



G-CLOUD 15 TERMS AND CONDITIONS (FRAMEWORK REFERENCE: RM1557.15)

Written for:
Crown Commercial Service

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**CYBER
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TERMS AND CONDITIONS



These Terms and Conditions set out ePC's and the Customer's legal rights and obligations in relation to the use of the Platform, Application and Services.

1. Definitions and interpretation

1.1 In the Agreement:

"Acceptable Use Policy" means the acceptable use policy set out in Schedule 1 to these Terms and Conditions, as it may be updated from time to time;

"Agreement" means the agreement between the Customer and ePC for the provision of the Application as a service, incorporating:

- (a) the Enrolment Form;
- (b) these Terms and Conditions; and
- (c) the Schedules to these Terms and Conditions,

and any amendments to that agreement from time to time;

"Application" means the application described on the Enrolment Form that was created or made available by ePC to the Customer using the Platform;

"Availability SLA" means the service level agreement set out in Schedule 4;

"Billing Period" means the period of time specified on the Enrolment Form, commencing:

- (a) if the Effective Date is the 1st day of a calendar month, on the Effective Date;
- (b) otherwise, on the 1st day of the calendar month following the Effective Date; and
- (c) in any case, at the end of a previous Billing Period;

"Business Day" means any weekday, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 London time on a Business Day;

"Charges" means the amounts payable by the Customer to ePC under or in relation to the Agreement;

"Confidential Information" means the Customer Confidential Information and/or the ePC Confidential Information;

"Customer" means the person (natural or legal) identified as ePC's customer on the Enrolment Form;

"Customer Affiliate" means a corporate entity that is a subsidiary undertaking of the Customer, a parent undertaking of the Customer, or subsidiary undertaking of a parent undertaking of the Customer (where "subsidiary undertaking" and "parent undertaking" have the meanings given in Section 1162 of the Companies Act 2006);

"Customer Confidential Information" means:

- (a) any information disclosed by the Customer to ePC before the end of the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by ePC to be confidential; and
- (b) Customer Data;

"Customer Data" means all files, works and materials uploaded to, stored on, processed using or transmitted via the Platform:

- (a) by the Customer;
- (b) on the Customer's behalf;
- (c) by any person using any User Account; or
- (d) if the Application is published for use by anonymous users, by any such user;

"Customer Indemnity Event" has the meaning given to it in Clause 9.3;

"Customer Personal Data" means any Personal Data that is processed by ePC on behalf of the Customer in relation to the Agreement;

"Data Protection Laws" means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

"Data Retention Period" means the period, following the end of the Term, for the retention of the Customer Data and Customer Personal Data by ePC, which period shall be agreed by the parties in writing (or, in the absence of any such written agreement, shall be as specified in ePC's standard data retention policy from time to time);

"Effective Date" means the date that the Agreement comes into force;

"Enrolment Form" means the form made available by ePC to the Customer to enable the Customer to sign up for the Services, whether online or offline;

"ePC" means ePartner Consulting Ltd, a company incorporated in England and Wales (registration number 05192543) having its registered office at ePartner Consulting Ltd, PO Box 1578, GU20 5AR;

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"ePC Confidential Information" means:

- (a) any information disclosed by ePC to the Customer before the end of the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by the Customer to be confidential; and
- (b) the terms of the Agreement;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the Internet or a part of the Internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing-off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Licence Fee" means the licence fee specified on the Enrolment Form;

"Minimum Term" means the period:

- (a) commencing upon the Effective Date; and
- (b) ending: (i) if the Effective Date is the 1st day of a calendar month, 12 months thereafter; or (ii) otherwise, 12 months after the 1st day of the calendar month following the Effective Date;

"Minimum Users" means the number of users specified as the minimum on the Enrolment Form;

"Permitted Purposes" means those purposes specified on the Enrolment Form;

"Personal Data" means personal data within the meaning of that phrase under any of the Data Protection Laws;

"Platform" means the software and hardware systems that ePC license, host and operate, and that will be used to provide the Application as a service via the Internet under the Agreement;

"Schedule" means a schedule to these Terms and Conditions;

"Services" means:

- (a) all the services provided or to be provided by ePC to the Customer under the Agreement via the Platform; and
- (b) all support services relating to the Application provided or to be provided under Schedule 3;

"Set-up Fee" means the set-up fee specified in the Enrolment Form;

"Support SLA" means the service level agreement set out in Schedule 3;

"Technical Contacts" means the person or persons identified as such on the Enrolment Form, and any substitute person or persons notified by the Customer to ePC in writing;

"Term" means the term of the Agreement;

"Terms and Conditions" means these terms and conditions, as they may be varied from time to time in accordance with Clause 17.4;

"UK GDPR" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Upgrades" means new versions of, and updates to, the Platform or Application, whether for the purpose of fixing an error, bug or other issue in the Platform or Application, or enhancing the functionality of the Platform or Application; and

"User Account" means a user account on the Platform created by the Customer or created for the Customer by ePC.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

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2. Agreement and Term

2.1 In order to sign up for access to the Application and Services, one of the following procedures must be completed:

- (a) the parties must execute a hard-copy Enrolment Form; or
- (b) the Customer must complete and submit the online Enrolment Form on ePC's website; and ePC must send to the Customer a written communication confirming that the Customer has been given access to the Application and Services.

2.2 The Agreement will come into force between ePC and the Customer when one of the procedures detailed in Clause 2.1 is completed.

2.3 Once in force, the Agreement will continue in force indefinitely, unless and until terminated in accordance with its express terms.

3. Platform, Application and Services

3.1 Upon or promptly following the completion of the sign-up process and the payment of any applicable Charges, ePC shall enable the Customer to access the Application and Services and create User Accounts.

3.2 Subject to Clauses 3.3 and 3.4, ePC hereby grants to the Customer and the Customer Affiliates a non-exclusive licence to use the Application via standard web browsers for the Permitted Purposes during the Term.

3.3 The Customer must:

- (a) ensure that only the Customer and the Customer Affiliates, and persons authorised by the Customer or a Customer Affiliate, use the Application via a User Account;
- (b) ensure that the only user of a User Account is the person identified in that User Account (providing that use of the Application by non-logged-in users shall not be restricted by this Clause 3.3);
- (c) comply at all times with the terms of the Acceptable Use Policy;
- (d) ensure that all persons who use the Application or Services, whether by means of a User Account or otherwise, comply with the Acceptable Use Policy and these Terms and Conditions;
- (e) keep all User Account passwords confidential and secure, and only disclose such passwords to persons who are permitted to use the Application in accordance with the provisions of this Clause 3.3; and
- (f) notify ePC immediately if the Customer believes that a User Account password has been improperly disclosed or misused, or if a User Account has been accessed or used by any unauthorised person.

3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted under Clause 3.2 is subject to the following prohibitions:

- (a) the rights to use the Application and Services under the Agreement must not be sub-licensed;
- (b) the Application must not be modified or altered, and no person shall attempt to modify or alter the Application;
- (c) neither the Customer nor any authorised user shall hack or attempt to gain unauthorised access to any part of the Application or Services; and
- (d) the Services must not be sold or resold without ePC's prior written consent.

3.5 The Customer will be responsible for any misuse of the Application arising out of any failure to comply with the provisions of Clause 3.3, and subject to Clause 10.1 ePC shall not be liable to the Customer in respect of any loss or damage arising out of any such misuse.

3.6 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Application or Platform under the Agreement, either during or after the Term. If the Customer requests access to the object code or source code for development or escrow purposes, and ePC agrees such access, then the access will be subject to a separate agreement between the parties.

3.7 All Intellectual Property Rights in the Application and Platform shall, as between the parties, be ePC's exclusive property.

3.8 ePC may amend the Acceptable Use Policy at any time by giving to the Customer at least 14 days' written notice of the amendment, providing that all such amendments must be reasonable and if the Customer objects to such an amendment the Customer may terminate the Agreement by giving written notice of termination to ePC at any time within the period of 14 days following receipt of ePC's written notice of the amendment, such notice of termination to be effective upon receipt by ePC.

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- 3.9 The Customer acknowledges that from time to time during the Term ePC may apply Upgrades and that such Upgrades may result in changes to the appearance and/or functionality of the Application, providing that, if:
- (a) an Upgrade results in a material loss of functionality; and
 - (b) that Upgrade was not reasonably necessary for the purposes of legal compliance and/or Application security,
- the Customer may terminate the Agreement by giving written notice of termination to ePC at any time within the period of 14 days following the Upgrade, such notice of termination to be effective upon receipt by ePC.
- 3.10 ePC will give to the Customer reasonable prior written notice of any significant Upgrade.
- 3.11 If the Customer suffers any loss or corruption of data stored on the Platform as a result of any breach by ePC of the terms of the Agreement then ePC shall use all reasonable endeavours to restore such lost or corrupted data from the latest available backup.
- 3.12 The Customer acknowledges that ePC may, at its discretion but with due concern for minimising the likelihood of any material reduction in performance, perform audits of the Platform and Application, both to evaluate security and performance, and to ensure the Customer's compliance with the Agreement.
4. **Support SLA**
Support services provided under the Agreement shall be provided to the Technical Contacts in accordance with the terms of the Support SLA.
5. **Availability SLA**
The Platform shall be hosted in accordance with the terms of the Availability SLA.
6. **Customer Data**
- 6.1 All the Intellectual Property Rights in Customer Data will remain the Customer's property and the property of the Customer's licensors, subject to Clause 6.2.
- 6.2 The Customer grants to ePC a non-exclusive licence to store, copy and otherwise use Customer Data on and in relation to the Platform for the purposes of operating the Platform and Application, providing the Services, fulfilling ePC's obligations under the Agreement and exercising ePC's rights under the Agreement. The Customer also grants to ePC the right to sub-license these rights, subject to ePC's other obligations in the Agreement.
- 6.3 The Customer warrants and represents to ePC that Customer Data, and its use by ePC in accordance with the terms of the Agreement, will not breach the terms of the Acceptable Use Policy
- 6.4 If ePC reasonably suspects that there has been a breach by the Customer of Clause 6.3, and has notified the Customer of the suspected breach and given the Customer at least 2 Business Days to remedy the suspected breach, then if the Customer has not satisfied ePC that there is no breach or that the suspected breach has been remedied:
- (a) ePC may, subject to ePC's obligations under the Data Protection Laws and Clause 11, delete or amend the relevant elements of Customer Data; and/or
 - (b) ePC may suspend any or all of the Services and/or the Customer's access to the Application while ePC investigates the matter.
7. **Charges**
The Customer must pay Charges to ePC in accordance with the provisions of Schedule 2.
8. **Warranties**
- 8.1 ePC warrants and represents to the Customer that:
- (a) ePC has the legal right and authority to enter into and perform its obligations under the Agreement;
 - (b) ePC will perform its obligations under the Agreement with reasonable care and skill; and
 - (c) neither the Platform nor the Application will infringe any person's Intellectual Property Rights (excluding patent rights) under English law.
- 8.2 The Customer warrants and represents to ePC that:
- (a) the Customer has the legal right and authority to enter into and perform its obligations under the Agreement; and
 - (b) all the information that the Customer supplies to ePC in relation to the Agreement (including all User Account information) is true, non-misleading, up to date and reasonably complete.

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8.3 The Customer acknowledges that:

- (a) save as expressly provided in the Agreement, ePC does not make any warranties or representations as to the nature or performance of the Platform, Application or Services;
- (b) complex software is never wholly free from defects, errors and bugs, and ePC gives no warranty or representation that the Platform or Application will be wholly free from such defects, errors and bugs;
- (c) whilst ePC shall use industry-standard security measures to secure the Platform and Application, complex software is never wholly free from security vulnerabilities, and ePC gives no warranty or representation that the Platform or Application will be wholly free from such vulnerabilities;
- (d) ePC does not warrant or represent that the Platform or Application will be compatible with any other application, program or software;
- (e) the Customer is responsible for determining whether the Platform, Application and Services meet the Customer's requirements, and ePC does not warrant or represent that the Platform, Application or Services will meet those requirements;
- (f) the Platform may be multi-tenanted, and accordingly Personal Data stored using the Application may share the same storage devices as data supplied by third parties;
- (g) transfers of unencrypted (or insufficiently encrypted) data via the Internet are inherently insecure; and
- (h) ePC will not and does not purport to provide any legal, taxation or accountancy advice under or in relation to the Agreement and (except to the extent expressly provided otherwise) ePC does not warrant or represent that the Platform, Application or Services will not give rise to any civil or criminal liability on the part of the Customer or any other person.

8.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law and subject to Clause 10.1, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

9. Indemnities

9.1 Subject to the Customer's compliance with Clause 9.2, ePC will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including reasonable legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by ePC of Clause 8.1(c) (an "**ePC Indemnity Event**").

9.2 The Customer will:

- (a) upon becoming aware of an actual or potential ePC Indemnity Event, notify ePC;
- (b) provide to ePC all reasonable assistance in relation to the ePC Indemnity Event;
- (c) allow ePC the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the ePC Indemnity Event; and
- (d) not admit liability in connection with the ePC Indemnity Event or settle the ePC Indemnity Event without the prior written consent of ePC.

9.3 Subject to ePC's compliance with Clause 9.4, the Customer will indemnify and will keep indemnified ePC against all liabilities, damages, losses, costs and expenses (including reasonable legal expenses and amounts paid upon legal advice in settlement of any dispute) suffered or incurred by ePC and arising as a result of any breach by the Customer of Clause 6.3 (a "**Customer Indemnity Event**").

9.4 ePC will:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all reasonable assistance in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and
- (d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.

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10. Limitations and exclusions of liability

- 10.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Agreement:
- (a) are subject to Clause 10.1; and
 - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 10.3 ePC will not be liable to the Customer in respect of any loss of profits, income, revenue, turnover, use, production or anticipated savings.
- 10.4 ePC will not be liable to the Customer for any loss of business, contracts or commercial opportunities.
- 10.5 ePC will not be liable to the Customer for any loss of or damage to goodwill or reputation.
- 10.6 Neither party will be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 10.7 ePC will not be liable to the Customer for any losses arising out of a Force Majeure Event.
- 10.8 ePC will not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 10.8 shall not limit or exclude any liability of ePC arising out of any breach by ePC of Clause 3.11, 8.3(c), 11 or 12.
- 10.9 Subject to Schedule 4, ePC will not be liable to the Customer in respect of any loss or damage arising out of the interruption to a business process by the temporary unavailability of the Platform or Application and/or suspension of the Services.
- 10.10 Subject to ePC's compliance with Clause 8.3(c), ePC will not be liable to the Customer for any loss or damage arising out of a computer virus, worm, logic bomb or Trojan horse transmitted to the Customer via the Platform, Application or Services.
- 10.11 ePC will not be liable to the Customer for any loss or damage arising from a denial of service attack.
- 10.12 ePC will not be liable to the Customer for any loss or damage arising out of any act or omission of any person using a User Account, including loss or damage arising out of a failure to keep passwords confidential.
- 10.13 ePC's liability to the Customer in relation to any event or series of related events will not exceed the lesser of:
- (a) GBP 50,000; and
 - (b) the total amount paid and payable by the Customer to ePC under the Agreement during the 12-month period immediately preceding the event or events giving rise to the claim or, if that period commenced before the Effective Date, the total amount paid and payable by the Customer to ePC under the Agreement in the normal course during the Minimum Term.

11. Data protection

- 11.1 The Customer warrants to ePC that it has the legal right to disclose all Personal Data that it does in fact disclose to ePC under or in connection with the Agreement.
- 11.2 The parties agree and acknowledge that:
- (a) the Customer Personal Data shall include user account details for Customer users of the Platform (providing that ePC shall be a controller of user details insofar as they are collected by ePC for billing, audit, security monitoring and system operations purposes, and insofar as ePC is a controller of such user details this Clause 11 shall not apply);
 - (b) the Customer may supply to ePC by means of the Platform any categories of Customer Personal Data (relating to any category of data subject); and
 - (c) ePC has no oversight or control of the categories of Customer Personal Data (or the categories of data subject) processed by ePC on behalf of the Customer under the Agreement.
- 11.3 ePC shall only process the Customer Personal Data for the purposes of providing and facilitating the provision of the Services and fulfilling its other obligations under the Agreement.
- 11.4 ePC shall only process the Customer Personal Data during the Term and during those periods referenced in Clause 14, subject to the other provisions of this Clause 11.
- 11.5 ePC shall only process the Customer Personal Data on the documented instructions of the Customer, as set out in the Agreement or any other document agreed by the parties in writing.

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- 11.6 ePC shall not transfer or authorise the transfer of the Customer Personal Data outside the United Kingdom unless such transfer is expressly permitted in writing by the Customer and, in the event of such permission, ePC shall ensure that the transfer is, where required by the Data Protection Laws, protected by appropriate safeguards.
 - 11.7 ePC shall promptly inform the Customer if, in the opinion of ePC, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
 - 11.8 Notwithstanding any other provision of the Agreement, ePC may process the Customer Personal Data if and to the extent that ePC is required to do so by applicable law. In such a case, ePC shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
 - 11.9 ePC shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
 - 11.10 ePC and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
 - 11.11 ePC must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, ePC shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to ePC, providing that such notice must be given within the period of 7 days following the date that ePC informed the Customer of the intended changes. ePC shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on ePC by this Clause 11.
 - 11.12 ePC is hereby generally authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, third parties within the categories identified in the Enrolment Form.
 - 11.13 ePC shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
 - 11.14 ePC shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. ePC may charge the Customer at its standard time-based charging rates for any work performed by ePC at the request of the Customer pursuant to this Clause 11.14.
 - 11.15 ePC must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after ePC becomes aware of the breach.
 - 11.16 ePC shall make available to the Customer all information necessary to demonstrate the compliance of ePC with its obligations under this Clause 11 and the Data Protection Laws. ePC may charge the Customer at its standard time-based charging rates for any work performed by ePC at the request of the Customer pursuant to this Clause 11.16.
 - 11.17 ePC shall, in accordance with Clause 14:
 - (a) provide a copy of all the Customer Personal Data to the Customer during the Data Retention Period;and
 - (b) delete all copies of the Customer Personal Data from the Platform and ePC's other systems and media within 3 months following the end of the Data Retention Period.
 - 11.18 ePC shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of ePC's processing of Customer Personal Data with the Data Protection Laws and this Clause 11. ePC may charge the Customer at its standard time-based charging rates for any work performed by ePC at the request of the Customer pursuant to this Clause 11.18, providing that no such charges shall be levied where the request to perform the work arises out of any breach by ePC of the Agreement or any security breach affecting the systems of ePC.
12. Confidentiality
- 12.1 The Customer agrees and undertakes:
 - (a) that it will keep all ePC Confidential Information strictly confidential and will not disclose any part of it

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- 12.2 ePC agrees and undertakes:
- (a) that it will keep all Customer Confidential Information strictly confidential and will not disclose any part of it to any other person without the Customer's prior written consent; and
 - (b) that it will use the same degree of care to protect the Customer Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care.
- 12.3 Notwithstanding Clauses 12.1 and 12.2, either party may disclose the Confidential Information of the other party to its officers, employees, professional advisers, insurers, agents and subcontractors, and the Customer may disclose the ePC Confidential Information to the Customer Affiliates and their officers and employees, who in each case:
- (a) have a need to have access to the Confidential Information for the performance of their work; and
 - (b) are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.
- 12.4 This Clause 12 imposes no obligations upon a party with respect to Confidential Information of the other party that:
- (a) is known to the first party before disclosure by the other party, and is not subject to any obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default on the part of the first party; or
 - (c) is obtained by the first party from a third party in circumstances where it has no reason to believe that there has been a breach of a duty of confidence.
- 12.5 The restrictions in this Clause 12 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, or any judicial or governmental request or order, or pursuant to the disclosure requirements relating to the listing of the stock of a party on any recognised stock exchange.
- 13. Termination**
- 13.1 Either party may terminate the Agreement by giving to the other party at least 90 days' written notice of termination expiring both:
- (a) after the end of the Minimum Term; and
 - (b) at the end of a Billing Period.
- 13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 13.3 Subject to applicable law, either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.
- 13.4 ePC may terminate the Agreement immediately by giving written notice of termination to the Customer if:
- (a) the Customer fails to pay to ePC any amount due to be paid under the Agreement by the due date; and
 - (b) ePC has given the Customer at least 14 days' prior written notice of its intention to terminate under this Clause 13.4, and the amount has not been paid by the end of that notice period.
- 13.5 ePC may terminate the Agreement immediately by giving written notice of termination to the Customer if ePC's licence to use the Platform, or any part of the Platform, is terminated.

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14. Effects of termination

- 14.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 3.5, 3.6, 6.2, 9, 10, 12, 14 and 17.
- 14.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 14.3 During the Data Retention Period, ePC shall provide to the Customer a single copy of the Customer Data stored on the Platform at or following the date of termination in a non-proprietary format such as a Microsoft SQL Server backup. The Customer acknowledges that such Customer Data will be provided in its raw form and may not be suitable for any particular purpose. ePC shall only transform the Customer Data into another format upon agreement with the Customer as to the terms of and charges for such transformation.
- 14.4 Unless the parties have expressly agreed otherwise in writing, ePC shall, during the period of 3 months following the end of the Data Retention Period, delete all Customer Data from ePC's computer systems and media.
- 14.5 The licence set out in Clause 6.2 shall continue after termination to the extent necessary for ePC to exercise its rights and fulfil its obligations under this Clause 14.
- 14.6 The Customer will not be entitled to any refund of the Charges upon the termination of the Agreement, nor will the Customer be released from any liability to pay Charges that have accrued before the date of effective termination.

15. Notices

- 15.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be:
- (a) delivered personally or by courier, or
 - (b) sent by recorded signed-for post, or
 - (c) unless the notice is a notice of termination or a notice that varies or may result in the variation of the terms of the Agreement, sent by eMail,
- for the attention of the relevant person, and to the relevant address or eMail address given below (or as notified by one party to the other in accordance with this Clause).
- ePC:
The Company Secretary
ePartner Consulting Ltd
PO Box 1578
Lightwater
GU20 5AR
support@epc.co.uk
- The Customer:
The Technical Contact, address and eMail address set out on the Enrolment Form.
- 15.2 If a party receives a notice by eMail under Clause 15.1, that party must promptly and in any event within 5 Business Days of receipt send an acknowledgement of receipt to the other party.
- 15.3 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) if the notice is delivered personally or sent by courier, at the time of delivery;
 - (b) if the notice is sent by recorded signed-for post, 48 hours after posting; and
 - (c) if the notice is sent by eMail, upon the sending of a written acknowledgement of receipt by the recipient.
- ## 16. Force Majeure Event
- 16.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 16.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
- (a) forthwith notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 16.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

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17. General

- 17.1 The Customer acknowledges that, if ePC agrees to develop any custom software on the Customer's behalf, such development shall be subject to a separate contract.
- 17.2 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.3 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.4 Save as expressly provided otherwise, the Agreement may not be varied except:
 - (a) to the extent reasonably required to ensure that the parties comply with applicable law, by ePC giving to the Customer at least 30 days' written notice of the variation; and
 - (b) otherwise, by the express written agreement of both parties.
- 17.5 Each party hereby agrees that the other party may freely assign the entirety of the other party's contractual rights and obligations under the Agreement to any successor to all or a substantial part of the other party's business from time to time. Subject to this, neither party may without the other party's prior written consent assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 17.6 Subject to Clause 11, the Customer hereby agrees that ePC may sub-contract any of ePC's obligations under the Agreement without notifying the Customer or obtaining the Customer's further consent.
- 17.7 The Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate or rescind, or agree any amendment, waiver, variation or settlement under or relating to, the Agreement are not subject to the consent of any third party.
- 17.8 Subject to Clause 10.1:
 - (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 17.9 The Agreement shall be governed by and construed in accordance with English law; and the courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

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Schedule 1

Acceptable Use Policy

- (1) This Policy
This Acceptable Use Policy (the "Policy") sets out the rules governing the use of our software platform (the "Platform") and any content that you may submit to the Platform or process using the Platform ("Customer Data").
By using our Platform, you agree to the rules set out in this Policy.
- (2) General restrictions
You must not use our Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform or any of the areas of, or services on, the Platform.
You must not use our Platform:
 - (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- (3) Unlawful and illegal material
You must not use our Platform to store, host, copy, distribute, display, publish, transmit or send Customer Data that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case, in any jurisdiction and under any applicable law).
Customer Data (and its publication on the Platform) must not:
 - (a) be libellous or maliciously false;
 - (b) be obscene or indecent;
 - (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off or other intellectual property rights;
 - (d) infringe any rights of confidence, rights of privacy or rights under data protection legislation;
 - (e) constitute negligent advice or contain any negligent statement;
 - (f) constitute an incitement to commit a crime;
 - (g) be in contempt of any court, or in breach of any court order;
 - (h) be in breach of racial or religious hatred legislation or discrimination legislation;
 - (i) be blasphemous;
 - (j) be in breach of official secrets legislation; or
 - (k) be in breach of any contractual obligation owed to any person.
- (4) Harmful software
You must not use the Platform to store or distribute any viruses, Trojans, worms, root kits, spyware or other harmful software, programs, routines, applications or technologies.
You must not use the Platform to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.
- (5) Marketing and spam
Customer Data must not constitute spam.
You must not use our Platform to store, transmit or send spam, or bulk or unsolicited commercial communications.

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Schedule 2

Charges

1. Calculation of monthly Charges
The Charges in respect of any calendar month during the Term shall equal the greater of:
 - (a) the Licence Fee multiplied by the Minimum Users; and
 - (b) the Licence Fee multiplied by the greatest number of user accounts existing during that calendar month, and ePC shall determine the number of user accounts using any reasonable methodology.
2. Pro-rated Charges
If:
 - (a) the Effective Date is not the 1st day of a calendar month; or
 - (b) the Agreement is terminated part way through a calendar month,then the applicable Charges shall be pro-rated by ePC.
3. Set-up Fee and first year Charges: pre-payment
ePC may issue an invoice to the Customer at any time for:
 - (a) the Set-up Fee; and
 - (b) the Charges payable during the Minimum Term, on the assumption that the Minimum Users will use the Platform during each calendar month.
4. First year Charges: adjustment of Charges
If at the end of any Billing Period during the Minimum Term the total amount due under this Schedule in respect of that Billing Period exceeds the total pre-payment in respect of that Billing Period, then ePC may at any time thereafter issue an invoice to the Customer for the difference.
5. Subsequent Charges
At or at any time after the end of each Billing Period following the end of the Minimum Term, ePC shall issue an invoice to the Customer in respect of the Charges due in respect of that Billing Period under Paragraph 1 or 2.
6. Payment of invoices
The Customer must pay the Charges under any invoice issued under the preceding Paragraphs of this Schedule within 30 days of the date of issue of the invoice.
7. Variation of Charges
ePC may vary the Charges by giving the Customer not less than 90 days' written notice of the variation expiring after the end of the Minimum Term. If the Customer objects to any variation of the Charges under this Paragraph 7, the Customer's sole remedy is to terminate the Agreement.
8. Taxes
All Charges stated in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
9. Payment methods
Charges must be paid by bank transfer, or by such other means as ePC may authorise from time to time.
10. Interest on late payments
If the Customer does not pay any amount properly due to ePC under or in connection with the Agreement, ePC may:
 - (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the Bank of England base rate from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
11. Non-payment and suspension of Services
ePC may suspend access to the Platform and the provision of the Services if any amounts due to be paid by the Customer to ePC under the Agreement are overdue.

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Schedule 3 Support SLA

1. Purpose

The purpose of this support SLA is to provide a sound framework for the provision of software support services by ePC to the client. It is designed to encourage an open partnership approach with regular and free exchange of information between both parties. To exploit the full capabilities of the solution, ePC will provide appropriate consulting engineers to work with the clients' own personnel.

2. Services covered

2.1 Definition

The provision of technical support for the software is defined as the process whereby ePC will receive and satisfy requests for technical help from the client. Specifically this technical support will provide:

- Consulting level support to the client by an engineer who is familiar with the software.
- An assigned ePC Support Manager and an ePC consulting engineer who will contact the client immediately on placement of a call for assistance. Contact will be via telephone or eMail.
- Site visits can be arranged as appropriate but will be charged in addition, as on-site consultancy.
- Ongoing maintenance for the most current and last release of software.
- Full version upgrades for selected products that offer free upgrades under the maintenance contract.
- Unlimited telephone and eMail technical support for the duration of the contract.
- The ability for ePC to connect to the system and remotely diagnose and fix problems via the Internet or remote desktop control as applicable.
- Supervision and instruction, via remote desktop monitoring by an ePC engineer, of installation and completion of new or modified software.
- Remote system maintenance and updates of the software as and when required.

2.2 Service availability

This service will be available on any weekday, other than a bank or public holiday in England during business hours, between 09:00 and 17:30, London time.

2.3 Contact information

- Telephone: 03300 100 000
- eMail: support@epc.co.uk
- Internet: www.epc.co.uk

2.4 Process and service levels

2.4.1 By the client

The client will ensure that any problems with the user's PC, peripherals, LAN, Internet connection and standard operating systems and web browsers are fixed by their normal service provider.

An adequately trained member of the clients' staff, familiar with the solution provided by ePC, will be available on site to manage support contact and implement any required actions for issue resolution.

The client will endeavour to have the following items of information available, insofar as relevant:

- Product version
- Product serial number or client account details
- Type and version of operating system and web browser
- The nature of your query
- Description of what you were doing when the problem occurred and steps to recreate the issue
- Exact wording or screenshots of any messages that appeared on screen

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2.4.2 By ePC

- All telephone calls, eMails and call-back requests will be responded to within 4 working hours after receipt.
- If a fix is not immediately available a suitable workaround will be investigated and where possible provided to the client.
- All unresolved technical support requests would be logged with an issue reference number generated and provided to the client by ePC.
- The client will be advised of the status of the issue at appropriate intervals.
- If an issue requires further information from the client to enable ePC to replicate or resolve the issue, the issue will be on hold until the required information is received from the client.
- After receipt of the detailed issue information the issue must be resolved within 24 hours or be escalated to an appropriate engineer. The engineer is the technical support representative specialising in the facet of software involved in the specific issue. This escalation is done verbally or via eMail followed by a note reassigning the issue within the log, to the appropriate technical support representative. The client is then advised of the status of the issue.
- If the engineer does not resolve the issue, the Technical Support Manager must be consulted and a decision made about the next appropriate step to resolve the issue.
- If required, ePC will forward the issue and all relevant information on to the relevant 3rd party supplier of the software or hardware at fault.
- When necessary ePC will prompt the 3rd party supplier for a response, in the event that a solution is not forthcoming.
- When the 3rd party supplier provides a fix, ePC's technical support is notified and the fix or workaround is made available to the client.

4. Exclusions

The service levels described within this document exclude English public holidays, Saturdays and Sundays and non-business hours. The service levels at such times will be subject to a separate agreement as and when the requirement arises.

Neither party will be liable for delay or failure to perform their part of the agreement due to circumstances beyond their control.

Only software or hardware listed on your support certificate or enrolment form is covered by this agreement.

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Schedule 4

Availability SLA

1. Uptime commitment
 - 1.1 ePC shall ensure that the Application is available at least 99.95% of the time during each calendar month, subject to the other Paragraphs of this Schedule 4.
 - 1.2 Application uptime shall be calculated by ePC using any reasonable methodology.
 - 1.3 ePC shall arrange for the monitoring of the availability of the Application, and shall send an availability report to the Customer promptly following the Customer's request.
2. Service credits
 - 2.1 In the event that, during a calendar month entirely within the Term, the Application fails to meet the availability level set out in Paragraph 1.1 then ePC shall issue service credits calculated in accordance with Paragraph 2.2 to the Customer, such service credits to be deducted by ePC from future Charges.
 - 2.2 Subject to Paragraph 2.3, the service credits referred to in Paragraph 2.1 and due in respect of a calendar month shall be equal to 1% of the monthly Charges for every full 1% of downtime below the guaranteed availability level.
 - 2.3 The maximum service credits available to the Customer in respect of any calendar month shall be 100% of the total Charges payable in respect of access to the Application during the relevant calendar month (exclusive of VAT and other taxes).
3. Scheduled maintenance
 - 3.1 ePC may suspend access to the Application in order to carry out scheduled maintenance, providing that ePC must where practicable give to the Customer reasonable written notice of scheduled maintenance.
 - 3.2 ePC shall use reasonable endeavours to ensure that scheduled maintenance is carried out outside Business Hours.
 - 3.3 ePC must give to the Customer notice of scheduled maintenance, including details of the expected Application downtime.
 - 3.4 Application downtime during scheduled maintenance carried out by ePC in accordance with this Paragraph 3 shall not be counted as downtime for the purposes of Paragraphs 1 and 2.
4. Exclusive remedy

Subject to Clause 10.1, the award of service credits under this Schedule 4 shall be the exclusive remedy of the Customer in the case of ePC's failure to meet the uptime commitment in Paragraph 1.1, except in the case of a failure constituting a material breach of the Agreement.
5. Service credits upon termination
 - 5.1 If the Agreement is terminated while the Customer has the benefit of service credits, the Customer shall lose those service credits.
 - 5.2 The Customer shall not be entitled to any compensation for loss of service credits under Paragraph 5.1.
6. Availability issue reporting

The Customer may report Platform availability issues to ePC at any time using the contact details set out in the Support SLA.

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Schedule 5

Infrastructure Guide

This Schedule describes the hardware, infrastructure and procedures used by ePC as at the date of the Agreement. The Customer acknowledges that from time to time during the Term ePC may change such hardware, infrastructure and procedures.

1. Servers

We currently use Dell rack-mount servers utilizing redundant, hot-plug power supplies, cooling fans and solid-state hard disks. The servers have hardware remote monitoring, alerting and management.

2. Environment

We use an ISO27001-certified, Tier 3 data centre with award-winning green efficiency. Cooling is N+5 with full environment monitoring and automatic ionic, optical and beam fire detection and suppression systems.

3. Physical Security

The data centre is protected by anti-ram security gates and four levels of proximity access security doors prior to entering the data floor itself. It is manned by security staff 24/7 with access being granted only after biometric registration.

4. Data Security

All data is encrypted at rest and accessible only to ePC staff that require access for day-to-day management operations. Industry best practices, including strong password policies, secure VPNs, updated servers and infrastructure and staff training are followed.

5. Power Supplies

Servers are supplied from two separate power circuits backed by both N+1 battery UPS and N+2 diesel generators.

6. Internet Connectivity

Two separate dark-fibre lines with IP transit capability of 5Gbps to Internet backbones through both Telecity Meridian Gate and Telehouse North in the London Docklands with direct connections to over 20 data centres throughout Europe and the rest of the world.

7. Backup

The servers themselves are replicated to a second geographical location in near real-time. These replicated servers are capable of being promoted to live, should there be a need, either for extended scheduled maintenance at the primary site or in the event of a failure with the primary site.

Periodic backups of servers are taken and retained for a period of no less than a year.

8. Maintenance Plans

Most updates to the platform are deployed while the services are live, with minimal loss of performance for a few seconds.

Monthly server updates in-line with Microsoft recommendations are scheduled out of normal UK office hours and generally cause minimal interruption.

Upgrades and maintenance affecting the whole platform or system, although rare, would be scheduled in advance and would usually rely on promoting backup systems to live, to ensure the minimum interruption while the main servers are worked on.

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Schedule 6

Professional services

This Schedule relates to the professional services provided by ePC to support the implementation of cloud software.

Prices

The Statement of Work will provide full costs.

These costs are in accordance with our Pricing document and SFIA Rate Card.

All prices are quoted exclusive of UK VAT, which will be added at the prevailing rate.

Payment terms

Software supply – full payment by cheque or BACS before delivery.

Professional services - 50% payment of total order value with order. If the completion of delivery is within eight weeks of the order date, the remaining balance is due upon completion of system delivery. If system delivery is not complete within eight weeks of the order date we require payment for completed work (whether delivered or not) at the end of each month.

ePartner Consulting Ltd reserves the right to apply a 5% surcharge to late payments.

Cancellation of training, installation or consultancy

A cancellation fee will be incurred for late cancellation of training, installation or consultancy:

Less than 24 hours notice - 75%.

Less than 48 hours notice - 50%.

Once booked all travel expenses will be non-refundable.

Travel, mileage, subsistence

Travel, mileage, subsistence is included in day rate within M25.

Travel and subsistence outside of the M25 will be re-charged to the customer at cost price.

Mileage outside of the M25 will be charged at 0.45p per mile from ePartner Consulting Ltd's offices which is: PO Box 1578, Lightwater, Surrey, GU20 5AR, United Kingdom.



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