processors, kept up to date, and provide it to the Client on request. As of the Effective Date, the authorised Sub-processors are those listed in Annex A (Sub-processors).
- 5.4 If the Client objects and the Supplier cannot propose a reasonable alternative within 30 days, the Client may terminate the affected Services without penalty.
- 5.5 Supplier shall ensure each Sub-processor is bound by a written contract imposing equivalent obligations to this Schedule and shall remain fully liable for all Sub-processor acts and omissions.
- 5.6 Supplier shall not use any Sub-processor in connection with the Services except as expressly agreed in writing with the Client.

6. Assistance

- 6.1 Supplier shall (at Client's cost except where the assistance is required due to Supplier's breach of this Schedule.):
- respond to Data Subject requests;
 - conduct data protection impact assessments;
 - consult with supervisory authorities;
 - manage notifications and remedial actions relating to a Protected Data Breach.
- 6.2 Supplier shall meet any Client request for assistance under 6.1 within five (5) business days, unless an earlier response is required by law.:
- 6.2.1 Supplier shall prioritise and expedite requests where statutory deadlines require shorter time frames.

7. Data subject requests

- 7.1. Supplier shall record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Client which relate (or which may relate) to any Protected Data promptly and shall not

respond to any without the Client's express written approval and strictly in accordance with Client's instructions unless and to the extent required by law.

7.2. Supplier shall:

- log all Data Subject requests and communications relating to Protected Data;
- notify the Client within 48 hours;
- not respond except on documented instructions from the Client.
- Supplier shall provide the DSAR log to Client on request.

8. **International transfers**

8.1 Any transfers by Supplier to a Sub-Processor outside the UK shall be carried out in accordance with Chapter 5 of the GDPR, and the following conditions are fulfilled:

8.1.1 Supplier and Sub-Processor have provided appropriate safeguards in relation to the transfer;

8.1.2 the data subject has enforceable rights and effective legal remedies;

8.1.3 Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Protected Data that is transferred; and

8.1.4 Supplier complies with reasonable instructions notified to the Supplier in advance by the Client with respect to the processing of the Protected Data.

8.2 The Parties acknowledge that the processing of Personal Data under this Agreement may occur within the United Kingdom, Northern Ireland, and Spain. Such shall be deemed to take place within the UK and/or European Economic Area (EEA) and therefore does not, in itself, constitute a restricted transfer under Data Protection Laws.

8.3 Any transfer outside the UK/EEA shall rely on an adequacy decision or approved safeguards, including the UK IDTA and/or EU SCCs, which are incorporated by reference and prevail in case of conflict with this Agreement:

- Pursuant to a valid adequacy decision;

- Subject to the UK International Data Transfer Agreement (IDTA) or EU Standard Contractual Clauses (SCCs); or

Any other safeguard approved under Data Protection Laws.

9. Records

Supplier shall maintain complete and accurate records of all categories of processing activities carried out on behalf of Client in accordance with Article 30 GDPR and shall make such records available to the Client on request.

10. Audit

- 10.1 Supplier shall make available to the Client all information reasonably required to demonstrate compliance with this Schedule.
- 10.2 The Client (or its appointed auditor) may conduct audits upon 10 Business Days' prior written notice, except in case of suspected or actual breach, where audits may be conducted on shorter notice.
- 10.3 Where any audit reveals material non-compliance by the Supplier, the Supplier shall bear the cost of such audit and remediate issues without delay.

11. Breach

- 11.1 Supplier shall promptly, without delay, notify Client if it (or any of its Sub-Processors) suspects or becomes aware of any suspected, actual or threatened occurrence of any Protected Data Breach in respect of any Protected Data.
- 11.2 Supplier shall promptly provide all information as Client requires to report the circumstances referred to in paragraph 11.1 (above) to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.
- 11.3. Initial notice shall include the nature of the breach, categories of data and data subjects, likely consequences, and measures taken or proposed.

12. Deletion/return

12.1 Upon termination of the Services, or when processing is no longer required, the Supplier shall, at the Client's written direction:

- Return all Protected Data in a commonly used format; or
- Securely delete all Protected Data.

12.2 Supplier shall complete such return or deletion within 30 days and provide written certification of completion.

12.3 Supplier shall ensure that any copies stored in backups are purged within 90 days of termination, unless retention is required by law.

12.4 Supplier may retain copies only to the extent required by law and shall notify the Client of the legal basis and duration of retention.

13. **Survival**

13.1 This Schedule shall survive termination or expiry of the Agreement for so long as either party processes Protected Data in connection with the Agreement.

13.2 Nothing in this Schedule limits either party's liability where such limitation is prohibited by Data Protection Laws; otherwise, the liability caps in clause 17 (Liability) of the MSA apply to liabilities under this Schedule.

14. **Data Processing**

14.1 Processing of the Protected Data by Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Protected Data and categories of Data Subjects set out in this Section 1.

14.2 Supplier shall only process such Protected Data as is required to provide the Services to Client.

14.3 Data Processing shall continue for the term of this Agreement.

14.4 The processing of Protected Data is required in order to enable Supplier to deliver the Services to Client.

14.5 The categories of Data Subjects are employees, agents or contractors of Client, customers and potential customers of Client and their stakeholders and suppliers and potential suppliers of Client or its Affiliates.

14.6 Supplier shall not process any Special Categories of Personal Data (as defined under Data Protection Laws) under this Agreement.