



Terms & Conditions

Prepared for:
G-Cloud 14

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TERMS OF BUSINESS

1. Definitions and Interpretation

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	any day (other than Saturday, Sunday or Public Holiday) on when banks in London are open for business;
"Commencement Date"	the date of this agreement;
"Confidential Information"	information which in relation to either Party is disclosed to that Party by the other Party pursuant to or in connection with this agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Deliverables"	all Documents, products and materials developed by the Service Provider or its agents, subcontractors, consultant and employees in relation to the Services in any form, including the deliverables specified in the Project Plan;
"Documents"	includes, in addition to any document in writing, any drawing, report map, plan, diagram, design, picture, or other image, tape, disk or other device or record embodying information in any form;
"Fees"	the Fixed Fee together with all other fees and charges payable by the Client to the Service Provider under this agreement;
"Fixed Fee"	the Cloud Consultancy, Professional Services and Software Support Fee;
"Group"	in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company; and each company in a Group is a member of the Group. Unless the context requires otherwise, the application of the definition of Group to a company at any time will apply to the company as it is at that time;
"Implementation Services Fee"	the fixed fee payable by the Client to the Service Provider in relation to the Cloud Consultancy , Professional Services and Software Support Project as set out in the Statement of Work;

"Implementation Services Project"	the project relating to the Cloud Consultancy , Professional Services and Software Support , as described in Statement of Work and the Project Plan;
"Insurance Policies"	public and product liability (to £5m), employers' liability (to £5m) and professional indemnity (to £5m);
"Nominated Account"	NatWest Bank Plc., Account Number 36328006, Sort Code 60-50-01, or such other bank account the Service Provider notifies the Client;
"Project Manager"	the Service Provider's manager for the Services appointed under clause 2.13;
"Project Milestones"	a date by which a part of the Services is estimated to be completed, as set out in the Project Plan and more specifically described in the Statement of Work;
"Project Plan"	the plan describing the Services and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services agreed in accordance with clause 3 and as set out in the Statement of Work;
"Quarter Months"	March, June, September and December;
"Rate Card"	the rate card for professional services substantially in the form set out in Statement of Work setting out the rates of various types of professional services that the Service Provider shall provide in accordance with clause 2.4.2;
"Service Provider's Equipment"	any equipment, including systems, cabling or facilities, provided by the Service Provider or its sub-contractors and used directly or indirectly in the supply of the Services;
"Term"	
"VAT"	means the term of this Agreement as set out in Clause 12;
	value added tax chargeable under English law for the time being any similar additional tax; and

"Works"

all Documents, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Service Provider in the provision of the Services.

- 1.2. Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3. "this Agreement" is a reference to this Agreement and each Statement of Work as amended or supplemented at the relevant time;
 - 1.2.4. a Clause or paragraph is a reference to a Clause of this Agreement (other than the Statement of Work) or a paragraph of the relevant Schedule.
 - 1.2.5. a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3. The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4. Words imparting the singular number shall include the plural and vice versa.
- 1.5. References to any gender shall include the other gender.
- 1.6. References to persons shall include corporations.
- 1.7. A reference to laws in general is to all local, national and directly applicable supranational laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any sub-ordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

2. Provision of the Services

- 2.1. With effect from the Commencement Date, the Service Provider shall, throughout the Term of this Agreement, provide the Services to the Client on the terms and conditions of this agreement.
- 2.2. The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan, unless this agreement is terminated in accordance with clause 12.
- 2.3. The Service Provider shall, as soon as reasonably practicable, provide the Client with a draft Project Plan, setting out the requirements and specifications of the Services which it shall supply to the Client, including a description of what work is to be done, dates by which each stage of the work is requested to be started and finished, Deliverables and such other information as the Client considers reasonably necessary for the provision of the Services. The Service Provider and the Client shall discuss and agree the draft Project Plan and when it has been agreed, they shall

both sign a copy of it and it shall be incorporated into the Statement of Work and be subject to this agreement. Once the Project Plan has been agreed and signed in accordance with this clause 2.3, no amendment shall be made to it except in accordance with clause 2.4 and clause 21.

- 2.4. If the Client requests a change to the scope of execution of the Services (the **"Change of Services"** also referred as a **"Change Request"**), the Service Provider shall, within a reasonable time, provide a written estimate to the Client of:
 - 2.4.1. the likely time required to implement the change;
 - 2.4.2. any variations to the Fees arising from the change, to include the Rate Card (if applicable);
 - 2.4.3. the likely effect of the change on the Project Plan; and
 - 2.4.4. any other impact of the change on this agreement.
- 2.5. The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of the matters referred to in clause 2.4.1 to clause 2.4.4.
- 2.6. Notwithstanding any provision of this agreement, the Service Provider may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirement.
- 2.7. The Service Provider shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Client in accordance with the Statement of Work, the Project Milestones and the Project Plan, but any dates provided shall be estimates only and time for performance by the Services Provider shall not be of the essence of this agreement.
- 2.8. The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the industry sector in the United Kingdom.
- 2.9. The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are in accordance with the specification of Services provided in the Statement of Work and the Project Plan.
- 2.10. The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.11. The Service Provider shall have reasonable autonomy in relation to determining the method of performance and delivery of the Services which is not expressly provided for in the Statement of Work, the Project Plan or within the terms of this agreement.
- 2.12. The Service Provider will correct any work it undertakes relating to the Services at its own expense if it considers such work as defective or not in accordance with the terms of the Statement of Work or the Project Plan.
- 2.13. The Service Provider shall appoint a Project Manager who shall have authority contractually to bind the Service Provider on all matters relation to the Services. The Service Provider shall use reasonable endeavours to ensure that the same person acts as the Project Manager throughout the terms of this Agreement but may replace him from time to time where reasonably necessary in the interests of the

Service Provider's business. The Project Manager shall be assisted by a team of suitably qualified and skilled consultants.

- 2.14. The Service Provider shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises and that have been communicated to it under clause 3, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

3. Client's Obligations

- 3.1. The Client shall co-operate with the Service Provider in all matters relating to the Services and shall use all reasonable endeavours to provide all information to the Service Provider that is necessary for the provision of the Services. The Client shall ensure that any information provided to the Service Provider is accurate in all respects.
- 3.2. In the event that the Service Provider, its agents, sub-contractors, consultants and employees require the decision, licence, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner. The Client shall obtain and maintain all necessary licenses and consent and comply with all relevant legislation in relation to the Services, the installation of the Service Provider's Equipment, in all cases before the date on which the Services are to start.
- 3.3. If any consents, licences or other permissions are needed from any third parties it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 3.4. If the nature of the Services requires that the Service Provider, its agents, subcontractors, consultants and employees has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that such persons have access to the same at the times to be agreed between the Service Provider and the Client as required, and at no charge.
- 3.5. The Client shall be responsible at its own cost for preparing and maintaining the relevant premises for the supply of Services.
- 3.6. The Client shall inform the Service Provider of all health and safety rules and regulations any other reasonable security requirements that apply at any of the Client's premises.
- 3.7. The Client shall ensure that all of its equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.
- 3.8. The Client shall keep, maintain the Service Provider's Equipment in accordance with the Service Provider's instructions as notified to the Client from time to time and shall not dispose of or use the Service Provider's Equipment other than in accordance with the Service Provider's written instructions or authorisation.
- 3.9. Any delay in the provision of the Services or failure to provide the Services resulting from the Client's failure or delay in complying with any of the provisions of this Clause 3 or by any act or omission of the Client, its agents, sub-contractors, consultants or employees under the terms of this agreement shall not be the

responsibility or fault of the Service Provider and the Service Provider shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such omission or delay.

4. Fees, Payment and Records

4.1. In consideration of the provision of the Services by the Service Provider, the Client shall pay the Fees (without deduction or set-off) in accordance with the terms of this agreement.

4.2. The Client shall pay:

4.2.1. the Cloud Consultancy, Professional Services and Software Support Fee;

4.3. The Service Provider shall invoice the Client for the charges that are then payable under this agreement (together with expenses and VAT, where appropriate, calculated as provided in clause 4.5):

4.4. in relation to the Cloud Consultancy, Professional Services and Software Support Services, on the date the Service Provider achieves a Project Milestone in respect of which an instalment is due;

4.5. All Fees exclude:

4.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Service Provider engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Service Provider for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Service Provider and payable by the Client subject to the production of receipts or other appropriate evidence of payment. The Service Provider shall provide the Client with a monthly itemised schedule of expenses incurred in the previous month.; and

4.5.2. VAT, which the Service Provider shall add to its invoices at the appropriate rate.

4.6. All payments required to be made pursuant to this agreement by either Party shall be made in full and in cleared funds to the Nominated Account within 20 Business Days of receipt by that Party of the relevant invoice.

4.7. All payments required to be made pursuant to this agreement by either Party shall be made in pounds sterling in cleared funds to the Service Providers bank as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

4.8. Where any payment pursuant to this agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

4.9. Without prejudice to clause 12.5.1 or any other right or remedy that the Service Provider may have, if the Client fails to pay any sums payable under this agreement on the due date the Service Provider may:

4.9.1. charge interest on a daily basis at 5% above the base rate of NetWest Bank plc from time to time until payment is made in full of any such outstanding sums, and the Client shall pay the interest immediately on demand; and/or

4.9.2. suspend all Services until payment has been made in full.

4.10. Each Party shall:

4.10.1. keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to this Agreement to be accurately calculated; and

4.10.2. at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them.

4.10.3. The Service Provider may charge according to its standard daily rate fees for the time it spends assessing a request for the Change of Services pursuant to clause 2.4.2.

5. Liability, Indemnity and Insurance

5.1. The Service Provider shall ensure that it has in place at all times suitable and valid Insurance Policies.

5.2. In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall be entitled to carry out any and all necessary remedial action at no additional cost to the Client. If the Service Provider elects to do so, the Client shall not be entitled to invoke a claim under clause 5.3 and clause 5.4 of this agreement.

5.3. Where the Service Provider is entitled to make a claim under an Insurance Policy in respect of any matter or circumstance giving rise to a claim by the Client for any proven material loss or proven material damage caused as a result of the Service Provider's negligence, breach of this agreement, breach of statutory duty or otherwise arising under or in connection with this agreement, the Service Provider's total liability in respect of any such claim shall be limited to the value of standard limits in the Insurance Policy, less all reasonable costs, charges and expenses incurred by the Service Provider in recovering that sum from its insurers.

5.4. Subject to clause 5.2 and clause 5.3, the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of:

5.4.1. the provision of the Services or any breach of this Agreement; and

5.4.2. any intellectual property infringement claim relating to the Works supplied by the Service Provider to the Client during the course of providing the Services.

- 5.5. The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 5.6. Subject to clause 5.7, the Client shall indemnify the Service Provider, on demand, all costs, charges or losses sustained or incurred by the Service Provider (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunities to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement.
- 5.7. The Client's total liability to the Service Provider for all claims that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement shall be limited to the total sum of the value of the charges paid by the Client under this agreement for the period commencing on the Commencement Date until the 12-month anniversary from the Commencement Date.
- 5.8. The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any Service Provider's Equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.
- 5.9. Nothing in this agreement shall limit or exclude the Service Provider's or Client's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 5.10. Neither Party shall be liable to the other or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6. Guarantee

- 6.1. The Service Provider guarantees that all Implementation Services shall be free from any and all defects for a period of 30 calendar days following completion of the Implementation Services Project.
- 6.2. If any defects in the product of the Services appear during the guarantee period set out in clause 6.1 the Service Provider shall rectify any and all such defects at no cost to the Client.

7. Warranty

- 7.1. The Service Provider warrants to the Client on the Commencement Date that it is not engaged or involved in, or otherwise subject to any litigation, insolvency or other proceedings, or any claims, actions or hearings before any court or tribunal which may have a material adverse effect on the financial position of the Client or prevent the Service Provider from carrying out its duties under this agreement (the "**Third Party Claim**").

- 7.2. In the event the Service Provider becomes actually aware of a Third-Party Claim during the period of the agreement, the Service Provider shall as soon as reasonably practicable give written notice of the Third-Party Claim to the Service Provider, specifying in reasonable detail the nature of the Third-Party Claim.

8. Anti-bribery and anti-corruption

8.1. The Service Provider shall:

- 8.1.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the “**Relevant Requirements**”);
- 8.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 8.1.3. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 8.1.4. promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this agreement.
- 8.1.5. For the purpose of this clause 8, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

9. Confidentiality

- 9.1. Each Party undertakes that, except as provided by clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this agreement and after its termination:

- 9.1.1. keep confidential all Confidential Information;
- 9.1.2. not disclose any Confidential Information to any other party;
- 9.1.3. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this agreement;
- 9.1.4. not make any copies of, record in any way or part with possession of any Confidential Information; and
- 9.1.5. ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of clauses 9.1.1 to 9.1.4 above.

9.2. Either Party may:

- 9.2.1. disclose any Confidential Information to:
 - 9.2.1.1. any sub-contractor or supplier of that Party;
 - 9.2.1.2. any governmental or other authority or regulatory body;

9.2.1.3. any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

9.2.1.3.1. to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under clause 9.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 9, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

9.2.1.3.2. use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

9.3. The provisions of this Clause 9 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

9.4. Subject to clause 10, the Service Provider covenants that it shall not at any time during the during the continuance of this agreement and after its termination use in the course of any business the company names or any trade or service mark or logo which, at the date of termination, was or had been used by the Client (or any member of its Group) in connection with its business.

10. Announcements

10.1. Subject to clause 10.2 and clause 10.3 no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction).

10.2. The Client shall, upon the request by the Service Provider, issue a press release in the agreed form of Exhibit "D" attached hereto and incorporated herein, [immediately following the Commencement Date.]

10.3. The Client consents to the Service Provider:

10.3.1. using the Client as a reference site on successful delivery of the implementation project; and

10.3.2. using the logo and/or service as trademark of the Service Provider on the Client's website during the term of this agreement and at any time after termination of this agreement.

11. Force Majeure

11.1. No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the

reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

- 11.2. In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 20 business days, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

12. Term and Termination

- 12.1. This Agreement shall come into force on the Commencement Date and shall continue for a Term of 1 year from that date, subject to the provisions of this Clause 12.
- 12.2. Subject to the provisions of this clause 12, either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 30 business days written notice to the other at any time prior to the expiry of the Term specified in clause 12.1 (or any further period for which this agreement has been extended pursuant to this provision) to extend this Agreement for a further period of 2 years.
- 12.3. Either Party may terminate the Services under this agreement by giving to the other not less than 30 Business Days written notice, to expire on or at any time after 2 years from the Commencement Date.
- 12.4. Either Party may terminate the Business Support Services Project under this agreement by giving to the other not less than 90 Business Days written notice, to expire on or at any time after 2 years from the Commencement Date.
- 12.5. Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 12.5.1. any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 Business Days of the due date for payment;
 - 12.5.2. the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 12.5.3. an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 12.5.4. the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 12.5.5. the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the

company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);

12.5.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

12.5.7. that other Party ceases, or threatens to cease, to carry on business; or

12.5.8. control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

12.6. The Client may terminate this Agreement without liability to the Service Provider on giving notice to the Service Provider if there is a change of control of the Client (as defined in section 574 of the Capital Allowances Act 2001 (the "**Change of Control**") provided the Client reasonably demonstrates that the Change of Control is detrimental to the business of the Client or the provision of the Services.

12.7. For the purposes of clause 12.5.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

12.8. The rights to terminate this agreement given by this Clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

13. Effects of Termination

Upon the termination of this Agreement for any reason:

- 13.1.1. any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable (this is without prejudice to any right to claim for interest under the law, or any such right under this agreement);
- 13.1.2. all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;
- 13.1.3. termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 13.1.4. subject as provided in this Clause 13 and except in respect of any accrued rights IT , remedies, obligations and liabilities neither Party shall be under any further obligation to the other; and
- 13.1.5. each Party shall (except to the extent referred to in Clause 9) immediately cease to use, either directly or indirectly, any Confidential Information. If the Client fails to do so, then the Service Provider may enter the Client's premises and take possession of it. Until they have been returned or repossessed the Client shall be solely responsible for its safe-keeping.

14. No Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

16. Costs

Subject to any provisions to the contrary each Party to this agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

17. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this agreement or any other agreement at any time.

18. Assignment and Sub-Contracting

- 18.1. Subject to clause 18.2 and clause 18.3, this agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or

sub-licence or otherwise delegate any of its rights hereunder, or subcontract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

18.2. The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its Group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or subcontractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

18.3. The Client may assign the benefit of this agreement to and from any member of its Group (so long as that assignee company remains within the same Group as the Client).

19. Time

The Parties agree that the times and dates referred to in this agreement (and any documents referred to in this agreement) are for guidance only and are not of the essence of this agreement and may be varied by mutual agreement between the Parties.

20. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a business partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this agreement.

21. Variation

Subject to the terms of clause 2.3 and clause 2.4 no variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

22. Non-Solicitation

22.1. Neither Party shall, for the Term of this agreement and for a period of 1 year after its termination or expiry, employ or contract the Services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this agreement without the express written consent of that Party.

22.2. Neither Party shall, for the term of this agreement and for a period of 1 year after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

23. Third Party Rights

23.1. Subject to clause 23.2, no part of this agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

23.2. Any member of the Group of the Client may enforce any term of this agreement (so long as that member of the Group remains within the same Group as the Client).

24. Notices

- 24.1. All notices under this agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 24.2. Notices shall be deemed to have been duly given:
- 24.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 24.2.2. when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 24.2.3. on the second business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 24.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.
 - 24.2.5. In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

25. Entire Agreement

- 25.1. This agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 25.2. Each Party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

26. Counterparts

This agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

27. Severance

In the event that one or more of the provisions of this agreement is found to be unlawful, invalid or otherwise unenforceable, that or those provision(s) shall be deemed severed from the remainder of this agreement. The remainder of this agreement shall be valid and enforceable.

28. Dispute Resolution

- 28.1. The Parties shall attempt to resolve any dispute arising out of or relating to this agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 28.2. If negotiations under clause 28.1 do not resolve the matter within 30 business days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

- 28.3. If the ADR procedure under clause 28.2 does not resolve the matter within 30 business days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 28.4. The seat of the arbitration under clause 28.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 28.5. Nothing in this clause 28 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 28.6. The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this clause 28 shall be final and binding on both Parties.

29. Law and Jurisdiction

- 29.1. This agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2. Subject to the provisions of clause 28, any dispute, controversy, proceedings or claim between the Parties relating to this agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.