

Software Licence Agreement – LMS Software Portal

This **Software Licence Agreement** (known hereafter as the "**Licence**") is made on the _____ day of _____

BETWEEN

(1) **[CLIENT] of [INSERT ADDRESS]** ("**the Client**").

AND

(2) **AGILE WORKFORCE SERVICES LIMITED** with company number **12072400** whose registered office is at 5th Floor, 4 Coleman Street, London, EC2R 5AR ("**the Supplier**").

each a "Party" and together "the Parties".

WHEREAS

- (A) The Supplier has a perpetual and irrevocable sublicense to use, copy, adapt, create derivative works of, commercially exploit and sub-licence a technology portal platform to specifically manage the booking process of temporary staff across a range of workforce solutions, called LMS (known hereafter as "**the Software**").
- (B) The Client wishes to engage the Supplier to make the Software available to the Client, subject to payment of the charges, by way of sub-licence via the internet to enable the Client to [(i) manage the provision and supply of temporary staff to the Client by way of the Client using the Software to input and manage its requirements for such supplies with its preferred supplier list of recruitment agencies,] [(ii) operate a direct engagement model for the payment of temporary staff, and] [(iii) to operate and manage its own internal bank of temporary staff].
- (C) [The Supplier has separately submitted to the Client a service offering for the provision of G-Cloud 13 Services **[AND/OR INSERT REFERENCE TO ANY OTHER RELEVANT SERVICES/TENDERS]** which the Client has accepted. Following acceptance of the Suppliers services, the Supplier has offered a sub-licence of the Software to the Client to support the above service offerings, subject to and in accordance with the terms of this Licence.]
- (D) It is hereby agreed that this Licence supplements the agreements (as more particularly set out and defined in Clause 1 below) between the Supplier and the Client for the supply of services by the Supplier.

1. Entire Agreement

- 1.1 This Licence is supplemental to and forms part of the contractual arrangements and agreements entered into between the Parties. The entire agreement between the Parties relating to the services and the supply of the supporting Software shall comprise the following contract documentation (as may be varied, amended and extended by the relevant parties from time to time):

- 1.1.1 [INSERT REFERENCE TO APPLICABLE G-CLOUD 13 FRAMEWORK AGREEMENT AND DATE] ("**G-Cloud 13 Framework Agreement**");
- 1.1.2 [INSERT REFERENCE TO APPLICABLE G-CLOUD 13 CALL OFF CONTRACTS AND DATE] ("**G-Cloud 13 Call Off Contract**");
- 1.1.3 [INSERT REFERENCE TO ANY OTHER APPLICABLE FRAMEWORK OR CALL OFF AGREEMENTS AND DATE];
- 1.1.4 this Licence;

(each an "**Agreement**" and together referred to as the "**Agreements**")

- 1.2 With the exception of statements made fraudulently, the Client and the Supplier agree that the Agreements set out in Clause 1.1 above comprise the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the Parties relating to the supply of the services and supporting Software.

2. Governing Law and Jurisdiction

- 2.1 This Licence 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 construed in accordance with the law of England and Wales.
- 2.2 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 Licence or its subject matter or formation (including non-contractual disputes or claims).

3. Term

- 3.1 This Licence will commence and take effect on the date that it is signed by the Parties (known hereafter as the "Commencement Date") or such other date as agreed in writing between the Parties and shall continue thereafter unless or until it is otherwise terminated in accordance with Clause 8 or Clause 11 ("**the Term**").

4. Licence

- 4.1 Subject to the terms of this Licence, the Supplier hereby grants to the Client a non-exclusive, non-transferable, revocable sub-licence to permit Authorised Users to use the Software during the Term solely for:

4.1.1 [managing the provision and supply of temporary staff under [INSERT CONTRACT REFERENCE IF APPLICABLE];] and/or

4.1.2 [for the provision of the direct engagement services under [INSERT REFERENCE TO APPLICABLE G-CLOUD 13 FRAMEWORK AGREEMENT AND/OR CALL OFF CONTRACT;] and/or

4.1.3 [for the Client's own internal management of its bank of temporary staff [INSERT CONTRACT REFERENCE]];]

("the Purpose").

For the purposes of this Licence, "Authorised Users" shall mean those employees of the Client who are authorised by the Client to use the Software and approved by the Supplier. The Client warrants that it shall not use the Software other than for the Purpose as specified under this Clause 4.1 without the express prior written consent of the Supplier and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier.

- 4.2 Neither party shall access, store, distribute or transmit any Viruses during the course of its use of the Software. For the purposes of this Licence, "Viruses" shall mean anything 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.
- 4.3 The Client shall not, 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 Licence,:-
 - 4.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - 4.3.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
- 4.4 The Client shall not:-
 - 4.4.1 access all or any part of the Software in order to build a similar product or service; or
 - 4.4.2 use the Software to provide services to third parties; or
 - 4.4.3 license, sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except Authorised Users; or
 - 4.4.4 attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Licence; or
 - 4.4.5 allow the Software to become the subject of any charge, lien or encumbrance; or
 - 4.4.6 deal in any other manner with any or all of its rights or obligations under this Licence.
- 4.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 4.6 The rights provided under this Clause 4 are granted to the Client only. The Client shall not sub-license, assign or novate the benefit or the burden of this licence in whole or in part to any third party.
- 4.7 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence without encumbrance or restriction.

5. Software

- 5.1 The Supplier shall, during the Term of this Licence, make available the Software to the Client on and subject to the terms of this Licence.
- 5.2 The Client acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software meet its requirements.
- 5.3 In relation to the Client's access to the Software, the Supplier may provide one or more unique identifications and passwords which the Client must keep secure and confidential. The Client must notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person or should it know or suspect that any such identification and password is no longer secure and confidential such that there is a risk of unauthorised access to the Software so that the Supplier may disable such access rights to the Software and issue the Client with a new identification and password.
- 5.4 Subject to any additional charges that may also become due and payable by the Client in accordance with Clause 11 below, the Client shall pay the Supplier the charges for supply of the Software under this Licence. The charges (and/or any associated licence fees or other amounts) shall be as agreed between the parties and set out in the [G-Cloud 13 Call Off Contract], together with the applicable payment terms. If the Client fails to make any payment due to the Supplier under this Licence by the due date for payment, then, without limiting the Supplier's remedies under Clause 11, the Client shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

6. Supplier's Obligations

- 6.1 The Supplier:-
- 6.1.1 does not warrant that the Client's use of the Software will be uninterrupted or error-free;
- 6.1.2 does not warrant that the Software will meet the Client's requirements or that it is fit for any purpose specified by the Client;
- 6.1.2 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 (for which it has no responsibility or control), including the internet, and the Client acknowledges that the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7. Client's Obligations

7.1 The Client shall:-

- 7.1.1 ensure that Authorised Users use the Software in accordance with the terms and conditions of this Licence and shall be responsible for any Authorised User's breach of this Licence; and
- 7.1.2 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

8. Proprietary Rights

- 8.1 Except as expressly stated herein, this Licence does not grant the Client any rights to, or in, any intellectual property rights including patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software.
- 8.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Licence. Should any such rights be withdrawn or terminated for any reason then the Supplier shall be entitled to terminate this Licence immediately and automatically upon providing notice to the Client.

9. Indemnity

- 9.1 The Client shall defend, indemnify keep indemnified and hold harmless the Supplier on demand against any and all 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 Client's use of the Software, provided that (where applicable):-
 - 9.1.1 the Client is given prompt notice of any such claim;
 - 9.1.2 the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - 9.1.3 the Client is given sole authority to defend or settle the claim.
- 9.2 The Supplier shall defend the Client against any claim that the Software infringes any intellectual property rights including patents, copyright, trade mark, database right or right of confidentiality, effective as of the effective date of this Licence and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:-
 - 9.2.1 the Supplier is given prompt notice of any such claim;
 - 9.2.2 the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense;
 - 9.2.3 the Supplier, as between it and the Client, is given sole authority to defend or settle the claim.

- 9.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, immediately terminate this Licence on notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 9.4 In no event shall the Supplier be liable to the Client to the extent that the alleged infringement is based on:-
- 9.4.1 a modification of the Software by anyone other than the Supplier; or
 - 9.4.2 the Client's use of the Software in a manner contrary to the instructions given to the Client by the Supplier; or
 - 9.4.3 the Supplier's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 9.5 The foregoing states the Client's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

10. Limitation of Liability

- 10.1 This clause 10 sets out the entire financial liability of the Supplier to the Client:-
- 10.1.1 arising under or in connection with this Licence;
 - 10.1.2 in respect of any use made by the Client of the Software; and
 - 10.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Licence.
- 10.2 Except as expressly and specifically provided in this Licence:-
- 10.2.1 the Client assumes sole responsibility for results obtained from the use of the Software by the Client. 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 Client in connection with the Software or any actions taken by the Supplier at the Client's direction;
 - 10.2.2 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 Licence; and
 - 10.2.3 the Software is provided to the Client on an "as is" and "as available" basis.
- 10.3 Nothing in this Licence excludes the liability of the Supplier:-
- 10.3.1 for death or personal injury caused by the Supplier's negligence; or
 - 10.3.2 for fraud or fraudulent misrepresentation;
 - 10.3.2 for any other liability that cannot be excluded by law.

- 10.4 Subject to clause 10.2 and clause 10.3 above the Supplier shall not be liable for any losses or damages which may be suffered by the Client (or any person claiming under or through the Client) whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- 10.4.1 loss of profits;
 - 10.4.2 loss of business;
 - 10.4.3 loss of anticipated savings;
 - 10.4.4 loss of business opportunity;
 - 10.4.5 loss of or damage to goodwill;
 - 10.4.6 loss or corruption of software, data or information; or
 - 10.4.7 for any special, indirect or consequential loss.
- 10.5 The Client acknowledges and agrees that the limitations of the Supplier's liability under this Clause 10 are a fundamental part of this Licence and formed the basis for the Supplier agreeing to license the Software to the Client under this Licence. Accordingly, the total liability of the Supplier to the Client, whether in contract, tort (including negligence) or otherwise and whether in connection with this Licence shall in no circumstances exceed a sum of [INSERT].

11. Term and Termination

- 11.1 Without affecting any other right or remedy available to it, either party may terminate this Licence for convenience on giving the other party not less than three (3) months' prior written notice to the other party to terminate.

[OPTION: INSERT/DELETE TERMINATION PROVISIONS AS APPROPRIATE]

- 11.2 On the occurrence of the expiry or earlier termination (howsoever arising or occurring) of any of the Agreements listed at Clause 1.1 above, the Supplier shall be entitled (at its sole option) to either:
- 11.2.1 at the request of the Client, continue to provide the Software to the Client under the terms of this Licence in whole or in part in relation to the Client's use of the Software in connection with one or more of the Agreements listed at Clause 1.1 above, subject to payment of a software licence fee and associated support and maintenance fee by the Client to the Supplier at a commercial rate to be agreed between the Parties; or
 - 11.2.2 terminate this Licence in whole or in part in relation to the Client's use of the Software in connection with one or more of the Agreements listed at Clause 1.1 above in which case this Licence shall terminate simultaneously with the expiry or earlier termination date of the relevant Agreement(s) or otherwise on a date notified to the Client by the Supplier.
- 11.3 Without affecting any other right or remedy available to it, either party may terminate this Licence (in whole or in part) with immediate effect by giving written notice to the other party if:

- 11.3.1 the other party commits a material breach of any other term of this Licence which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
 - 11.3.2 the other party fails to pay any amounts due under this Licence by the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 11.3.2 the other party (i) becomes insolvent as defined by section 123 of the Insolvency Act 1986; or (ii) an order is made or a resolution is passed for either party's winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction); or (iii) an administrator, administrative receiver or receiver is appointed over the whole or any part of either party's assets; or (iv) either party makes any arrangement with its creditors; or (v) any event occurs, or proceeding is taken, with respect to either party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clauses (i) to (iv) inclusive above.
- 11.4 On the effective date of termination of this Licence (whether in whole or in part and howsoever occurring or arising):
- 11.4.1 all licences granted under this Licence shall immediately terminate (in whole or in part) and the Client shall make no further use of the Software;
 - 11.4.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - 11.4.3 subject to any legislative requirements, the Supplier may, destroy or otherwise dispose of any of the Client Content (in whole or in part) in its possession, unless the Supplier receives, no later than ten days after the effective date of the termination of this Licence, a written request for the delivery to the Client of the then most recent back-up of the Client Content. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within 90 days of its receipt of such a written request, provided that the Client 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 Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Content; and
 - 11.4.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

For the purposes of this Licence, "**Client Content**" means all material including but not limited to logos, graphics, icons, image, photos, animation, video, audio music and text or other content created or supplied by the Client to the Supplier, as well as data inputted into the information fields of the Software by the Client, by Authorised Users, or by the Supplier on the Client's behalf.

12. Service Levels

The Supplier's performance of the Services shall be required to meet the Service Levels agreed by the parties from the Commencement Date of the Contract.

12.1 Baseline Service Levels

The parties agree the following Key Performance Indicators for the Software:-

Key Performance Indicators	Service Levels	Target Score
Clear communication & response to queries	Timely, transparent communication with response to any queries within 4 Hours of receipt (during normal office hours)	99%
Service Availability	24 hours, 7 days a week, 365 days per year. Agreed Downtime with the written consent of the Client's Authorised Officer will be exempt	99.9%
Management Information provided on a monthly basis	Full KPI Management Information to the Client by the 10 th of each month	100%
Service Complaints	less than 1% per annum	99%
Complaint Resolution – Lead Times	Less than 2 weeks	99%

12.2 **Failure to meet Service Levels**

12.2.1 If the Supplier persistently (e.g. breaches the same Service Level on three (3) or more occasions in three (3) consecutive months) or deliberately or intentionally fails in any material respect to achieve any Service Level, such failure shall be considered to be a material breach of its obligations and shall entitle the Client to terminate the Contract in accordance with the provisions of Clause 11.3.a provided that neither party shall be prevented from determining that any other breach of the Contract constitutes a material breach.

12.3 **Support**

12.3.1 During the continuance of the Licence, the Supplier shall provide any or all of the following support and maintenance services as and when directed by the Supplier:

12.3.1.1 Identifying and resolving faults in the Software

12.3.1.2 Ongoing routine support and maintenance of the Software

12.3.1.3 The creation and installation of all error corrections and maintenance updates to the Software that might be required from time

- 12.3.1.4 Provision of assistance to designated Authorised Users at the Client in the use of the Software, including its administrative tools
- 12.3.2 The Supplier shall provide the services referred to in clause 12.3.1 above in accordance with the Support Level Standards listed in Schedule 1, and carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate to the tasks they are allocated.
- 12.3.3 The Supplier does not warrant that all errors can and will be corrected.
- 12.3.4 The Supplier shall not be required to provide the services listed in clause 12.3.1 in respect of any errors/problems to the Software arising from:
 - 12.3.4.1 Third party applications, including the operating system upon which the Client accesses the Software
 - 12.3.4.2 The improper use or neglect of the Software by the Client or its employees
 - 12.3.4.3 The modification of the operating system upon which the Client accesses the Software or its merger with any other Software.

12.4 Review

The Supplier shall attend formal, minuted review meetings as required by the Authorised Officer to discuss the Client's levels of satisfaction in respect of the Services supplied by the Supplier under the Contract and to agree the necessary action to address areas of dissatisfaction. The Supplier will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Client and the Supplier, together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

13 Deliverables

- 13.1 The Supplier shall allow the Client and any person, firm or organisation authorised by the Client to have access to and to audit all records maintained by the Supplier in relation to the supply of the Services. The Supplier shall assist the Client or any party authorised by the Beneficiary (as the case may be), in the conduct of the audit.
- 13.2 The Client's rights under Clause 13.1 are without prejudice to any other rights or remedies the Client may be entitled to.
- 13.3 If required by the Client, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Client.

14 Information Governance

- 14.1 The Supplier shall, in providing the Software, abide by the Client's reasonable policies as notified from time to time in respect of governance of its information,

including but not limited to data protection, data security, data retention, the Freedom of Information Act 2000 and confidentiality of Client information.

- 14.2 The Parties acknowledge and agree that for the purposes of this Licence and the use of the Software by the Client as is intended under this Licence and under the services provided in accordance with the relevant Agreements listed at Clause 1.1 above that:

14.2.1 [under [INSERT CONTRACT REFERENCE, IF APPLICABLE] the Client and the Supplier are both separate and independent data controllers;] and

14.2.2 [under [INSERT CONTRACT REFERENCE, IF APPLICABLE] the Client is a data controller and the Supplier is a data processor on behalf of the Client;]

[in both the scenarios contemplated by Clauses 14.2.1 and 14.2.2 above the Parties shall comply with their respective obligations as agreed and set out in the terms and conditions of the applicable Framework Agreement and Call Off Agreement as stated (as may be varied, extended or amended from time to time) and in accordance with Data Protection Legislation (defined below).]

- 14.3 [The Parties acknowledge and agree that the Parties shall comply with their respective obligations under Schedule 2 to this Licence in relation to the supply of the Software and the Client's use of the Software for the purposes specified under [INSERT REFERENCE TO ANY SERVICES PROVIDED OUTSIDE OF CONTRACT, IF APPLICABLE].]

- 14.4 For the purposes of this Clause 14, **"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); controller, processor, shall have the meanings given to them in the Data Protection Legislation.

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

SIGNED

PRINT NAME

DESIGNATION

DATE

For and on behalf of **[CLIENT]**

AND;

SIGNED

PRINT NAME

DESIGNATION **Director / Company Secretary**

DATE

For and on behalf of **AGILE WORKFORCE SERVICES LIMITED**

Schedule 1

Locum Management System

[INSERT SERVICES DESCRIPTION]

Support Level Standards

1. The Supplier will take all reasonable measures to ensure continuity of the Software.
2. The Software will have 99% availability where the Client's internet is fully functional, and availability rates will be monitored and reviewed from the first date of the month following "go live" at the Client.
3. Planned and agreed maintenance to LMS and the Software shall be excluded from the monthly availability report.
4. For the provision of assistance to designated Authorised Users at the Client in the use of the Software, including its administrative tools, the LMS Help Desk may be contacted during the 9am and 5.30pm on 01756 704762. Outside of these hours a message may be left for the help desk team who will respond to all calls within 2 hours.
5. As regards fault reporting, the Supplier will determine the priority of any defect using the one of the following priorities:
6. For the purpose of fault reporting, a business day is between 9am and 5.30pm (UK local time) Monday to Friday, excluding UK bank holidays.

Priority	Description	Contact Details	Target Resolution Time (after receipt)
1	Entire system down and inaccessible, or major components of system not operational and work cannot continue	For Priority 1 faults, the Client should contact the following number (01756 704762	6 business hours (with Client's full cooperation)

Priority	Description	Contact Details	Target Resolution Time (after receipt)
2	Operation of system severely degraded, or non business critical components of system not operational	01756 704762	Within 1 business day

3	Certain non essential features of system impaired	01756 704762	Within 5 business days
4	Errors that are cosmetic or non disabling – low impact	01756 704762	Next software release

[Schedule 2]

DEFINITIONS

For the purposes of this Schedule 2 the following definitions shall have the following meanings:

"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "processing" and "appropriate technical and organisational measures" as defined in the Data Protection Legislation.

"Data Protection Legislation" the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party].

"UK Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1. DATA PROTECTION

1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 1, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. Appendix 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

1.3 Without prejudice to the generality of clause 1.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and where applicable, lawful collection of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of this agreement.

1.4 Without prejudice to the generality of clause 1.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may

- include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause.

1.5 The Client consents to the Supplier appointing a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule and which the third party processor confirms to reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

1.6 Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

[Appendix 1]

Processing, Personal Data and Data Subjects

1. Processing by the Supplier

1.1 Scope

[For the purposes of the Client receiving the benefit and use of the Supplier's Software portal for management of its own internal use.]

1.3 Nature and Purpose of processing

[The Supplier shall process Personal Data for the purposes of the Client's own internal bank management via the Software portal.

The processing shall include the collection, recording, organisation, structuring, storage, retrieval, consultation, use, transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).]

1.4 Duration of the processing:

[For the period during which the Software is provided to the Client under and subject to this Licence for the purposes of The Client's internal bank management.]

2. Types of Personal Data (including special categories)

- [Names, email addresses, postal address, telephone number and other contact details]
- [ESR/assignment number]
- [Previous job/booking history]

3. Categories of Data Subject

[Client agency staff and employees]