

SAAS AGREEMENT – NICANDER LIMITED

This Software-as-a-Service Agreement (SaaS) ("Agreement") is dated and effective from:

Date :

Parties

- (1) NICANDER LIMITED incorporated and registered in England and Wales with Company Registration Number 6454561 whose registered office is at 14 Colmans Nook, Belasis Business Park, Billingham, TS23 4EG, United Kingdom ("Nicander") (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in [Country] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers on a subscription basis for the purpose of asset management.
- (B) The Customer wishes to use the Supplier's service in connection with its business.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Administration Users: employee(s) of the Customer designated by it to serve as technical administrator of the SaaS Services on the Customer's behalf.

Authorised Users: those employee(s), agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

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



Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.1

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document(s) made available to the Customer by the Supplier which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

Host: means the computer equipment on which the Software is installed, which is owned, operated or controlled by the Supplier

Maintenance Services: the maintenance services undertaken by the Supplier to maintain the software applications and platforms pursuant to this agreement.

Initial Subscription Term: the initial term of this agreement as set out in Schedule 2.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 13.1.

SaaS Services: the specific internet-accessible subscription services provided by the Supplier to the Customer under this agreement identified in Schedule 1 that provides use of the Suppliers identity/access management Software hosted by the Supplier (or its subcontractor) and made available to the Customer over a network on a term-use basis.

Software: the online software applications provided by the Supplier as part of the SaaS Services, including any updates or replacement versions.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 3 of Schedule 1.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or

adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants the Customer a non-exclusive, non-assignable, non-transferable, worldwide licence, without the right to grant sublicense, to



access and use the SaaS Service in accordance with the terms of this Agreement and to permit the Authorised Users to use the SaaS Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (b) if the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 125 of Schedule 1;
- (c) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than every 6 calendar months and that each Authorised User shall keep their password confidential.

2.3 The Customer shall ensure that each Administration User completes training and qualification requirements reasonably required by the Supplier.

2.4 The Customer shall not exploit a Vulnerability, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to, and remove any material that breaches the provisions of this clause.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 3 of Schedule 1 and the Supplier shall grant access to the Services and the

Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and shall respond within 5 business days to activate the additional User Subscriptions.
- 3.3 Upon activation of additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 4 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 3.4 Any additional User Subscriptions purchased in accordance with this clause 3 shall be renewed upon the expiry of the Subscription term in accordance with clause 13.

4. Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) scheduled maintenance carried out outside Normal Business Hours; and
 - (b) unscheduled maintenance, provided that the Supplier has used reasonable endeavours to give the Customer at least 24 hours' notice in advance.
- 4.3 The Supplier, as part of the standard support services, will provide the Customer with telephone, video call or email support during our normal business hours. The Customer may purchase enhanced support services separately at the Supplier's then current rates set out in Schedule 1.

5. Data protection

5.1 Definitions

Applicable Laws: means:



- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Purpose: the purposes for which the Customer Personal Data is processed, as set out in clause 5.7(a)

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

- 5.2 For the purposes of this clause 5, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.3 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.4 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://jc-afms.nicander.online> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.

- 5.5 Without prejudice to the generality of clause 5.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier for the duration and purposes of this agreement.
- 5.6 In relation to the Customer Personal Data, it is envisaged that the nature and purpose of processing by the Supplier, shall be limited to storage upon its servers of data input by the Customer and transfer to and from the Customer or between servers for the duration of this agreement.
- 5.7 Without prejudice to the generality of clause 5.3 the Supplier shall, in relation to Customer Personal Data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, with its entry into this agreement being the Customer's instructions to process the Customer Personal Data for the purposes set out in clause 5.6.
 - (b) process the Customer Personal Data when required by Applicable Laws to do so. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (c) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data having regard to the state of technological development and the cost of implementing any measures;
 - (d) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (e) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (g) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 5.7(g) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (h) maintain records to demonstrate its compliance with this clause 5.

5.8 The Customer hereby provides its prior, general authorisation for the Supplier to transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws and to comply with any reasonable request of the Supplier to amend this agreement to include any additional appropriate standard data protection clauses.

5.9 Subject to clause 12.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract insofar as it relates to the obligations set out in this clause 5, or Applicable Data Protection Laws shall be limited to £1,000.00.

6. Supplier's obligations

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3 The Supplier:

- (a) does not warrant that:



- (i) the Customer's use of the Services will be uninterrupted or error-free; or
 - (ii) the Supplier will be able to correct any errors; or
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
 - (b) 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 Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 6.6 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at [TO BE COMPLETED] or such other website address as may be notified to the Customer from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

7. Customer's obligations

- 7.1 The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement;
 - (ii) all necessary access to such information as may be required by the Supplier; and
 - (iii) such information and assistance as the Supplier reasonably requires to enable the Supplier to deliver the SaaS Services. The Customer

acknowledges that the Supplier's ability to deliver the SaaS Services in the manner provided in this SaaS Agreement may depend upon the accuracy and timeliness of such information and assistance

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that only Authorised Users may use the SaaS Services and that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement. The Supplier shall not be liable for :
 - (i) any Authorised User's breach of this agreement; and
 - (i) the acts and omissions of any Authorised User, including but not exclusively in relation to any loss of data or functionality caused directly or indirectly by the Authorised Users.
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

7.3 The Customer shall :



- (a) not upload, post, reproduce or distribute any information, Software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- (b) grant the Supplier a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Data solely as is necessary to provide the SaaS Services to Customer.
- (c) notify the Supplier immediately of any unauthorised use of any password or Authorised User's ID or any other known or suspected breach of security,
- (d) report to the Supplier immediately and use reasonable efforts to stop any unauthorised use of the SaaS Services that is known or suspected by Customer
- (e) carry out all reasonable checks to confirm the identity of all proposed Authorised Users and report any attempt to access the SaaS Services by use of false identity information.

7.4 Customer is solely responsible for collecting, inputting and updating all Customer Content stored on the Host, and for ensuring that the Customer Content does not

- (a) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or
- (b) contain anything that is obscene, defamatory, harassing, offensive or malicious.

7.5 License Restrictions – the Customer shall not, and shall not permit anyone or acquiesce to anyone

- (a) Copying, republishing or redistributing any content or material of the SaaS Services or Software;
- (b) Making the SaaS Services available to any person other than authorised users;
- (c) Using or accessing the SaaS Services to provide service bureau, time-sharing or other computer hosting services to third parties;
- (d) Removing, modifying or obscuring any copyright, trademark or other proprietary notices contained in the Software used to provide the SaaS Services or in the Documentation;
- (e) Reverse engineering, decompiling, disassembling, or otherwise attempting to derive the source code of the Software used to provide the SaaS Services, except and only to the extent such activity is expressly permitted by applicable law;

- (f) Accessing the SaaS Services or using the Documentation in order to build a similar product or competitive product.
- (g) Using the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or platform or impairment of the availability or accessibility of the Hosted Services.
- (h) Sub-licensing its right to access and use the Hosted Services;
- (i) Conducting or requesting that any other person conduct any load testing or penetration testing on the platform or Hosted Services without the prior written consent of the Supplier.
- (j) Using the Hosted Services in any way that is unlawful, illegal, fraudulent or harmful.

8. Charges and payment

8.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and Schedule 1.

8.2 The Customer shall on the Effective Date provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

- (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to clause 13.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall either:

- (a) pay each invoice in full within 30 days after the date of such invoice, or
- (b) setup a Direct Debit to pay the supplier in monthly instalments during the subscription period.

8.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the Bank of England's base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling or the local currency set out on Schedule 1;
- (b) are, subject to clause 12.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9. Proprietary and Intellectual Property Rights

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, SaaS Services and the Documentation. Except as expressly stated herein, this agreement the Supplier does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 The Supplier confirms that it owns all rights, title and interest in and to the Software, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and all intellectual property rights therein and has all the rights in relation to the SaaS Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

9.3 Customer retains ownership and intellectual property rights in and to its Customer Data.



- 9.4 Third party technology that may be appropriate or necessary for use with some of the Supplier's Software is specified in the Documentation. The Customer's right to use such third-party technology is governed by the terms of the third-party technology license agreement specified by the Supplier and not under the terms of this agreement.

10. Confidentiality

- 10.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this agreement, including but not limited to:

- (a) terms of this agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (c) any information developed by the parties in the course of carrying out this agreement and the parties agree that:
 - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

- 10.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed

10.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 10.

10.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

10.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible, where notice of disclosure is not prohibited and is given in accordance with this clause 10, it takes into account the reasonable requests of the other party in relation to the making of and the content of such disclosure.

10.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

10.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

10.8 On termination of this agreement, each party shall:

- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
- (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 10.11.

10.9 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

10.10 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

10.11 The above provisions of this clause 10 shall continue to apply after termination of this agreement for a period of seven years from the date of termination.

11. Indemnity

11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Customer gives the Supplier prompt notice of any such claim. The parties agree that "prompt notice" shall require the Customer to notify the Supplier within 7 days of any claim being made, exclusive of the day of actual receipt of the claim (i.e. if a claim is received on a Monday then the time to notify expires at midnight on the following Tuesday); and
 - (b) deliver to the Supplier all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding; and
 - (c) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (d) the Supplier is given sole authority to defend or settle the claim.
- 11.3 The Customer shall not be entitled to rely upon the indemnity provided by the Supplier in accordance with clause 11.2 in the event of any default by the Customer in relation to clauses 11.2(a) – (c).
- 11.4 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.5 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.6 The foregoing and clause 12.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. Limitation of liability

WARNING: you are strongly advised to read this clause.

12.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction, or for any damage caused by unauthorised alteration of the Software, or the theft, destruction or loss of the Customer's Data, files or programs, unless caused by the negligence of the Supplier its employees or contractors ;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and clause 12.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special,

indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

12.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights".

13. Term and termination

13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing (including email) to do so;

13.3 On termination of this agreement for any reason:



- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession, save that the Supplier shall grant the Customer a period of 30 days after termination of the agreement to retrieve the Customer Data or make a written request for the delivery up to the Customer the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

16. Variation

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

17. Waiver

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

21.1 The Customer shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Counterparts

24.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24.2 Transmission of an executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

24.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

24.4 Digital Signatures – this agreement may be executed using digital signatures using e-signing platforms such as Adobe Sign, DocuSign and HelloSign pursuant to the *Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/89)*.

25. Notices

25.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) Supplier : [SUPPLIER EMAIL ADDRESS]
 - (ii) Customer : accounts@nicander.co.uk

25.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at 9.00am on the day following the day of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume, subject to receipt of delivery receipt from the recipient's email server.

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

26. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales as in force in England.

27. Jurisdiction

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

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

Schedule 1 Services and Fees

1. SUPPORT SERVICES

During the Term of this Agreement, Nicander will provide the Customer with telephone or electronic support (video or email) during our normal business hours in order to help the Customer operation of the Software. Nicander's normal business hours are 9am to 5pm Monday to Friday (GMT time)

2. MAINTENANCE SERVICES

2.1 During the Term of this Agreement, Nicander shall provide the Maintenance Services to the Customer.

2.2 Nicander shall give to the Customer at least 5 business days' prior notice of scheduled Maintenance Services that are likely to have a negative impact upon the Hosted Services.

2.3 Nicander shall give to the Customer at least 5 business days' prior notice of the application of an upgrade to the platform.

2.4 Nicander may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to Nicander under this Agreement is overdue, and Nicander has given to the Customer at least 30 days' written notice, following the amount becoming overdue.

3. Subscription Fees

[TO BE COMPLETED]

4. Additional User Subscription Fees

[TO BE COMPLETED]

5. Support Fees

[TO BE COMPLETED]

6. Revision of Fees and VAT

Subscription Fees, Additional Subscription Fees and Support Fees are subject to review in accordance with clause 8.5 of this agreement. All such fees are subject to Value Added Tax



or equivalent tax on goods and services that the Supplier is obliged to charge from time to time, which is payable in addition to the fees.

Schedule 2 Subscription Term

Initial Subscription Term: [TO BE COMPLETED]

Signed by [NAME OF
DIRECTOR] for and on behalf
of NICANDER LIMITED

.....
Director

Date :

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF CUSTOMER]

.....
Director

Date :