



**DATED**

**AGREEMENT FOR THE PROVISION OF SERVICES**

between

**CHARLES NOVACROFT DIRECT LIMITED**

and

**[CLIENT NAME]**

## AGREEMENT FOR THE PROVISION OF SERVICES

THIS Agreement is dated the                      day of 20xx

### PARTIES:-

- (1) **CHARLES NOVACROFT DIRECT LIMITED** incorporated and registered in England and Wales with company number 03601214 whose registered office is at Seebeck House, 1 Seebeck Place, Knowlhill, Milton Keynes, Buckinghamshire, MK5 8FR, United Kingdom (the "Us", "We" and "Our"); and
- (2) **[CLIENT NAME]** incorporated and registered in England and Wales with company number [company number] whose registered office is at [registered office address] ("You" and "Your").

### BACKGROUND:-

- A. We carry on in business, amongst other things, as the provider of the Services (as defined below).
- B. You wish to enter into an Agreement with Us for the provision of the Services in accordance with the terms of this Agreement.

### AGREED TERMS:-

#### 1. INTERPRETATION

- 1.1. In this Agreement, the following words shall have the meanings set out below unless the context otherwise requires:

|                            |                                                                                                                                   |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>"Additional fees"</b>   | means any fees chargeable by Us to You as agreed in writing;                                                                      |
| <b>"Business Days"</b>     | means Monday to Friday between the hours of 9am and 5pm excluding bank and public holidays in the United Kingdom;                 |
| <b>"Commencement Date"</b> | means the date of this Agreement;                                                                                                 |
| <b>Contract Year</b>       | means a period of 12 months (or such shorter period if this Agreement is terminated earlier), commencing on the Commencement Date |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | and/or each anniversary of the Commencement Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>"Controller"</b>                   | shall have the meaning given to it under the GDPR;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Data"</b>                         | means any and all data held, stored, gathered, received, used or retained by the Us in relation to the provision of the Services in accordance with this Agreement. For the avoidance of doubt, the term "data" in this definition includes "Personal Data"                                                                                                                                                                                                                                                                                              |
| <b>"Data Handover Procedure"</b>      | means the handover of Data to You after termination of this Agreement as more particularly described in Schedule 2                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Data Protection Legislation"</b>  | means the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR); the UK Data Protection Act 2018; the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003, any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party in connection with these Terms and Conditions and any laws that replace, extend, re-enact, consolidate, or amend any of the foregoing or laws that are analogous to any of them; |
| <b>"Fees"</b>                         | means the fees payable by You to Us for the provision of the Services as set out the Schedules;                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Group"</b>                        | means in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a [holding company of that company. Each company in a Group is a <b>"member of the Group"</b> ;                                                                                                                                                                                                                                                                                           |
| <b>"Initial Term"</b>                 | means the period set out in Schedule 1 starting on the Commencement Date;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Intellectual Property Rights"</b> | means patents, know-how, registered and unregistered trademarks and service marks (including any trade, brand or business names and any distinctive sounds used to differentiate Our goods and services), domain names, registered designs, design rights, utility models, copyright (including all such rights in computer                                                                                                                                                                                                                              |

software and any databases), moral rights and topography rights (in each case for the full period thereof and all extensions and renewals thereof), applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world and any similar rights in any country;

**“Network Attack”**

means any attempt (whether successful or otherwise) to try and breach the security of or access to our network, systems, software or any computing facilities owned by or within our control where such attempt is not for bona fide purposes, or any denial of service attack which is designed or intended to reduce the efficiency of our network, systems, software or any of its computing facilities;

**“Personal Data”**

shall have the meaning given to it under the Data Protection Legislation;

**“Processing”**

shall have the meaning given to it under the Data Protection Legislation;

**“Processor”**

shall have the meaning given to it under the Data Protection Legislation;

**“Services”**

means the services provided by Us to You as set out in the Schedules and specifically identified in Annex A;;

**“Subsequent Term”**

means the period set out in Schedule 1;

**“Territory”**

means the United Kingdom;

**“Term”**

means the Initial Term and any 1 (one) or more Subsequent Terms;

**“Transfer”**

means the provision of access to and/or the transfer of Personal Data;

**“VAT”**

means value added tax at the prevailing rate in force from time to time.

- 1.2. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Background, the Schedules and any Appendices. In the event of a conflict between the Appendices, the Schedules and the main body of this Agreement, the main body shall prevail, then the Schedules and then the Appendices.
- 1.3. References to clauses and Schedules are to the clauses and Schedules of this Agreement. References within a Schedule to paragraphs or Appendices shall be a reference to a paragraph or Appendix of that Schedule.
- 1.4. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6. Other than in respect of periods of time expressed in Business Days, if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day. In respect of periods of time expressed in Business Days, if a period of time is specified from a given day, or from the day of an act or event, such period shall be calculated as inclusive of that day unless such act or event occurs after business hours during that day.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party. This clause does not, however, apply in relation to taxation.
- 1.8. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9. Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), governmental entity, partnership and in relation to a party who is an individual, their legal personal representative(s).
- 1.11. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006.

## **2. SERVICES AND DURATION**

In consideration of You paying Us the Fees in accordance with the terms of this Agreement, we hereby grant You a non-exclusive, revocable, non-transferable licence in the Territory for the Term, to receive the Services.

### **2.1. In relation to scope of use of the Services:**

- 2.1.1. You may not use or access the Services other than as specified in this Agreement. Any use of or access to the Services other than in accordance with the terms of this Agreement shall only be allowed with Our prior written consent and You hereby acknowledge and agree that Additional Fees may be payable in respect of any change to or additional use of the Services if approved in writing by Us;
- 2.1.2. You have no right (and shall not permit any end user or other third party whatsoever) under any circumstances to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Services in whole or in part.

### **2.2. In relation to assignment and sub-licensing:**

- 2.2.1 You have no right whatsoever to sub-license or to assign the benefit or burden of this Agreement, in whole or in part, or to allow the Services, in whole or in part, to become the subject of any charge, lien or encumbrance;
- 2.2.2 We may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this Agreement without notice to You.

### **2.3 You shall permit Us to inspect and have access to any premises, and to the computer or other data processing equipment located there, accessed or used by You in relation to the Services, and any records kept pursuant to the Agreement or the Services, for the purposes of ensuring that You are complying with the terms of this Agreement, provided that we give You reasonable advance notice of any such inspections, which shall take place at reasonable times.**

### **2.4 This Agreement shall come into effect on the Commencement Date and, subject to the provisions of this Agreement, shall continue in full force and effect for the Initial Term. Either party may give the other not less than three (3) months' (or such other period specified in Schedule 1) written notice of termination of this Agreement during the Initial Term, such notice to expire at the end of the Initial Term. In the event that no such notice is given by either party, this Agreement shall renew automatically at the end of the Initial Term for a Subsequent Term and shall continue to renew thereafter for further Subsequent Terms unless and until terminated by either party giving to the other not less than three (3) months' (or such other period specified in Schedule 1) written notice to expire at the end of the relevant Subsequent Term.**

### **3 AGREEMENT UNDERTAKINGS**

You hereby undertake and agree that, at all times during the continuation of this Agreement, you shall:

- 3.1 use and access the Services strictly on the basis that You may not make any copy, reproduction or backup and neither shall You use, sell, licence or otherwise deal with the Services in any way whatsoever other than strictly in accordance with the terms of this Agreement;
- 3.2 not post, store, display or upload any material, document, information, article, reference, link or content which is or may be considered by Us, in Our absolute opinion, to be inappropriate, illegal, harassing, unlawful, inaccurate, misleading, offensive, pornographic, defamatory or unacceptable for any reason whatsoever;
- 3.3 not at any time, directly or indirectly, make any efforts to decompile or reverse-engineer the whole or part of the Services;

### **4 UNDERTAKINGS AND WARRANTIES**

4.1 We hereby warrant to You that We:

- 4.1.1 have full power and authority to enter into this Agreement and to carry out the actions and meet Our obligations under this Agreement;
- 4.1.2 shall use reasonable care and skill in the provision of the Services;
- 4.1.3 shall use Our reasonable endeavours, where appropriate, to ensure that any and all content contained within the Services is correct, accurate and up to date from time to time.

4.2 You warrant to Us that:

- 4.2.1 You have full power and authority to enter into this Agreement and to carry out the actions and meet Your obligations under this Agreement; and
  - 4.2.2 all information, data and materials provided by You or on Your behalf to Us pursuant to this Agreement is, and will be, to the best of Your knowledge and belief, accurate and complete in all material respects, and You are entitled to provide the same to Us without prior recourse to any third party.
- 4.3 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term which might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise is, insofar as it is lawful to do so, hereby excluded.

## **5 FEES AND PAYMENT**

- 5.1 You agree to pay Us the Fees within 30days of receiving an invoice and in accordance with the remainder of this Clause 5.
- 5.2 You shall not withhold any amounts due to Us in the event of a Dispute in relation to the Fees or otherwise.
- 5.3 If You fail to pay any amount payable by You under this Agreement in accordance with this clause 5, then We shall be entitled (but not obliged) to suspend Our provisions of the Services to You for an indefinite period until We are paid accordingly and/or charge You interest on any overdue amount, payable by You forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of National Westminster Bank Plc or such amount as provided for by late payment legislation in force from time to time, whichever is the greater. Such interest shall accrue on a daily basis and be compounded quarterly.

## **6 INTELLECTUAL PROPERTY**

- 6.1 You hereby acknowledge and agree that any and all Intellectual Property Rights whatsoever and howsoever arising in/or related to the Services and/or any Modifications, shall at all times be, Our absolute property and You shall have no rights whatsoever in/or to the Services and/or any Modifications or any Intellectual Property Rights in relation thereto other than as set out in this Agreement.
- 6.2 Subject to clause 6.3 and clause 8 below, We undertake, at Our own cost and expense, to defend You or, at Our option, settle any claim or action brought against You alleging that the possession, use of or access to the Solutions (or any part thereof) in accordance with the terms of this Agreement infringes any United Kingdom Intellectual Property Rights of a third party ("Infringement Claim") and We shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against You as a result of or in connection with any such Infringement Claim. For the avoidance of doubt, this clause 6.2 shall not apply where the Infringement Claim in question is attributable to:
  - 6.2.1 the possession, use of or access to the Services (or any part thereof) by You other than in accordance with the terms of this Agreement; or
  - 6.2.2 the use of a non-current release of the Services; or
  - 6.2.3 a breach by You of the terms of this Agreement.
- 6.3 Clause 6.2 above is conditional upon:
  - 6.3.1 You notifying Us in writing, as soon as reasonably practicable, of any Infringement Claim of which You have notice;



- 6.3.2 You not making any admission as to liability, making or entering into any compromise or agreeing to any settlement of any Infringement Claim without Our prior written consent, which consent shall not be unreasonably withheld or delayed; and
- 6.3.3 Us having, at Our own cost and expense, the conduct of or the right to settle any and all negotiations and litigation arising from any Infringement Claim and You giving Us any and all reasonable assistance in connection with those negotiations and such litigation at Our request and expense.
- 6.4 If any Infringement Claim is made, or in Our reasonable opinion is likely to be made, against You, We may, at Our sole option, cost and expense:
  - 6.4.1 procure for You the right to continue using the Services (or any part thereof) in accordance with the terms of this Agreement;
  - 6.4.2 modify the Services so that it or they cease to be infringing;
  - 6.4.3 replace the Services with non-infringing software; or
  - 6.4.4 terminate this Agreement immediately by notice in writing to You.

## **7 DATA PROTECTION**

- 7.1 The parties acknowledge that You will ordinarily be the Controller and We will be the Processor in respect of all Personal Data provided under this Agreement. Annex A describes the subject matter, duration, nature, and purpose of the processing and the Personal Data categories and Data Subject types in respect of which the Processor may process the Personal Data to fulfil the Business Purposes.
- 7.2 The parties shall at all times comply with any and all Data Protection Legislation.
- 7.3 To the extent that We are the Processor, We shall:
  - 7.3.1 process the Personal Data in compliance with Your documented instructions from time to time unless We are required to do otherwise by law in which case We shall inform You about that legal requirement before processing, unless We are prohibited by law to do so on grounds of public interest;
  - 7.3.2 process the Personal Data only to the extent necessary for the proper performance of this Agreement and We shall not process the Personal Data for any other purpose whatsoever;
  - 7.3.3 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, We will implement the appropriate technical and organisational measures (including, where relevant, those prescribed elsewhere in this Agreement) to ensure a level of security appropriate to the risk and to protect the Personal Data against

accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of Processing;

- 7.3.4 take reasonable steps to ensure the reliability of any of Our personnel who have access to the Personal Data; that only those personnel who need to have access to the Personal Data are granted access to it; that such access is granted only for the purposes of the proper performance of this Agreement; and that such personnel are informed by Us of (and have committed themselves to) the confidential nature of the Personal Data and comply with the obligations set out in this clause 7;
  - 7.3.5 notify You without undue delay from the time it comes to Our attention, that any Personal Data has been the subject of accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any other unlawful form of Processing;
  - 7.3.6 taking into account the nature of the Processing, assist You by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of Your obligations to respond to requests for exercising the data subject's rights, data protection impact assessments, and reporting to and consulting with the Commissioner, provided that any costs incurred in relation to such assistance shall be borne exclusively by You;
  - 7.3.7 assist You in ensuring compliance with the obligations pursuant to Articles 32 (*Security of processing*) to Article 36 (*Prior consultation*) of the GDPR taking into account the nature of processing and the information available to Us and provided that any costs incurred in relation to such assistance shall be borne exclusively by You; and
  - 7.3.8 not retain the Personal Data for longer than is necessary to properly perform the Services and/or make the Services available and/or meet Our obligations under this Agreement and, upon expiry or termination of this Agreement for any reason whatsoever, or at any other time at Your request, securely destroy or immediately return to You any and all Personal Data provided that such secure destruction or return does not prevent Us from fulfilling Our obligations under this Agreement.
- 7.4 We may, in some limited circumstances, act as a Controller and collect, Process and use Personal Data. To the extent that We are a Controller, We shall:
- 7.4.1 only process that Personal Data solely for the purpose of providing the Services and/or making the Services available, and for no other use, unless expressly authorised in writing by You; and
  - 7.4.2 implement the appropriate technical and organisational measures (including, where relevant, those prescribed elsewhere in this Agreement) to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of Processing.

- 7.5 You hereby agree and acknowledge that We may decide to store Personal Data on servers outside of the European Economic Area for business or operational reasons. In the event that We do this, We will use reasonable endeavours to ensure that such Personal Data is secure and ensure that any transfer of Personal Data outside the European Economic Area is compliant with Data Protection Legislation.
- 7.6 In the event of any change in the Data Protection Legislation subsequent to the date of signature of this Agreement (including, but not limited to, the coming into force of the European General Data Protection Regulation), We shall take such steps (including agreeing to additional obligations, executing additional documents and/or doing all such acts and things) at Our sole cost and expense as may be necessary to ensure that the Processing of Personal Data under this Agreement continues to comply with the Data Protection Legislation.
- 7.7 The parties agree that the subject matter, duration, nature and purpose of processing, the type of Personal Data and the categories of data subject are set out in Annex A.
- 7.8 We shall keep at Our normal place of business records relating to the processing of the Personal Data insofar as it is necessary to demonstrate compliance with Our obligations under this clause 7 ("**Records**"). We shall permit You, on reasonable notice, to gain access to and take copies of, the Records at Our premises and inspect those Records provided that:
- 7.8.1 Such records shall only be made available to the extent the same is necessary for us to discharge our obligations pursuant to the GDPR (and, in particular, Article 28(3)(h) of the GDPR);
- 7.8.2 You shall use the Records for no other purpose except the purpose of auditing Our compliance with Our obligations under this clause 7 only;
- 7.8.3 You shall carry out such inspection as soon as possible after the Records have been made available to you and then return copies of the same to Us as soon as possible after completion of such inspection; and
- 7.8.4 You shall exercise Your rights under this clause 7.8 with as little disturbance to Our business operations as possible.
- 7.9 This clause 7.9 only applies to the extent we are acting as Your Processor. You give to Us general authorisation to engage Our existing sub-processors set out in Annex A as at the Commencement Date to process the Personal Data on Our behalf. We shall not engage any additional processor (or change our existing sub-processors) without Your prior authorisation and without acting in accordance with the provisions of this clause 7.9. We will notify You of the identity of any proposed new sub-processor following which You shall either approve or reject the appointment of such sub-processor (and any such approval shall not be unreasonably withheld).
- 7.10 If You reject such appointment, or We do not receive a response from you within 5 Business Days of Our notice, We shall not sub-contract any of Our obligations under this clause 7 to such proposed sub-processor and We reserve the right to terminate this Agreement on written notice.

- 7.11 If You approve the appointment of such sub-processor under that clause, then before such appointment takes effect, We shall enter into and maintain for the duration of such appointment a written agreement with such sub-processor which includes terms that are similar those set out in this clause 7.

## **8 LIABILITY**

- 8.1 Subject to clauses 8.2, 8.3 and 8.4, Our total aggregate liability in contract, 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 125% of the total Fees paid for during the 12 months immediately preceding the date on which the claim arose.
- 8.2 Subject to clause 8.4, We shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any (whether direct or indirect):
- 8.2.1 loss of profits;
  - 8.2.2 loss of business;
  - 8.2.3 depletion of goodwill;
  - 8.2.4 loss or corruption of data or information;
  - 8.2.5 pure economic loss; or
  - 8.2.6 special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
- 8.3 Subject to clause 8.4, We shall have no liability whatsoever to You and/or any third party in the event of a disruption, failure, loss of Personal Data, delay or interruption in relation to the provision of the Services for any reason whatsoever beyond Our reasonable control including, but not limited to:
- 8.3.1 any disruption, failure, delay or interruption in any Services provided to Us by any third party, supplier (including, but not limited to, any third party provider required for the operation and availability of the Services), utility provider or any other person whatsoever;
  - 8.3.2 any loss or unavailability of:
    - 8.3.2.1 power;
    - 8.3.2.2 electricity;
    - 8.3.2.3 internet connectivity or access;
    - 8.3.2.4 access to premises;

8.3.2.5 access and/or availability of Our servers and any resulting access and/or availability of the Services and/or the Solutions;

8.3.2.6 terrorist act or threat of terrorism which We reasonably believe to be of a genuine nature.

8.3.2.7 Your inability, and/or the inability of any third party, to access the Services.

8.4 Nothing in this clause 8 shall affect Our liability for any losses, costs, expenses, claims or damages resulting from death or personal injury caused by Our negligence or for fraud or fraudulent misrepresentation.

## **9 TERMINATION**

9.1 We may, by written notice to You, and without any liability whatsoever to You and/or any third party, terminate this Agreement with immediate effect if:

9.1.1 You fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment; or

9.1.2 You undergo a change of control.

9.2 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:

9.2.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

9.2.2 the other party suspends, or threatens to suspend, payment of its debts as they fall due or admits inability to pay its debts or is unable to do so in accordance with section 123 of the Insolvency Act 1986;

9.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or it makes a proposal for or enters into any compromise or arrangement with its creditors, other than for the sole purpose of a scheme of solvent amalgamation of with one or more other companies or a solvent restructuring;

9.2.4 a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the other party's winding up other than for the sole purpose of a scheme of solvent amalgamation with one or more other companies or its solvent restructuring;

9.2.5 an application is made to a court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

- 9.2.6 the holder of a floating charge over the other party's assets has become entitled to appoint or has appointed an administrative receiver;
- 9.2.7 a person becomes entitled to appoint a receiver over the other party's assets;
- 9.2.8 one (1) or more of the other party's creditors or encumbrancers attaches or takes possession of, or distress, execution, sequestration or other such process is levied or enforced on or used against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 9.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which the other party is subject which has an effect equivalent or similar to any of the events mentioned in clauses 9.2.2 to 9.2.8 inclusive above; or
- 9.2.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business and the terminating party believes, in its reasonable opinion, that the other party is unlikely to be able to pay any amounts it owes.

## **10 EFFECTS OF TERMINATION**

- 10.1 Termination of this Agreement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 10.2 On termination of this Agreement:
  - 10.2.1 all licences granted under this Agreement shall immediately terminate and You shall immediately cease all use of the Services;
  - 10.2.2 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; and
  - 10.3.3 both parties shall follow the Data Handover Procedure as soon as reasonably practicable.

## **11 CONFIDENTIALITY**

11.1 Each party shall, during the term of this Agreement and thereafter, keep confidential and not use for its own purposes and not disclose to any third party any information of a confidential nature or which could reasonably be considered to be confidential in nature (including, without limitation, trade secrets and information of commercial or financially sensitive value) which may become known to such party from the other party and which relates to the other party or any of its Group, unless:

11.1.1 the receiving party has written consent from the disclosing party to do otherwise;

11.1.2 such information subsequently comes lawfully into the possession of the receiving party from a third party.

11.2 The terms of this Agreement are confidential and may not be disclosed by You without Our prior written consent

11.3 The provisions of this clause 11 shall remain in full force and effect notwithstanding termination of this Agreement for any reason.

## **12 FORCE MAJEURE**

12.1 Our obligations under this Agreement shall be suspended during the Term to the extent that We are prevented or hindered from complying with Our duties and obligations hereunder by any cause beyond Our reasonable control including, but not limited to, strikes, lockouts, labour disputes, Act of God, war, riot, civil commotion, network attacks, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this Agreement.

12.2 In the event that Our obligations under this Agreement are suspended in accordance with this clause 12 for a period of three ( 3) months, then We may terminate this Agreement without liability to You.

## **13 DISPUTES**

13.1 If a dispute arises between the parties out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then, except as expressly provided in this Agreement, We and You shall follow the dispute resolution procedure set out in this clause 13 as follows:

13.1.1 either We or You shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documentation. Upon service of the Dispute Notice, We or You shall attempt, in good faith, to resolve the Dispute;

13.1.2 if We and You are unable to resolve the Dispute within thirty (30) days of the date of service of the Dispute Notice, then We and You agree to attempt to

settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure ([www.cedr.com](http://www.cedr.com)). Unless otherwise agreed between Us and You, the mediator shall be nominated by CEDR Solve. To initiate the mediation, We or You must serve notice in writing ("**ADR notice**") to the other requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice. Unless otherwise agreed by Us and You, the place of mediation shall be nominated by the mediator.

- 13.2 Neither We nor You may commence any court proceedings in relation to any dispute arising out of this Agreement until thirty (30) days after the appointment of a mediator, PROVIDED THAT (a) the right to issue proceedings is not prejudiced by a delay and (b) We may commence court proceedings immediately (without the need to follow clause 13.1) in respect of any Fees which are overdue.

## **14 STATUS OF THE PARTIES**

The parties hereby confirm and acknowledge that nothing in this Agreement is intended to, or shall be deemed or construed to, constitute a partnership, joint venture or employment relationship of any kind whatsoever between them. Neither shall this Agreement constitute or create a relationship between the parties so that either party may be considered to be an employee or the agent of the other for any purpose whatsoever.

## **15 ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties with respect to its subject matter and it supersedes all prior agreements, negotiations and discussions between the parties relating to it.

## **16 AMENDMENTS**

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

## **17 ASSIGNMENT**

- 17.1 You shall not, without Our prior written consent, assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, nor subcontract any or all of its obligations under this Agreement.

- 17.2 We may assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it.

## **18 FREEDOM TO CONTRACT**



The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under this Agreement.

## **19 WAIVER**

Our failure to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

## **20 SEVERABILITY**

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. If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall, in such an event, negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement.

## **21 NOTICES**

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (or airmail if to an address outside the country of posting) to, the address of the relevant party set out in this Agreement or such other address as either party notifies to the other from time to time, or by email to such address as notified by either party to the other in writing from time to time. Any notice given according to the above procedure shall be deemed to have been given two (2) Business Days after sending provided that the sender can provide a valid confirmation of sending.

## **22 RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **23 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNED by an authorised representative     )  
for and on behalf of                             )  
**CHARLES NOVACROFT DIRECT LIMITED**     )

Signature: .....

Name: .....

SIGNED by an authorised representative     )  
for and on behalf of                             )  
**[CLIENT NAME]**                                     )

Signature: .....

Name: .....

## **ANNEX A- PERSONAL DATA PROCESSING PURPOSES AND DETAILS**

**Subject matter of processing:** [Short description, for example name of the service or description of the Contract]

**Duration of Processing:** [Periods for which the services are being provided]

**Nature of Processing:** [Description of the type of processing such as data collection, storage, sharing and so on]

**Business Purposes:** [Description of the processing purpose(s)]

**Personal Data Categories:** [Set out types of personal data such as names, contact details, images and so on]

**Data Subject Types:** [Set out categories of data subjects such as employees, customers, and so on]

**Approved Subcontractors:**  
[List all approved subcontractors]