

Applicable Laws: all applicable laws, statutes, regulation from time to time in force applicable to the provision of the Services.

Background IPR: means any and all Intellectual Property Rights that are not Foreground Intellectual Property, owned or controlled by Affinus or licensed to Affinus prior to or outside the relevant SOW but required for the purposes of the SOW or for the proper use of the Deliverables;

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

Change Order: a document setting out the proposed changes and the effect that those changes will have on: (a) the Services; (b) the Charges; (c) the timetable for the Services; and (d) any of the other terms of the Agreement listed in the template change order set out in Schedule 3.

Charges: the sums payable for the Services as set out in this MSA.

Client's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the SOW.

Client Materials: all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to Affinus in connection with the Services, including the items provided pursuant to clause 5.1.3.

Confidential Information means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the MSA or any SoW (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such) but does not include any information which (a) was in the possession of the receiving Party without obligation of confidentiality prior to its disclosure by the disclosing Party (b) the receiving Party obtained on a non-confidential basis from a third party who is not, to the receiving Party knowledge or belief, bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving Party or (c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this MSA or breach of a duty of confidentiality.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Deliverables: any output of the Services to be provided by Affinus to the Client as specified in the SOW and any other documents, products and materials provided by Affinus to the Client in relation to the Services (excluding Affinus' Equipment).

Foreground IPRs: all Intellectual Property Rights and other matter capable of being the subject of intellectual property rights in the Deliverables that is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of the Services;

Intellectual Property Rights or IPRs: patents, rights to inventions, copyright and related rights, trade marks, business names, domain names, rights in get-up and trade dress, goodwill and the right to passing off actions, design rights, database rights, rights to use confidential information and the right to protect the same, and any and all other intellectual property rights, whether registered or unregistered, including applications and the right to apply for (and be granted) renewals or extensions of, and rights to claim priority from, any such rights and any and all equivalent rights or other forms of protection subsisting now or in the future anywhere in the world.

Master Services Agreement or MSA: means this agreement and all Schedules to this MSA as varied from time to time.

Services: the IT consultancy services, as further detailed in the relevant SOW.

Statement of Work or SOW: a detailed plan, agreed in accordance with clause 3, describing the Services to be provided by Affinus, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 2.

VAT: value added tax chargeable in the UK.

Year: each consecutive period of 12 calendar months, the first commencing on the Commencement Date and each subsequent year commencing on the anniversary of the Commencement Date.

1.2 In this MSA:

- 1.2.1 clause headings will not affect interpretation;
- 1.2.2 references to attachments, clauses, recitals, annexes and schedules are of or to the same in the Agreement unless otherwise stated; and
- 1.2.3 a reference to writing or written includes email, but not fax.

2 COMMENCEMENT AND DURATION

- 2.1 This MSA shall commence on the date when it has been signed by all the Parties and shall continue, unless terminated earlier in accordance with clause 16 (Termination), until either Party gives to the other Party written notice to terminate. Such notice shall expire on the completion of all SOW entered into before the date on which it is served.
- 2.2 If there are no uncompleted SOW as at the date notice to terminate is served under clause 2.1 such notice shall terminate this MSA with immediate effect.
- 2.3 The Parties shall not enter into any further SOW after the date on which notice to terminate is served under clause 2.1.
- 2.4 The Client may procure any of the Services by agreeing a SOW with Affinus pursuant to clause 3 (Statements of Work).
- 2.5 Affinus shall provide the Services from the date specified in the relevant SOW until the date set out in the relevant SOW.

3 STATEMENTS OF WORK

- 3.1 Each SOW shall be agreed in the following manner:
 - 3.1.1 the Client shall ask Affinus to provide any or all of the Services and provide Affinus with as much information as Affinus reasonably requests in order to prepare a draft SOW for the Services requested;
 - 3.1.2 following receipt of the information requested from the Client, Affinus shall, as soon as reasonably practicable either:
 - (a) inform the Client that it declines to provide the Services; or
 - (b) provide the Client with a draft SOW.
 - 3.1.3 if Affinus provides the Client with a draft SOW pursuant to clause 3.1.2(b), Affinus and the Client shall discuss and agree that draft SOW; and
 - 3.1.4 both Parties shall sign the draft SOW when it is agreed.
- 3.2 Once a SOW has been agreed and signed in accordance with clause 3.1.4, no amendment shall be made to it except in accordance with clause 7 (Change control).
- 3.3 Each Statement of Work shall be part of this MSA and shall not form a separate contract to it.

4 AFFINUS' RESPONSIBILITIES

- 4.1 Affinus will use provide the Services and deliver the Deliverables to the Client from the start date set out in the relevant SOW and for the duration as set out in the SOW.
- 4.2 In supplying the Services, Affinus shall:
- 4.2.1 perform the Services with reasonable care and skill;
 - 4.2.2 use reasonable endeavours to perform the Services in accordance with the service description set out in the relevant SOW in all material respects;
 - 4.2.3 use reasonable endeavours to meet any performance dates specified in the relevant SOW, but any such dates will be estimates only and time for performance by Affinus will not be of the essence of this MSA
 - 4.2.4 act in accordance with all reasonable instructions issued by the Client provided that such instructions are compatible with this MSA;
 - 4.2.5 comply with all applicable laws, statutes, regulations from time to time in force;
 - 4.2.6 in the event that the Client provides access to the Client's premises and any other facilities that is or are agreed upon by the Parties to enable Affinus to provide the Services, Affinus will use reasonable endeavours to observe all health and safety and security requirements that apply at the Client's premises and that have been communicated to it in accordance with clause 5.1.4, provided that Affinus will not be liable under this MSA if, as a result of such observation, it is in breach of any of its obligations under this MSA.
 - 4.2.7 ensure that any personnel involved in the provision of the Services are suitably skilled, qualified, and experienced to perform the part(s) of the Services to which they are assigned; and
 - 4.2.8 take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, always provided that Affinus may destroy the Client Materials if the Client fails to collect the Client Materials within a reasonable period after expiry or termination of the Agreement.

5 CLIENT'S OBLIGATIONS

- 5.1 The Client will:

- 5.1.1 co-operate with Affinus in all matters relating to the Services;
 - 5.1.2 provide, for Affinus, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, systems, data and other facilities as required by Affinus including any such access as is specified in this MSA;
 - 5.1.3 provide to Affinus in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under the relevant SOW or otherwise reasonably required by Affinus in connection with the Services and ensure that they are accurate and complete;
 - 5.1.4 inform Affinus of all health and safety and security requirements that apply at any of the Client's premises;
 - 5.1.5 ensure that all the Client'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; and
 - 5.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Affinus to provide the Services, including in relation to the installation of Affinus' Equipment, the use of all Client Materials and the use of the Client's Equipment, in all cases before the date on which the Services are to start.
- 5.2 If Affinus' performance of its obligations under the SOW is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Affinus:
- 5.2.1 will be allowed an extension of time to perform its obligations equal to the delay caused by the Client.
 - 5.2.2 not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
 - 5.2.3 be entitled to payment of the Charges despite any such prevention or delay; and
 - 5.2.4 be entitled to recover any additional costs, charges or losses Affinus sustains or incurs that arise directly or indirectly from such prevention or delay.

6 NON-SOLICITATION AND EMPLOYMENT

- 6.1 The Client will not, without the prior written consent of Affinus, at any time from the date on which any Services commence to the expiry of 6 months after the completion of such Services, solicit or entice away from Affinus or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Affinus in the provision of such Services.

7 CHANGE CONTROL

- 7.1 Either Party may propose changes to the scope or execution of the Services but no proposed changes will come into effect until a relevant Change Order has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- 7.1.1 the Services;
- 7.1.2 the Charges;
- 7.1.3 the timetable for the Services; and
- 7.1.4 any of the other terms of the relevant SOW.

- 7.2 If either Party wishes to make a change to the Services it will notify the other and provide as much detail as reasonably required of the proposed changes, including the timing of the proposed change.

- 7.3 If the Parties agree to a Change Order, they will sign such Change Order and that Change Order will amend the SOW (or this MSA, if relevant).

8 CHARGES AND PAYMENT

- 8.1 In consideration of the provision of the Services by Affinus, the Client will pay the Charges.

- 8.2 The Charges are as set out in the relevant SOW.

- 8.3 Affinus shall have the right to charge the Client for any reasonable expenses incurred by the personnel that it engages in the provision of the Services including, but not limited to, travel expenses, accommodation expenses, subsistence, and any other associated expenses, and for the cost of any services procured from third parties by Affinus necessary for the performance of the Services, and for the cost of any materials required.

- 8.4 Affinus may increase the Charges on an annual basis with effect from each anniversary of the date of the SOW in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase will take effect on the first anniversary of the date of the SOW and will be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 8.5 Affinus will invoice the Client for the Charges at the intervals specified in this SOW. If no intervals are so specified, Affinus will invoice the Client at the end of each month for Services performed during that month.
- 8.6 The Client will pay each invoice submitted to it by Affinus within 30 days of invoice date to a bank account nominated in writing by Affinus from time to time.
- 8.7 If the Client receives an invoice and reasonably believes that it is incorrect, Client may Dispute that invoice in good faith as follows:
- 8.7.1 the Client shall notify Affinus in writing as soon as reasonably possible and practicable;
 - 8.7.2 the Client shall not be deemed to be in breach of the SOW or this MSA for failure to pay the disputed sums while such a Dispute is ongoing;
 - 8.7.3 the Client shall pay any sum which is not in Dispute by the due date for payment;
 - 8.7.4 following the resolution of the Dispute, the Client shall pay the sum agreed between the Parties including any interest charged on that sum by Affinus, as calculated in accordance with clause 8.7;
 - 8.7.5 in the event that Affinus is required to refund any sums to the Client, interest shall be added to such sums, as calculated in accordance with clause 8.7; and
 - 8.7.6 following the resolution of the Dispute, in the event that either Party is required to make a balancing payment, that Party shall make such payment within 30 days and, in the event that Affinus is required to issue a credit note, it shall issue the same within 30 days.
- 8.8 Without prejudice to any other right or remedy that Affinus may have, if the Client fails to pay Affinus any sum due under the SOW on the due date:
- 8.8.1 the Client will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% per annum above the base rate of the Bank of England from time to time, or at 8% per annum for any

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period during which that base rate is below 0%, from the due date for payment until payment is made in full of any such outstanding sums, whether before or after judgment; and

8.8.2 Affinus may suspend part or all of the Services until payment has been made in full.

8.9 All sums payable to Affinus under any SOW:

8.9.1 are exclusive of VAT, and the Client will in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

8.9.2 will 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 INTELLECTUAL PROPERTY RIGHTS

9.1 All Background Intellectual Property used in connection with the Services or the Deliverables shall remain the property of Affinus or the third party who licenses it to Affinus as at the date of the relevant SOW.

9.2 In relation to the Deliverables, the Foreground Intellectual Property Rights in the Deliverables shall, on the later of (i) creation of the rights or (ii) payment in full of the relevant Charges for the Deliverables, vest in the Client. Affinus assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Client.

9.3 To the extent that the Client requires use of the Background IPR within the Deliverables in order to receive the Services or use the Deliverables:

9.3.1 Affinus grants the Client a fully paid-up, worldwide, non-exclusive, royalty-free licence to use, copy and modify the Background Intellectual Property Rights within the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business; and

9.3.2 the Client shall not sub-license, assign or otherwise transfer the rights granted in clause 9.3.1 without the prior written consent of Affinus.

9.4 In relation to the Client Materials, the Client:

9.4.1 and its licensors will retain ownership of all IPRs in the Client Materials; and

9.4.2 grants to Affinus a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of the SOW for the purpose of providing the Services to the Client.

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9.5 The Client:

- 9.5.1 warrants that the receipt and use in the performance of the SOW by Affinus, its agents, subcontractors or consultants of the Client Materials will not infringe the Intellectual Property Rights of any third party; and
- 9.5.2 will indemnify Affinus against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by Affinus arising out of or in connection with any claim brought against Affinus, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of the SOW of the Client Materials.

10 ACCEPTANCE TESTING

- 10.1 Where a Deliverable is stated as being subject to Acceptance Tests (each an **Acceptance Deliverable**), this clause 10 shall apply.
- 10.2 Client shall carry out the agreed Acceptance Tests for each Acceptance Deliverable within ten days of completion of the Acceptance Deliverable by Affinus.
- 10.3 If any completion of the Acceptance Deliverable fails to pass the Acceptance Tests, the Client shall, within 5 days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). Affinus shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 10.4 Acceptance of such Acceptance Deliverable shall be deemed to have occurred on the earliest of:
 - 10.4.1 signing by the Client of an Acceptance Certificate when all the Acceptance Tests for that Acceptance Deliverable have been met.
 - 10.4.2 the expiry of five days after the completion of the Acceptance Tests for the Acceptance Deliverable, unless the Client has given any written notice under Clause 10.3; or
 - 10.4.3 the use of the Acceptance Deliverable by the Client in the normal course of its business.

11 DATA PROTECTION

- 11.1 Affinus will only process the Client's Personal Data in accordance with the terms of Affinus' data processing addendum, available at Schedule 1 (Data Processing Addendum)

12 CONFIDENTIALITY

- 12.1 Each Party undertakes that it will not at any time during this MSA, and for a period of two years after termination or expiry of this MSA, disclose to any person any Confidential Information, except as permitted by clause 12.2.1.
- 12.2 Each Party may disclose the other Party's Confidential Information:
- 12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this MSA. Each Party will ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this clause 12; and
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No Party will use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this MSA.

13 INDEMNITY

Each Party (the **"Indemnifying Party"**) shall indemnify other Party (the **"Indemnified Party"**) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:

- 13.1.1 the Indemnifying Party's breach or negligent performance or non-performance of this MSA;
- 13.1.2 the enforcement of this MSA;
- 13.1.3 any claim made against the Indemnified Party for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Services or the Client Material; and

- 13.1.4 any claim made against the Indemnified Party by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this MSA by the Indemnifying Party, its employees, agents or subcontractors.
- 13.2 This indemnity shall not cover the Indemnified Party to the extent that a claim under it results from the Indemnified Party's negligence or wilful misconduct.
- 13.3 Liability under this indemnity is conditional on the Indemnified Party discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Indemnified Party shall:
 - 13.3.1 as soon as reasonably practicable, give written notice of the Claim to the Indemnifying Party, specifying the nature of the Claim in reasonable detail;
 - 13.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party provided that the Indemnified Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining the Indemnifying Party's consent) if the Indemnified Party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 13.3.3 give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and Records within the power or control of the Indemnified Party, so as to enable the Indemnifying Party and its professional advisers to examine them and to take copies (at the Indemnifying Party's expense) for the purpose of assessing the Claim; and
 - 13.3.4 take such action as the Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.
- 13.4 Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

14 INSURANCE

- 14.1 Affinus will for the term of the Agreement take out and maintain professional indemnity and public liability insurance with a reputable insurance company to cover the

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liabilities that may arise under or in relation to the Agreement and, on the Client's request, supply the Client with copies of current certificates of insurance.

15 LIMITATION OF LIABILITY

15.1 References to liability in this clause 15 include every kind of liability arising under or in connection with all SOWs and this MSA including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Nothing in this clause 15 will limit the Client's:

15.2.1 payment obligations under this MSA; and

15.2.2 liability under clause 9.5.2.

15.3 Nothing in this MSA limits any liability which cannot legally be limited, including liability for:

15.3.1 death or personal injury caused by negligence;

15.3.2 fraud or fraudulent misrepresentation; and

15.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

15.4 Subject to clauses 15.3, 15.7, 15.8 and 15.9, Affinus' total aggregate liability to the Client in any Year under this MSA and all SoWs will be limited to the amount of Charges paid or payable by the Client during the Year during which the incident giving rise to liability occurred.

15.5 Subject to clause 15.2, 15.3, 15.6, 15.7 and 15.9, the Client's total aggregate liability to Affinus in any Year will be limited to the amount of Charges paid or payable by the Client during the Year during which the incident giving rise to liability occurred.

15.6 The caps on the Client's liabilities will not be reduced by:

15.6.1 amounts to be awarded or agreed to be paid under clause 9.5.2 (IPR Indemnities); and

15.6.2 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

15.7 Neither Party shall not in any circumstance be liable to the other Party for the following type of losses which are excluded:

- 15.7.1 loss of profits;
 - 15.7.2 loss of sales or business;
 - 15.7.3 loss of agreements or contracts;
 - 15.7.4 loss of anticipated savings;
 - 15.7.5 loss of use or corruption of software, data or information;
 - 15.7.6 loss of or damage to goodwill; and
 - 15.7.7 indirect or consequential loss.
- 15.8 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this MSA.
- 15.9 Unless the Client notifies Affinus that it intends to make a claim in respect of an event within the notice period, Affinus will have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

16 TERMINATION

- 16.1 Without affecting any other right or remedy available to it, either Party may terminate the Agreement by giving the other Party 60 days written notice.
- 16.2 Without affecting any other right or remedy available to it, either Party may terminate this MSA with immediate effect by giving written notice to the other Party if:
- 16.2.1 the other Party commits a material breach of any term of this MSA and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;
 - 16.2.2 the other Party repeatedly breaches any of the terms of this MSA 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 MSA;
 - 16.2.3 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court,

unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

16.2.4 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

16.2.5 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

16.3 Without affecting any other right or remedy available to it, Affinus may terminate this MSA with immediate effect by giving written notice to the Client if:

16.3.1 the Client fails to pay any amount due under this MSA on the due date for payment and remains in default not less than 30 days after being notified to make such payment; or

16.3.2 there is a change of Control of the Client.

17 CONSEQUENCES OF TERMINATION

17.1 On termination or expiry of this MSA:

17.1.1 the Client will immediately pay to Affinus all of Affinus' outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Affinus may submit an invoice, which will be payable immediately on receipt;

17.1.2 the Client will return all of Affinus' Equipment. If the Client fails to do so, then Affinus may enter the Client's premises and take possession of Affinus' Equipment. Until Affinus' Equipment has been returned or repossessed, the Client will be solely responsible for its safe keeping;

17.1.3 Affinus will on request return any of the Client Materials not used up in the provision of the Services; and

17.1.4 each Party shall (except to the extent referred to in clause 12 (Confidentiality)) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

18 GENERAL

18.1 Survival

- 18.1.1 Any provision of this MSA that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this MSA will remain in full force and effect.
- 18.1.2 Termination or expiry of this MSA will 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 the Agreement which existed at or before the date of termination or expiry.

18.2 Force Majeure.

- 18.2.1 Neither Party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).
- 18.2.2 If any Force Majeure Event occurs in relation to either Party which affects or may affect that Party's performance of its obligations under the Agreement, the affected Party shall notify the other Party as soon as reasonably possible and practicable of the nature and extent of the circumstances in question. The affected Party shall use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.2.3 Subject to compliance with clause 18.2.2, neither Party shall be deemed to be in breach of this MSA or shall otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under this MSA to the extent that performance of that obligation is prevented, hindered, or delayed by a Force Majeure Event of which it has notified the other Party, and the time for that performance shall be extended accordingly. The time for performance of such obligations shall be extended accordingly.
- 18.2.4 If the period of delay or non-performance continues for 3 months, the Party not affected may terminate the Agreement by giving 30 days' written notice to the affected Party.

18.3 Assignment and other dealings

18.3.1 The Client will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this MSA.

18.3.2 Affinus may at any time subcontract, assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this MSA.

18.4 **Variation.** Subject to clause 7 (Change control), no variation of this will be effective unless it is in writing and signed by the Parties (or their authorised representatives).

18.5 Waiver.

18.5.1 A waiver of any right or remedy under this MSA or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy.

18.5.2 A failure or delay by a Party to exercise any right or remedy provided under this MSA or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this MSA or by law will prevent or restrict the further exercise of that or any other right or remedy.

18.5.3 A Party that waives a right or remedy provided under this MSA or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

18.6 **Rights and remedies.** The rights and remedies provided under this MSA are in addition to, and not exclusive of, any rights or remedies provided by law.

18.7 **Severance.** If any provision or part-provision of this MSA 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 MSA.

18.8 Entire Agreement

18.8.1 This MSA 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.

18.8.2 Each Party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this MSA. Each Party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this MSA.

18.9 **Conflict.** If there is an inconsistency between any of the provisions of this MSA and the provisions of the Schedules, the provisions of this MSA will prevail.

18.10 **No partnership or agency**

18.10.1 Nothing in this MSA is intended to, or will 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.

18.10.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

18.11 **Third party rights.** Unless it expressly states otherwise, this MSA does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MSA.

18.12 **Notices.**

18.12.1 Any notice given to a Party under or in connection with this MSA will be in writing and will be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address for that Party as notified to the other Party from time to time.

18.12.2 Any notice will be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, one Business Day after transmission.

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

18.13 **Counterparts.** This MSA may be executed in any number of counterparts, each of which will constitute a duplicate original, but all the counterparts will together constitute the one Agreement.

18.14 **Dispute resolution.**

18.14.1 If a dispute arises out of or in connection with this MSA or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedure set out in this clause:

- (a) 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 Managing Directors (or equivalent) of the Parties shall attempt in good faith to resolve the Dispute;
- (b) if the Managing Directors (or equivalent) of the Parties are for any reason unable to resolve the Dispute within 20 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. 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. The mediation will start not later than 20 days after the date of the ADR notice.

18.14.2 If the Dispute is not resolved within 20 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 20 days, or the mediation terminates before the expiration of the said period of 20 days, the

Dispute may be finally resolved by the courts of England and Wales in accordance with clause 18.16.

18.14.3 The commencement of mediation shall not prevent Affinus from commencing or continuing court proceedings in relation to the Dispute where that Dispute relates to payment of Charges.

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

18.16 **Jurisdiction.** Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this MSA or its subject matter or formation.

This MSA has been entered into on the date stated at the beginning of it.

Signed for and on the behalf of Affinus Limited

Signature:

.....

Name:

.....

Position:

.....

Date:

.....

Signed for and on the behalf of the Client

Signature:

.....

Name:

.....

Position:

.....

Date:

.....



Address: Affinus Limited, Wessex House, Teign Road, Newton Abbot, Devon, TQ12 4AA
Web: www.affinus.com
Email: contactus@affinus.com
Telephone: (UK) 01392 712299

Schedule 1

Data Processing Addendum

This data processing addendum (**DPA**) sets out the additional terms, requirements and conditions on which Affinus will process Personal Data when providing services under the Agreement. This DPA contains the mandatory clauses required by Article 28(3) of the UK GDPR. All capitalised terms used, but not defined in this DPA shall have the meanings set forth in the Agreement. In the event of a conflict between the Agreement and the DPA, the terms of the DPA shall prevail.

AGREED TERMS

1 DEFINITIONS

applicable law: applicable law of the United Kingdom (or of a part of the United Kingdom).

Commissioner: the Information Commissioner (see Article 4 (A3), UK GDPR and section 114, DPA 2018).

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Processing and Processor: have the meanings given to them in the Data Protection Legislation (and related expressions, including **process**, **processed** and **processes** shall be construed accordingly).

Data Protection Legislation: means, as binding on either Party or the Services, (a) the UK GDPR (b) the Data Protection Act 2018 (c) any laws which implement or supplement any such laws and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

EEA: the European Economic Area.

Protected Data: Personal Data received from or on behalf of the Client in connection with the performance of Affinus' obligations under this MSA; and

Purposes: the services to be provided by Affinus to the Client as described in the Agreement.

Sub-Processor: means any Processor engaged by Affinus (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data on behalf of the Client.

UK GDPR: has the meaning given to it in section 3(10) of the Data Protection Act 2018.

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2 COMPLIANCE WITH DATA PROTECTION LEGISLATION

- 2.1 The Parties shall at all times comply with all Data Protection Legislation in connection with the processing of Protected Data.
- 2.2 The Client and Affinus agree and acknowledge that for the purpose of the Data Protection Legislation:
 - 2.2.1 the Client is the Controller and Affinus is the Processor; and
 - 2.2.2 the Client retains control of the Protected Data and remains responsible for its compliance obligations under the Data Protection Legislation.
- 2.3 The SOW shall describe the subject matter, duration, nature and purpose of the processing and the Protected Data categories and Data Subject types in respect of which Affinus may process the Protected Data to fulfil the Purpose.

3 DATA PROTECTION OBLIGATIONS

- 3.1 The Client shall ensure all instructions given by it to Affinus in respect of Protected Data (including the terms of this MSA) shall at all times be in accordance with all Data Protection Laws. Nothing in this MSA relieves the Client of any responsibilities or liabilities under any Data Protection Laws.
- 3.2 Affinus will only process the Protected Data to the extent in accordance with the Client's written instructions (except to the extent processing is otherwise required by applicable law) and shall inform the Client of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest.
- 3.3 Affinus will promptly notify the Client if, in its opinion, the Client's instructions do not comply with the Data Protection Legislation and shall (without any liability to the Client or set-off in charges) be entitled to cease to provide the relevant Services until the Parties have agreed appropriate amended instructions which are not infringing.
- 3.4 Affinus will comply with any Client written instructions requiring Affinus to amend, transfer, delete or otherwise process the Protected Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.5 Affinus warrants that it will process the Personal Data in compliance with the Data Protection Legislation.
- 3.6 Affinus will maintain the confidentiality of the Protected Data and will not disclose the Protected Data to third-parties unless the Client or this DPA specifically authorises the disclosure, or as required by applicable law, court or regulator (including the

Commissioner) and if so required Affinus will inform the Client of such legal or regulatory requirement unless applicable law prohibits the giving of such notice.

- 3.7 Affinus will reasonably assist the Client with meeting the Client's compliance obligations under the Data Protection Legislation, taking into account the nature of Affinus' processing and the information available to Affinus.
- 3.8 The Client will comply with its obligations under applicable Data Protection Legislation.
- 3.9 The Client warrants and represents that Affinus' expected use of the Protected Data for the Purpose and as instructed by the Client will comply with the Data Protection Legislation.

4 SECURITY

- 4.1 Affinus will ensure it maintains and implements appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access to ensure a level of security appropriate to the risk involved, including, for example:
 - 4.1.1 the pseudonymisation and encryption of Personal Data;
 - 4.1.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; and
 - 4.1.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident.

5 PERSONAL DATA BREACH

- 5.1 Affinus will within 72 hours and in any event without undue delay notify the Client in writing if it becomes aware of any actual Personal Data Breach affecting the Protected Data:
- 5.2 Following a confirmed Personal Data Breach, the Parties will co-ordinate with each other to investigate the matter. Further, Affinus will use reasonable efforts to cooperate with the Client in the Client's handling of the matter.
- 5.3 Affinus will not inform any third-party of any accidental, unauthorised or unlawful processing of all or part of the Protected Data and/or a Personal Data Breach without first obtaining the Client's written consent, except when required to do so by applicable law.

6 CROSS-BORDER TRANSFERS OF PERSONAL DATA

- 6.1 Affinus may transfer or otherwise process Protected Data outside the UK or the EEA if:
- 6.1.1 the Client is notified of Affinus' intention to do so and is provided with a reasonable period of time (as set out in the notice) to object to such transfer;
 - 6.1.2 the Client has not objected to such transfer during that period of time; and
 - 6.1.3 Affinus complies at all times with Chapter V of the UK GDPR.

7 SUB-PROCESSORS

- 7.1 The Client grants Affinus general authorisation to engage third parties to process the Protected Data ("**Sub-processors**").
- 7.2 The Client authorises the appointment of the Sub-Processors listed in the SOW.
- 7.3 Prior to appointing any further Sub-Processors, Affinus will provide the Client with 14 days' notice (the "**Notice Period**") prior to adding or replacing any Sub-processor by notifying the Client in writing. In the event Client reasonably objects to the addition or replacement of such Sub-processor, Client will provide Affinus written notice of its objection within the Notice Period and the Parties will discuss in good faith with a view to achieving a commercially reasonable resolution. If no such resolution can be reached, Affinus will either not appoint the new Sub-processor with respect to Client's use of the Services, or permit Client to suspend or terminate the affected Services.
- 7.4 Affinus shall ensure each Sub-processor is appointed pursuant to a written contract conferring a materially the same obligations with respect to Protected Data as this DPA and shall be responsible for ensuring each such Sub-processor complies with all such obligations.

8 COMPLAINTS, DATA SUBJECT REQUESTS AND THIRD-PARTY RIGHTS

- 8.1 Affinus will provide reasonable assistance to the Client to enable the Client to comply with the rights of Data Subjects under the Data Protection Legislation, and information or assessment notices served on the Client by the Commissioner the Data Protection Legislation.
- 8.2 Affinus will notify the Client as soon as possible if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Protected Data or to either Party's compliance with the Data Protection Legislation.

- 8.3 Affinus will notify the Client as soon as possible if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.
- 8.4 Affinus will not disclose the Personal Data to any Data Subject or to a third-party other than in accordance with the Client's written instructions, or as required by applicable law.

9 TERM AND TERMINATION

- 9.1 This DPA will remain in full force and effect so long as:
 - 9.1.1 the Agreement remains in effect; or
 - 9.1.2 Affinus retains any of the Protected Data related to the Agreement in its possession or control (**Term**).
- 9.2 Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of the Agreement in order to protect the Protected Data will remain in full force and effect.
- 9.3 If a change in any Data Protection Legislation prevents Affinus from fulfilling all or part of its obligations under the Agreement, Affinus may by written notice to the Client suspend the processing of the Protected Data until that processing complies with the new requirements. If Affinus are unable to bring the Protected Data processing into compliance with the Data Protection Legislation, Affinus may terminate the Agreement (or the element of the Services effected by the change in Data Protection Legislation) without any liability to the Client on giving 30 days' written notice to the Client.

10 DATA RETURN AND DESTRUCTION

- 10.1 On termination of the Agreement for any reason or expiry of its term or on the end of the processing of the Protected Data (if later), Affinus will securely delete or destroy or, if directed in writing by the Client, return and not retain, all or any of the Protected Data in its possession or control.
- 10.2 If any law, regulation, or government or regulatory body requires Affinus to retain any documents, materials or Protected Data that Affinus would otherwise be required to return or destroy, it will notify the Client in writing of that retention requirement.

11 RECORDS

- 11.1 Affinus will keep detailed, accurate and up-to-date written records regarding any processing of the Protected Data (**Records**).

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- 11.2 Affinus will ensure that the Records are sufficient to enable the Client to verify Affinus's compliance with its obligations under this DPA and the Data Protection Legislation and Affinus will provide the Client with copies of the Records upon request.

12 AUDIT

- 12.1 Affinus will, during the Term and to the extent required by Data Protection Legislation, following the Client's written request will contribute to audits or inspections by making audit reports available to the Client. Following this request, and no more frequently than once during each Year, Affinus will promptly provide documentation or complete a written data security questionnaire of reasonable scope and duration regarding Affinus' processing of Protected Data.

Schedule 2

Template Statement of Works

Statement of Works Details

Contract No:	[CONTRACT NUMBER]	
Client:	[COMPANY NAME] LIMITED (No. [NUMBER])	
Client's address:	[REGISTERED ADDRESS]	
Client representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [Telephone] Postal Address: [POSTAL ADDRESS]	
Affinus representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [Telephone] Postal Address: [POSTAL ADDRESS]	
Services start Date:	The date the Agreement is entered into by the parties.	
End date	The date the Agreement is terminated by either Party in accordance with clause 16 (Termination).	
Services:	[DESCRIPTION], as further detailed in this SoW.	
Deliverables:	[DESCRIPTION, including if they are subject to any Acceptance Testing]	
Charges:	[Details of charges to be included here]	
Invoicing arrangements:	The Charges shall be invoiced monthly in arrears for the Services provided in the month.	
Data Processing	Subject-matter of processing:	The deliver the Services.

	Duration of processing:	For the duration of the Term and/or so long as Affinus need to process the Personal Data to provide the Services.
	Nature and purpose of processing:	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose of processing is for the provision of the Services.
	Categories of Data Subjects:	[TBC]
	Types of Personal Data:	[TBC]

1. This Statement of Work is made up of the following:
 - 1.1. this Statement of Work; and
 - 1.2. the rights and obligations set out in the Master Services Agreement entered into by Affinus and the Client on [INSERT DATE]
2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in this Statement of Work shall have priority over the MSA.
3. This Statement of Work shall form the basis of the contract. Any attempt to impose or incorporate into this Statement of Work any other terms, or any terms which are implied by trade custom, practice, or course of dealing shall be excluded from the Agreement.

This Statement of Work has been entered into on the date stated at the beginning of it.

Signed for and on the behalf of Affinus

Signature :

Name :

Position :

Date :

Signed for and on the behalf of the Client

Signature :

Name :

Position :

Date :

Schedule 3
Template Change Order

Change Order Details:

CCN No	
Statement of Work reference	
Effective Date of Change	
Change requested by	Change requested by [Affinus OR Client].
Period of validity	This Change Control note is valid for acceptance until [DATE].
Reason for Change	
Detailed description and impact of Change (including to delivery and performance)	
Required amendments to wording of agreements or schedules	
Adjustment to Charges resulting from Change	
Additional one-off charges and means of determine these (for example, fixed price basis)	
Supporting or additional information	

SIGNED BEHALF OF THE CLIENT	ON THE	Signature: Name: Position: Date:
SIGNED BEHALF OF AFFINUS	ON OF	Signature: Name: Position: Date:

Schedule 4
Acceptance Certificate

To: Af
From: [insert name of Client]
[insert date]

Dear Sirs,

Acceptance Certificate

Deliverable: [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the statement of work ("**SoW**") relating to the provision of the [insert description of the services] between the [insert Client name] ("**Client**") and Affinus Limited ("**Affinus**") dated [insert date] pursuant to the Master Services Agreement between the parties dated [insert date] (the "**MSA**").

The definitions for any capitalised terms in this certificate are as set out in the SoW and/or MSA.

We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones] have been tested successfully in accordance with the Acceptance Tests.

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Client]