

IMPOWER Consulting Limited

and

[CLIENT NAME]

Software, Services and Support Agreement

THIS AGREEMENT is made the **X day of MONTH YEAR**

BETWEEN:

- (1) IMPOWER Consulting Limited** (company number: 03876501) whose registered office is at 8 – 10 Warner Street, London EC1R 5HA (“**IMPOWER**”); and
- (2) [Client Name]** of **[Client address]** (**The Client**)

(together described as “the **Parties**”)

IT IS HEREBY AGREED between the Parties hereto as follows:

1. DEFINITIONS

For the purpose of this Agreement the following terms shall have the following meanings:

"Additional Support Charges"	means the charges payable by the Client to IMPOWER in respect of the provision of Additional Support Services.
"Additional Support Services"	means support and maintenance services requested by the Client other than the support provided by IMPOWER in accordance with the Statement of Work.
"Agreement"	means this written agreement between the Parties consisting of these clauses and the attached Schedules.
"Agreement Period"	means the period from the Commencement Date to: (a) the date of expiry of the Initial Agreement Period, or (b) following an extension pursuant to clause 2.2, the date of expiry of the extended period, or such earlier date of termination of the Agreement.
"Agreement Year"	means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.
"Change"	means any variation to this Agreement including to any of the Services.
"Charges"	means the Licence Charges and the Support Charges.

"Client Change Control Notice"	means a notice served by the Client on IMPOWER requesting a Change in accordance with clause 8B.
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"Client Material"	means any information, text, graphics, material or content as is provided by or on behalf of the Client to IMPOWER.
"Commencement Date"	means the date on which services will commence under the agreement. Unless stated otherwise, the Commencement Date will be the day of the signing of this agreement.
"Controller"	takes the meaning given in the UK GDPR.
"Data"	means the data to be provided by the Client to IMPOWER, as set out in Schedule 1 (Statement of Work).
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by IMPOWER under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
"Data Processing Agreement"	has the meaning given in clause 6 of this Agreement.
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	means (i) the UK GDPR; (ii) the DPA to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy.
"Data Protection Officer"	takes the meaning given in the UK GDPR.
"Data Subject"	takes the meaning given in the UK GDPR.
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Deliverables"	means the Documentation and any other deliverables (other than the Software), as specified in Schedule 1 (Statement of Work).
"Documentation"	means the electronic user manual for the Software provided by IMPOWER to the Client either in hard copy or on the media on which the Software is supplied.
"DPA"	means the Data Protection Act 2018.
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"Error"	means either (a) failure of the Software to perform in accordance with the Documentation; or (b) a cessation, interruption or degradation of the usual functionality of the Software.
"Error Reporting Co-ordinator"	means the person who shall be responsible for reporting Errors to IMPOWER and receiving information on the status and resolution of Errors from IMPOWER.
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
"Good Industry Practice"	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the Parties, the Statement of Work, the term, the pricing structure and any other relevant factors.
"Hour"	means one hour worked within the Working Hours.
"Information"	has the meaning given under section 84 of the FOIA and includes Personal Data as defined under Data Protection Legislation.
"Information Commissioner's Office"	means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.
"Initial Agreement Period"	means three (3) years from the Commencement Date or earlier date of termination of the Agreement in accordance with the Law or the provisions of the Agreement.
"Intellectual Property Rights"	means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
"ICT"	means information and communications technology.

"ICT Environment"	means the Client's ICT system and IMPOWER'S ICT system.
"IMPOWER'S Change Control Notice"	means a notice served by IMPOWER on the Client requesting a Change in accordance with clause 8B.
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which IMPOWER is bound to comply.
"Licence Charges"	means the charges payable by the Client in respect of the licence to use the Software and Deliverables granted by IMPOWER to the Client, as set out in Schedule 2.
"Losses"	means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).
"Maintenance Release"	means any corrected version of any of the Software from time to time issued by IMPOWER.
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without the knowledge of its existence.
"Month"	means calendar month.
"Party"	means a party to this Agreement.
"Personal Data"	takes the meaning given in the UK GDPR.
"Personal Data Breach"	takes the meaning given in the UK GDPR.
"Processing"	takes the meaning given in the UK GDPR.
"Processor"	takes the meaning given in the UK GDPR.

"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as IMPOWER would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Statement of Work).
"Receipt"	means the physical or electronic arrival of the invoice at the address of the Client detailed in Schedule 2.
"Request for Information"	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).
"Schedule"	means a schedule attached to, and forming part of, this Agreement.
"Services"	means the services, Software, Deliverables and Support to be provided by IMPOWER to the Client as set out in Schedule 1 (Statement of Work).
"SLA"	means the minimum percentage to which the tier 1 Support requests shall be resolved by IMPOWER in accordance with the SLA table and provisions within Schedule 1 (Statement of Work).
"Software"	means the object code form of the software set out in the Statement of Work, together with any bug fixes, enhancements or other modifications of the Software provided to the Client pursuant to this Agreement.
"Staff"	means all directors, officers, employees, agents, consultants and contractors of IMPOWER and/or of any Sub-Contractor engaged in the performance of IMPOWER's obligations under this Agreement.
"Statement of Work"	means the statement of work, in the form set out at Schedule 1 (Statement of Work).
"Sub-processor"	means any third party appointed to process Personal Data on behalf of IMPOWER related to this Agreement.
"Support"	means the support and maintenance to be provided by IMPOWER to the Client as is more particularly set out in the Statement of Work.
"Support Charges"	means the charges payable by the Client to IMPOWER in respect of the provision of Support by IMPOWER, as set out in Schedule 2 (The Charges).

"Use"	means use for the Client's own internal business purposes and only to the extent necessary for the Client to receive the benefit of the Services, Software and/or Deliverables for the purpose of assessing special educational needs and disabilities (SEND) and other needs of a child within the care system.
"UK GDPR"	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.
"Working Hours"	means 9.00am until 5.00pm, Monday to Friday, excluding bank and public holidays.

2. COMMENCEMENT DATE

- 2.1 This Agreement shall commence on [Start Date] and shall remain in force for the Initial Agreement Period ([End Date]) unless terminated earlier in accordance with clause 9 (or otherwise lawfully terminated) or extended under clause 2.2.
- 2.2 The Client may, by giving written notice to IMPOWER not less than three (3) Month(s) prior to the last day of the Initial Agreement Period, extend this Agreement on the same terms for a further period up to twelve (12) Months with an option to further extend (subject to the same notice being given prior to the end of the first extension period) the Agreement on the same terms for a further period of up to twelve (12) Months to a maximum Agreement Period of twenty four (24) Months in total. The provisions of this Agreement shall apply throughout any such extended period.

2A. THE SERVICES, SOFTWARE AND SUPPORT

- 2A.1 The Services shall commence on the Commencement Date and, subject to the extension and termination provisions herein, shall continue for the Agreement Period.
- 2A.2 IMPOWER shall provide the Software and perform the Services specified in the Statement of Work for the Client in accordance with the terms and conditions of this Agreement.
- 2A.3 IMPOWER may provide additional services (excluding Additional Support Services) to the Client, including but not limited to training, consultancy and the development of enhancements, subject to clause 8B (Change Control Procedure). No changes to the Services

(excluding Additional Support Services), Deliverables or Software shall have effect until agreed by both Parties in accordance with clause 8B (Change Control Procedure).

3. GRANT OF RIGHTS/RESTRICTIONS

- 3.1 IMPOWER grants the Client (a regional, non-exclusive, non-transferable, paid-up) license to Use the Software and the Deliverables. This license is in respect of Use of the Software and the Deliverables by the Client.
- 3.2 Except as expressly permitted in this Agreement, the Client shall not, and shall not permit others to:
- (i) modify, translate, create derivative copies of or copy the Software or the Deliverables (other than one backup copy which reproduces all proprietary notices), in whole or in part;
 - (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Software or the Deliverables to source code form;
 - (iii) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes, or otherwise transfer the Software or the Client's right to Use the Software or the Deliverables;
 - (iv) remove or modify any copyright, trademark, or other proprietary notices of IMPOWER affixed to the media containing the Software or the Deliverables or contained within the Software or the Deliverables; or
 - (v) use the Software or the Deliverables in any manner not expressly authorised by this Agreement.
- 3.3 Except for the rights expressly granted in this Agreement, nothing in this Agreement will serve to transfer from IMPOWER to the Client any of the Software or the Deliverables, and all right, title and interest in and to the Software and the Deliverables will remain exclusively with IMPOWER and/or IMPOWER's licensors.
- 3.4 All third-party Intellectual Property Rights in relation to the Client's ICT system required in order to enable the Client to Use the Software, Deliverables or access Support shall be procured by the Client. IMPOWER shall not be liable for any delay or failure in the provision of the Services which arises from a failure or delay by the Client to procure such third-party Intellectual Property Rights.
- 3.5 Without prejudice to clause 3.4 IMPOWER shall procure all other third-party Intellectual Property Rights required in order to provide the Services to the Client.
- 3.6 The Client hereby represents that it shall:-

- (i) comply with all applicable Laws which may govern the use of the Software and/or the Deliverables; and
- (ii) use the Software and the Deliverables only for lawful purposes and in accordance with the terms of this Agreement.

3.7 All legal and beneficial interest in the Intellectual Property Rights in the Client Material shall remain vested in the Client and the Client hereby grants IMPOWER a non-exclusive, nontransferable, royalty-free licence for the duration of this Agreement to use the Client Material for the purpose of providing the Services, Deliverables and Support.

4. CHARGES AND PAYMENTS

4.1 In consideration of IMPOWERs proper performance of its obligations under the Statement of Works and terms and conditions of this Agreement, the Client shall pay the Charges (and/or Additional Support Charges where applicable) in accordance with clause 4 and Schedule 2 (The Charges).

4.2 All payments to be made by the Client under this Agreement are stated to be exclusive of VAT which shall be additionally paid by the Client (subject to clause 4.10) where relevant at the prevailing rate and from time to time in the manner prescribed by Law.

4.3 IMPOWER shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Client at any time in respect of IMPOWERs failure to account for or to pay any VAT relating to payments made to IMPOWER under this Agreement. Any amounts due under this clause 4.3 shall be paid by IMPOWER to the Client not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Client.

4.5 IMPOWER shall not suspend the supply of the Services (and/or Additional Support Services where applicable) unless IMPOWER is entitled to terminate this Agreement under clause 9.2 for failure to pay undisputed sums of money.

4.6 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Agreement such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

4.7 Where payment by the Client of all or any part of any invoice submitted or other claim for payment by IMPOWER is disputed, this dispute shall be resolved as follows:-

- (a) Notwithstanding clause 4B, payment by the Client of all or any part of any Charges rendered or other claim for payment by IMPOWER shall not signify approval. The Client reserves the right to verify the Charges after the date of payment and subsequently to recover any sums which have been overpaid.
- (b) If any part of a claim rendered by IMPOWER is disputed or subject to question by the Client either before or after payment then the Client may call for IMPOWER to provide such further documentary or oral evidence as it may reasonably require to verify its

liability to pay the amount which is disputed or subject to question and IMPOWER shall promptly provide such evidence in a form satisfactory to the Client.

- (c) If any part of a claim rendered by IMPOWER is disputed or subject to question by the Client, the Client shall not withhold payment of the remainder.
- (d) If any Charges rendered for payment by IMPOWER is paid but any part of it is disputed or subject to question by the Client and such part is subsequently agreed or determined not to have been properly payable then IMPOWER shall forthwith repay such part to the Client.

4.8 IMPOWER shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Client pursuant to this Agreement and shall declare and make available for inspection to the Client all Charges components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Client six (6) years from the end of the Agreement year to which the records relate.

4.9 Without prejudice to clause 4.2, for the avoidance of doubt, it shall be the sole responsibility of IMPOWER to:

- (a) assess the VAT rate and tax liability arising out of or in connection with the Agreement; and
- (b) account for or pay any VAT (and any other tax liability) relating to payments made to IMPOWER under the Agreement to HM Revenue and Customs ("HMRC").

4.10 Where IMPOWER does not submit a VAT invoice together with any claim for payment of the Charges, the Client shall not be liable to pay any VAT for that claim of the Charges either when it falls due or at any later date.

4A. PRICE REVIEW

4A.1 The Parties may in the six (6) Month period prior to the end of each Agreement Year, enter into good faith negotiations with IMPOWER for a period of not more than thirty (30) Working Days to agree a variation in the Charges.

4A.2 If a variation in the Charges is agreed between the Parties, the revised Charges shall take effect from the first day of the subsequent Agreement Year and shall apply (subject to clause 4A.1) for the remainder of the Agreement Period.

4B. RECOVERY OF SUMS DUE

4B.1 Wherever under this Agreement any sum of money is recoverable from or payable by IMPOWER (including any sum which IMPOWER is liable to pay to the Client in respect of any breach of this Agreement), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to IMPOWER under this Agreement or under any other agreement or contract with the Client.

4B.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

4B.3 IMPOWER shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless IMPOWER has a valid court order requiring an amount equal to such deduction to be paid by the Client to IMPOWER.

5. THE CLIENT'S OBLIGATIONS

5.1 The Client shall not use the Services and/or the Support for any improper or unlawful purposes and shall, in connection with the use of the Services and/or the Support, comply with:

5.1.1 all applicable Law; and

5.1.2 all reasonable instructions of IMPOWER relating to the use of the Services.

5.2 IMPOWER shall not be liable for any delay or failure to perform its obligations hereunder which arise as a result of a failure or delay by the Client to comply with its obligations set out in this Agreement, and the time for performance of IMPOWER's obligations under this Agreement shall be extended by IMPOWER as a result of any such failure or delay.

5.3 Nothing in this Agreement shall, unless stated otherwise, be interpreted to or operate so as to grant the Client any rights of access to or custody, care or control of any property which IMPOWER owns or in which IMPOWER has an interest.

6. DATA PROTECTION

6 A Data Processing Agreement dated [Start Date] is included as Schedule 3 to this Agreement. The Data Processing Agreement sets out the Parties' roles and responsibilities in relation to Data Protection, in accordance only with the Personal Data identified in Annex A of the Data Processing Agreement.

6.1 The Data Processing Agreement (and the responsibilities it places on both Parties) will remain in full force and effect so long as:

(a) the provision of services outlined in Annex A of the Data Processing Agreement remains in effect; or

(b) IMPOWER retains any of the Personal Data related to the provision of services outlined in Annex A of the Data Processing Agreement in its possession or control.

7. CONFIDENTIALITY

- 7.1 Subject to clause 7A neither Party will during the term of this Agreement or after it has ended (except as required by Law) disclose to any person any confidential information or trade secrets relating to the other's business. Such matters include, without limitation, information or secrets relating to: corporate and marketing strategy, business development and plans, sales reports and research results, business methods and processes, technical information and know-how relating to the other's business and which is not in the public domain, including inventions, designs, programs, techniques, data base systems, formulae and ideas; business contacts, lists of customers and suppliers and details of contracts with them; and any document marked "confidential".
- 7.2 During the term of this Agreement and for a period of 5 years after its termination, the Parties will use all reasonable endeavours to prevent the publication or disclosure of any such information or secrets. These restrictions are subject to clause 7A and will not apply during or after this Agreement has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure.

7A. FREEDOM OF INFORMATION ACT 2000

- 7A.1 IMPOWER acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.
- 7A.2 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 7A.3 In no event shall IMPOWER respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 7A.4 IMPOWER acknowledges that the Client may acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code") be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning IMPOWER or the Services in certain circumstances:
- (a) without consulting IMPOWER; or
 - (b) following consultation with IMPOWER and having taken their views into account
- provided always that where 7A.4(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give IMPOWER advanced notice, or failing that, to draw the disclosure to IMPOWER's attention after any such disclosure.
- 7A.5 IMPOWER shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time. For the avoidance of doubt,

IMPOWER shall not be obliged to retrieve or provide data or information stored and accessible by the Client but shall provide information held solely by IMPOWER relating to this Agreement.

8. WARRANTIES AND INDEMNITIES

8.1 IMPOWER warrants, undertakes and agrees that in the provision of the Services (and/or any Additional Support Services where applicable) it shall:-

- (a) ensure that the Services are delivered in accordance with the provisions within the Statement of Work;
- (b) at all times comply with the applicable and relevant Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;
- (c) perform its obligations under this Agreement in accordance with the Law and Good Industry Practice;
- (d) comply with any reasonable requests and all rules and regulations imposed by the Client as the case may be in respect of the premises;
- (e) cooperate with all reasonable requests by the Client in relation to the performance of its obligations under this Agreement.

8.2 The Client warrants and undertakes that it has procured all necessary third party Intellectual Property Rights in relation to its ICT systems to permit IMPOWER to provide the Services.

8.3 Without prejudice to clause 8.2, IMPOWER warrants and undertakes that it has procured all other third party Intellectual Property Rights required in order to provide the Services and/or Additional Support Services where applicable to the Client.

8.4 IMPOWER shall indemnify the Client against all Losses arising from or incurred by reason of any infringement of any Intellectual Property Right by the Use or possession of the Software and/or the Deliverables by the Client conditional on IMPOWER being given reasonable control of defence of such a claim.

8.5 IMPOWER shall have no liability for, and the Client shall indemnify IMPOWER against any claim that the Services, Software and/or the Deliverables or the performance of the Services and/or the Support (including any Additional Support Services where applicable) infringes any Intellectual Property Rights, where the cause of the infringement is:

- 8.5.1 any materials provided to IMPOWER by or on behalf of the Client; or
- 8.5.2 modification, enhancement or alteration of Services, Software and/or the Deliverables by the Client; or
- 8.5.3 combination of the Services, Software and/or the Deliverables with other software or hardware not approved by IMPOWER; or

8.5.4 due to the Client using the Services in breach of the provisions of this Agreement; or

8.5.5 due to any breach by the Client of clause 8.2.

8A. Malicious Software

8A.1 IMPOWER shall ensure anti-virus software on IMPOWER systems is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

8A.2 Notwithstanding clause 8A.1, if Malicious Software is found, IMPOWER shall co-operate with the Client to reduce the effect of Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Personal Data or any other Data provided by the Client, assist the Client to mitigate any losses and to restore the Services to their desired operating efficiency.

8A.3 Any cost arising out of the actions of the Client taken in compliance with the provisions of clause 8A.2 shall be borne by IMPOWER where the Malicious Software originates from IMPOWER Software and/or third-party software licenced to IMPOWER.

8B. CHANGE CONTROL PROCEDURE

CLIENT CHANGE

8B.1 The Client has the right to propose a Change in the Services (excluding Support) and Software in accordance with this clause 8B.1. If the Client requires a Change, it must serve a Client Change Control Notice on IMPOWER. The Client shall not propose a Change that:-

- (a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
- (b) would cause any consent to be revoked (or become unobtainable);
- (c) would, if implemented, result in a substantial change in the nature of the Services and/or Software; or
- (d) would materially and adversely affect IMPOWER's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

8B.2 The Client Change Control Notice shall:-

- (a) set out the Change required in sufficient detail to enable IMPOWER to calculate and provide an estimate of the variation in costs ("IMPOWER's Change Control Response"); and

- (b) require IMPOWER to provide the Client within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Client Change Control Notice with IMPOWER's Change Control Response.
- 8B.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Client Change Control Notice, IMPOWER shall deliver to the Client IMPOWER's Change Control Response. IMPOWER's Change Control Response shall include the opinion of IMPOWER on:-
 - (a) whether relief from compliance with obligations is required during the implementation of the Change;
 - (b) any impact on the provision of the Services;
 - (c) any amendment required to this Agreement as a result of the Change; and
 - (d) any loss of revenue or prospective revenue to IMPOWER or a Sub-Contractor that results from the Change.
- 8B.4 As soon as practicable after the Client receives IMPOWER's Change Control Response, the Parties shall discuss and agree the issues set out in IMPOWER's Change Control Response, including:-
 - (a) providing evidence that IMPOWER has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub-Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and
 - (c) in such discussions the Client may modify the Client Change Control Notice, in which case IMPOWER shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Client of any consequential changes to IMPOWER's Change Control Response.
- 8B.5 If the Parties cannot agree on the contents of IMPOWER's Change Control Response then the dispute may be determined by the Parties in accordance with clause 15 (Dispute Resolution) or the Client may withdraw the Client Change of Control Notice.
- 8B.6 As soon as practicable after the contents of IMPOWER's Change Control Response has been agreed or otherwise determined pursuant to clause 15 (Dispute Resolution), the Client shall:-
 - (a) confirm in writing IMPOWER's Change Control Response (as may have been modified); or
 - (b) withdraw the Client Change Control Notice.

- 8B.7 If the Client does not confirm in writing IMPOWER's Change Control Response (as may have been modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of IMPOWER's Change Control Response having been agreed in accordance with clause 8B.4 above or determined pursuant to clause 8B.5 above, then the Client Change Control Notice shall be deemed to have been withdrawn.
- 8B.8 In the event that IMPOWER's Change Control Response has been confirmed by the Client, the relevant Change shall be implemented within seven (7) Working Days of the Client's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the Change.

IMPOWER CHANGE

- 8B.9 If IMPOWER wishes to introduce a Change in the Services (excluding Support) and Software, it must serve IMPOWER's Change Control Notice on the Client.
- 8B.10 IMPOWER's Change Control Notice must:-
- (a) set out the proposed Change in sufficient detail which detail shall include, but not be limited to, impact on Service delivery and financial implications so as to enable the Client to evaluate it in full;
 - (b) specify IMPOWER's reasons for proposing the Change;
 - (c) request the Client to consult with IMPOWER with a view to deciding whether to agree to the Change and, if so, what consequential changes the Client requires as a result;
 - (d) indicate any implications of the Change(s); and
 - (e) indicate if there are any dates by which a decision by the Client is critical.
- 8B.11 The Client shall evaluate IMPOWER's proposed Change, taking into account all relevant issues, including whether:-
- (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - (b) the Change shall interfere with the relationship of the Client with third parties;
 - (c) the financial strength of IMPOWER is sufficient to perform the Change; and
 - (d) the Change materially affects the risks or costs to which the Client is exposed.
- 8B.12 As soon as practicable after receiving IMPOWER's Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Client may propose modifications or accept or reject IMPOWER's Change Control Notice.

- 8B.13 If the Client accepts IMPOWER's Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Client's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the Change.
- 8B.14 If the Client rejects IMPOWER Change Control Notice, it shall give its reasons for such a rejection.

9. TERMINATION

- 9.1 Either Party may terminate this Agreement with immediate effect by written notice to the other Party in the event that the other Party:
- 9.1.1 any resolution is passed or any petition presented for the winding-up of the other Party, a receiver, administrative receiver or liquidator is appointed in respect of all or any part of its undertaking, the other Party calls a meeting of or enters into or proposes to enter into any arrangement, scheme or composition with creditors or otherwise enters into liquidation, is wound up or in the event the other Party ceases or threatens to cease to carry on doing business; or
 - 9.1.2 the other Party commits a breach of this Agreement which is material in the context of the Agreement as a whole and which is not remediable, or which in the case of a breach which is capable of remedy, is not remedied within thirty (30) days after the non-breaching Party has given written notice requiring such breach to be remedied.
- 9.2 If the Client fails to pay IMPOWER undisputed sums of money when due, IMPOWER shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, IMPOWER may terminate this Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clause 4B.
- 9.3 The termination of this Agreement shall be without prejudice to any other rights or remedies to which IMPOWER and the Client may be entitled hereunder or at Law.
- 9.4 On termination of this Agreement by the Client for any reason IMPOWER shall be entitled to be paid the Charges due for Services, Licence and Support provided by IMPOWER to the Client (in accordance with the terms and conditions of this Agreement) up to the date of termination but the Client shall otherwise not be liable for any Losses whatsoever arising from such termination.
- 9.5 On termination of this Agreement for any reason this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or impliedly have effect after termination.

10. LIMITATION OF LIABILITY

- 10.1 Neither Party excludes or limits liability to the other Party for:-

- (a) death or personal injury caused by its negligence; or
- (b) fraud; or
- (c) fraudulent misrepresentation

10.2 IMPOWER shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses (including the costs of legal and professional services (including legal costs on a full indemnity basis) and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services (and/or Additional Support Services where applicable) or the performance or non-performance by IMPOWER of its obligations under this Agreement, the presence of IMPOWER or any Staff on the Client's premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by IMPOWER, or any other loss which is caused directly or indirectly by any act or omission of IMPOWER. The indemnity provided by IMPOWER under this Clause 10.2 shall not exceed a sum equal to (£70,000) seventy thousand pounds.

10.3 IMPOWER shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under this Agreement.

10.4 Without prejudice to the Client's rights under this Agreement, IMPOWER shall in respect of the performance of its obligations under this Agreement effect and maintain the following insurances as applicable at indemnity levels commensurate of the nature of the Services provided under this Agreement with a reputable insurance provider:

- (a) public liability insurance with a minimum limit of (£10,000,000) ten million pounds for each individual claim;
- (b) product liability insurance with a minimum limit of (£10,000,000) ten million pounds for each individual claim;
- (c) employer's liability insurance with a minimum limit of (£5,000,000) five million pounds or any higher minimum limit required by Law;
- (d) professional indemnity insurance with a minimum limit of indemnity of (£5,000,000) five million pounds for each individual claim;
- (e) cyber and data security insurance with a minimum limit of indemnity of (£5,000,000) five million pounds for each individual claim, and
- (f) any other insurances as may be required by Law.

10.5 In each case, the level of insurance carried shall apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by IMPOWER. Such insurance shall be

maintained for the duration of the Agreement Period and for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

10.6 Subject always to clause 10.1, in no event shall either Party be liable to the other for any:-

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) loss of savings (whether anticipated or otherwise); and/or
- (c) indirect or consequential loss or damage.

10.7 IMPOWER shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

10.8 If, for whatever reason, IMPOWER fails to give effect to and maintain the insurances required by the provisions of this Agreement the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from IMPOWER.

10.9 The provisions of any insurance or the amount of cover shall not relieve IMPOWER of any liabilities under this Agreement.

11. INDUCEMENT OF EMPLOYEES

11.1 Neither Party shall during the term of this Agreement and for a period of 12 Months after termination howsoever caused, directly or indirectly solicit or entice away or endeavour to solicit or entice away from the other Party any employee of the other Party who has been engaged in the provision of the Services and/or the Support or the performance of this Agreement.

11.2 In the event that a Party is found to be in breach of clause 11.1 then that Party shall pay the other Party by way of liquidated damages an amount equal to the gross annual salary, as at the time of the breach, of the employee concerned. This provision shall be without prejudice to the other Party's right to seek injunctive relief.

12. ASSIGNMENT AND SUBCONTRACTING

12.1 IMPOWER may employ any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement, provided always that such employment shall not relieve IMPOWER from any of its obligations hereunder.

12.2 This Agreement is personal to the Client and the Client may not assign, hold on trust or otherwise deal in any way with this Agreement or the benefit and burden thereof.

13. FORCE MAJEURE

13.1 Neither Party shall be liable for any failure to perform obligations under this Agreement to the extent that such performance has been prevented, hindered or delayed due to any causes

outside the reasonable control of the defaulting Party, including but not limited to default or failure of a third party (including another telecommunications operator, equipment supplier, installer or maintainer); government action, failure in the supply of a third party network; war or other hostilities, invasion, act of foreign enemies, immobilisation, requisitions or embargo; rebellion, revolution, insurrection, military or usurped power or civil war; riot, commotion or disorder except where solely restricted to the Party concerned or its sub-contractors or sub suppliers; or earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the Party claiming Force Majeure (together: "Force Majeure").

- 13.2 Any Party whose performance is affected by an event of Force Majeure shall inform the other Party immediately and shall take reasonable steps to mitigate the impact of Force Majeure on its obligations under this Agreement.
- 13.3 IMPOWER shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of an event of Force Majeure.
- 13.4 If the Force Majeure event continues for sixty days, the Party whose performance is not affected by the Force Majeure event shall be entitled to terminate this Agreement immediately by serving written notice on the affected Party.

14. NOTICES

- 14.1 Any notice under this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served personally or by prepaid first class letter or email to the addresses stated in the particulars or to such other address as shall previously have been notified by one Party to the other under this Agreement, on not less than ten (10) days' prior written notice. Any such notice shall be deemed to have been received, in the case of posted notice, 48 hours after posting and in the case of an email, at the time of sending.
- 14.2 Any notice or other communication received on a day which is not a Working Day or after 5.00 p.m. local time on any Working Day shall be deemed to be received on the next following Working Day.

15. DISPUTE RESOLUTION

- 15.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director (or equivalent) of each party.
- 15.2 If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

16. MISCELLANEOUS

- 16.1 References to clauses and Schedules shall be to clauses and Schedules of this Agreement. The Schedules to this Agreement form part of this Agreement and shall be interpreted accordingly.
- 16.2 Failure by either Party at any time to require the performance of any provision of this Agreement shall not affect the right of such Party to require full performance thereof at any time thereafter and the waiver by either Party of any breach of any such provision of this Agreement shall not be construed as, nor held to be, a waiver of any subsequent breach thereof, nor as nullifying the effectiveness of any such provision or in any way prejudicing such Party's rights under this Agreement.
- 16.3 No alteration, modification or addition to this Agreement shall be valid unless made in writing and signed by the duly authorised representatives from both Parties.
- 16.4 If any part of this Agreement is found to be unreasonable, invalid or unlawful under any enactment or rule of law the Court shall have the power to strike out or override that part whether it be an entire clause or clauses or some part or parts thereof and enforce this Agreement as if the offending part or parts had not been included.
- 16.5 The clause headings in this Agreement are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- 16.6 In this Agreement the singular shall be deemed to include the plural and the plural shall be deemed to include the singular unless the context requires otherwise.
- 16.7 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation under or in connection with this Agreement.
- 16.8 Neither Party may assign the benefit of all or part of this Agreement without the prior written consent of the other Party which shall not be unreasonably delayed or withheld, except that IMPOWER may upon written notice to the Client assign the benefit and burden of this Agreement to its holding company or to any company which is a subsidiary of its holding company.
- 16.9 This Agreement shall be governed and construed in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the Courts of England.

The Parties hereto have executed this Agreement as a Deed with effect from the date first above written.

EXECUTED by ([Client Name])

.....
Authorised Officer Signature
Print name:

EXECUTED by IMPOWER Consulting Ltd

.....
Director's Signature
Print name:

SCHEDULE 1

STATEMENT OF WORK

1. SERVICES AND DELIVERABLES

1.1 IMPOWER shall provide the Services and Deliverables set out below:

Technical implementation and setup of VALUING LIVES modules including:

- Valuing Care (VCARE)

This activity includes:

- Provision of a web-based platform allowing:
 - completion of assessments of individuals, home environments, and care support and services providers by social workers, practitioners and others users as required within the local authority area.
 - management of completed and in-progress assessments by user to keep track of individuals' needs, care provision options and home environments.
 - export of completed assessments for sharing with other professionals.
 - development and storage of support plans based on the needs assessment.
 - reporting of completed assessments by users and the local authority to generate insights on needs of cohorts of individuals and gaps in provision.
 - The Client to manage its users and access to the system as appropriate to their needs.
- Provision of Insights tools within the platform allowing users to see summarised information on the use of the platform and the results of the assessments carried out.
- Technical support to users of the platform to ensure that they can access the platform and make use of its functions as appropriate.
- Support to staff of the Client on use of the platform, so that they can provide professional support to users. This will include training sessions to be agreed with the Client as part of the setup; and on-going professional support to assist the Client in answering queries about the platform received from users.

2. SOFTWARE

2.1 IMPOWER shall supply the Client with software to include modules as per the table below:

Software	Provision
VCARE Module	Yes/No

2.2 Minimum Security Requirements:

- VALUING LIVES data will be protected between end user devices and services using HTTPS (TLS1.2)
- Data in transit will be protected using TLS1.2 between the database server and API server

3. SUPPORT

3.1 IMPOWER will create a local authority administrator account, and assign it to an individual nominated by the Client. The Client administrator will be responsible for registering users and other entities on the system, and assigning an Administrator for each entity who will create entity users on the system.

3.2 Support for users of VALUING LIVES online will have three tiers according to the type of query. All queries will initially come to the VALUING LIVES support desk, provided by IMPOWER. IMPOWER shall provide the Client and users benefiting from the Software with the contact details of the VALUING LIVES support desk upon request and from within the platform:

- **Tier 1: Technical support** - Questions relating to logging into the platform; registering users; and tasks that do not require any assessment guidance. Tier 1 queries will be resolved by the VALUING LIVES support desk wherever possible.
- **Tier 2: Professional support** - Guidance on how and when to complete an assessment; queries arising about language within the tool; advice on resources available etc. These queries will be forwarded by the VALUING LIVES support desk to the Client service to resolve.
- **Tier 3: VALUING LIVES development and guidance** - Where the Client requires advice in responding to a query; or where a query relates to development of Valuing LIVES, the Client will liaise with IMPOWER. Unless otherwise agreed, IMPOWER will liaise with the Client, who will then respond to the user and resolve the query.

Support requests will be prioritised at Tier 1 and responded to according to their Priority level:

Category	Incident Severity	Priority	Response Time	Resolution Time	SLA
1	High – Multiple users are affected, or no service is available or there is severe degradation of service	P1 – Critical Priority	2 Hours from Incident report	Max 4 Hours from Response time where remote fix is possible. Next Working Day where site visit is required (e.g. hardware failure)	90%

2	Medium – Multiple users are affected the service is available with degradation	P2 – High Priority	4 Hours from Incident report	Max 8 Hours from Response time where remote fix is possible. Next Working Day where site visit is required (e.g. hardware failure)	90%
3	Low – A single user is affected. Service is available but with degradation	P3 – Medium Priority	4 Hours from Incident report	Resolution within 3 Working Days (M-F 09:00-17:30)	100%

3.3 IMPOWER shall monitor and ensure accurate reporting at all times of its own performance and compliance with, or failure under the SLA Table detailed above and terms and conditions of this Agreement.

3.4 The Parties shall review the performance of IMPOWER against the above SLA Table and terms and conditions of this Agreement at quarterly performance management meetings arranged by the Client.

3A. PROVISION OF SUPPORT

3A.1 The Client may report Errors to IMPOWER. Such reports shall be made by the Client as soon as an Error is detected and shall include sufficient material and information to enable IMPOWER to duplicate the problem, including, but not limited to:

3A.1.1 a clear and accurate description of the Error; and

3A.1.2 the area of the Software to which it relates; and

3A.1.3 what function was being performed when the Error occurred; and

3A.1.4 the error message displayed, if any; and

3A.1.5 the sequence of events leading up to the occurrence of the Error; and

3A.1.6 sufficient details of the Error's effect on the Client's business operation to enable IMPOWER to classify the Error as Category 1, 2 or 3; and

3A.1.7 any other information relating to the Software or the Error which IMPOWER reasonably requires to perform its obligations hereunder.

3A.2 All Errors must be reported using the error reporting process where the Client can gain access to log into the Software.

- 3A.3 IMPOWER will deal with Errors notified to it by the Client, dependent on the category of the Error concerned and the applicable SLA within the SLA Table at paragraph 3.2 of this Schedule. IMPOWER shall use reasonable endeavours to notify the Client as soon as possible by telephone or email of the category assigned to the Error.
- 3A.4 IMPOWER may (subject to the Clients approval acting reasonably) provide a temporary, practical circumvention (as opposed to a permanent fix) for an Error, but shall continue to use its reasonable endeavours to provide a permanent fix, save in the event of Category 3 fixes. In the event that IMPOWER provides a practical circumvention to a Category 1 Error, that Error shall become a Category 2 Error. In the event that IMPOWER provides a practical circumvention to a Category 2 Error, that Error shall become a Category 3 Error.
- 3A.5 The Client shall appoint an Error Reporting Co-ordinator and shall keep IMPOWER informed of the name, telephone number and email address of the Error Reporting Co-ordinator from time to time. IMPOWER shall not be liable for any failure or delay in performing its obligations pursuant to this paragraph 3A that results from the Client's failure to comply with this clause 3A.5.
- 3A.6 Subject to paragraph 2 of Schedule 2, IMPOWER shall not diagnose or rectify any Error resulting from:
- 3A.6.1 the improper use, operation or neglect of the Software or the equipment upon which it is run;
 - 3A.6.2 the modification or merger of the Software (in whole or in part) with any other software except as permitted by the licence agreement for such Software;
 - 3A.6.3 the failure by the Client to implement Maintenance Releases or recommendations in respect of, or solutions to, Errors previously advised by IMPOWER;
 - 3A.6.4 any repair, adjustment, alteration or modification of the Software by any person other than IMPOWER without IMPOWER's prior consent;
 - 3A.6.5 the use of the Software for a purpose for which it was not designed;
 - 3A.6.6 rectification of lost or corrupted data arising for any reason other than IMPOWER's own negligence;
 - 3A.6.7 a fault in Client or other third party software or applications or any upgrade or new release in respect thereof;
 - 3A.6.8 a fault in the equipment or in any other software operating in conjunction with or integrating with the Software.
- 3A.7 IMPOWER shall not provide support services in respect of:
- 3A.7.1 Client side server operating systems or server hardware;
 - 3A.7.2 Clients ICT systems or personal computer hardware;

3A.7.3 movement or relocation of computer equipment;

SCHEDULE 2 THE CHARGES

1. The Charges payable to IMPOWER by the Client subject to the terms and conditions of this Agreement shall be:

Software	Provision	Charges
VALUING LIVES Platform License	Up to 500 users	£XX,XXXX per annum
Additional User Licenses	Per additional 100 users	£X,XXX per annum (pro-rata)

2. If at the Client's request IMPOWER undertakes any Additional Support Services then provided (prior to providing the Additional Support Services to the Client) IMPOWER:-

- (a) notifies the Client in writing that such request is an Additional Support Service;
- (b) confirms the Additional Support Charge to the Client to provide such Additional Support Services; and
- (c) obtains the Clients approval to proceed with the Additional Support Services.

the Additional Support Charge will be payable by the Client in accordance with the terms and conditions of this Agreement upon providing the Additional Support Services.

3. IMPOWER shall submit an invoice to the Client in accordance with this Schedule in respect of the Annual License and Support Charges for the Services rendered.

On the Commencement Date	£xx,xxx
12 months after the Commencement Date	£xx,xxx
24 months after the Commencement Date	£xx,xxx

4. IMPOWER shall submit an invoice to the Client in respect of any Additional Support Charge Monthly in arrears.
5. Invoices shall be addressed to [Client name] and be submitted to the address stated in paragraph 8(g) below or any other address as the Client may notify to IMPOWER in writing.
6. IMPOWER shall supply evidence to the Client to support the invoice and must be submitted to the Client. The Client may request any further information it may require in order to satisfy itself that the amount claimed under the invoice is properly due and payable in respect of Services properly delivered in accordance with the requirements of the Agreement.

7. The Client shall pay each invoice within thirty (30) days of Receipt of an invoice that complies with the requirements set out in this Schedule.
8. In respect of any invoice, IMPOWER shall ensure that each invoice:-
 - (a) clearly displays a valid purchase order number which number must be obtained from the Client;
 - (b) only contains one purchase order number relating to the Agreement. For the avoidance of doubt, any invoice which contains more than one purchase order number shall be rejected;
 - (c) includes the Client's name, address, contact details;
 - (d) details the Services which the invoice relates to including the delivery address;
 - (e) a unique invoice reference number;
 - (f) is either electronically typed or handwritten but no invoice shall be accepted which has been electronically typed and manually altered, e.g. manually corrected or updated;
 - (g) is submitted via e-mail to XXXX in PDF or TIF format without security being applied and is sent as a separate file or is sent by post addressed to XXXX
 - (h) which is submitted by e-mail shall only consist of an invoice (with Purchase Order quoted) and no other documentation; and
 - (i) which is to be accompanied by documentation, is submitted by post to the address identified in sub-paragraph (g) above.
9. If IMPOWER fails to submit an invoice in accordance with paragraph 8 above, no payment shall become due until such time as an invoice has been submitted by IMPOWER which conforms in all respects with the requirements set out in paragraph 8 above. For the avoidance of doubt, IMPOWER shall not be able to exercise any right under clause 9.2 until such time as it has submitted an invoice in full compliance with the requirements set out in paragraph 8 above.
10. Where any payment is made by the Client and it is subsequently established that in the circumstances existing at the relevant time the Client was only liable under the terms of this Agreement to pay IMPOWER a lesser sum (or none at all), IMPOWER shall repay the amount of the overpayment within five (5) Working Days from receiving notice from the Client of such overpayment.

SCHEDULE 3
DATA PROCESSING AGREEMENT

This **Data Processing Agreement** is dated [Start Date]

PARTIES

- (1) [Client Name] of [Client address] (the “Controller”)
- (2) **IMPOWER Consulting Limited**, registered in England under company number 03876501 with offices registered at 8-10 Warner Street, London EC1R 5HA (the “Processor”).

Background

The Processor provides certain services (“Services”) to the Controller. As part of such Services, the Processor processes Data (provided to the Processor by the Controller) which is capable of identifying individuals located in the UK, and for purposes of applicable Data Protection Legislation, the parties believe and intend that the Controller is the “Data Controller”, and the Processor is the “Data Processor” of such Data. The parties now wish to confirm their obligations to comply with applicable Data Protection Legislation on the terms set out below. All capitalised terms herein shall, if not defined herein, shall be as defined under UK Data Protection Legislation.

1. Scope

- 1.1 The Controller appoints the Processor as a Data Processor to perform the Data Processing Services as defined in Annex A.
- 1.2 When delivering the Data Processing Services, the Processor must comply with the provisions of this Data Processing Agreement.
- 1.3 This Data Processing Agreement applies for so long as the Processor acts as a Data Processor in connection with this Agreement.

2. Term and termination

- 2.1 This Agreement will remain in full force and effect so long as:
 - (a) the provision of services outlined in Annex A remains in effect; or
 - (b) the Processor retains any of the Personal Data related to the provision of services outlined in Annex A in its possession or control (**Term**).
- 2.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination in order to protect the Personal Data will remain in full force and effect.
- 2.3 The Processor’s failure to comply with any of the terms of this Agreement is a material breach of this. In such event, the Controller may terminate this Agreement or any part of this Agreement or the Master Agreement involving the processing of the Personal Data effective immediately on written notice to the Processor without further liability or obligation on the Controller.

3. Data Protection

- 3.1 The Parties acknowledge that for the purposes of Data Protection Legislation in relation to the Data Processing Services the Controller is the Data Controller and the Processor is the Data Processor. The Processor must process the Data only to the extent necessary to perform the Data Processing Services and only in accordance with written instructions set out in this Data Processing Agreement, including instructions regarding transfers of Personal Data outside the UK or to an international organisation unless such transfer is required by Law, in which case the Processor must inform the Controller of that requirement before processing takes place, unless this is prohibited by Law on the grounds of public interest.
- 3.2 The Processor must notify the Controller immediately if it considers that carrying out any of the Controller's instructions would infringe Data Protection Legislation.
- 3.3 The Processor must provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Data Processing Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 3.4 The Processor must, in relation to any Personal Data processed in connection with its obligations under this Data Processing Agreement:
 - (a) process that Personal Data only in accordance with Annex A unless the Processor is required to do otherwise by Law. If it is so required, the Processor must promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature, scope, context and purposes of processing the data to be protected;
 - (ii) likelihood and level of harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:

- (i) when delivering the Data Processing Services, the Processor's Staff only process Personal Data in accordance with this Data Processing Agreement (and in particular Annex A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor and any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Agreement;
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (E) are aware of and trained in relevant policies and procedures notified to the Processor in advance by the Controller relating to Confidentiality, Data Protection and Transparency.
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting their obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Data Processing Services and certify to the Controller that it has done so within five Working Days of any such instructions being issued, unless the Processor is required by Law to retain the Personal Data;
- (f) if the Processor is required by any Law or relevant regulatory or supervisory body to retain any Data that it would otherwise be required to destroy under this paragraph 3.4, notify the Controller in writing of that retention giving details of the Data that it must retain and the reasons for its retention; and

- (g) co-operate fully with the Controller during any handover arising from the cessation of any part of the Data Processing Services, and if the Controller directs the Processor to migrate Data to the Controller, or to a third party, provide all reasonable assistance with ensuring safe migration including ensuring the integrity of Data and the nomination of a named point of contact for the Controller.
- 3.5 Subject to paragraph 3.6, the Processor must notify the Controller immediately if, in relation any Personal Data processed in connection with its obligations under this Data Processing Agreement, it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to obligations under Data Protection Legislation owed by the Processor or the Controller;
 - (d) receives any communication from the Information Commissioner or any other Regulatory or Supervisory Body (including any communication concerned with the systems on which Personal Data is processed under this Data Processing Agreement);
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
 - (f) becomes aware of or reasonably suspects a Data Loss Event; or
 - (g) becomes aware of or reasonably suspects that it has in any way caused the Controller to breach Data Protection Legislation.
- 3.6 The Processor's obligation to notify under paragraph 3.5 includes the provision of further information to the Controller in phases, as details become available.
- 3.7 The Processor must provide whatever co-operation the Controller reasonably requires to remedy any issue notified to the Controller under paragraphs 3.5 and 3.6 as soon as reasonably practicable.
- 3.8 Taking into account the nature of the processing, the Processor must provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 3.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Legislation;

- (c) assistance as requested by the Controller following any Data Loss Event;
 - (d) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 3.9 The Processor must allow for audits of its delivery of the Data Processing Services by the Controller or its designated auditor.
- 3.10 Before allowing any Sub-processor to process any Personal Data related to this Data Processing Agreement, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) carry out appropriate due diligence of the Sub-processor and ensure this is documented;
 - (d) enter into a binding written agreement with the Sub-processor which as far as practicable includes equivalent terms to those set out in this Data Processing Agreement; and
 - (e) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 3.11 The Processor must create and maintain a record of all categories of data processing activities carried out under this Data Processing Agreement, containing:
 - (a) the categories of processing carried out under this Data Processing Agreement;
 - (b) where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;
 - (c) a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Data Processing Agreement; and
 - (d) a log recording the processing of the Data by or on behalf of the Processor comprising, as a minimum, details of the Data concerned, how the Data was processed, when the Data was processed and the identity of any individual carrying out the processing.
- 3.12 The Processor warrants and undertakes that it will deliver the Data Processing Services in accordance with all Data Protection Legislation and this Data Processing Agreement and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Data Processing Services complies with Data Protection Legislation and ensures that the rights of Data Subjects are protected.

- 3.13 The Processor must comply at all times with those obligations set out at Article 32 of the UK GDPR and equivalent provisions implemented into Law by DPA 2018.
- 3.14 The Processor must assist the Controller in ensuring compliance with the obligations set out at Article 32 to 36 of the UK GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Processor.
- 3.15 The Processor must take prompt and proper remedial action regarding any Data Loss Event.
- 3.16 The Processor must assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligations to respond to requests for exercising rights granted to individuals by Data Protection Legislation.

This data processing agreement has been entered into by:

Executed by [Name & Job Title] for and on behalf of Controller	
Date	XXXXXX

and

Executed by Paul Henry, Data Protection Officer for and on behalf of Processor	
Date	XXXXXX

Annex A
Data Processing Services

Processing, Personal Data and Data Subjects

1. The Processor must comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Annex.

Description	Details
Subject matter of the processing	Processing of personal data relating to high needs children with a view to improving the outcomes and inclusion for those specific individuals and, more generally, informing and improving the commissioning process.
Nature and purposes of the processing	The solution will be used by operational staff working within care environments and local authorities to capture and record data. The overall purpose of processing will be to improve children's long-term care outcomes and inclusion, and to improve the experience of families and professionals across the high needs care system by: • Creating a single, rounded picture of the needs of children and the support that they need to succeed and prosper both outside of their education, from birth to adulthood. • Using this as the foundation for planning and commissioning of support, monitoring of progress and evaluation of support at a child and cohort level, and to enable earlier and more coordinated intervention. As well as supporting assessments for individual children and young people, the aggregated data from the Platform can be used to draw out insights for commissioning support across age groups, whole care providers, care service groupings, or even local authority areas, including anonymised benchmarking. The effect on individuals is expected to be a direct improvement in care service provision for individuals. It is also expected that there will be a general improvement in care service provision for all children receiving services who will benefit from re-designs and improvements to services.
Personal Data Categories	The data to be processed will include: • Personal data; • Special categories of personal data; and • Information which will be subject to the common law duty of confidentiality. The data items which are processed within the Platform are:

	Field	Category	Mandatory / optional	Rationale
	UPN	Basic information	Optional	Unique identifier set and by local authorities to identify and match data on specific individuals
	Former UPN	Basic information	Optional	Some children's UPN may change during the course of their care - noting this will allow tracking of individuals over time
	Forename	Personal Data	Mandatory	Personal details to identify the child
	Preferred Forename	Personal Data	Optional	Personal details to identify the child
	Middle Name(s)	Personal Data	Optional	Personal details to identify the child
	Surname	Personal Data	Mandatory	Personal details to identify the child
	Former Surname	Personal Data	Optional	Personal details to identify the child
	Preferred Surname	Personal Data	Optional	Personal details to identify the child
	Date of birth	Personal Data	Mandatory	Personal details to identify the child; also allows reporting by age across a cohort at school/setting and local authority level
	Gender	Personal Data	Mandatory	Allows reporting by gender to highlight differences in outcomes between genders, supporting school/setting- and authority-wide planning
	Preferred language	Background information	Optional	Allows reporting for children where English is not a first language, to highlight differences in outcomes between people from different backgrounds, supporting school/setting- and authority-wide planning
	Ethnicity	Special Category Personal Data	Optional	Allows reporting by ethnicity, to highlight differences in outcomes between people of different backgrounds, supporting school/setting- and authority-wide planning
	Disabilities	Special Category Personal Data	Optional	Personal details relevant to the individual's record. Also allows reporting by disability type to highlight differences in outcomes
	SEN Provision type	Non-Personal Data	Mandatory	Indicates the current level of support received by the child, essential context to understand the needs assessment
	Next Review date	Non-Personal Data	Optional	Allows for planning for and tracking upcoming reviews and will also highlight overdue reviews
Categories of Data Subject	The scope of the data to be processed including the categories of data subject and the numbers affected by this data processing activity will be determined and defined by the data controllers, however the solution is designed to be used to process data relating to children with or may have special educational needs and disabilities (SEND). The data subjects are therefore expected to be vulnerable.			

General Details (VALUING LIVES):

Duration of the processing	The processing will be co-terminus with the overarching Agreement for services held between the Controller and the Processor dated [Start Date]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data.	The data supplied to the Processor by the Controller will be retained for the duration of the Agreement, as necessary for delivery. The Controller may request that data supplied is returned, transferred or destroyed on completion or termination of the Agreement. If data is to be returned or transferred to an alternative processor, the format and method of secure transfer will be agreed between parties prior to transfer. Data which is directly collected by the Processor and for which they are data controller will be subject to the Processor's own retention policies in accordance with their responsibilities under Data Protection Law.
Authorised Persons	Controller Data Protection Officer – [NAME], [EMAIL] Processor Data Protection Officer – Paul Henry, phenry@impower.co.uk
Approved Sub-processors	Unify Business Solutions Ltd (Companies House registration number 04749638) Dorial House, 2 Hazel Court, Midland Way, Barlborough, Chesterfield, England, S43 4FD
International transfers	None

Annex B – Additional Definitions

In this Data Processing Agreement, the following words and phrases have the following meanings:

Authorised Persons: the persons or categories of persons that the Data Controller authorises to give the Data Processor written personal data processing instructions as identified in Annex A and from whom the Data Processor agrees solely to accept such instructions.

Business Purposes: the services to be provided by the Data Processor to the Data Controller as described in Annex A.

Data Processing Services: the data processing services described in Annex A to this Data Processing Agreement

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures.