

Track Record G-Cloud 15 Supplier Licence Terms

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Jacobs U.K. Limited

2nd Floor, Cottons Centre
Cottons Lane
London SE1 2QG
United Kingdom

T +44 (0)203 980 2000
www.jacobs.com

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These terms and conditions ("these Terms") and any Open Source Software licence terms as referred to in clause 4.10.2 below are the applicable "Supplier Licence Terms" referred to in the Call-Off Contract (reference number [xxxxx]) between Jacobs UK Limited (Company number 02594504) ("the Supplier") and the Buyer (as defined in the Call-Off Contract). The Parties have entered into the Call-Off Contract in relation to the Buyer's access and use of the Applications and accordingly hereby agree to these Terms as part of the Call-Off Contract.

BACKGROUND:

- a) The Supplier has developed and owns the Applications which the Buyer wishes to use and/or have access to as referred to within the Call-Off Contract.
- b) Notwithstanding the other terms of the Call-Off Contract, the Buyer hereby agrees and acknowledges that the use and access of the Applications are governed by these Terms.
- c) The Buyer is and shall be responsible for all Authorised Users compliance under these Terms and the respective Web Application Terms of Use and Mobile Application Terms of Use.

1. Definitions

- 1.1 **Capitalized terms used in these Terms shall have the same meaning as set out in the Call-Off Contract unless otherwise stated herein and the following definitions and rules of interpretation in this clause apply:**

"Affiliate"	means as regards a Party, any subsidiary or holding company of that Party, from time to time, and any subsidiary, from time to time, of a holding company of that Party (for the purposes of this definition, "holding company" and "subsidiary" shall have the meanings ascribed to them in Section 1159 of the Companies Act 2006);
"Applications"	means the Web Application and the Mobile Applications or any of them (as the context so requires) for the respective Track Record Group of Products;
"Applicable Data Protection Law"	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any replacement legislation coming into effect from time to time;
"Authorised Users"	means those Buyer employees, agents, and independent third-party consultants and contractors acting on behalf of the Buyer who the Supplier has agreed can be authorised by the Buyer to access the Applications;
"Authorised User Data"	means data that is either collected and / or generated in connection with the Buyer's and any or all Authorised User's access and use of the Applications (as detailed in the Transparency Notice) but excluding any Buyer Content. Authorised User Data may include but is not in any way limited to username, business email address, IP address and Applications usage data;
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"Buyer Content"	means all content provided by the Buyer including without limitation data that is created and/or provided by the Buyer or on behalf of the Buyer whether by the Supplier and/or any other third party, and all data derived, reconfigured and/or regenerated from it for the purposes of using the Applications and/or performing the Consultancy Services and/or facilitating the Buyer and the Authorised Users use of the Applications and/or the Consultancy Services;
"Call-Off Contract"	means the call-off contract entered into on <insert contract date> between the Supplier and the Buyer reference number [XXXX] which shall include any subsequent variations, amendments and changes made thereto;
"Buyer Content"	means all content including data that is created and/or provided by the Buyer or on behalf of the Buyer whether by The Supplier and/or any other third party and all data derived, reconfigured and/or regenerated from it for the purposes of using and/or performing the Consultancy Services and/or facilitating the Buyer and the Authorised Users use of the Consultancy Services;
"Confidential Information"	has the meaning given to it in Clause 11.2.1;
"Consultancy Services"	means any consultancy services to be provided to the Buyer by the Supplier under the Call-Off Contract and described therein which does not include the Applications which is governed by these Terms;
"Data Retention Period"	means the period for which the Buyer Content is saved in the in the Web Application and/or by the Supplier, being a period of six (6) months from the earlier of the end of the Initial Subscription Period (or from the end of the Renewal Period(s) if applicable) or termination or natural expiry of these Terms. Buyer Content naturally cycles out of backups over a three-month period after deletion.
"G-Cloud 15 Framework Agreement"	means the G- Cloud framework agreement entered into between the Crown Commercial Services and the Supplier (reference:) dated [date].
"Knowledge Articles"	means the procedures and information distributed or otherwise made available by the Supplier to the Buyer and the Authorised Users (including but not limited to the self-service knowledge base and the "how to guides") either in printed form, online or stored electronically providing instructions and guidance in the use of the Application, which may be amended or updated from time to time by The Supplier;
"Effective Date"	means the Start Date set out in the Call off Contract
"Initial Subscription Period"	means the first twelve (12) months of the SaaS Subscription starting on the Effective Date unless otherwise agreed with the Client;
"Intellectual Property Enhancements"	any customised services and or configurations provided by The Supplier to the Buyer in relation to the Applications pursuant to the Call-Off Contract and/or these Terms;
"Intellectual Property Rights"	means any and all, current and future, intellectual and industrial property rights and interests, including but not limited to (a) any patents, design,

	utility models, database rights, trademarks, service marks, eligible layout rights, designs, copyrights and topographical rights, moral rights, design patents, trading names, internet domain names, source code, rights in the get-up of products (including the screens and user interfaces of software) and other signs and indications of origin, whether registered or unregistered, and any applications for registration of any of them; (b) any discoveries, trade secrets, know-how, software and improvements; (c) together with any rights in server programmes, specifications, formulae, data, analytics, algorithms, libraries, know-how, processes, methods, techniques, development improvement and any other innovation, including but not limited to methodologies, frameworks, metrics, assessment questions, software configuration, customisation codes, images, ideas, confidential information, tools and text that are part of the proprietary content; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them, in the UK or the world, for the duration of those rights and interests; and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"IP Claim"	has the meaning give to it in Clause 4.13;
"Jacobs' Group"	means the Supplier, its Affiliates and third-party licensors and suppliers including those of the Open Source Software;
"Jacobs IP"	has the definition given at Clause 4.1
"Laws"	has the meaning given to it in Clause 1.2.4;
"Mobile Application(s)"	means the Track Record applications available on the Apple App Store and/or Google Play Store: as may be updated from time to time;
"Mobile Application Terms of Use"	Means in respect of the Mobile Application(s) the end user agreement terms available for information and acceptance on the Mobile Web Applications which the Authorised Users must agree to in order to access the Mobile Applications;
"Open Source Software"	means any software licenced under any form of open source licensing or any libraries or code or anything similar, included or used in, or in the development of, the Applications, or with which the Applications is compiled or to which it is linked as set out in the attributions page within the Applications;
"Output Data"	means data or other type of deliverable that is generated by the Supplier as a result of the Applications, including, but not limited to, reports, analytics and materials. For the avoidance of doubt the format of the deliverable for the Output Data shall remain the Supplier's IP or where applicable Third Party Materials.
"Personal Data"	has the meaning given in the Applicable Data Protection Law;

"Purpose"	Means [The Buyer's purpose to be agreed at call-off stage and a succinct description to be inserted here.]
"Transparency Notice"	Means the transparency notice as made available in the Applications and as may be amended from time to time.
"Renewal Period(s)"	means the period(s) described in Clause 12.1;
"SaaS Subscription"	means the subscription to the particular Product(s) specified in the Call-Off Contract and Schedule 1 of these Terms that are to be provided by The Supplier to the Buyer for the Subscription Period;
Services	means the Applications and any Consultancy Services referred to in the Call-Off Contract.
"Subscription Fees"	means the subscription fees referred to in Schedule 1 and payable by the Buyer for the SaaS Subscription including any fees for any and/or all Renewal Periods pursuant to these Terms;
"Subscription Period"	means the Initial Subscription Period together with all subsequent Renewal Periods
"Suggestions"	means any and all ideas and/or suggestions for improvements, new features, functionalities, corrections, enhancements or changes to the Applications suggested by the Buyer and/or any Authorised Users to The Supplier, which may constitute Intellectual Property Rights under the applicable law;
"Technical Support"	means the support provided to resolve technical issues associated with access to the Applications and their functionalities, in accordance with the Track Record Support Policy;
"Terms"	means these terms and conditions;
"Web Application"	means the web-based software application for the specific Product(s) as specified in the Call-Off Contract and Schedule 1 of these Terms (known as Track Record), which is owned, configured and managed by the Supplier and contains Third Party Materials and Open Source Software (for which the relevant rights are held and/or operated by the Supplier);
"Web Application Terms of Use"	means the end user agreement available for information and acceptance on the Web Application which the Authorised Users must agree to in order to access the Web Application;
"Third Party Materials"	means any software, data, online services or infrastructure in relation to the Applications that is owned or provided by a third party as set out in the Applications; and
"Track Record"	is the trademark and branding used by The Supplier to refer to its Intellectual Property Rights in the Track Record Use Cases.
"Track Record Use Cases"	means: ▪ Track Record Engage;

- Track Record Facilities; and
- Track Record Safety;

(each individually a "Use Case" or combination of more than one, the "Use Cases")

"Track Record Support Policy" means the policy for Technical Support

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 In these Terms, unless expressly stated otherwise, the following applies:

- 1.2.1 these Terms form part of and are deemed to be incorporated into the Call-Off Contract
- 1.2.2 notwithstanding the terms of the G-Cloud 15 Framework Agreement and/or the Call-Off Contract these Terms shall take precedence over the G-Cloud 15 Framework Agreement and the Call-Off Contract and any other terms and conditions applicable to the Applications;
- 1.2.3 reference to the singular includes reference to the plural and vice versa and reference to any gender includes reference to the other genders;
- 1.2.4 reference to:
 - 1.2.4.1 a person includes a firm, incorporated association, corporation and a government or statutory body or authority;
 - 1.2.4.2 a person includes its legal personal representative, successors and permitted assigns;
 - 1.2.4.3 time is to local time in London, England;
 - 1.2.4.4 a "Clause" is to a clause in these Terms;
- 1.2.5 any phrase introduced by the terms "including", "includes", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.6 reference to any statute, statutory provision, subordinate legislation, code or guide ("**Laws**") includes a reference to such Laws as from time to time amended, extended or re-enacted; and
- 1.2.7 Schedules attached to these Terms (including their respective attachments, if any) form an integral part of these Terms and are incorporated herein by reference.

2. Access, Use and Support

Access Rights and Use

- 2.1 The Supplier grants the Buyer and its Authorised Users for the Subscription Period, a non-transferrable and non-exclusive, non-refundable (other than pursuant to clause 12.7) right to access and use the Applications solely for the purpose specified in the Call-Off Contract in accordance with the Knowledge Articles and these Terms.
- 2.2 The Buyer and its Authorised Users shall only access the Web Application in accordance with Clause 2.1 via the internet on its own computers through a website address which shall be notified by the Supplier to the Buyer from time to time.

- 2.3 The Supplier shall use reasonable efforts to provide the Buyer and its Authorised Users with access to the latest supported version of the Applications via the internet from the hosting facility that the Supplier has chosen to use for the Applications.
- 2.4 The Buyer and Authorised Users may only use the Web Application:
 - 2.4.1 to view, download and print the Buyer Data; and
 - 2.4.2 if provided within the limited individual Authorised User access rights, to edit and upload Client Data, provided that each Authorised User agrees to the Web Application Terms
- 2.5 The Supplier shall make available for download the relevant Mobile Applications and grants the Buyer and its Authorised Users a non-transferable and non-exclusive right to access and use the Mobile Applications for the Subscription Period solely for the Purpose, in accordance with the Knowledge Articles, these Terms and the relevant Mobile Application Terms of Use.

Login Access

- 2.6 The Buyer is solely responsible for ensuring: (i) appropriate parties are selected/nominated by the Buyer to be given access to the Applications as "Authorised users", (ii) such Authorised Users have received appropriate training on the use of the Applications, (ii) that such Authorised Users use the Applications in accordance with the Knowledge Articles, and comply in full with these Terms, the Web Application Terms of Use and/or the Mobile Application Terms of Use (which the Authorised Users must accept to use the Applications); (iii) the Authorised Users comply in full with the Client's Bring Your Own Device policy, if applicable; and (iv) ensuring the proper usage of passwords, tokens and access procedures with respect to logging into the Applications.
- 2.7 The Supplier reserves the right to refuse registration of, or to cancel, login IDs that it reasonably believes to violate these Terms and the Knowledge Articles in which case the Supplier will promptly inform the Buyer in writing of such refusal or cancellation.
- 2.8 If the Buyer learns or suspects that any Authorised User is not complying with the provisions of these Terms, the Web Application Terms of Use or the Mobile Application Terms of Use, the Buyer must notify the Supplier immediately and terminate such Authorised User's right to use the Applications.
- 2.9 Authorised Users must be current employees or nominated third parties of the Client. The Buyer may only allow nominated third parties to use the Applications if they enter into contractually binding terms no less onerous than these Terms ("Third Party User Agreement"). Any breach by a nominated third party of the terms of any Third Party User Agreement shall be deemed to be a breach by the Buyer of these Terms. On any Authorised User ceasing to be an employee of the Buyer or a contracted third party of the Client, the Buyer shall immediately notify the Supplier and shall terminate the right for such Authorised User to use the Applications.
- 2.10 Any breach by an Authorised User of any Web Application Terms of Use or Mobile Application Terms of Use shall be deemed to be a breach by the Buyer of these Terms.
- 2.11 The Buyer shall implement and take measures to maintain, reasonable and appropriate administrative, technical, and physical security safeguards, protect against anticipated threats or hazards to the security or integrity of the Applications and protect against any unauthorised access to, or use of, the Applications and ensure compliance with Clause 3.2. The Buyer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Applications and, in the event of any such unauthorised access or use, promptly notify the Supplier.

Technical Support and Service Levels

- 2.12 The Supplier shall provide the relevant Technical Support to assist the Buyer and the Authorised Users with accessing the Applications in accordance with Track Record Support Policy.
- 2.13 Notwithstanding any other provision of these Terms or the Call-Off Contract, the Applications may be suspended for so long as is reasonably necessary:
 - 2.13.1 to enable either Party to comply with an order or request from a governmental, or other competent regulatory body or administrative authority; and/or
 - 2.13.2 to enable the Supplier to carry out work which is necessary in its reasonable opinion to maintain or improve the Applications; and/or
 - 2.13.3 to carry out any emergency and/or standard maintenance, support and/or upgrades of the Applications,

provided that the Supplier will use its reasonable endeavours to minimise the impact of such suspension, which shall be notified to the Buyer with as much advance notice as is reasonably practicable.

3. Client Obligations

- 3.1 The Buyer acknowledges and undertakes that it will:
 - 3.1.1 use the Applications for lawful purposes only and in accordance with these Terms;
 - 3.1.2 comply in every respect with all the instructions which the Supplier provides concerning the Applications;
 - 3.1.3 use and adhere to any authentication codes or security procedures which the Supplier may notify to the Buyer from time to time; and
 - 3.1.4 keep and maintain an up to date a list of its Authorised Users and will provide such list to the Supplier promptly at the Supplier's request and shall provide the Supplier with notification of any changes to its Authorised Users (including where an Authorised User no longer requires access to the Applications for any reason) within a reasonable time frame.
- 3.2 The Buyer shall not and shall ensure the Authorised Users shall not (in each case either directly or indirectly):
 - 3.2.1 copy, modify, duplicate, mirror, republish, download, display, transmit, distribute or reproduce the Applications or the Knowledge Articles, or create, translate or otherwise prepare derivative works based upon the Applications, Knowledge Articles or Jacobs' Group's Intellectual Property Rights;
 - 3.2.2 exceed the users or other entitlement measures of the Applications as set forth in these Terms and/or the Call-Off Contract;
 - 3.2.3 remove or destroy any copyright, trademark or other proprietary marking or legends placed on or contained in the Applications, Knowledge Articles or Jacobs' Group's Intellectual Property Rights;
 - 3.2.4 assign, sell, resell, licence, rent, lease, distribute or otherwise commercially exploit or transfer the rights granted to the Buyer under these Terms to any third party except as expressly provided herein;
 - 3.2.5 use the Applications and/or Knowledge Articles to provide services to third parties;
 - 3.2.6 except to the extent applicable laws specifically prohibit such restriction; modify, disassemble, decompile, reverse engineer, or attempt to derive the source code or underlying ideas or algorithms

of any part of the Applications, access all or any part of the Applications to recreate the Applications or use the Applications for any competitive purpose;

- 3.2.7 disseminate or otherwise disclose the content of any part of the Applications or any underlying software except as expressly set out in these Terms;
- 3.2.8 access all or any part of the Applications and Knowledge Articles in order to build a product which competes with the Applications;
- 3.2.9 use the Applications to infringe on the Intellectual Property Rights, publicity rights, or privacy rights of any third party, or to store or transfer defamatory, trade libellous or otherwise unlawful data;
- 3.2.10 interfere with or disrupt the integrity or performance of the Applications;
- 3.2.11 introduce or permit the introduction of any virus, vulnerability or other harmful or malicious code into the Supplier network and information systems;
- 3.2.12 bypass or disable any protections that may be put in place to provide security for the Applications or to protect against non-authorised access to the Applications;
- 3.2.13 grant or transfer right to access the Applications to any other Party outside of these Terms;
- 3.2.14 permit any unauthorised access to the Applications or attempt to gain unauthorised access to the Applications or its related systems or networks, or perform unauthorised penetrating testing on the Applications; and/or
- 3.2.15 use run-time versions of any third party products which may be embedded in the Applications or any underlying software, for any use other than the intended use of the Applications as specified in these Terms.
- 3.3 If, for the purposes of providing the Applications and/or the Technical Support, it is necessary or desirable for The Supplier to access or use any equipment, software or software intermediary (API) of the Client (or a third party's which the Client is engaged with), Buyer Content, , facilities or services, the Buyer will make these available to the Supplier for access free of charge to enable the Supplier to perform its obligations under these Terms, and the Buyer grants to the Supplier a non-exclusive, royalty-free licence to access and/or use such equipment, software, Buyer Content, facilities and/or services solely for such purposes of providing the Applications and/or the Technical Support.
- 3.4 The Supplier shall not be liable for any failure to perform its obligations under these Terms due to issues arising out of or in connection with the access and/or use required pursuant to Clause 3.3 and the Buyer shall be liable for all additional costs incurred by the Supplier and/or the Buyer in facilitating appropriate access and/or use necessary for the Supplier to make the Applications accessible and usable pursuant to these Terms.
- 3.5 If at any time the Client's or any Authorised User's access to, or use of, the Applications is not in compliance with any applicable Laws or regulation, the Buyer will be in breach of these Terms, The Supplier will be entitled at its sole discretion to terminate the use of the Applications under Clause 12 and to cancel the Client's and any Authorised User's access to the Applications. The Buyer acknowledges and agrees that The Supplier is entitled to report such a breach or non-compliance to any relevant regulatory body or agency, and that The Supplier will not incur any liability to the Buyer or Authorised User as a result of the breach, the non-compliance, or The Supplier reporting of it.

4. Intellectual Property Rights

- 4.1 The Buyer acknowledges and agrees that the Supplier and/or its third party licensors own all Intellectual Property Rights (including any Intellectual Property Enhancements and Suggestions) in the Applications and all underlying software and applications and the Knowledge Articles as well as

any output format from the Applications ("**Jacobs IP**"). All rights, title and interest and all Intellectual Property Rights in Jacobs IP shall remain vested in the respective Parties in the Jacobs' Group and nothing in these Terms shall affect such rights or transfer ownership of any Intellectual Property Rights from The Supplier to the Client.

- 4.2 All Buyer Content shall be owned by the Client, subject to the limited use rights granted to The Supplier in Clause 4.3. The Buyer warrants that the Buyer Content does not infringe the Intellectual Property Rights of any third party. The Buyer acknowledges that the Supplier makes no independent assessment or evaluation of any Buyer Content, nor does the Supplier examine the sources of the Buyer Content to determine whether it may incur liability to third parties from delivery or use thereof as permitted herein. The Buyer shall be solely responsible for the accuracy, quality, integrity, and legality of Buyer Content and of the means by which Buyer Content was acquired. The Buyer undertakes that it has all rights, permissions, and licenses to provide the Supplier with access to Buyer Content pursuant to these Terms and for the purposes specified in these Terms.
- 4.3 The Buyer hereby grants to the Supplier a limited, perpetual, non-exclusive, royalty-free right and license to use the Buyer Content for the purposes of providing access to the Applications, training services and performing analytics with regard to the Applications, monitoring use and compliance of these Terms, and to improve and enhance the Applications and other products and services offered by the Supplier , provided that to the extent the Buyer Content contains any personal Data, The Supplier use of the Buyer Content shall subject to the Supplier data protection obligations as specified in Clause 6 and the Transparency Notice.
- 4.4 Subject to the payment in full of the Subscription Fees by the Buyer, the Buyer shall retain ownership, title and interest in and to any Output Data (not including any Jacobs IP). Client acknowledges that the Output Data may not be unique and may be substantially similar in whole or part to results produced for other customers of the Supplier obtaining similar services. To the extent that any Jacobs IP is incorporated in or otherwise required for the access to or use of the Output Data, the Supplier hereby grants the Buyer a limited, perpetual, royalty-free, nonexclusive, license to such data only to the extent necessary to allow Client to view, download and export (to the extent technically practicable) and have access to the Output Data. The Supplier shall also retain the right to use the Output Data for the purposes of providing training services and performing analytics with regard to the Applications, and to improve and enhance the Applications and other products and services offered by the Supplier .
- 4.5 Except for the rights expressly granted to the Buyer under Clause 4.1, these Terms do not grant to the Buyer and the Buyer agrees and acknowledges that it shall not acquire (whether under these Terms or the Call-Off Contract or as a result of the use of the Applications in accordance with these Terms or otherwise) any right, title, interest or licence in or under any of the Jacobs' Group's Intellectual Property Rights to, in or related to the Applications.
- 4.6 The Buyer acknowledges that any discoveries, inventions, patents, design rights or other Intellectual Property Rights including any Intellectual Property Enhancements arising (directly or indirectly) out of or in connection with the Applications is the intellectual property of The Supplier .
- 4.7 To the extent that the Buyer provides the Supplier with Suggestions, such Suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon The Supplier pursuant to these Terms and/or the Call-Off Contract and may be implemented by the Supplier in its sole discretion. The Buyer acknowledges that any Supplier products or materials including but not limited to the Applications and Knowledge Articles incorporating any such Suggestions becomes the sole and exclusive property and intellectual property of the Supplier immediately upon the Buyer uploading or providing the Suggestion(s) to the Supplier . The Buyer hereby assigns all Intellectual Property Rights in all and any such Suggestions to the Supplier effective as soon as the Buyer provides such Suggestion to the Supplier .

- 4.8 The Buyer acknowledges that the grant of access to the Applications does not include any licence or access rights to any Third Party Material or Open Source Software, other than the access provided to the Applications. Any direct access or access over and above that provided pursuant to these Terms requires a separate licence from such parties owning the Third Party Material or providing the Open Source Software which the Buyer must procure directly.
- 4.9 Other than as expressly set out in these Terms, the Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content, performance or use of any third party content (including but not limited to any Third Party Materials and Open Source Software).
- 4.10 The Applications may contain or be provided with the following components:
 - 4.10.1 Third Party Materials which are licenced to the Supplier by a third party and/or
 - 4.10.2 Open Source Software which is subject to the terms and conditions of Open Source Software licences. Open Source Software is identified in the user interface of the Web Application.
- 4.11 To the extent required by the licence that accompanies the Open Source Software, the terms of such licence will apply in lieu of these Terms with respect to such Open Source Software including without limitation any provisions governing access to source code, modification, or reverse engineering.
- 4.12 The Buyer shall not use the Supplier's trademarks (whether registered or unregistered) including in respect of the Applications except with the Supplier's prior written consent and will ensure it will not attempt, now or in the future, to claim any rights in the trademarks, degrade the distinctiveness of the trademarks, or use the trademarks to disparage or misrepresent the Supplier, the Applications or the Consultancy Services.
- 4.13 If any claim is brought or threatened by a third party against the Buyer or its Affiliates, alleging that the Applications infringe such third party's Intellectual Property Rights (an "IP Claim") the Buyer shall immediately notify the Supplier in writing giving detailed particulars of the IP Claim. The Buyer shall not make any comment or admission to any third party in respect of any IP Claim without the prior written consent of the Supplier except, insofar as urgently necessary to maintain its legal position, to deny the claim.
- 4.14 The Supplier shall be entitled and, on the Supplier's request, the Buyer shall grant the Supplier such authority as required to allow the Supplier to assume control over the defence of any IP Claim and to settle such claim provided that such settlement does not impose any liability on the Buyer other than restrictions on its use of the Applications.
- 4.15 In the event that the Client's use of the Applications in accordance with these Terms infringes a third party's Intellectual Property Rights or if any IP Claim is made or threatened, or in the Supplier's reasonable opinion is likely to be made or threatened against the Jacobs Group or the Client, the Supplier shall be entitled (but not obligated) at its sole option and expense to:
 - 4.15.1 procure for the Buyer the right to continue using or maintaining the Applications (or any part thereof) in accordance with the terms of these Terms; and/or
 - 4.15.2 modify the Applications so that it ceases to be infringing; and/or
 - 4.15.3 replace the Applications with non-infringing software; and/or
 - 4.15.4 terminate these Terms immediately by notice in writing to the Buyer and refund, on a pro rata basis, the Subscription Fees paid by the Buyer as at the date of termination in respect of any period after the effective date of termination.

5. Buyer Content

- 5.1 The Buyer acknowledges and herein agrees to the Supplier's hosting and processing the Buyer Content and the Authorised User Data in the Applications for the purpose of these Terms and (if applicable) to deliver the Consultancy Services under the Call-Off Contract.
- 5.2 Save as regards to the Supplier ' obligations in respect of Personal Data within the Buyer Content under the Call-Off Contract and these Terms, the Buyer acknowledges and agrees that it is entirely responsible for its Buyer Content and any use that it or any Authoriser User or third party may make of it for any purpose, and that the Supplier shall have no responsibility for the Buyer Content or such use under these Terms.
- 5.3 Without prejudice to the generality of Clause 5.2, the Buyer undertakes:
 - 5.3.1 to inform itself (and, if appropriate, the Supplier) concerning, and in performing its obligations under these Terms fully to comply with, all Laws, regulations, licences or binding codes or standards of practice relevant to personal data or personal information (including without limitation the Applicable Data Protection Law if and as applicable);
 - 5.3.2 not to enter, upload, transmit or download any item of Buyer Content or any message or material into the Applications that:
 - 5.3.2.1 is in breach of any applicable Laws or which in the Supplier reasonable opinion is likely to cause annoyance or distress to any person;
 - 5.3.2.2 infringes the copyright or other Intellectual Property Rights of any other person, company or partnership, anywhere in the world; or
 - 5.3.2.3 infringes any Applicable Data Protection laws or regulations anywhere in the world.
- 5.4 The Buyer Content will be retained for the Data Retention Period unless agreed otherwise with the Supplier. The archived Buyer Content will only be accessed to respond to the Supplier's reasonable requests during the Data Retention Period.
- 5.5 On expiry of the Data Retention Period, the Buyer Content will be permanently deleted from the Applications with no option or ability to restore the original Buyer Content or to access any copy of it.
- 5.6 Upon termination, expiry or termination of the Initial Subscription Period or from the end of any Renewal Period(s), the Supplier can arrange to transfer one copy of the Buyer Content in an industry standard format (made available on an SFTP site for the Buyer to retrieve, subject to all due Subscription Fees being received in full by The Supplier. Any additional data exports that the Buyer may require shall be an additional cost to be determined by the Supplier and to be paid by the Client.
- 5.7 The Buyer acknowledges and herein agrees to the Supplier using the Buyer Content to identify and inform any Applications improvement, development and maintenance requirements.

6. Personal Data

- 6.1 The Buyer acknowledges that any Personal Data which it shares with the Supplier pursuant to these Terms and for the purpose of the Supplier providing the Applications may be collected, used and disclosed as described in the Transparency Notice. By entering into these Terms the Buyer acknowledges that the Supplier will process any Personal Data which the Buyer may provide as set out in the Transparency Notice.
- 6.2 The Parties agree that any processing of Personal Data by the Supplier in relation to the provision of the Consultancy Services (if applicable) and/or under the Call-Off Contract, shall be on the basis set

out within the Call-Off Contract and subject to the relevant data protection terms as set out within the Call-Off Contract.

7. Subscription Fees

- 7.1 The Subscription Fees are non-refundable and payable by the Buyer in respect of the Subscription Period and shall be as set out in Part A of Schedule 1 of these Terms and include any variation or as otherwise agreed in writing between the Buyer and the Supplier .
- 7.2 Notwithstanding the Call-Off Contract, the Buyer shall pay the Subscription Fees annually in advance and in the manner set out in these Terms unless otherwise agreed with the Supplier.
- 7.3 The Supplier shall raise an invoice for the Subscription Fees upon entering into these Terms with the Buyer and the Buyer shall pay the invoice within 28 calendar days of receipt. The Supplier reserves the right at any time during the Subscription Period to increase the Subscription Fees ("Fee Increase") in event that the Buyer exceeds the Application Package (which is set out in Part B of Schedule 1) . The Supplier will notify the Buyer in respect of any such Fee Increase, and shall thereafter raise an invoice for the Fee Increase which shall be payable by the Buyer within 28 days of receipt.
- 7.4 Notwithstanding the provisions of the Call-Off Contract, the Subscription Fees shall be paid without any set-off, withholding or deduction on any account whatsoever. Any late payment from the Buyer shall be subject to interest (after as well as before judgment or order) at the annual rate of four percent (4%) above the official bank rate of the Bank of England calculated on a daily basis from the due date, such interest to be paid on demand.
- 7.5 In the event that the Supplier has not received payment of the Subscription Fees within the time specified in Clause 7.3, and without prejudice to any other rights and remedies the Supplier may have available to them, the Supplier may, at its sole discretion and without any liability to the Buyer and notwithstanding the provisions of the Call-Off Contract, suspend the Client's access to the SaaS Subscription by disabling the Client's and all the Authorised Users passwords, accounts and access to all or part of the Applications and archive any Buyer Content contained within the Applications. the Supplier shall be under no obligation to provide any or all of the Applications or return the Buyer Content while the relevant invoice(s) remain unpaid. Access to the Applications and the Buyer Content for the Buyer and the Authorised Users shall only be re-instated upon full payment of any and all outstanding invoices in relation to the Applications.

8. Warranties and Exclusions

- 8.1 The Buyer acknowledges that software is never wholly free from defects, errors and bugs and subject to the other provisions of these Terms, the Supplier does not warrant or represent that the Applications will be wholly free from such defects, errors or bugs.
- 8.2 The Buyer shall report any defect, error or bug to the Supplier within two (2) Business Days of when the Buyer became aware or should reasonably have been expected to have been aware of such defect, error or bug. the Supplier ' sole and exclusive liability, and the Client's sole and exclusive remedy, will be for the Supplier , at its expense, to use reasonable commercial efforts to correct any such agreed and fixable nonconformity within thirty calendar (30) days from the date that notice of the breach was provided.
- 8.3 The Supplier will use commercially reasonable efforts for the Applications to be available without any material interruptions but does not warrant that the Client's use of the Applications will be uninterrupted or error-free and disclaims any and all liability resulting from or related to such events.
- 8.4 The Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the

Buyer acknowledges that the Applications may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 8.5 The Buyer acknowledges that the Supplier and/or its suppliers provide back-up systems for the Applications in accordance with the Supplier ' internal policies from time to time.
- 8.6 Except as provided within these Terms, the Supplier does not make any other warranties, guarantees or representations concerning the operation or performance of the Applications.
- 8.7 The Buyer warrants that it shall impose and enforce a best practice "Bring Your Own Device" policy or similar where the Client's staff and contractors use the Applications on their own devices of any kind to ensure the integrity and security of the Applications. The Buyer shall provide a copy of its Bring Your Own Device policy or similar to the Supplier for its review upon its request. The Buyer shall alert the Supplier of any act, omission or breach arising out of or in respect of such policy as soon as it becomes aware of the same to the extent it affects or has the potential to affect the Applications and/or Apps and/or the Parties' compliance with these Terms.
- 8.8 The Buyer assumes sole responsibility for results obtained from the use of the Applications and the Knowledge Articles by the Client, and for conclusions drawn from such use.
- 8.9 The Supplier shall have no liability for any damage caused by or losses incurred due to errors or omissions in any information, instructions or scripts provided to the Supplier by the Buyer in connection with the Applications or any actions taken by the Supplier at the Client's direction.
- 8.10 Any and all warranties, expressed or incorporated are limited to the extent and period in these Terms.
- 8.11 Except for the express warranties set out in these Terms, to the maximum extent allowed by applicable Law, the Supplier disclaims and excludes all other warranties, representations and conditions of any kind whatsoever and other terms, in each case whether express or implied or incorporated into these Terms by statute, common law, the Call-Off Contract or otherwise, including any implied conditions and warranties of merchantability/satisfactory quality and fitness for a particular purpose.
- 8.12 The Buyer acknowledges that the Applications may enable or assist it or provide links to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Neither the Supplier nor any member of the Jacobs' Group assumes any responsibility for the owners or operators of such third party websites, any goods and services they supply or the content of their websites. No condition, warranty or other terms or representation is given in relation to any such website (including any liability arising out of any claim that the content of any external website to which the Applications includes a link infringes the intellectual property rights of a third party). The Supplier does not endorse or approve any third party website nor the content of any third party website made available via the Applications and hypertext links are not to be taken as an endorsement of such websites or as a warranty that such websites will be free of viruses or other such items of a destructive nature. The Buyer acknowledges that the Supplier does not control and cannot be responsible for the content or privacy practices of such website links.

9. Indemnities

- 9.1 The Buyer shall defend and indemnify the Supplier and/or the Jacobs' Group and their officers, directors and employees against any costs and expenses (including reasonable attorneys' fees), liabilities, claims, losses, damages suits and proceedings (including those brought by a government entity or any other third party) or other liability arising or resulting from:

- 9.1.1 any unauthorised access to, or use or misuse of, the Applications and/or any and all alleged or actual infringement of the Jacobs IP and/or Third Party Material and/or any Open Source Software by any employee, agent or sub-contractor of the Buyer or any Authorised User;
- 9.1.2 the Client's or any Authorised User's use of the Applications in breach of these Terms or the Web Application Terms of Use or Mobile Application Terms of Use;
- 9.1.3 any claims that the Buyer Content violates or misappropriates the intellectual property rights or other rights of a third party; and/or
- 9.1.4 the Client's non-compliance with or violation of any applicable laws or regulations.
- 9.2 The Buyer must notify the Supplier immediately if the Buyer receives a claim or demand that is subject to the Client's indemnification obligation.

10. Limitation of Liability

- 10.1 Notwithstanding any other provision of the Call-Off Contract and/or the G-Cloud 15 Framework in no event shall the Supplier be liable to the Client, including by way of indemnity, by virtue of any fiduciary duty, tort (including without limitation negligence), breach of contract or under any other legal doctrine or principle or otherwise at law and whether or not foreseeable at the date of entering into the Call-off Contract, for any
 - 10.1.1 any special, indirect, incidental or consequential loss or damage; and/or
 - 10.1.2 any loss of profit or anticipated profit or savings, loss of revenue, loss of contracts or reputation, loss of production, loss of product, loss or corruption of data or information, loss of use or opportunity or loss of efficiency, loss of savings (whether anticipated or otherwise), loss of or damage to goodwill, loss of business, any claims by Client's suppliers, contractors, customers whether based on alleged the Supplier fault or otherwise, any financing or interest costs, increase in running and/or operating costs, costs of plant downtime, business interruption or downtime or any similar losses or claims and any pure economic loss, in each case whether direct or indirect, howsoever arising and regardless of cause including without limitation by the fault, breach of contract, tort (including concurrent or sole and exclusive negligence) breach of duty, strict liability or otherwise of the Supplier and whether a claim is based on contract, at law, in equity or otherwise,

which may arise out of or in connection with the Applications and/or the the Call-Off Contract.

- 10.2 Subject to Clause 10.1 and 10.4, but notwithstanding any other applicable terms, the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), warranty, indemnity, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and/or the use of the Applications shall in no event exceed the Subscription Fee paid for the twelve (12) months immediately preceding the date on which the claim arose. Any claims and or losses suffered by the Buyer in relation to the Consultancy Services (if applicable) shall be dealt with under the Call-Off Contract exclusively.
- 10.3 The Client's sole and exclusive remedies for any and all claims it might have against the Supplier in relation to the Applications arising out of any act, error or omission of the Supplier are those expressly set forth in these Terms and the Buyer waives any other remedies it might have whether at law, or in equity and whether based on contract or in tort. Any and all releases, limitations on liability, restrictions, exclusions and indemnities running in favour of the Supplier in these Terms shall include in the aggregate Jacobs' Group and its and their officers, directors, shareholders, employees, agents and representatives.

- 10.4 Nothing in these Terms shall exclude or in any way limit the Supplier's liability for fraud, or for death or personal injury caused by its negligence, or any other liability in relation to these Terms and/or the Applications to the extent the same may not be excluded or limited as a matter of law.

11. Confidential Information

Confidential Obligations and Restrictions

- 11.1 Subject to and without prejudice to Clause 6, the Supplier's confidentiality obligations to the Buyer in relation to the Buyer Content and Client Personal Data shall be as set out in the Call-Off Contract.
- 11.2 The Client's confidentiality obligations in relation to the Applications shall be as set out in this Clause 11.2:
- 11.2.1 information that the Buyer gains in relation to the Applications (including but not limited to the results of any benchmarking or comparative analysis), the respective access details and Knowledge Articles (hereinafter referred to as "**Confidential Information**") shall be treated as confidential and except as provided in Clause 11.4, shall not be disclosed to any third party save as expressly permitted in these Terms or with the written consent of the Supplier;
- 11.2.2 if the Buyer learns about any of the components, processes or methods of operating any software comprised in the Applications, the Buyer will treat that knowledge or information as the Supplier ' trade secret and it shall be deemed as Confidential Information and the Buyer shall not use it to the benefit of any Party other than the Supplier or convey it in any way to any of its employees or any third party or allow any employee or third party to acquire it; and
- 11.2.3 the Buyer undertakes to take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, Confidential Information and to prevent the unauthorised use, dissemination, disclosure, or publication of such Confidential Information.
- 11.3 These confidentiality obligations shall apply to the Buyer and all Authorised Users for whom the Buyer shall be responsible.

Exceptions

- 11.4 The following exceptions apply to the confidentiality undertakings set out in Clause 11.2.1:
- 11.4.1 the Buyer may disclose Confidential Information under Clause 11.2.1 to its Authorised Users and advisors on a need-to-know basis and provided that such Party is bound by obligations of confidentiality substantially similar to those contained herein;
- 11.4.2 disclosure required pursuant to the requirements of a court, governmental agency and/or by operation of law including the requirements of The Freedom of Information Act to which the Buyer is subject but shall (to the extent permissible by law) limit such disclosure to only the information requested and give the Supplier prior written notice sufficient to permit the Supplier to contest such disclosure;
- 11.4.3 the Buyer undertakes to take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, Confidential Information and to prevent the unauthorised use, dissemination, disclosure, or publication of such Confidential Information. The confidentiality obligation shall apply to the Buyer and all Authorised Users for whom the Buyer shall be responsible;
- 11.4.4 the Confidential Information is or has become publicly available except by default of or breach by the Client; and

- 11.4.5 the Confidential Information has been provided to the Buyer by a third party which owes no duties of confidentiality to the Supplier in respect of the Confidential Information.

Continued Obligations

- 11.5 The obligations set out in this Clause 11 shall continue to apply after the natural expiry or termination of these Terms and/or the expiry of the Subscription Period.

12. Commencement, Renewal and Termination

- 12.1 These Terms will commence on the Effective Date and continue in force for the Initial Subscription Period and thereafter shall automatically renew for successive periods of twelve (12) months (each subsequent period of twelve (12) months being a "Renewal Period" and any and all being the "Renewal Periods" as the context so requires) subject to full payment of the Subscription Fee until terminated by either Party by giving no less than three (3) months' prior written notice to the other Party unless otherwise terminated in accordance with the provisions of these Terms (and subject to Clause 12.6).
- 12.2 NOT USED
- 12.3 Either Party may terminate the Call-Off Contract immediately upon notice to the other Party if the other Party:
- 12.3.1 materially breaches these Terms and either fails to remedy such breach within thirty (30) calendar days after receiving written notice of the breach from the other Party or such breach is incapable of remedy; or
- 12.3.2 becomes insolvent, ceases to operate in the ordinary course of business, has a receiver, liquidator, administrative receiver, administrator, trustee or other similar officer appointed for a substantial part of its assets, commences bankruptcy or dissolution proceedings over the whole or part of its assets, or an order is made or a resolution is passed for its liquidation, winding up or if an administrative or judicial order is made in respect of it or if it makes an arrangement or assignment for the benefit of its creditors or if any event analogous to any of the foregoing occurs anywhere in the world.
- 12.4 Either Party may terminate the Call-Off Contract, in whole or in part, or cease provision of the Applications if required to comply with applicable Law or regulation, and such termination will not constitute a breach of the Call-Off Contract by the terminating Party.
- 12.5 On termination or expiration of an applicable Subscription Period:
- 12.5.1 the Buyer will have no further right to access or use the Applications and the Supplier may immediately deactivate the Buyer and all Authorised Users accounts;
- 12.5.2 the Buyer shall within thirty (30) calendar days return or destroy any tangible Confidential Information within its possession or control that is not contained in the Applications;
- 12.5.3 unless otherwise agreed with the Client, any Client Personal Data and the Buyer Content contained in the Applications will be deleted within six (6) months of termination/expiration of the Subscription Period;
- 12.5.4 subject to Clause 12.4.5, the Buyer acknowledges that it is responsible for exporting any Buyer Content to which the Buyer desires to have continued access after termination/expiration and the Supplier shall have no liability for any failure of the Buyer to retrieve such Buyer Content and no obligation to store or retain any such Buyer Content beyond the Data Retention Period; and
- 12.5.5 Not used

- 12.5.6 The Supplier shall, on request of the Buyer and subject to all payments pursuant to these Terms being received in full by the Supplier, arrange with the Buyer to transfer the Buyer Content to the Client. The Buyer Content shall be provided in an industry standard format. Any additional data exports that the Buyer may require shall be an additional cost to be determined by the Supplier and to be paid by the Client.
- 12.6 Termination of the Call-Off Contract or the Subscription Period shall be without prejudice to the rights of the Parties up to termination.
- 12.7 Where the Applications have been suspended or terminated in accordance with this Clause 12, the Buyer shall not be entitled to any refund of the Subscription Fee and the full Subscription Fee shall be payable for the Subscription Period.

13. Suspension

- 13.1 The Supplier may audit the Client's use of the Applications to verify Client's compliance with these Terms, and Client shall provide any reasonable assistance with any such review.
- 13.2 In addition to the termination rights under Clause 12.2, the Supplier ' reserves the right to suspend the Client's access to the Applications immediately upon written notice to the Buyer if there is a breach or threatened breach of these Terms.
- 13.3 The Supplier shall have the right to suspend the Client's access and use of the Applications if there is an unusual or material spike or increase in Client's use of the Applications and the Supplier reasonably suspects or knows that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the Applications. The Supplier will provide notice prior to such suspension unless the Supplier reasonably believes that providing such notice poses a risk to the security of the Applications.
- 13.4 The Supplier shall have the right to suspend use of the Applications immediately if deemed reasonably necessary by the Supplier in order to protect the proper interests of the the Supplier or of its other clients, customers or suppliers. If practicable and depending on the nature of the reason for such suspension, the Supplier may, in its absolute discretion, give the Buyer an opportunity to remedy the situation.
- 13.5 Except as provided in Clause 13.3, the Supplier will promptly reinstate the Client's access and use of the Applications once the breach under this Clause 13 has been cured or the Parties agree that the matter has been resolved.

14. Force Majeure

- 14.1 Neither Party shall be liable to the other for any delay or failure in performing any of its obligations under these Terms where caused by circumstances, acts or omissions beyond its reasonable control including, but not limited to, lightning, fire, flood or storm, exceptionally severe weather conditions, act of God, explosion, war, riots, civil disorder or commotion, act of terrorism, malicious damage, failure of utility service or transport of telecommunications network, industrial disputes (other than of its own employees), strikes or lockouts or other labour difficulties or acts of local or central Government or other competent authorities, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, any force majeure event aforementioned suffered by the Supplier ' third party suppliers or sub-contractors, provided that the unaffected Party is notified of such an event and its expected duration.

15. Relationship of the Parties

- 15.1 Nothing herein contained shall be construed as creating a partnership of any kind, an association, or a trust between any member of the Jacobs' Group and the Buyer and/or the Authorised Users.

16. Third Party Rights

- 16.1 These Terms are not intended to nor will they operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person or entity who is not named as a Party to these Terms.

17. Assignment or Transfer

- 17.1 The Buyer may not assign, transfer or otherwise dispose of any of its right or obligations under these Terms without the prior written consent of the Supplier.

18. Amendments and Waivers

- 18.1 No amendment, except as provided in Clause 18.2, to these Terms or any provisions shall be binding on the Parties unless made in writing and signed by the Parties.
- 18.2 The Supplier may amend these Terms from time to time by giving the Buyer at least 30 calendar days prior written notice. the Buyer may request good faith negotiations regarding the amended terms and conditions.

A failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall 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 these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19. Entire Agreement

- 19.1 These Terms together with the documents referred to herein and the Call-Off Contract constitute the entire agreement between the Parties as to its subject matter and in relation to that subject matter supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.
- 19.2 In the event that these Terms are inconsistent in any way with the terms set out in the G-Cloud 15 Framework and/or the Call-Off Contract, these Terms shall take precedence.

20. Severability

- 20.1 The invalidity, illegality or unenforceability of any provision of these Terms shall not affect or impact the continuation in force of the remainder of these Terms. Any such defective provision shall be deemed severed from these Terms without affecting the validity of the remainder of these Terms which shall be construed and interpreted to give effect, to the greatest extent possible, to the intent of the Parties as expressed herein.

21. Notices

- 21.1 A Party giving notice or notifying the other Party under these Terms must do so in writing using the notice procedures set out in the Call-Off Contract provided that any notice given to the Supplier by the Buyer shall be sent with copy via email to trackrec@jacobs.com and NoticesEurope@Jacobs.com.

22. Authority

- 22.1 The Buyer represents and warrants to the Supplier that it has full power, capacity, and authority and has obtained all requisite management and other approvals necessary to enable it to accept and perform its obligations under these Terms and that it has full authority and capacity to accept these terms on behalf of the Client. By accessing the Applications, the Buyer accepts all the terms and conditions within these Terms.

23. Governing Law

- 23.1 These Terms shall be governed by and construed in accordance with the Laws of England and Wales.
- 23.2 The Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales save that a Party may bring proceedings in the courts of any jurisdiction other than England and Wales for the purpose of seeking: (i) an injunction, order or other non-monetary relief (or its equivalent in such other jurisdiction); or (ii) any relief or remedy which, if it (or its equivalent) were granted by the courts of England and Wales, would not be enforceable in such other jurisdiction.

Schedule 1

Part A – Subscription Fees

Product	Price
[insert]	[insert]

Part B – Application Package