

Digital Asset Management Services Terms

Background:

- (A) The Supplier is in the business of providing the cloud services described in the Specification and ordered by the Buyer using the Order Form and applicable Call-Off Schedules.
- (B) The Buyer agrees to obtain and the Supplier agrees to provide services on the terms set out in this Agreement.

Agreed Terms:

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions

Affiliate	in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.
Applicable Data Protection Laws	all Applicable Laws relating to the protection of personal data and the privacy of individuals, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
Applicable Laws	all applicable laws, statutes, regulations and codes from time to time in force.
Business Day	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the period from 9.00 am to 5.00 pm on any Business Day.
Buyer	as detailed in the Call-Off Contract
Buyer Materials	all documents, information, software, items and materials in any form (whether owned by the Buyer or a third party), which are provided by the Buyer to the Supplier in connection with the Services.
Call-Off Schedules	the Call-Off Schedules at Framework Schedule 6.
Charges	the fees payable for the Services, as set out in the Order Form.
Confidential Information	all information (however recorded or preserved) that one party or any of its Affiliates (discloser) discloses or makes available to the other party or any of its Affiliates (recipient) in connection

with this Agreement and which would be regarded as confidential by a reasonable business person. It includes any information of a confidential nature relating to the Charges or the Supplier's operations, products, processes, trade secrets or know-how. It does not include information that:

- (a) is or becomes generally available to the public (other than as a result of the recipient's breach);
- (b) was available to the recipient on a non-confidential basis before disclosure by the discloser;
- (c) was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the discloser or otherwise prohibited from disclosing the information to the recipient;
- (d) is developed by or for the recipient independently of the information disclosed by the discloser; or
- (e) the parties agree in writing is not confidential or may be disclosed.

Deliverables

the output(s) of the Services to be provided by the Supplier to the Buyer as agreed in an Order Form.

Effective Date

has the meaning given in clause 2.1.

Force Majeure Event

any event outside the reasonable control of either party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster or any action taken by a third party in relation to any third party software.

Framework

The UK government's updated framework agreement (RM1557.15).

Intellectual Property Rights

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, or to claim priority from, those rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses

all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, awards, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and professional costs and expenses).

Order Form

An order form completed and agreed between the parties for the call off of Services and/or Deliverables under this Agreement.

Services

the services as set out in Framework Schedule 1 and agreed in an Order Form.

Specification

Framework schedule 1 (Specification), which sets out the Services that may be provided under the Framework and any other description of the Services provided by the Supplier in writing as a specification from time to time.

Supplier

as detailed in the Call-Off Contract.

Term

has the meaning given in clause 2.1.

Third Party Materials

all documents, information, software, items and other materials in any form belonging to a third party which the Supplier uses in connection with the Services.

UK GDPR

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

VAT

value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Unless the context otherwise expressly requires, references to:

1.2.1 **"including"** or **"includes"** shall be deemed to have the words "without limitation" inserted after them;

1.2.2 **"writing"** or **"written"** includes e-mail;

1.2.3 references to any Applicable Laws and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such applicable law and the equivalent terms defined in such Applicable Laws, once in force and applicable; and a reference to a law includes all subordinate legislation made under that law; and

1.2.4 a time shall be GMT or BST (as applicable).

1.3 Clause and Schedule headings do not affect the interpretation of this Agreement.

2. Commencement and duration

2.1 This Agreement starts on the date specified in the Order Form (**Effective Date**) and continues, unless terminated earlier in accordance with clause 11 (Termination), for the term specified in the Order Form (**Term**) when it terminates automatically without notice.

3. Supplier's responsibilities

3.1 The Supplier shall use reasonable endeavours to provide the Services and Deliverables to the Buyer in accordance with this Agreement in all material respects from the Effective Date.

3.2 The Supplier shall perform the Services with reasonable skill and care.

3.3 The Supplier shall use reasonable endeavours to meet any performance dates specified in this Agreement but these dates are estimates only. Time is not of the essence for the performance of any of the Supplier's obligations in this Agreement.

3.4 The Supplier shall maintain all licences, consents and permissions needed to supply the Services in accordance with this Agreement, excluding any licences, consents and permissions that the Buyer is expressly responsible for maintaining under this Agreement or should reasonably be responsible for maintaining.

4. Buyer's obligations

4.1 The Buyer shall:

4.1.1 co-operate with the Supplier in all matters relating to the Services;

4.1.2 provide the Supplier, its employees, agents and subcontractors with such access to the Buyer's premises, facilities, equipment and systems as is reasonably required by the Supplier for the purpose of performing the Services, including (without limitation) conducting site visits, inspections, surveys, assessments, installation activities, or any other on-site tasks necessary for the proper provision of the Services.

4.1.3 provide the Supplier, in a timely manner, with all documents, data, information and materials reasonably required by the Supplier to provide the Services, and ensure that they are accurate and complete in all material respects;

- 4.1.4 obtain and maintain all licences, consents and permissions that are necessary to enable the Supplier to provide the Services;
 - 4.1.5 provide clear and prompt feedback on draft Deliverables submitted by the Supplier to the Buyer; and
 - 4.1.6 respond promptly to any reasonable requests from the Supplier for instructions or approvals required to provide the Services.
- 4.2 To the extent that the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Buyer or any of its agents, consultants or other suppliers (**Excusing Cause**), the Supplier shall not be in breach of this Agreement nor liable for any Losses incurred by the Buyer as a result of its performance being prevented or delayed. Without prejudice to any other right or remedy it may have, the Supplier shall be:
 - 4.2.1 allowed an extension of time to perform its obligations equal to the delay caused by the Excusing Cause; and
 - 4.2.2 entitled to payment of the Charges despite its performance being prevented or delayed; and
 - 4.2.3 entitled to recover any Losses, including additional costs, incurred as a result of the Excusing Cause.
- 4.3 If, in the reasonable opinion of the Supplier, a health and safety issue arises at the Buyer's premises that prevents the Supplier from safely performing their duties on site, the Supplier shall be entitled to immediately suspend the performance of its obligations under this Agreement until such health and safety issue has been resolved to the Supplier's reasonable satisfaction.

5. Non-solicitation

- 5.1 The Buyer shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of six (6) months after the termination or expiry of this Agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or worker of the Supplier in the provision of the Services to the Buyer.

6. Charges and payment

- 6.1 The Supplier shall invoice the Buyer for the Charges on the schedule specified in the Order Form. If no schedule is specified, the Supplier shall invoice the Buyer at the end of each month for Services performed during that month.
- 6.2 The Supplier shall invoice the Buyer for the Charges in the Order Form.
- 6.3 Where the Charges are calculated on a time and materials basis daily fee rates are calculated on the basis of an eight-hour day, worked during Business Hours. The Supplier shall charge on a pro rata basis for part days worked during Business Hours.
- 6.4 The Supplier may charge for work outside Business Hours at any agreed overtime rates.
- 6.5 All Charges:
 - 6.5.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 6.5.2 include all costs connected with the Supply of Deliverables.
- 6.6 The Buyer shall reimburse the Supplier for the following expenses and costs which are excluded from the Charges:

- 6.6.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier Personnel in connection with the Services (**Expenses**); and
 - 6.6.2 the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services (**Third Party Costs**). The Supplier shall invoice the Buyer monthly in arrears for Expenses and Third Party Costs.
- 6.7 The Buyer must pay the Supplier the Charges:
 - 6.7.1 before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Buyer in respect of the sum; or
 - 6.7.2 if later, by the date on which the payment falls due in accordance with the invoice, subject to the invoice being verified by the Buyer as valid and undisputed; and
 - 6.7.3 in cleared funds using the payment method and details stated in the invoice or in the Order Form.
- 6.8 Where the Buyer disputes the invoice, the Buyer shall notify the Supplier without undue delay and in any event within the payment period.
- 6.9 The Buyer shall make payment of all invoices in full without set off, deduction or withholding.
- 7. Intellectual property rights**
- 7.1 The Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding any Buyer Materials contained within them.
- 7.2 Subject to clause 7.4 and to the Supplier receiving payment of all Charges attributable to the Deliverables, the Supplier grants to the Buyer a non-exclusive, royalty-free, non-transferable (except in accordance with clause 13), revocable, licence during the Term and for the term of any licenced use of the Supplier's Facilities-iQ platform (or legacy platform) by the Buyer, to use, copy and modify the Deliverables (excluding the Buyer Materials) for the purpose of receiving and using the Services and Deliverables in its business.
- 7.3 The Buyer shall not sub-license the rights granted in clause 7.2 without the Supplier's prior written consent.
- 7.4 The Buyer acknowledges that the Supplier may need to include Third Party Materials which cannot be licensed on the terms of clause 7.2 within the Deliverables. The Supplier shall grant to the Buyer a licence (at the Buyer's cost) to use any Third Party Materials included in the Deliverables on the terms permitted by the third party. The Buyer shall comply with the terms (including any usage restrictions) that apply to the Third Party Materials and which have been provided to the Buyer in writing. Subject to clause 10.1, the Supplier's liability in relation to Third Party Materials shall be limited to the liability accepted by the third party under the relevant licence agreement.
- 7.5 The Buyer and its licensors shall retain ownership of all Intellectual Property Rights in the Buyer Materials. The Buyer grants the Supplier a non-exclusive, royalty-free, non-transferable (except in accordance with clause 13) licence to use, copy and modify the Buyer Materials during the Term for the purpose of providing the Services to the Buyer. The Supplier may grant sublicences of the Buyer Materials to its subcontractors and other suppliers where necessary for the performance of the Services.
- 7.6 The Supplier shall have no liability to the Buyer whatsoever, under this Agreement or any terms or indemnities relating to the provision of Services or Deliverables to the extent that such liability, infringement or claim arises from:

- 7.6.1 the use of Buyer Materials in the development of, or the inclusion of Buyer Materials in, any Deliverables;
 - 7.6.2 any changes made to the Deliverables without the Supplier's prior written consent (not to be unreasonably withheld);
 - 7.6.3 compliance with the Buyer's specifications or instructions for the development of the Deliverables;
 - 7.6.4 the use of the Deliverables in combination with any other materials not supplied or approved in writing by the Supplier (approval not to be unreasonably withheld); or
 - 7.6.5 the use of the Deliverables for a purpose or in a manner not authorised in writing by the Supplier or the failure of the Buyer to adhere to the Supplier's reasonable instructions for the use of the Deliverables.
- 7.7 If any Supplier IPR Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Buyer, the Supplier may, at its expense:
- 7.7.1 procure for the Buyer the right to continue to use the Deliverables, or relevant part of the Deliverables, in accordance with the terms of this Agreement;
 - 7.7.2 modify or replace the Deliverables with non-infringing versions, provided that the modified or replaced versions are at least equivalent in terms of functionality, quality and performance as the original versions; and
 - 7.7.3 if clause 7.7.1 and clause 7.7.2 are not reasonably practicable, terminate the Buyer's right to use the Deliverables affected by the Supplier IPR Claim with immediate effect by notice in writing to the Buyer and refund any of the fees paid by the Buyer as at the date of termination in respect of the affected Deliverables (less a reasonable sum in respect of the Buyer's use of the Deliverables to the date of termination) on return of all copies of the Deliverables which are capable of return.
- 7.8 The Buyer:
- 7.8.1 warrants that the supply, receipt and use of the Buyer Materials in the performance of this Agreement by the Supplier and its Affiliates shall not infringe the Intellectual Property Rights of any third party; and
 - 7.8.2 shall indemnify the Supplier against all Losses incurred by the Supplier as a result of any claim that the supply, receipt or use of the Buyer Materials infringes the Intellectual Property Rights of any third party.

8. Data protection

- 8.1 For the purposes of this clause 8, the terms **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** shall have the meaning given to them in Applicable Data Protection Law.
- 8.2 Both parties will comply with all Applicable Data Protection Law. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Law.
- 8.3 The parties acknowledge that for the purposes of Applicable Data Protection Law, the Buyer is the Controller and the Supplier is the Processor.

- 8.4 Without prejudice to the generality of clause 8.2, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 8.5 Without prejudice to the generality of clause 8.2, 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 Buyer unless the Supplier is required by UK law to otherwise process that Personal Data.
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, 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 UK unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - (i) the Buyer 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 Buyer with respect to the processing of the Personal Data;
 - (e) assist the Buyer, at the Buyer'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 Buyer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the Agreement unless required by UK Law to store the Personal Data; and

- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- 8.6 The Buyer does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement.
- 9. Confidentiality**
- 9.1 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
 - 9.1.1 use that Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
 - 9.1.2 disclose that Confidential Information in whole or in part to any person, except as permitted by clause 9.2.
- 9.2 Subject to clause 9.3, each party may disclose the other party's Confidential Information:
 - 9.2.1 to those of its Affiliates' employees, officers, representatives, independent contractors, subcontractors and advisers who need to know that information for the Permitted Purpose (**Representatives**). Each party shall ensure that its Representatives comply with confidentiality obligations which are substantially equivalent to those set out in this clause 9; and
 - 9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 The Buyer shall not disclose the Supplier's Confidential Information to any competitor of the Supplier except as strictly necessary to transition the Services to a replacement supplier or with the Supplier's prior written consent (not to be unreasonably withheld). The Buyer shall ensure that any competitor receiving the Supplier's Confidential Information complies with confidentiality obligations which are substantially equivalent to those set out in this clause 9.
- 9.4 The provisions of this clause 9 shall continue to apply indefinitely after termination or expiry of this Agreement in relation to Confidential Information.

10. Limitation of liability

- 10.1 Nothing in this Agreement limits or excludes:
 - 10.1.1 liability for deliberate default;
 - 10.1.2 liability for death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;
 - 10.1.3 liability for fraud or fraudulent misrepresentation;
 - 10.1.4 any liability that cannot legally be limited; or
 - 10.1.5 the Buyer's liability for its payment obligations under this Agreement.
- 10.2 Subject to clause 10.1, neither party shall have any liability for indirect or consequential loss or loss of profits, damage to or loss of goodwill or loss of opportunity.
- 10.3 Subject to clause 10.1, the Supplier's total liability to the Buyer shall not exceed the Charges paid by the Buyer in relation to any Services or Deliverables that are the subject of the relevant breach.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate or suspend this Agreement with immediate effect by notifying the other party if:

11.1.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

11.1.2 the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 11.1.2; or

11.1.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on business.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate or suspend this Agreement with immediate effect by notifying the Buyer if the Buyer fails to pay any amount due under this Agreement by the due date for payment.

11.3 On termination or expiry of this Agreement the Buyer shall immediately pay to the Supplier all of the Supplier's unpaid invoices and interest and, where no invoice has been submitted for Services supplied, the Supplier may submit an invoice, which shall be payable immediately on receipt;

11.4 Survival

11.4.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect, including clause 5, clause 7, clause 9, clause 10, and this clause 11.

11.4.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

12. Force majeure

12.1 This clause 12 shall not apply to any of the Buyer's payment obligations under this Agreement.

12.2 Subject to Clause 12.1, neither party shall in any circumstances 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 results from a Force Majeure Event.

12.3 Subject to Clause 12.1, if a Force Majeure Event prevents or delays the Supplier or the Buyer in their respective performance of a material part of their obligations under this Agreement for a period exceeding ninety (90) days (or such other period as may be agreed between the parties), either party may terminate this Agreement immediately on written notice to the other. Where this is the case, the Buyer shall not be obliged to pay any Charges to the extent the Supplier was unable to perform Services after the date the Force Majeure Event first occurred, and the Supplier will refund to the Buyer a corresponding proportion of Charges paid in advance which relate to Services which the Supplier was unable to perform.

13. Assignment and other dealings

- 13.1 The Supplier may at any time assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that the Supplier gives prior notice to the Buyer.

14. Variation

- 14.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives) and expressly states that it is amending this Agreement.

15. Waiver

- 15.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent right or remedy.
- 15.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16. Severance

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

17. Entire agreement

- 17.1 This Agreement constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 17.2 Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

18. Third party rights

- 18.1 No person other than a party to this Agreement shall have any rights (including any rights under the Contracts (Rights of Third Parties) Act 1999) to enforce any term of this Agreement.

19. Counterparts

- 19.1 This Agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

20. Governing law

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

21. Jurisdiction

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