



G-Cloud 15 Supplier Terms

Last updated: 26/01/2026

Version: 1.0

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Introduction

This agreement is dated as at the date of last signature hereto, or the date of last signature to a relevant Service Order Form in relation to that Service Order Form.

Parties

“Mixd” or “We” or “Us” or “Our” is a reference to the business operating as a partnership between Philip Shackleton and Michael Danford whose principal office address is: Platform, New Station Street, Leeds LS1 4JB United Kingdom. (“**Supplier**” / “**we**” / “**us**”)

The entity or person named at the end of this agreement and/or as expressly identified in the relevant Service Order Form setting out the procurement of services from the Supplier and referencing this agreement (“**Customer**” / “**you**”)

Background

The parties have agreed that the Customer may request certain digital services (as more particularly described in an applicable Service Order Form) from the Supplier on the terms of this agreement.

Part A: Master Services Agreement

Agreed terms

1. Definitions and interpretations

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

- 1.1. **Acceptance Criteria:** where relevant, the acceptance criteria or other completion conditions for a Deliverable or any other item of work including the User Stories, as may be agreed between the parties from time to time.
- 1.2. **Acceptance Tests:** the tests that are to be run as agreed in the Service Order Form, or as otherwise agreed between the parties from time to time, to determine whether or not a particular Deliverable complies with its Acceptance Criteria, where applicable, and the expected results of those tests.
- 1.3. **Agreement (or agreement):** is a reference to the terms of this Master Services Agreement and any document expressly incorporated by reference including but not limited to any Service Order Form, or any applicable Data Processing Agreement or Hosting Services Agreement applicable to that Service Order Form.
- 1.4. **Affiliate:** any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.
- 1.5. **Applicable Laws:** (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 1.6. **Ice Box:** a list of all tasks, User Stories or any kind of Deliverable that was originally planned or intended to be included or delivered as part of a Project, but have instead been put on hold for some reason (e.g. replaced by other more desirable or higher priority tasks) and which are not planned to be worked on any time soon though they could (whether likely or not) be picked back up in the future under some other Project.
- 1.7. **Backlog:** means the prioritised list of deliverables or other objectives identified by the Supplier to be delivered or implemented as part of a Project.
- 1.8. **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.9. **Business Hours:** the period from 9.00 am to 5.30 pm on any Business Day.
- 1.10. **Commencement Date:** means the date that each Project commences as set out in the Service Order Form.
- 1.11. **Consulting:** the professional services and other advice and guidance as may be provided by the Supplier from time to time relating to or provided alongside the Project in any capacity.
- 1.12. **Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and Controls, Controlled and the expression change of Control shall be construed accordingly.
- 1.13. **Customer Materials:** means anything provided by the Customer to the Supplier for inclusion within the Services howsoever arising, including but not limited to content of the Customer's own clients, the Customer Software, any hardware deployed by the Customer involved in or required to use the Services and any other materials, data or content not originating from the Supplier.

- 1.14. **Customer Software:** means any and all software programs and environments, including all interfaces and code pre-dating the Commencement Date or otherwise either in the possession of or licensed to the Customer by any third party both before and after the Commencement Date including any software recommended by the Supplier which the Customer procures on its own account or otherwise falling under clause 10.4 but excluding any Software provided by the Supplier as defined below.
- 1.15. **Customer Systems:** the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer, its Affiliates, or any of its or their agents or contractors.
- 1.16. **Cybersecurity Requirements:** all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
- 1.17. **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 1.18. **Data Capture Document:** means the document used by the Supplier to record information regarding the Customer's requirements for the applicable Project in each case.
- 1.19. **Data Processing Agreement (or "DPA"):** means the contract signed by the parties on or around the date of this Agreement which sets out the terms under which personal data is processed where that is required in order to perform and manage the rights and obligations set out in this Agreement. A reference in this Agreement to clause 22 shall be interpreted as a reference to the appropriate term of the DPA.
- 1.20. **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- 1.21. **Deliverables:** as expressly set out in the Service Order Form, the deliverables to be provided under a project which may include Software, Documentation, User Stories or other reports and guidance notes provided as part of the Consulting Services from time to time.
- 1.22. **Dependencies or Dependency:** refers to those factors, in addition to any generally applicable Relief Event, which have been recognised as having the possibility to impact the timely or accurate completion of a Project as may be set out in the applicable Service Order Form.
- 1.23. **Dispute Resolution Procedure:** the procedure set out in clause 37.
- 1.24. **Documents/ Documentation:** the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier and referred to in the User Stories.
- 1.25. **Fees:** the aggregate price for the Services and the Deliverables, as specified in the applicable Service Order Form.
- 1.26. **Force Majeure Event:** event, circumstance or cause beyond either party's reasonable control, including epidemic, pandemic, terrorist activity, shortage of raw materials, power or fuel, failures and delays in the banking or payment collections or payment transfer systems, any breakdown of plant or machinery, any failure of any computer software or hardware, or any failure in a communications network.

- 1.27. **Good Industry Practice:** the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading software development company that uses the Agile Process or a similar industry approved or other adopted process to develop software.
- 1.28. **Hosting Services Agreement (or “HSA”):** is a reference to the terms and conditions that apply to the Mixd managed hosting service, which shall apply to the Agreement where incorporated into any Service Order Form by express reference to the HSA.
- 1.29. **Index:** the Retail Prices Index Jevons (RPIJ) of the United Kingdom Office for National Statistics or, if that index ceases to be published, the nearest index having like effect.
- 1.30. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.31. **Known Vulnerabilities:** any Vulnerability that, at the time of Project Completion, has
- 1.32. either been:
 - 1.32.1. assigned a Common Vulnerability and Exposures (CVE) number;
 - 1.32.2. disclosed on the National Vulnerabilities Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
 - 1.32.3. disclosed on the internet or an open public database such that it would be revealed by reasonable searched conducted in accordance with Good Industry Practice.
- 1.33. **Latent Vulnerabilities:** any instances of typical classes of Vulnerability. For example buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.
- 1.34. **Licence:** the licences granted under clause 10.
- 1.35. **Master Services Agreement (or “MSA”):** means these terms and conditions from clause 1 to clause 38 inclusive of all sub-clauses thereunder and the terms of the applicable DPA where relevant.
- 1.36. **Open-Source Software:** any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition or any libraries or code licensed from time to time under the General Public Licence, or anything similar.
- 1.37. **Product Owner:** the Customer representative in charge of the Project on the Customer's side, where applicable, as named in the Service Order Form.
- 1.38. **Project:** the project described in the applicable Service Order Form.
- 1.39. **Project Completion:** the date on which the notice is given to the Supplier under clause 6.5.
- 1.40. **Project Term:** the term of the Project, commencing on the Commencement Date and ending on Project Completion or earlier termination of this agreement under clause 23.
- 1.41. **Rates:** the Rate Card, available to be supplied on request, which the Supplier makes available to customers generally from time to time.
- 1.42. **Relief Events:** the following events:

- 1.42.1. any failure by the Customer to comply with its obligations under this agreement;
- 1.42.2. any error or malfunction in the Customer Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- 1.42.3. any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this agreement; or
- 1.42.4. any of the causes or events set out in clause 11.5.
- 1.43. **Representative:** has the meaning given in clause 21.1 and includes, for clarity, in the case of the Customer, the Product Owner and, in the case of the Supplier, each member of the Project Team.
- 1.44. **Requirement:** the non-technical description of a requirement of the Customer (including User Stories), describing the intended operations, functions, performance and other characteristics intended to be outcomes of a Project.
- 1.45. **Resource Allowance:** a unit of measurement of the amount of resource allocated for:
 - 1.45.1. Services under a Project carried out according to a Retainer; or
 - 1.45.2. Support Services.
- 1.46. **Result:** the result of development work carried out under this agreement to meet a particular Requirement, with regard to and to be judged against any agreed Acceptance Criteria applicable to a particular Requirement.
- 1.47. **Project Manager:** the Supplier's representative as described in the Service Order Form, or as otherwise agreed from time to time, who shall be the Customer's lead point of contact for that particular Project.
- 1.48. **Project Team:** the persons described in the Service Order Form, and any replacements from time to time.
- 1.49. **Services:** an all-inclusive term intended to generally reference the services to be provided by or on behalf of the Supplier under this agreement howsoever provided.
- 1.50. **Software:** the software or modules thereof to be developed under this agreement by the Supplier excluding any Customer Software.
- 1.51. **Source Code:** the source code of the software to which it relates, in the language in which the software was written, together with all related flowcharts and technical documents, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that software.
- 1.52. **UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.53. **User Story(ies):** means a method of describing Acceptance Criteria from the perspective of a user (or multiple categories of users where expressly set out in writing) by reference to the ability to achieve a certain outcome or a way of working required to achieve that outcome. User Stories may form part of or the entirety of the Acceptance Criteria for a Project or a specific Deliverable or other Requirement identified within a Service Order Form.
- 1.54. **VAT:** value added tax chargeable under the Value Added Tax Act 1994.

- 1.55. **Vulnerability(ies)**: refers to either or both of Known Vulnerabilities and Latent Vulnerabilities as the context requires.
- 1.56. **Virus**: any thing or device (including any software, code, file or programme) which may:
- 1.56.1. prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- 1.56.2. prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or
- 1.56.3. adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.
- 1.57. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.58. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.59. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.60. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.61. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.62. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.63. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.64. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.65. A reference to **writing** or **written** includes email but not fax.
- 1.66. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.67. References to clauses are to the clauses of this agreement
- 1.68. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.69. Any approval or consent required under this agreement shall not be unreasonably withheld or delayed, unless stated otherwise.
- 1.70. Any estimate given under this agreement shall be based on due diligence and fair and reasonable assumptions.
- 1.71. Any requirement for notice shall be deemed to be a requirement for written notice and, if no timescale is specified for the giving of notice or the performance of any obligation under this agreement, the deemed requisite timescale shall be as soon as reasonably possible in the circumstances.
- 1.72. Except to the limited extent expressly set forth in this MSA, if there is any conflict or ambiguity between the terms of the documents listed in this clause, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:
- 1.72.1. The Master Services Agreement (MSA);
- 1.72.2. The Schedules to the MSA;

- 1.72.3. A Service Order Form; and
- 1.72.4. Any attachment to a Service Order Form.

2. Commencement and duration

- 2.1. This agreement shall commence on the date of last signature to these terms and conditions and each Project falling under and made pursuant to this agreement shall begin on the Commencement Date of the relevant Service Order Form and shall continue, unless terminated earlier in accordance with clause 23, until Project Completion when the Project under that Service Order Form shall terminate automatically without further notice. This Agreement shall expire naturally upon the completion or termination of all active and contemplated Projects under it.
- 2.2. By executing a Service Order Form referencing this Agreement, a new and separate contract for Services will be created and each subsequent Service Order Form shall create a new and separate contract in each instance.

3. Project Engagement

- 3.1. If you require Services from us, then you must give us as much detail as possible of any Requirement or specific Deliverables you need and we will endeavour to respond within five (5) Business Days with a draft proposal. We prepare draft proposals first because there can be a degree of back and forth involved, and we prepare them with a view to being able to use that detail in order to prepare a draft Service Order Form. Each Service Order Form will usually follow the same format as the template attached to this Agreement.
- 3.2. It is possible that we might uncover some new requirements you hadn't considered, or we might alternatively need further information where we think that is reasonably required (and/or a further Data Capture Document) and we reserve the right to ask you further questions before, during and after preparing proposals and Service Order Forms where we realistically need further information from you, including any situation where we consider that you would be best placed to provide or confirm certain information that we feel is important to get right.
- 3.3. If you need anything specific adding to the Service Order Form or this Agreement for your internal process/compliance purposes (for example: the need to include a PO number), then please let us know as soon as possible during this process so that we can take your administrative requirements into account.
- 3.4. **Deliverables-based Projects.** If you know what you need and this can be well defined in a prescriptive manner, we may agree to set this out as a Deliverable and we will work with you to determine the applicable Acceptance Criteria used to judge the Acceptance Tests used to determine Project Completion in relation to those Deliverables following the procedure set out in this Agreement including clause 15.5 below.
- 3.5. **Requirements-based Projects.** If you have a rough idea of where/what you want to end up with, but you aren't exactly sure how to get there or it can't really be well defined, we might agree on a list of Requirements with you rather than a set list of Deliverables. If we work on a Requirements basis, then we will work with you to achieve a Result that matches your Requirements as closely as possible in the circumstances taking into account the Fee, complexity and duration of the Project and you accept that this is not likely to precisely match your initial Requirements in every way, though the solution provided should substantially achieve those Requirements. Where we work in this way, we may adopt industry standard methodologies (including the use of User Stories for example) in order to find a suitable way for us to agree what Result we need to achieve in order to best meet the Requirements taking into account the Project as a whole.

- 3.6. We will not generally assume any responsibility for managing the Project timeline and its delivery, and where we perform or offer this kind of management service to you then we are only offering our guidance and reasonable assistance as most Projects will almost always be heavily reliant on Dependencies of your own staff or materials/resources etc. Where we identify Dependencies prior to commencing any Project then we will try to ensure that these are out in the Service Order Form. If we identify Dependencies during a Project that arise for any reason, we will flag them up to you as soon as possible as and when they become apparent or when they start to cause a serious delay.

4. Project Participants

- 4.1. We will agree with you on who is going to be involved in the Project and we will list these people, or their general job roles or titles, in each Service Order Form (the "Project Participants"). Our team, for whom we are responsible in relation to a Project, form the Project Team and we will often also work with your representatives on a Project. Together, those people form the "Project Participants".
- 4.2. The Project Participants, whether that's our employees or contractors (who are part of our "Project Team") or yours as the Customer, will work with reasonable skill and care and shall be suitably skilled and qualified for the task they are allocated to perform. Where we don't specify a certain level of qualification or similar requirement we may both assume certain skill levels in accordance with Good Industry Practice. This is an important assumption we have to be able to make and rely on in relation to any third party whom you direct or ask us to work with from time to time.
- 4.3. The parties each acknowledge and agree that:
- 4.3.1. the respective roles and responsibilities, level of dedication to the Project and (where appropriate) criteria concerning requisite skills, experience and qualifications of the Project Participants should be agreed at the outset as part of the initial Service Order Form; and
- 4.3.2. timely and successful Project Completion may be facilitated by continuity of personnel in their roles as Project Participants, but we as the Supplier may, where reasonable, replace Project Team members from time to time during the Project Term. We will use our reasonable endeavours to ensure the continuity of at least one person with prior knowledge of your business where applicable.
- 4.4. Good communication is always important, and any Project Participant shall respond to any queries or reasonable requests for information from any other Project Participant as soon as reasonably possible.

5. Project Delivery

- 5.1. Both parties each:
- 5.1.1. acknowledge that the Requirements and/or Deliverables as agreed from time to time provide an overarching framework for each Project as described in the relevant Service Order Form; and
- 5.1.2. agree that they shall perform their roles, responsibilities, obligations and duties in a manner consistent with that framework and, as far as reasonable to do so, with a focus on maximising the potential for attaining the goals outlined in a Service Order Form, but our focus will primarily be on achieving the Result or Acceptance of Deliverables where applicable.
- 5.2. The parties agree that the Product Owner shall be responsible for the provision from time to time under this agreement of details of, respectively, any Customer approvals required relating to budget changes, scope changes, reprioritisation of Deliverables/Requirements or any other Change Request.
- 5.3. Where the Product Owner adjusts the level of priority of any part of the Services the

Supplier shall, where possible and foreseeable, set out any estimated impact on the Project including but not limited to any change to the Fees and Project Term and may require the Customer to complete a formal Change Request.

- 5.4. Project management and reporting – The Project Manager shall be reasonably available to the Customer to arrange meetings as required from time to time, and where any regular meetings are required the parties shall indicate a desired frequency of such meetings in the Service Order Form. Meetings and status update reports may be provided remotely unless expressly stated to the contrary in the Service Order Form.

6. Project Methodology

- 6.1. For clarity, the parties acknowledge and agree that each Project has different requirements which may evolve over time and accordingly:
- 6.1.1. Unless expressly set out in the Service Order Form, the Supplier will propose what it considers to be a suitable methodology following Good Industry Practice based on the needs of the Customer at the time. The Supplier shall provide a reasonably detailed summary of its proposed methodologies and ways of working upon request by the Customer. Such determination may take into account differing levels of priority as to duration, cost, efficiency, level of creative input required etc and where applicable the Supplier shall maintain a Backlog to record any parts of the services which are de-prioritised for later delivery and shall keep the Customer informed and updated as the Backlog changes;
- 6.1.2. Either the Supplier, Customer or the Product Owner may, from time to time during the Project Term, request a change to the priority of the Deliverables or request a change to the Project Methodology specified in the relevant Service Order Form or otherwise adopted by the Supplier in relation to a Project. Subject to an agreement in writing between the Supplier and one of the Product Manager or the Customer, such a change may not require a formal Change Request if the Supplier confirms that there would be no impact on the scope or cost of the Project;
- 6.1.3. the Product Owner must submit any other change as part of a Change Request to the Supplier for approval.
- 6.2. The Product Owner and the Project Team shall use all reasonable endeavours to agree the Acceptance Criteria for applicable Deliverables as soon as possible following the Commencement Date for each Project, or as soon as possible after the applicable Deliverable is proposed during the Project.
- 6.3. Once the Deliverables to be included in the Project have been agreed any changes may be subject to a formal Change Request:
- 6.4. Where the Project Methodology requires, the Supplier shall keep the Customer updated as to its progress in relation to each applicable Deliverable or the progression of Requirements and the status of the Backlog where relevant. The Supplier may provide access to a project planning/management system at its discretion from time to time, such as Jira.
- 6.5. The Project shall be complete once all Deliverables are Accepted and/or the Result is deemed to substantially meet the Requirements by either party acting reasonably ("Completion"). Please see clause 15.5 of this Agreement for the Acceptance Testing procedure. If there is any disagreement as to whether or not a Project has reached "Completion" the parties shall follow the Dispute Resolution Procedure set out in clause 37.
- 6.6. Within five (5) Business Days of Completion, the Supplier shall provide the Customer with written notice of the same and shall deliver any remaining undelivered Deliverables to the Customer (in object code versions only).

7. Change Request

- 7.1. If the Product Owner, Customer or the Supplier requests that a new Deliverable or other Requirement be added or removed from or to a Project, the Ice Box or the Backlog (a "Change Request"):
 - 7.1.1. The Supplier shall, in response to such Change Request provide an estimate of any impact on dates and costs in relation to the Project;
 - 7.1.2. the Product Owner or the Customer may, at its option, then:
 - 7.1.2.1. remove from the Project or Backlog an existing Deliverable or multiple Deliverables, or any Requirements, where it no longer requires the same and the Supplier confirms that the proposed change is technically viable and would result in a negligible cost impact/change on the Project; or
 - 7.1.2.2. request that the Supplier delivers such new Deliverable(s), or re-introduces any items of work from the Ice Box back into the Backlog or into the current Project scope, as additional Services in accordance with the Rates then in force.
- 7.2. Where the Customer or the Supplier propose any Change Request, they shall complete and submit a Change Request to the Supplier in writing. The Supplier will reply to and manage each Change Request in its own Change Request Form which shall confirm the extent of any agreed change, a copy of which shall be provided by the Supplier upon request of the Customer. The Supplier may keep and maintain a list of all Changes and shall make that list available to the customer upon request.

8. Payment

- 8.1. The Services may be performed on a Fixed Fee basis or on a Time and Materials (T&M) and this shall be expressly set out in the applicable Service Order Form.
- 8.2. Where Services are provided on a T&M basis, the Supplier shall provide the Services according to its Rates unless otherwise agreed. The Supplier shall provide a non-binding estimate of its anticipated costs in advance of commencing such Services where it is reasonably able to do and shall keep the Customer updated and informed as to its progress and associated costs no less than monthly (and shall submit invoices monthly in arrears, relating to the Services carried out in the immediately preceding month) unless otherwise agreed in the Service Order Form.
- 8.3. Where Services are performed on the basis of a Fixed Fee (including but not limited to Retainer arrangements) then the complete scope of work shall be deemed to be provided in full at the point that the Fixed Fee is agreed or the applicable Service Order Form is signed. The Fixed Fee shall be capped and the cost of the Services shall not exceed the Fixed Fee without the prior written consent of the Customer unless the Customer's scope of requirements is extended. The Customer's scope of requirements shall be deemed to be extended if:
 - 8.3.1. The Supplier becomes aware of a change in laws or other change in circumstances made by a third party outside of the Supplier's reasonable control which has a direct impact on the Services requested by the Customer;
 - 8.3.2. The Customer requests a change that the Supplier can demonstrate or reasonably articulate would result in additional work effort not taken into account by the Fixed Fee;
 - 8.3.3. The Customer provides materials not in accordance with any agreed standard or requirements specific by the Supplier from time to time; or
 - 8.3.4. The Customer unreasonably delays progress within a Project or Handover/Completion/Acceptance of any element of the Services to such a degree that the Supplier can evidence an increase in costs incurred by it.
- 8.4. The Supplier shall submit invoices in accordance with any specific invoicing terms set out in the applicable Service Order Form which shall be deemed to apply over

and above any conflicting terms set out in this clause 8. An invoice shall be deemed payable regardless of the Customer's failure to specify invoicing requirements in a Service Order Form and any re-submission of an otherwise validly issued invoice by the Supplier shall not be taken to extend any timeframe for payment by the Customer by virtue of such re-issuing.

- 8.5. The Customer shall make payment of each such invoice by the due date stated in that invoice or within 30 days of receipt of the invoice. The Customer acknowledges that timely payment of invoices may be required to ensure the smooth delivery of a Project and the Supplier can't be held responsible for delays due to non-payment by the Customer.
- 8.6. The Fees and all other payments specified in each Service Order Form or clause 23 are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).
- 8.7. If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 23:
 - 8.7.1. the Customer shall pay interest on the overdue amount at the rate of 4% a year above HSBC Bank (UK) plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - 8.7.2. the Supplier may, without liability to the Customer, suspend the provision of the Services, and the Supplier shall be under no obligation to provide any the Services while the invoice(s) concerned remain unpaid.
- 8.8. The Customer shall not be obliged to pay any charges or fees to the Supplier for any Services performed, unless the applicable Rates, charges or fees are either specified in this agreement or have been approved in writing in advance by the Customer. Reasonable out-of-pocket expenses and disbursements, agreed by the parties in writing in advance, may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.
- 8.9. All invoices issued by the Supplier under or in connection with this agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced and any additional costs authorised under clause 8.8.
- 8.10. The Supplier's Rate Card may be increased in proportion to the increase (if any) in the Index between the Commencement Date and the Index published immediately before the end of each Year. The updated Rates shall apply following 30 days notice: of the increase in Rates sent by the Supplier; or from the date it publishes on its website; or otherwise from when the Supplier issues a new Rate Card to the Customer.

9. Ownership

- 9.1. If you provide things to us, that doesn't mean we own them. The parties acknowledge and agree that the Intellectual Property Rights in the Customer's Materials, and any Customer Software are, and shall remain, the property of the Customer or its respective licensors.
- 9.2. If you provide things for us to use in the Project, you have the right to let us use them in the way we say we will use them or that you ask us to, and you give us a license to those things for that purpose. The Customer grants, subject to the terms of this agreement, the Supplier the non-exclusive right to use the Customer's Materials and

the Customer Software for the purpose of exercising the Supplier's rights or performing its roles, responsibilities, duties and obligations under this agreement (including those expressed to be on the part of the Project Team) during the Project Term.

- 9.3. We will own the core rights (ownership) to any Deliverables, unless they are Bespoke (and then you'll own them), but we will provide you with a licence so that you can use them for your internal business purposes (see clause 10 below). The Intellectual Property Rights in the Deliverables and the Software (including all object code and Source Code versions) shall, at the Commencement Date or (if later) on creation of the rights from time to time, vest in the Supplier unless otherwise agreed in writing in the Service Order Form. The Customer assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Supplier. If work effort is expressly identified in the Service Order Form as being "Bespoke", in each case, then all Intellectual Property Rights created shall instead be deemed to vest in the Customer.
- 9.4. If, in creating Bespoke items of work for you, we discover a more efficient process or way of working, if that improvement doesn't only relate specifically to you and you can't be identified as the source of that improvement, then we are allowed to use those things to improve any aspect of our own services generally. Where Bespoke services lead to the creation of Intellectual Property Rights vesting in the Customer, the Supplier shall be granted a perpetual license to such inventions and improvements in processes or processing and the like that exist, or are contained, within such Intellectual Property Rights only to the extent that those Bespoke materials cannot be traced back to the Customer as the source. For the avoidance of doubt, to the extent that the Customer's branding is present or cannot be removed from the more generic elements of such Bespoke items of work, the Supplier acknowledges that it would require the Customer's prior written consent in order to re-use those things. To the extent that Bespoke creations can be used to identify the Customer, these shall also be deemed to be the Confidential Information of the Customer. To the extent that Bespoke creations contain more generic elements, which can be separated from the Customer's own branding and other materials, the Supplier shall not be restricted in its re-use of Bespoke creations to the extent that its own Services can be generally improved by further use of such discoveries, inventions and improvements existing in those Bespoke works howsoever created.
- 9.5. We provide our work to you in return for payment, and because we are a business we may withhold the delivery of our work product generally to protect our own interests where that is commercially reasonable for us to do so and usually until you've paid us in cleared funds of any monies you owe us. This means that you'll get the things you need to use all Bespoke work when the Project is completed and after you've paid for it in full, but not beforehand. Where Bespoke creations result in Bespoke Software being produced for the Customer then, subject to payment of all Fees relating to the Project, the Customer shall be provided with all applicable Bespoke Source Code for such Bespoke Software at Project Completion.
- 9.6. If either of us need to make the legal position around ownership of Deliverables more clear for some reason, before Project Completion, we will both work together to do what is reasonably required in the circumstances to achieve that clarity. The Customer shall do and execute, or arrange for the doing and executing of, each act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Deliverables, including, if this agreement is terminated before Project Completion, any uncompleted Deliverables and the Supplier shall likewise offer the

same courtesy to the Customer as applicable to vest ownership in any Bespoke creations to the Customer in any such circumstance.

- 9.7. In relation to Bespoke Deliverables, the Supplier shall, and in relation to Deliverables the Customer shall:
 - 9.7.1. procure the irrevocable waiver of all moral rights in the Deliverables, to the extent permitted by law;
 - 9.7.2. ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Deliverables; and
 - 9.7.3. be responsible for ensuring that written agreements are entered into with, and adhered to by, employees and subcontractors engaged in the performance of this agreement and that, unless otherwise agreed with the other party in writing in advance, the terms of engagement of such employees and subcontractors are consistent with, and enable each party to fully to comply with, the provisions as to the Deliverables set out in this agreement, including this clause 9.
- 9.8. The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Services, Software or the Deliverables and shall promptly report to the Supplier any such infringement that comes to its attention.
- 10. Licence**
 - 10.1. The Supplier grants, subject to the terms of this agreement, the Customer and its Affiliates a perpetual and non-exclusive, non-transferable right (subject to clause 20) to use the Software, Documentation and the Deliverables in or alongside the Customer Systems for any purpose related to the Customer's business operations.
 - 10.2. The Customer may make such copies of the Software and Documentation as are reasonably necessary for use in accordance with this agreement and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Software and Documentation except as strictly required in order to effectively and permanently migrate the Customer Systems from one production environment to another.
 - 10.3. The Supplier shall at all times own, or shall have a suitable license in place regarding, all copies of all or any part of the Software. The only exception to this is the use of Open-Source Software which, given the nature of things like Wordpress and other services which utilise copyleft style Open-Source Software licences, may mean that the source code for modifications to that code might have to be made publicly available upon request in some instances and the Customer acknowledges that its use of such Software may be subject to additional Open-Source Software license terms. The Supplier shall provide reasonable assistance to the Customer in identifying its use of Open-Source Software upon reasonable request by the Customer.
 - 10.4. The Customer shall:
 - 10.4.1. Promptly review and agree any third party software licensing terms where required;
 - 10.4.2. ensure that all proprietary notices contained in the Software will be maintained in such copies and will display when the software is run, in the same way as in the case of the Software as supplied by the Supplier; and
 - 10.4.3. take all reasonable precautions to prevent any unauthorised access to any copy of the Software.
 - 10.5. The Customer shall not:
 - 10.5.1. sub-license, rent, lend, assign or transfer in any other way this agreement or the Software to any person without the prior written consent of the Supplier; and
 - 10.5.2. give access to the Software through any network of computers to users who are not

employees or agents of the Customer.

10.6. The Customer may use the Software with other software.

10.7. The Customer may make adaptations or variations of the Software where that Software is either provided as Bespoke to the Customer, or where any perpetual license applies, subject always to the terms of any applicable Open-Source Software or Third Party Software license.

10.8. The Customer may only disassemble, decompile, reverse translate or in any other manner decode any applicable Software where strictly permitted by applicable laws.

10.9. If the customer makes any modification to the Software pursuant to sub-clauses 10.6, 10.7 or 10.8 (Modification) above then, to the extent that such Modification has caused any malfunction or defect, the Supplier's warranties shall be null and voided in their entirety unless the Customer has acquired the Supplier's prior approval in relation to such Modifications. Where the Customer requests the Supplier to remedy any defect that is later found to be a result of a Modification, the Supplier shall be entitled to recover its reasonable costs of discovery/fix of such defect at its then-current standard Rates.

11. Indemnity

11.1. In this clause, a reference to the Software is a reference to the Software in its current state of development at the time when any relevant Claim is made.

11.2. The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of any Software or receipt of the benefit of any of the Services.

11.3. This indemnity shall not cover the Customer if a claim under it results from the Customer's negligence or wilful misconduct or unauthorised Modification.

11.4. Liability under this indemnity is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Customer shall:

11.4.1. as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

11.4.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;

11.4.3. give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

11.4.4. be deemed to have given to the Supplier sole authority to avoid, dispute, compromise or defend the Claim.

11.5. The Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights caused or contributed to by:

11.5.1. the Customer's use of the Software in combination with software not supplied or approved in writing by the Supplier (other than the operating system of the Customer Systems, provided that the Supplier was notified in writing of the identity and extent

- of such operating system before this agreement was entered into);
- 11.5.2. any unauthorised modification of the Software made by, or on behalf of, the Customer;
- 11.5.3. the Customer's use of any version of the Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version;
- 11.5.4. the Supplier's incorporation into the Software of a feature expressly requested by the Customer and not in accordance with the Agile Process or the Agile Change Control Process; or
- 11.5.5. the Supplier's use in connection with the Project of any software, material, information, data, know-how, instructions or scripts provided by the Customer or any of its Affiliates that contain any errors or omissions.
- 11.6. If use of the Supplier Software or receipt of the benefit of the Services becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, the Supplier may:
 - 11.6.1. replace all or part of the Software with functionally equivalent software or documents without any charge to the Customer;
 - 11.6.2. modify the Software as necessary to avoid such claim, provided that the Software (as amended) functions in substantially the same way as the Software before modification; and
 - 11.6.3. procure for the Customer a licence from the relevant claimant to continue using the Software.
- 11.7. If:
 - 11.7.1. the Software is determined in a court of law to be infringing;
 - 11.7.2. the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer of the Software in accordance with this agreement is likely to constitute infringement of a third party's rights; or
 - 11.7.3. if an injunction or similar order is granted in connection with any claim within the scope of clause 11.2 which prevents or restricts the use or possession by the Customer of the Software in accordance with this agreement; and the Supplier is unable, after using its reasonable endeavours, to procure for the Customer the right to continue using the Software, or to provide the Customer with functionally equivalent non-infringing software, this agreement and the Licence shall be terminated.
- 11.8. If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.
- 11.9. Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

12. Supplier's warranties

- 12.1. The Supplier warrants that:
 - 12.1.1. the Deliverables are proprietary to the Supplier and that it has the right to license all UK Intellectual Property Rights in and to the Deliverables to the Customer;
 - 12.1.2. as far as it is aware use of any of the Deliverables does not infringe the Intellectual Property Rights of any third party;
 - 12.1.3. the Software will, at Completion, and for one (1) month after that date, perform in all material aspects in accordance with the Software Description;

- 12.1.4. it will carry out the Services using reasonable skill and care;
- 12.1.5. there has not been included or used any Open-Source Software or anything similar in, or in the development of, the Software nor does any Software operate in such a way that it is compiled with or linked to any Open-Source Software or anything similar which has not been brought to the attention of the Customer;
- 12.1.6. the Project Team members will perform their respective roles, responsibilities, obligations and duties expressed to be on their part in this agreement and shall use all reasonable endeavours to do so within the relevant timescales specified in the relevant Service Order Form or, if none, as soon as reasonably possible; and
- 12.1.7. any appointee or replacement Project Team member from time to time will meet the level of dedication and the respective criteria to be reasonably expected in accordance with Good Industry Practice.
- 12.2. The sole remedies for breach of the warranties in clause 12.1.1 and clause 12.1.2 are set out in clause 11 (Indemnity).
- 12.3. Time shall not be of the essence in relation to any timeframe, deadline or implementation plan milestone agreed under this agreement or a Service Order Form from time to time.
- 12.4. The warranties set out in clause 12.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement.
- 12.5. The Supplier does not warrant that the Software will operate uninterrupted or error-free.
- 12.6. The Supplier shall not in any circumstances be liable under the warranties in clause 12.1.3 if it can demonstrate that any failure of the Software to comply with such warranties was caused or contributed to by any Relief Event.
- 12.7. Save in respect of any specific warranties given elsewhere in this agreement or any SLA, following Completion of a Project or the expiry of any period of support services, the Supplier does not warrant or guarantee that the Deliverables, or any applicable Services, when taken in whole or in part, will:
 - 12.7.1. comply with any Cybersecurity Requirements, or
 - 12.7.2. contain no Vulnerabilities,
 and it shall be the Customer's sole responsibility to ensure that the Requirements and/or the Project brief details all of the Customer's cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems as part of any Cybersecurity Requirements, in sufficient detail so they can be implemented by the Supplier as part of the Deliverables to the extent reasonably applicable and relevant to the Project.

13. Customer's warranties and Indemnity

- 13.1. The Customer acknowledges and agrees that:
 - 13.1.1. the co-operation and effective and prompt communication and support of the Customer and specifically its employees with knowledge relevant to the Project are crucial to the overall and timely success of the Project;
 - 13.1.2. some development effort may not be used or may be used in a different way from the way in which it was originally intended, owing to lack of detailed due diligence, design and scoping before commencement of the Services inherent in more agile development processes; and
 - 13.1.3. where the Customer cannot provide certainty of its objectives to the extent required to establish fixed Deliverables, where the Customer instead requests the Supplier to use its independent and professional judgement in determining how to produce a Result to substantially achieve such less defined Requirements, the Supplier is not

committing to deliver any particular Result which exactly matches the Requirements.

- 13.2. The Customer warrants that during the Project Term:
 - 13.2.1. the Product Owner will:
 - 13.2.1.1. perform the role, responsibilities, obligations and duties expressed to be on the Product Owner's part in this agreement within the relevant specified timescales specified in the Service Order Form or, if none, as soon as reasonably possible; and
 - 13.2.1.2. meet the level of dedication, or provide Services up to the amount of work effort over time, as expressly specified in the relevant Service Order Form; and
 - 13.2.1.3. have the authority to negotiate or approve any matter as required under a Service Order Form, or shall act with the appropriate delegated authority of the Customer wherever required.
 - 13.2.2. the Customer will provide adequate and appropriately skilled, skilled and qualified resources to facilitate any Acceptance Tests applicable to the Customer where indicated in a Service Order Form.
- 13.3. Breach of clause 13.2 or clause 14 shall be deemed material breach of this agreement by the Customer for the purpose of clause 23.2.2.
- 13.4. The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials infringe any rights of a third party or are otherwise illegally provided in any way.

14. Customer Responsibilities

- 14.1. The Customer shall:
 - 14.1.1. Be responsible for the accuracy and completeness of the Customer Materials;
 - 14.1.2. Be responsible for ensuring meaningful and timely participation of its employees and agents as part of the Services as required from time to time;
 - 14.1.3. comply with the terms of any applicable third party licences which either form part of the existing Customer Software or as may be incorporated into the Software by the Supplier, provided that the Supplier brings the existence of such third party software to the attention of the Customer during the Project;
 - 14.1.4. Inform the Supplier of any relevant Customer Software forming part of the Customer Systems and any modifications (including add-on packages where applicable) to the standard deployment of third-party software products forming part of the Customer Software which may be involved in the Project work in any way;
 - 14.1.5. obtain any required and relevant legal or other professional advice relating to its deployment of the Project services or any Consulting advice provided and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, the Project Team and the Project Participants to perform their respective roles, responsibilities, obligations and duties under this agreement including as regards any modification or other bespoke development of the Customer Software;
 - 14.1.6. ensure that the Customer Systems, and all network connections and telecommunications links from the Customer Systems to the Supplier's systems and/or data centres and any other applicable hardware complies with the relevant specifications provided by the Supplier from time to time or if no specification is provided then such items must comply with and shall be assumed to match applicable industry norms or original manufacturer specifications; and
 - 14.1.7. use all reasonable endeavours not to introduce Viruses into the Supplier network and information systems and to take reasonable steps to prevent any security breach.

15. Service Specific Terms (and Acceptance)

- 15.1. The following specific terms and conditions set out in this clause shall apply in addition to the other terms of this Agreement where applicable, including but not limited to those set out in clause 12 above and any other general dependencies

specified herein, when those specific services are provided as part of the Services. These specific services may include:

- 15.1.1. **Hosting Services:** where the Supplier hosts any data or content, including but not limited to websites, on more than just a temporary basis, where such hosting is managed directly by the Supplier and not by the Customer. Where Hosting Services are supplied then the terms of the Hosting Services Agreement shall apply and be deemed to be incorporated into the applicable Service Order Form.
- 15.1.2. **Marketing Services:** including but not limited to management of Pay Per Click accounts (PPC), Search Engine Optimisation (SEO) and any other Services which are described as Marketing Services in the Service Order Form. Where Marketing Services are provided then clause 15.3 below shall also apply.
- 15.1.3. **Consulting Services:** advice provided by the Supplier as defined in clause 1.1 above. Where Consulting Services are provided then clause 15.4 below shall also apply.
- 15.1.4. **Retainer Services:** means Services including but not limited to ongoing support and advice which may include any Services or element of Services that the Supplier generally provides from time to time where a monthly pool of hours are made available for the Customer to draw down upon in order to instruct the Supplier to perform such Services. Where Retainer Services are provided then clause 15.5 below shall also apply.
- 15.1.5. **Acceptance Testing of Deliverables:** For the avoidance of any doubt, the Result of any Requirements based Services shall not be subject to Acceptance Testing. Where the Services include Deliverables in relation to which the parties have agreed specific Acceptance Criteria then the Completion and Acceptance of those Deliverables shall require the Acceptance Tests to be carried out. The process of Acceptance Testing is set out in clause 15.6 below and shall be deemed to be incorporated by reference into any Service Order Form requiring Acceptance Testing. The relevant Service Order Form may modify the process for Acceptance as set out in this agreement where the provisions to be overridden are expressly called out in the Service Order Form.
- 15.2. Hosting Services are provided subject to the terms of the Hosting Services Agreement, where applicable.
- 15.3. Marketing Services
- 15.3.1. The Supplier cannot guarantee any performance related results in relation to SEO as the rankings of search results are dependent upon third party algorithms which are outside of the reasonable control of the Supplier.
- 15.3.2. Where SEO targets are agreed between the parties from time to time these shall be indicative and for guidance purposes only and the Customer acknowledges the reason why results cannot be guaranteed.
- 15.3.3. The Customer shall provide prompt approval as may be required for any lists of key words or other requirements specified by the Supplier for SEO Services from time to time.
- 15.3.4. Where PPC Services are provided the Supplier may assume control of certain accounts on behalf of the Customer in order to manage such services effectively. Upon termination of this Agreement and conditional upon full payment of any outstanding Fees due to the Supplier the Supplier shall transfer control of any such PPC accounts back to the Customer within a reasonable time following such termination.
- 15.3.5. The Customer shall retain all right and title to, but shall grant the Supplier a limited license to make such use of, the Customer Materials as are required by the Supplier in order to provide the Marketing Services in the manner requested by the Customer

from time to time. The Supplier shall take into account and act in accordance with any branding guidelines provided to the Supplier as part of the Customer Materials when making use of any logo, brand, trademark or other marks of the Customer.

15.4. Consulting Services

- 15.4.1. The Supplier provides all Consulting Services using reasonable care and skill in accordance with Good Industry Practice, however, such Consulting Services should not be relied upon by the Customer in place of proper and professional legal, IT security, due diligence or regulatory advice that may apply to the Customer's business from time to time including but not limited to Applicable Laws.
- 15.4.2. The Supplier's advice or recommendations shall be considered guidance only and the Customer acknowledges and accepts that it should not place legal reliance upon such advice or take any action to its detriment without acquiring its own independent professional advice.
- 15.4.3. Where guidance is provided in relation to the security of any IT systems as part of the Consultancy Services, this advice shall be based upon the information provided by the Customer and the Supplier shall not conduct any audit of such materials to establish the veracity of that information. The Supplier shall produce a report setting out in high level terms areas which it believes the Customer should take action, including but not limited to recommendations to the Customer in relation to the areas of its business where the instruction of professional IT security consultants would appear to present the best value-added approach in its reasonable opinion.
- 15.4.4. For the avoidance of any doubt, the Supplier's Consulting Services shall not include any penetration testing or any certified audit or other assessment identifying all Cybersecurity Requirements or Vulnerabilities which may be present. The Suppliers services shall not include any ongoing management of the Customer's security systems or processes nor any ongoing intrusion detection or similar monitoring services unless expressly set out in the Service Order Form.
- 15.5. Retainer Services
- 15.5.1. Retainer Services involving or requesting any change to existing Services shall follow the Agile process unless otherwise agreed and the applicable Resource Allowance available shall be calculated based on the Customers monthly allowance as set out in the Retainer. Retainer Services shall be provided on a Fixed Fee basis unless otherwise agreed in the applicable Service Order Form.
- 15.5.2. For each Retainer the Customer shall be entitled to request Services on an ad-hoc basis to direct resources of the Supplier to perform Services according to its directions from time to time up to the amount of work effort provided for within each monthly period (the "Resource Allowance").
- 15.5.3. Where the Customer does not make use of the full amount of their Retainer Allowance, there will be no roll-over into any future monthly periods and the Retainer Allowance shall reset upon the expiry of each monthly period.
- 15.5.4. The Customer acknowledges and accepts that the Retainer Allowance does not provide for urgent response times and the Retainer Services to be drawn down from the Retainer Allowance each month should generally be agreed at least two (2) weeks prior to such Retainer Services commencing.
- 15.6. Acceptance Testing (Procedure)
- 15.6.1. No later than 30 days from the Commencement Date of a Service Order Form, the parties shall agree the Acceptance Criteria or a further schedule for making such determination where applicable. These criteria and data shall be such as are reasonably required to show that the relevant Deliverable complies with the Acceptance Criteria. The parties shall provide reasonable assistance to the other in preparation of any Acceptance Criteria as required. The parties shall use best

endeavours to agree the Acceptance Tests for the System within ten days from the date of delivery from one party to the other of the proposed Acceptance Criteria and other relevant data.

- 15.6.2. Within ten days of delivery of the relevant Deliverable, the Acceptance Tests shall be carried out. The Acceptance Tests shall be started as soon as reasonably possible after installation or delivery and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed Acceptance Tests for the Deliverable unless the Customer notifies the Supplier, not later than five days after the relevant delivery date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.
- 15.6.3. If the Deliverable fails to pass the Acceptance Tests, the Customer shall, within five (5) days from the completion of the Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 15.6.4. If the Deliverable fails in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
 - 15.6.4.1. to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Deliverable on the same terms and conditions. If the Deliverable fails such further tests then the Customer may request a repeat test under this clause 15.6; or
 - 15.6.4.2. to accept the Deliverable subject to such change of Acceptance Criteria, amendment of the Technical or other applicable Specification and/or reduction in the Price/Fee as, after taking into account all the relevant circumstances, is reasonable; or
 - 15.6.4.3. if the Supplier is unable to correct material defects within a period of three (3) months from the commencement of Acceptance Tests under Clause 15.6.2, to reject the Deliverable as not being in conformity with the Service Order Form, in which event the Customer may terminate the part of the Service Order Form relating to such Deliverable.
- 15.6.5. Acceptance of Deliverables
- 15.6.5.1. Acceptance of the Deliverable or Result where applicable shall be deemed to have occurred on whichever is the earliest of:
 - 15.6.5.1.1. the signing by the Customer of an Acceptance certificate for the Deliverable or Result which has passed the Acceptance Tests;
 - 15.6.5.1.2. the expiry of five days after the completion of all the Acceptance Tests under a Service Order Form, or in relation to the Milestone identified in that Service Order Form, unless the Customer has given any written notice under clause 15.6.3 above;
 - 15.6.5.1.3. the expiry of ten days after the date of delivery of the final Deliverable or Result ("Handover" as further defined in clause 15.6.5.2 below) if the Acceptance Tests for that module have not started, or have not been pursued with due diligence, unless such failure results from the Supplier's failure to co-operate in the performance of the Acceptance Tests; or
 - 15.6.5.1.4. the use of the Deliverable by the Customer in the normal course of its business such as in a live or customer facing capacity or environment whether for profit purposes or not.
- 15.6.5.2. The Supplier shall notify the Customer at the time it supplies the final Deliverable or Result, where the Supplier does not anticipate that it will be required to perform any further Services (notwithstanding the degree of likelihood of any remedial works or

re-testing that may follow any failed Acceptance Test), and the Customer acknowledges that at this time the Supplier has effectively performed a handover of the Services and associated materials to the Customer ("Handover"). In the event that the Customer does not take any action following Handover, and later discovers some defect in any element of the Services, without prejudice to any rights the Customer may have as against the Supplier pursuant to this Agreement: the Customer acknowledges that the Supplier will not have planned to apply resources to the resolving the Customers complaint or correcting any defect notified to it following more than ten (10) days after Handover occurs and that the Supplier may incur additional cost, at the expense of the Customer, where it is required to remedy any defect or address any complaint which is not made within the time allocated for Accepting Testing following Handover or Delivery of any particular Deliverable or Result generally.

16. Limitation of liability

- 16.1. The Customer acknowledges and agrees that, except as expressly provided in this agreement, the Customer assumes sole responsibility for:
 - 16.1.1. results obtained from the use of the Services, Software and the Documents by the Customer, and for conclusions drawn from such use;
 - 16.1.2. procuring and maintaining the Customer Systems, and all network connections and telecommunications links from the Customer Systems to the Supplier's systems and data centres;
 - 16.1.3. all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - 16.1.4. loss or damage arising from or relating to any Relief Event.
- 16.2. Neither party excludes or limits liability to the other party for:
 - 16.2.1. fraud or fraudulent misrepresentation;
 - 16.2.2. death or personal injury caused by negligence;
 - 16.2.3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 16.2.4. any matter for which it would be unlawful for the parties to exclude liability.
- 16.3. Subject to clause 16.2, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - 16.3.1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, data, reputation or goodwill;
 - 16.3.2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 16.3.3. any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 16.4. Clause 16.3 shall not prevent claims that fall within the scope of clause 16.5, for:
 - 16.4.1. Damages or other compensation, including any applicable service level credits recovered by the Supplier from third-party Hosting Services providers following data loss not being a breach of clause 21 or clause 22;
 - 16.4.2. Loss of or disclosure of data in breach of any applicable duty of confidentiality

pursuant to clause 21 or a breach of the duties arising pursuant to applicable Data Protection Legislation as set out under clause 22.

16.4.3. direct financial loss that are not excluded under any of the categories set out in 16.3.1 to 16.3.3 inclusive; or

16.4.4. tangible property or physical damage.

16.5. Subject to clause 16.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to 125% of the amount of the Fees.

16.6. Subject to clause 16.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with and breach or liability arising pursuant to clause 16.4.2 shall be limited to 125% of the amount of the Fees or £250,000, whichever is the greater.

17. Relief Events

Subject to clause 16.2, and notwithstanding any other provision of this agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event or any relevant Dependency identified as being the responsibility of the Customer as expressly identified in any Service Order Form.

18. Insurance

On execution of this agreement, the Supplier shall provide to the Customer written confirmation from its insurers that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which may arise in connection with this agreement.

19. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations with regard to the extent and severity of the delay and its impact on the Project timeline generally. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the affected party.

20. Assignment and other dealings

20.1. Subject to the further provisions of this clause 20, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

20.2. Either party (**Party 1**) may, after having given prior written notice to the other party (**Party 2**), assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with its rights under this agreement to any person to which it transfers that part of its Business to which this agreement relates, provided that the assignee undertakes in writing to Party 2 to be bound by the obligations of Party 1 under this agreement.

21. Confidentiality

- 21.1. **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives whether before or after the date of this agreement in connection with the Project, concerning:
 - 21.1.1. any information that would be regarded as confidential by a reasonable business person relating to:
 - 21.1.1.1. the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any Affiliate of the disclosing party); and
 - 21.1.1.2. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any Affiliate of the disclosing party);
 - 21.1.2. any information or materials developed by the parties in the course of carrying out or in connection with this agreement, including the Deliverables (including the Source Code in the Software); and
 - 21.1.3. any information detailed in a Service Order Form.
- 21.2. The provisions of this clause shall not apply to any Confidential Information that:
 - 21.2.1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - 21.2.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 21.2.3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - 21.2.4. the parties agree in writing is not confidential or may be disclosed; or
 - 21.2.5. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 21.3. Each party shall keep the other party's Confidential Information confidential and shall not:
 - 21.3.1. use such Confidential Information except for the purpose of exercising its rights or performing its roles, responsibilities, duties and obligations under this agreement (**Permitted Purpose**); or
 - 21.3.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 21.4. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 21.4.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 21.4.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 21.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchanges) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 21.6. A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010,

disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

- 21.7. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.
- 21.8. On termination of this agreement, each party shall, subject to clause 24.3:
 - 21.8.1. return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - 21.8.2. (in the case of electronic data) delete all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (and any electronic data shall be considered deleted, for the purposes of this clause 21.8, and the relevant provisions of the Data Processing Agreement where it has been put beyond use by the deleting party); and
 - 21.8.3. certify in writing to the other party that it has complied with the requirements of this clause,
provided that, in each case above, a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and the provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 24.3.2,
- 21.9. Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 21.10. The provisions of this clause 21 shall survive for a period of two years from termination of this agreement.

22. Data protection

- 22.1. Both parties will comply with all applicable requirements of the Data Protection Legislation as set out in the Data Processing Agreement. *This clause 22 and the DPA are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. Any reference in this Agreement to clause 22 shall be interpreted as a reference to the applicable part of the DPA.*

23. Termination

- 23.1. Without affecting any other right or remedy available to it, the Customer may terminate this agreement, without liability to the Supplier in respect of such termination other than as set out in this clause but without prejudice to clause 24.2.1, on giving not less than 30 days' written notice to the Supplier, provided that on any such termination it shall be obliged to pay termination compensation to the Supplier, calculated as the reasonable losses which the Supplier contractually or otherwise irreversibly committed and is not reasonably able to recoup, using its reasonable endeavours to attempt to mitigate its losses by asking for refunds and acting as though such losses were otherwise its own to bear. The Supplier shall provide a breakdown of all such termination compensation on request by the Customer.
- 23.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - 23.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified to make such payment;
 - 23.2.2. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

- 23.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 23.2.4. the other party commences negotiations with all or any class of any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 23.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 23.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 23.2.7. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 23.2.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 23.2.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 23.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23.2.3 to clause 23.2.9 (inclusive);
- 23.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 23.2.12. any warranty given by the other party in this agreement is found to be materially untrue or misleading.
- 23.3. Without affecting any other right or remedy available to it, the Customer may terminate this agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 12.1.
- 23.4. The Supplier may elect to suspend performance of any or all of its obligations under this Agreement where it would also be permitted to terminate the agreement. Where the Supplier elects to suspend any part of this Agreement rather than terminate it, such suspension shall be without prejudice to the rights of the Supplier to terminate this Agreement or any relevant part of it and by opting to suspend rather than terminate the Supplier shall not be precluded and does not waive its right to so terminate should it determine that to be the most prudent course of action taking into account its own commercial interests. Where any such suspension occurs, the provisions of clause 24 shall not be triggered until termination actually takes place.
- 24. Consequences of termination
- 24.1. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 24.2. On termination or expiry of this agreement for any reason:
- 24.2.1. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry, shall not be affected;

- 24.2.2. all licences granted under this agreement, including the Licence, shall immediately terminate, except for any rights granted under clause 24.3.2, provided that the Licence shall continue for the life of the relevant Intellectual Property Rights in the case of automatic termination under clause 2; and
- 24.2.3. subject to clause 24.3 and without prejudice to clause 22, each party shall return and make no further use of any equipment, property, Documents and other items (and all copies of them) belonging to the other party.
- 24.3. If the Customer terminates this agreement, or any Project, under clause 19 or clause 23:
 - 24.3.1. the Supplier shall deliver to the Customer, as is relevant in the circumstances for each Project:
 - 24.3.1.1. the Software and Deliverables (but in an object code version only) in their current state of development (Deliverables to date); and
 - 24.3.1.2. the part of any Acceptance Criteria for incomplete Deliverables ready for the Customer's review and approval in accordance with any applicable modified or reduced Acceptance Tests remaining to be carried out, if requested within five Business Days of the date of such termination; and
 - 24.3.2. the Customer may, without prejudice to the generality of clause 22:
 - 24.3.2.1. exercise the Licence in respect of the Deliverables to date;
 - 24.3.2.2. retain such of the Supplier's Confidential Information as is incorporated in the Deliverables and use the same for the Permitted Purpose; and
 - 24.3.2.3. retain and use such of the Supplier's Confidential Information as is reasonably necessary for the Customer to use the Deliverables for the Permitted Purpose.

25. Announcements

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 any relevant securities exchange), any court or other authority of competent jurisdiction.

26. Entire agreement

- 26.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 26.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

27. Conflict

If there is an inconsistency between any of the provisions of this agreement and any part of a Service Order Form, except where expressly stated to the contrary in this agreement, the provisions of this agreement shall prevail in preference to the Service Order Form.

28. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

29. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31. Severance

- 31.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 31.2. If any provision or part-provision of this agreement is deemed deleted under clause 31.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. Non Solicitation

- 32.1. Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during any Project or engagement or for a further period of 6 months after the later of termination of this agreement or any other services other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 32.2. If either party commits any breach of this clause 32, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

33. No employment, partnership or agency

- 33.1. Nothing in this agreement is intended to, or shall be deemed to, establish any employment relationship or transfer of employee, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party, except for any commitments made by the Product Owner on behalf of the Customer or by any Project Team on behalf of the Supplier in accordance with the express provisions of this agreement.
- 33.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

34. Notices

- 34.1. Any notice or other communication given to a party under or in connection with any Project shall be in writing and shall be addressed to the contact expressly named in the relevant Service Order Form.

34.2. Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be addressed to the following contacts as may be updated by the parties by notice from time to time or otherwise as expressly set out in a Service Order Form:

34.3. A notice given under this agreement is not valid if sent by fax.

35. Third-party rights

35.1. No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

36. Governing law

36.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

37. Dispute Resolution Procedure

37.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

37.1.1. We will try to sort things out between us, acting reasonably, within the first five (5) Business Days and the complaining party (with such complaint to be managed by the Supplier's project manager or the Product Owner as appropriate) should submit a Dispute Notice setting out the issues with enough detail as would be required by a reasonably competent professional to understand the nature and extent of the Dispute;

37.1.2. if then for any reason we are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Directors or other appropriate senior stakeholders with sufficient authority to negotiate and approve any agreed resolution, who shall attempt in good faith to resolve the Dispute; and

37.1.3. if the escalation above does not result in the Dispute being resolved within 30 days of it being referred to them, the parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure or alternatively, at the election of the Supplier, the Expert Determination procedure set out in clause 38 below may be commenced.

37.1.4. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR Notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR Notice.

37.2. The commencement of mediation shall not prevent the parties commencing or continuing Expert Determination or court proceedings in relation to the Dispute under clause 36.1 which clause shall apply at all times.

38. Expert determination

38.1. The provisions of this clause 38 shall apply to any dispute regarding any of the following issues identified that have not been resolved under clause 37:

- The selection of Requirements or other items to be included in the Backlog or Ice Box.

- Any amendment of the Requirements or Deliverables reasonably required and any associated impact on the project timeline or the Fees.
 - Conformity of any Result or Deliverable with the relevant Requirement or Acceptance Criteria.
 - The quality of code or of any technical services delivered by the Supplier, or the quality and/or suitability of any support or materials provided by the Customer for use in the Services.
 - Whether the Software Description is deficient in its description of any one or more of the elements specified in the definition of the Software Description.
- 38.2. **Expert** means a person appointed in accordance with this clause to resolve any of the issues referred to in clause 38.1.
- 38.3. The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of their appointment.
- 38.4. If the parties are unable to agree on an Expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request a reasonably independent and professional software development body (or some other independent body of a profession or specialism most closely related to the services in dispute) to appoint an Expert of repute with international or other extensive experience in issues concerning software development and for the relevant independent body to agree with the Expert the terms of their appointment.
- 38.5. The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
- 38.6. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 38.6.1. either party may apply to the relevant independent body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 38.6.2. This clause shall apply to the new Expert as if they were the first Expert appointed.
- 38.7. All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- 38.8. The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 38.9. To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.
- 38.10. Each party shall with reasonable promptness supply each other with all information and give each other access to all documents and personnel and/or things as the other party may reasonably require to make a submission under this clause.
- 38.11. The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the relevant issue or issues referred to in clause 38.1 which may include any issue involving the interpretation of any provision of this agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 38.12. In determining the relevant issue or issues referred to in clause 38.1, the Expert shall take into account normal industry practice, the price paid to the Supplier by the

Customer, the duration of the Project and any other matters the Expert deems to be relevant.

- 38.13. Each party shall bear its own costs in relation to the reference to the Expert and the Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert may direct as they consider to be commercially reasonable in light of the facts and circumstances giving rise to, and those constituting, the Dispute.
- 38.14. All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 38.15. Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

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

Part B: Hosting Services Agreement

Agreed terms

1. Definitions and interpretations

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

- 1.1. **Acceptable Use Policy:** the Host's policy setting out a description of acceptable use of the Services as amended by it from time to time and including any applicable Third Party acceptable use terms including but not limited to those set out at: <https://wpengine.co.uk/legal/aup>.
- 1.2. **Acceptance:** acceptance or deemed acceptance of the Site by the Customer under clause 4.
- 1.3. **Acceptance Tests:** the tests to be carried out on the Site as set out in clause 4 and as described in the Service Order Form.
- 1.4. **Agreement** (or agreement): where used herein shall be interpreted to refer to this HSA unless otherwise expressly stated.
- 1.5. **Business Day:** any day other than a Saturday, Sunday or public holiday in England when banks in London are generally open for business.
- 1.6. **Business Hours:** the period from 9.00 am to 5.30 pm on any Business Day.
- 1.7. **Change Control Procedures:** the procedures set out in Schedule 1.
- 1.8. **Confidential Information:** all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is:
 - 1.8.1. identified as confidential at the time of disclosure; or
 - 1.8.2. ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- 1.9. **Contract:** when used within this HSA means this HSA and any other terms incorporated here by express reference, including but not limited to the DPA. Where used within a Service Order Form the word Contract shall be interpreted to additionally include reference to the Service Order Form in which it is used and includes all documents incorporated therein.
- 1.10. **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 1.11. **Customer Materials:** the content provided to the Host by the Customer, or any end user of the customer, from time to time for incorporation in the Site.
- 1.12. **Data Processing Agreement** (or "DPA"): means the contractual terms agreed by the parties which govern the processing of personal data required for provision of the Services and administration of contracts.

- 1.13. **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 1.14. **Effective Date:** The date that the Hosting Services commence as expressly set out in the relevant Service Order Form.
- 1.15. **Fees:** the payments and charges in respect of the Services set out in the relevant Service Order Form, together with any charges arising from the Change Control Procedures.
- 1.16. **Go-Live:** is the estimated date (or actual date) that the Site is made public on the internet and is generally accessible to users.
- 1.17. **Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to the Customer (but not the Host) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
- 1.18. **Hosting Services Agreement** (or “HSA”): means these terms and conditions, as set out herein, from clause 1 to clause 28 (inclusive) all sub-clauses thereunder, including as those provisions are amended from time to time.
- 1.19. **CANN:** Internet Corporation for Assigned Names and Numbers as set out at <https://www.icann.org/>.
- 1.20. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.21. **Non-Host Defects:** the defects described in clause 4.3.
- 1.22. **Project Plan:** the timetable for setting up the Site and performing the Services as set out in the Service Order Form.
- 1.23. **Services:** the hosting and related services to be provided under this agreement as described in the Service Order Form.
- 1.24. **Service Credits:** as defined in the SLA.
- 1.25. **Service Level Agreement** (or “SLA”): means the agreement which sets out the agreed remedy,(ies) where applicable, for Unavailability of the Site as set out at <http://legal.mixed.co.uk/sla> unless otherwise expressly agreed between the Parties from time to time.
- 1.26. **Service Order Form:** the document, signed by the Parties and incorporating the terms of this agreement by reference, which sets out the relevant commercial terms and description of the Services to be provided under this agreement.

- 1.27. **Site:** the website pages at the URL(s) agreed between the parties, or as otherwise expressly set out in the relevant Service Order Form, to be hosted by the Host under this agreement.
- 1.28. **Site Software:** the relevant customer software for the Site .
- 1.29. **Site Specification:** the specification for the Site set out in the Service Order Form.
- 1.30. **Third Party:** includes any third party who provides products or services which are incorporated into, or which are relied upon by the Supplier in, the provision of the Services.
- 1.31. **Unavailability:** as defined in the SLA.
- 1.32. **Visitor:** a visitor to the Site.
- 1.33. **Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to confidentiality, integrity, or availability and the term Vulnerabilities shall be construed accordingly.
- 1.34. Clause and Schedule headings shall not affect the interpretation of this agreement.
- 1.35. References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.
- 1.36. If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules or a Service Order Form, the provisions in the main body of this agreement shall prevail over the Schedules and Service Order Form. The Schedules may be amended by an express agreement in a Service Order Form. The terms set out in the main body of this agreement shall not be amended by any Service Order Form except as expressly permitted within the relevant clause of this agreement and only as such change relates to that clause.
- 1.37. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.38. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.39. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.40. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.41. References to content include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website.

2. Services

- 2.1. This Contract does not by itself oblige the parties to provide or pay for Services, unless a Service Order Form is agreed between them relating to Hosting Services.
- 2.2. The Host shall perform its obligations in accordance with the description set out in the Service Order Form and the Project Plan as the same may be amended by the parties over time as part of any additional services agreed subject to following the Change Control Procedure. In particular:
 - 2.2.1. provided the Host receives a final approved and fully functional copy of the Site Software and Customer Materials on or before the date set out in a Service Order Form, the Host shall use reasonable endeavours to set up the Site for Acceptance Testing on that date; and
 - 2.2.2. the Host shall, as soon as reasonably practicable after Acceptance and to the extent expressly included within the relevant package of available Services offered by the Supplier as accepted by the Customer within the relevant Service Order Form (and

subject always to any limitations, exclusions and dependencies which are expressly set out therein and in this agreement):

- 2.2.2.1. provide the Services in accordance with this agreement and the description set out in the Service Order Form;
- 2.2.2.2. make available an appropriate number of suitably skilled and experienced resources in order to provide support services (up to the maximum number of hours expressed per annum in the Service Order Form);
- 2.2.2.3. provide security updates, and maintenance in relation to the upkeep of the Site in accordance with the relevant SLA or other package selected by the Customer as expressly called out in the relevant Service Order Form, during Business Hours; and
- 2.2.2.4. Provide up to the agreed maximum amount of disk storage space for the Site and, further, up to the maximum amount of content delivery network capacity (where applicable), and access up to the maximum number of Visitors, as expressly set out in the relevant Service Order Form.

3. Customer responsibilities

- 3.1. The Customer shall be responsible for the accuracy, timeliness and completeness of the Customer Materials. The Host shall have no liability in relation to the accuracy, timeliness or completeness of the Customer Materials.
- 3.2. The Customer shall comply with the terms of any reasonable Acceptable Use Policy which applies to the Services as notified to it by the Supplier from time to time.
- 3.3. The Customer shall ensure that the Customer Systems, and all network connections and telecommunications links from the Customer Systems to the Host's systems and/or data centres and any other applicable hardware complies with the relevant specifications provided by the Host from time to time or if no specification is provided then such items must comply with and shall be assumed to match applicable industry norms or original manufacturer specifications; and
- 3.4. The Host shall not be liable for any delays in implementing the Project Plan resulting from the Customer's failure to fulfil any of its obligations set out in the Project Plan. The Host reserves the right to invoice the Customer for any additional expenses reasonably incurred by the Host as a result of such delays at its then current day rates.
- 3.5. The Customer shall pay the Fees to the Host, in accordance with the terms of this agreement and the Service Order Form. The Customer shall in addition pay any additional Fees that may become due in the event that the Customer's use of the Services exceeds any relevant limitation or cap on use set out in clause 2 above, in accordance with the Host's then current applicable overage Fees and rates then in force at the time.
- 3.6. The Customer shall not make any attempt to, nor shall it permit or request that any third party, gain unauthorised access to any aspect of the Services (including penetration testing) without the prior and express written consent of the Host in each such instance.
- 3.7. The Customer shall be responsible for any domain registration or other third party license terms (for example, Wordpress' terms as set out at <https://wordpress.com/tos/>) and renewals (including but not limited to SSL and other certificates), which shall be managed at all times by the Customer unless otherwise expressly agreed to the contrary in any applicable SoW. For the avoidance of doubt, the Host is not obliged to provide reminders or similar notifications to the Customer as to any renewal or other dates, or actions, relating to domain registrations and the Customer acknowledges that the registration and use of domains names is subject to the terms and conditions of the relevant naming authority (such as ICANN) in

relation to which the Customer assumes full responsibility.

4. Acceptance

- 4.1. The Acceptance Tests shall test compliance of the Site with the Site Specification. The form and detail of the Acceptance Tests are set out in Service Order Form where relevant. Acceptance of the Site for the purpose of hosting is without prejudice to any acceptance testing falling under development contracts, and shall be objectively assessed by the Host according to agreed criteria.
- 4.2. Unless otherwise agreed in the Service Order Form, the Host shall run the Acceptance Tests prior to Go-Live and Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The Host shall notify the Customer when the Acceptance Tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.
- 4.3. If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, a Third Party, or by one of the Customer's sub-contractors or agents for whom the Host has no responsibility (Non-Host Defect), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Host Defect. The Host shall provide assistance reasonably requested by the Customer in remedying any Non-Host Defects by supplying additional services or products. If so requested, the Customer shall pay the Host in full for all such additional services and products at the Host's then current fees and prices. If the Non-Host Defect arises solely as a result of an act or omission of a Third Party then the Host's liability and the Customer's sole and exclusive remedy shall be for the Host to use its reasonable commercial endeavours to pursue any remedy that the Host may have against that Third Party and shall pass on the benefit of any remedy provided by that Third Party, as provided to the Host, to the Customer.
- 4.4. Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
 - 4.4.1. the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes or makes any part of the Site publicly accessible via the world web other than expressly agreed by the parties as part of an Acceptance Test; or
 - 4.4.2. the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Host is ready to commence running such Acceptance Tests or retests.
 - 4.4.3. Notwithstanding any other term of this Agreement or any Service Order Form the Host shall not be liable to the Customer (and gives no warranty whatsoever) for any use of Third Party Services made available through the Services, such as beta releases and other evaluation licences for third party software which the Customer may have the option of downloading or activating during the Term.

5. Project management

- 5.1. Each party shall appoint a project manager who shall:
 - 5.1.1. provide professional and prompt liaison with the other party; and
 - 5.1.2. have the necessary expertise and authority to commit the relevant party.
- 5.2. Unless otherwise agreed to the contrary in a Service Order Form the project managers shall meet no more than once per year to discuss the Services..

6. Fees and payment

- 6.1. The Host shall issue a VAT invoice in respect of the Fees, and the Customer shall pay to the Host the Fees set out in the Host's invoice within 30 days of the date of

the Host's invoice

6.2. All Fees are exclusive of VAT.

6.3. If the Customer fails to make any payment due to the Host under this agreement by the due date for payment, then, without limiting the Host's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time but at 4% a year for any period when that base rate is below 0%.

7. Warranties

7.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.

7.2. The Host shall perform the Services with reasonable care and skill using personnel with appropriate skills, experience and qualifications for their role.

7.3. The Host warrants that:

7.3.1. the Site will perform substantially in accordance with the Site Specification at the time of go-live. If the Site does not so perform, the Host shall, for no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specification; and

7.3.2. thereafter the Site shall be available in accordance with the period of time (calculated on a monthly basis unless otherwise agreed) set out in the Service Level Agreement attached or referred to within the Service Order Form;

7.4. The warranties set out in clause 7.3 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by the Site Software or any Customer Materials or any other action or omission by the Customer or any Third Party not under the control of (or approved by) the Host. The Customer accepts and agrees that its sole and exclusive remedies in relation to any breach of the warranties set out in this agreement shall be those remedies set out or expressly incorporated within clause 7.3 above and, in particular, that the Customer's sole and exclusive remedy for any period of Unavailability shall be the agreed Service Credits calculated to apply to such periods.

7.5. This agreement sets out the full extent of the Host's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

7.6. Other than as expressly and clearly set out within an agreed Service Order Form, the Host:

7.6.1. does not warrant that:

7.6.1.1. the Customer's use of the Services or the Site will be uninterrupted or error-free; or

7.6.1.2. the Services or the Site will be free from Vulnerabilities

7.6.1.3. the Services or the Site will comply with any Heightened Cybersecurity Requirements.

8. Limitation of remedies and liability

8.1. Nothing in this agreement shall operate to exclude or limit the Host's liability for:

8.1.1. death or personal injury caused by its negligence; or

8.1.2. any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

8.1.3. fraud; or

8.1.4. any other liability which cannot be excluded or limited under applicable law.

8.2. Neither party shall be liable under or in connection with this Agreement or any collateral contract for any:

- 8.2.1. loss of revenue;
- 8.2.2. loss of actual or anticipated profits;
- 8.2.3. loss of contracts;
- 8.2.4. loss of the use of money;
- 8.2.5. loss of anticipated savings;
- 8.2.6. loss of business;
- 8.2.7. loss of opportunity;
- 8.2.8. loss of goodwill;
- 8.2.9. loss of reputation;
- 8.2.10. loss of, damage to or corruption of data (excluding any security failure which is solely caused by the Host or any Third Party instructed by the Host or any combination thereof); or
- 8.2.11. any indirect or consequential loss, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 8.3. Subject to clause 8.1, the Host's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the total Fees payable by the Customer to the Host under this agreement in that calendar year.
- 8.4. The Customer must notify the Host of any potential action, claim or liability alleged against the Host within a period of two (2) calendar years of the facts giving rise to the claim (Limitation Period). The Customer acknowledges that the Host shall not be liable for any claim brought by the Customer outside of the Limitation Period. The Limitation Period is required for the Host to pass through obligations imposed on it by Third Party terms. The Parties agree that the limitations of liability and the Limitation Period are commercially reasonable given the nature and extent of the Services and the Parties' respective warranties and benefits contained herein which form an essential element of the bargain between them.
- 8.5. The Host disclaims all representations, warranties, conditions, and liability arising from:
 - 8.5.1. acts or omissions of Customer and/or Third Parties;
 - 8.5.2. Open Source Software, Third Party Services, and Third Party Software (except that Host warrants its right to use or provide these items, as applicable);
 - 8.5.3. Software, or Customer Materials, provided by Customer
 - 8.5.4. any actions taken by Host which are requested by Customer, and not based on the advice or recommendation of Host; and
 - 8.5.5. services provided at Customer's request, but not required by the agreement.
- 8.6. The maximum Service Credit for failures to meet an applicable SLA will be limited to
 - 8.6.1. the greater amount, when more than one SLA applies to the same occurrence; or
 - 8.6.2. for any calendar month, 100% of the then current monthly recurring Fee for the Services. Customer is not eligible to request a credit if Customer is in breach of the terms of this agreement or a Service Order Form at the time of the occurrence of the event giving rise to the Service Credit, until such time as Customer has remedied the breach. No Service Credit shall be due if the Service Credit would not have accrued but for Customer's act or omission.

9. Intellectual property rights

- 9.1. The Customer and its licensors retain all Intellectual Property Rights in the Site

Software and Customer Materials and grants the Host a licence to such Intellectual Property Rights to the extent required by the Host to perform its obligations under this agreement.

- 9.2. All Intellectual Property Rights in any works arising in connection with the performance of the Services by the Host (Works) shall be the property of the Host, and the Host hereby grants to the Customer a non-exclusive licence to such Intellectual Property Rights to the extent required by the Customer to receive the benefit of, or perform its obligations under, this agreement.
- 9.3. The Customer shall indemnify the Host against all damages, losses and expenses arising as a result of any breach of the Acceptable Use Policy (including that of any Third Party) or any action or claim that the Site Software or the Customer Materials infringe any Intellectual Property Rights of a third party.
- 9.4. The Host shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Customer's receipt and use of the Services in accordance with this agreement infringe the Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 9.3.
- 9.5. The indemnities in clause 9.3, clause 9.4, and clause 10.3 are subject to the following conditions:
 - 9.5.1. the indemnified party promptly notifies the indemnifier in writing of the action or claim;
 - 9.5.2. the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
 - 9.5.3. the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require;
 - 9.5.4. the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 9.6. The indemnities in clause 9.3, clause 9.4, and clause 10.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.
- 9.7. At its own expense, the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to clause 9.2.
- 9.8. Where the Host is unable to procure the necessary rights for the Customer to use the Services the Host may upon 90 days notice to the Customer, after using all reasonable endeavours to attempt to procure such rights, terminate the relevant part of the Services which are infringing third party rights and the Host shall make no further charge, and shall refund to the Customer any pre-paid unearned amounts, relating to such withdrawn Services. The Host shall have no further liability to the Customer for such withdrawn Services except as expressly set out in this clause 9.8.

10. Site content

- 10.1. The Customer shall be responsible for all content hosted on the Site. The Customer shall ensure that the Customer Materials do not infringe any applicable laws, the Acceptable Use Policy, regulations or third party rights (such as but not limited to material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).
- 10.2. The Host shall include only the Customer Materials on the Site which the Customer has explicitly directed the Host to upload, or that the Customer has uploaded themselves. The Customer acknowledges that the Host has no control over any

content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Host reserves the right to remove content from, or suspend access to relevant parts of, the Site where it reasonably suspects such content is Inappropriate Content. The Host shall notify the Customer if it becomes aware of any allegation that content on the Site may be Inappropriate Content.

- 10.3. The Customer shall indemnify the Host against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials or any other material posted to, or linked to, the Site constitutes Inappropriate Content or otherwise breaches any applicable Acceptable Use Policy in effect from time to time.
- 10.4. The Host may include the statement "Lovingly crafted by Mixd" in the footer of the Site in a form to be agreed.

11. Data protection

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2. The parties agree that the terms and conditions of the Data Processing Agreement (DPA) shall apply to any processing of personal data required under this HSA and all Order Forms made under it.
- 11.3. The Customer's processing instructions to the Host are attached to the DPA and may be further specified in this HAS or any Order Form where further or more detailed instructions are required.

12. Term and termination

- 12.1. This HSA shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with this clause 12, until the first anniversary of the Effective Date, when it shall automatically renew without notice unless, no later than ninety (90) calendar days before the end of the then current Term, either of the parties give notice to the other in writing of their intention to terminate the agreement at the end of the then current Term. Unless it is terminated earlier in accordance with this clause 12, the agreement shall renew automatically for further consecutive Terms equal to one (1) year up to a maximum Term of five (5) years. Each Service Order Form shall continue under its own term for the duration of any fixed Initial Term set out in that Service Order Form and, unless otherwise expressly set out in that Service Order Form, shall automatically renew for additional terms equal to the Initial Term but in any event no more than five (5) years in total from the Effective Date of that Service Order Form at which time that Service Order Form shall automatically expire unless expressly renewed by at least 30 days written notice from the Customer to the Host.
- 12.2. Without affecting any other right or remedy available to it, either party may terminate this agreement, or any applicable Service Order Form, with immediate effect by giving written notice to the other party if:
 - 12.2.1. the other party fails to pay any amount due under this agreement (including any Service Order Form) on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;
 - 12.2.2. the other party commits a material breach of any other term of this agreement (including any Service Order Form) and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
 - 12.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the

- meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.2.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.2.5. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 12.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 12.2.8. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 12.2.9. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 12.2.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 12.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(c) to clause 12.2(j) (inclusive); or
 - 12.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 12.2.13. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 12.3. On termination of this agreement by the Host pursuant to clause 12.2, all licences granted by the Host under this agreement shall terminate immediately.
 - 12.4. On expiry or termination of this agreement otherwise than on termination by the Host under clause 12.2 the Host shall:
 - 12.4.1. promptly return to the Customer the Site Software and all Customer Materials and shall provide to the Customer an electronic copy of the Site (including all content on the Site).
 - 12.4.2. provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Site to the Customer or another service provider, subject to payment of the Host's expenses reasonably incurred.
 - 12.5. On expiry or termination of this agreement (including any applicable Service Order Form), all provisions of this agreement shall cease to have effect, except that any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement (including any Service Order Form) shall remain in full force and effect.
 - 12.6. The Customer may terminate this agreement or any Service Order Form for its

convenience at any time without any further liability to the Host, upon no less than thirty (30) calendar days notice to the Host, subject to the Customer's payment in full of all Fees that would have applied, for the remainder of the Initial Term of any Service Order Form in relation to which such notice of termination takes effect, relating to the Services that would have been provided but for the Customer's termination for convenience until expiry of any fixed term under a Service Order Form whether or not expressed as an Initial Term.

- 12.7. The Host may terminate this agreement or any Service Order Form for its convenience at any time without any further liability to the Customer, upon no less than ninety (90) calendar days notice to the Customer.

13. Change control

- 13.1. Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure set out in Schedule 1.

14. Force majeure

- 14.1. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

15. Confidentiality

- 15.1. Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of businesses to which the other party belongs, except as permitted by clause 15.2.
- 15.2. Each party may disclose the other party's confidential information:
- 15.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- 15.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

16. Notices

- 16.1. Any notice given to a party under or in connection with this agreement contract shall be in writing and shall be:
- 16.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 16.1.2. sent by email to the address specified in the Service Order Form
- 16.2. Any notice shall be deemed to have been received:
- 16.2.1. if delivered by hand, at the time the notice is left at the proper address;

- 16.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- 16.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.4. A notice given under this agreement is not valid if sent by fax.

17. Announcements

- 17.1. No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, 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 any relevant securities exchange), any court or other authority of competent jurisdiction.

18. Assignment

- 18.1. Except where expressly permitted and agreed in writing, neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

19. Entire agreement

- 19.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

20. Third party rights

- 20.1. Unless it expressly states otherwise, this agreement does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 20.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

21. Variation

- 21.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Waiver

- 22.1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy
- 22.2. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy,

nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23. Rights and remedies

- 23.1. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. Severance

- 24.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 24.2. If any provision or part-provision of this agreement is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. No partnership or agency

- 25.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 25.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. Governing law

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

27. Jurisdiction

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

28. Binding Arbitration

- 28.1. Notwithstanding the foregoing provisions of clauses 26 and 27 above, the Customer agrees that where the subject of any claim relates to a Third Party (including where service liability for Services provided by the Host to the Customer which are the subject of a claim by the Customer actually arise out of services provided by a Third Party to the Host) and where the Host is contractually obliged to attend binding Arbitration by the terms of that Third Party agreement, the Customer agrees to comply with such alternative dispute resolution mechanism which, unless otherwise agreed, shall be conducted in England and Wales.

Part C: Data Processing Agreement

Agreed terms

1. Definitions and interpretations

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

- 1.1. **Authorised Persons:** unless otherwise agreed in writing, the persons or categories of persons that the Customer authorises to give the Supplier instructions generally as identified as the lead point of contact with an applicable Service Order Form made under the MSA.
- 1.2. **Business Purposes:** the services described in the MSA or any other purpose specifically identified in Annex A.
- 1.3. **Data Subject:** an individual who is the subject of Personal Data.
- 1.4. **Personal Data:** means any information relating to an identified or identifiable natural person that is processed by the Supplier as a result of, or in connection with, the provision of the services under the MSA; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.5. **Processing, processes, process:** either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.
- 1.6. **Controller and Processor:** as defined in the Data Protection Legislation.
- 1.7. **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- 1.8. **UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) 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, as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) and the Data Protection Act 2018.
- 1.9. **Personal Data Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
- 1.10. **Processor:** a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller.
- 1.11. **Standard Contractual Clauses (SCCs):** the ICO's International Data Transfer Agreement for the transfer of personal data from the UK and/or the ICO's

International Data Transfer Addendum to EU Commission Standard Contractual Clauses and/or the European Commission's Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as set out in the Annex to Commission Implementing Decision (EU) 2021/914 and/or the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU as adapted for the UK, a completed copy of which comprises ANNEX E, or such alternative clauses as may be approved by the European Commission or by the UK from time to time.

- 1.12. This DPA is made subject to the terms of the MSA and is incorporated into the MSA as though set out in full therein. Interpretations and defined terms set forth in the MSA apply to the interpretation of this DPA unless otherwise specified.
- 1.13. The Annexes form part of this DPA and will have effect as if set out in full in the body of this DPA and the applicable MSA. Any reference to this DPA includes the Annexes.
- 1.14. A reference to writing or written includes email but not faxes.
- 1.15. In the case of conflict or ambiguity between:
- 1.16. any provision contained in the body of this DPA and any provision contained in ANNEX C, the provision in the body of ANNEX C will prevail;
- 1.17. any provision contained in the body of this DPA and any provision contained in the Annexes, other than ANNEX C, the provision in the body of this DPA will prevail;
- 1.18. the terms of any accompanying invoice or other documents annexed to this DPA and any provision contained in the Annexes, the provision contained in the Annexes will prevail; and
- 1.19. any of the provisions of this DPA and the provisions of the MSA, the provisions of this DPA will prevail.

2. Personal data types and processing purposes

- 2.1. The Customer and the Supplier acknowledge that for the purpose of the Data Protection Legislation, and this DPA, the Customer will generally be the Controller and the Supplier shall be a Processor. This clause is without prejudice to any Controller obligations of the Supplier that may arise as a matter of law, for example, in processing Customer staff contact information for its own marketing/contract management purposes according to its privacy policy generally, though this DPA primarily relates to the processing carried out as part of the Supplier's service provision to the Customer under the applicable MSA.
- 2.2. The Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to the Supplier.
- 2.3. [Annex A](#) describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types in respect of which the Supplier may process to fulfil the Business Purposes of the MSA.

3. Supplier's obligations

- 3.1. The Supplier will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions from Authorised Persons. The Supplier will not process the Personal Data for any other purpose or in a way that does not comply

with this DPA or the Data Protection Legislation. The Supplier must promptly notify the Customer if, in its opinion, the Customer's instruction would not comply with the Data Protection Legislation.

- 3.2. The Supplier must promptly comply with any Customer request or instruction from Authorised Persons requiring the Supplier to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3. The Supplier may refuse to comply with any instruction it receives if it reasonably believes or becomes aware that such instruction may result in a breach or reasonable risk of breaching the Data Protection Legislation. Where the Supplier refuses such instructions it shall notify the Customer promptly in writing with reasonable detail of the basis for its rejection.
- 3.4. The Supplier will maintain the confidentiality of all Personal Data and will not disclose Personal Data to third parties unless the Customer or this DPA specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires the Supplier to process or disclose Personal Data, the Supplier must first inform the Customer of the legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- 3.5. The Supplier will reasonably assist the Customer with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of the Supplier's processing and the information available to the Supplier, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.
- 3.6. The Supplier must promptly notify the Customer of any changes to Data Protection Legislation that may reasonably be interpreted as adversely affecting the Supplier's performance of the MSA.

4. Supplier's employees

- 4.1. The Supplier will ensure that all employees:
 - 4.1.1. are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
 - 4.1.2. have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
 - 4.1.3. are aware both of the Supplier's duties and their personal duties and obligations under the Data Protection Legislation and this DPA.
- 4.2. The Supplier will take reasonable steps to ensure the reliability, integrity and trustworthiness of and conduct background checks consistent with applicable law on all of the Supplier's employees with access to the Personal Data.

5. Security

- 5.1. The Supplier must at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in [Annex C](#). The Supplier shall document those measures in writing and periodically review them to ensure they remain current and complete, at least annually.
- 5.2. The Supplier must implement such measures to ensure a level of security

appropriate to the risk involved, including as appropriate:

- 5.2.1. the pseudonymisation and encryption of personal data;
- 5.2.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 5.2.3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- 5.2.4. a process for regularly testing, assessing and evaluating the effectiveness of security measures.

6. Personal data breach

- 6.1. The Supplier shall promptly and without undue delay notify the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable as a result of the Supplier's act or omission. The Supplier will restore such Personal Data at its own expense in accordance with its back-up policy where applicable.
- 6.2. The Supplier shall within 48 hours, and without undue delay notify the Customer if it becomes aware of:
 - 6.2.1. any accidental, unauthorised or unlawful processing of the Personal Data; or
 - 6.2.2. any Personal Data Breach.
- 6.3. Where the Supplier becomes aware of clause 6.2.1 and/or clause 6.2.2 above, it shall, without undue delay, also provide the Customer with the following information:
 - 6.3.1. description of the nature of clause 6.2.1 and/or clause 6.2.2, including the categories of in-scope Personal Data and approximate number of both Data Subjects and Personal Data records concerned;
 - 6.3.2. the likely consequences; and
 - 6.3.3. description of the measures taken or proposed to be taken to address clause 6.2.1 and/or clause 6.2.2, including measures to mitigate its possible adverse effects.
- 6.4. Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will coordinate with each other to investigate the matter. The Supplier shall, where within its control, reasonably cooperate with the Customer in the Customer's handling of the matter, including:
 - 6.4.1. assisting with any investigation;
 - 6.4.2. providing the Customer with physical access to any facilities and operations affected;
 - 6.4.3. facilitating interviews with the Supplier's employees, former employees and others involved in the matter;
 - 6.4.4. making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer; and
 - 6.4.5. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.
- 6.5. The Supplier will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's prior written consent, except when required to do so by law.
- 6.6. The Supplier agrees that the Customer has the sole right to determine:
 - 6.6.1. whether to provide notice of the Personal Data Breach to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
 - 6.6.2. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

- 6.7. The Supplier will cover all reasonable expenses associated with the performance of the obligations under Clause 6.2 and Clause 6.4 unless the matter arose from the Customer's specific instructions, negligence, wilful default or breach of this DPA, in which case the Customer will cover all reasonable expenses.
- 6.8. The Supplier will also reimburse the Customer for actual reasonable expenses that the Customer incurs when responding to a Personal Data Breach to the extent that the Supplier caused such a Personal Data Breach, including all costs of notice and any remedy as set out in Clause 6.6.

7. Cross-border transfers of personal data

- 7.1. The Supplier (or any subcontractor) must not transfer or otherwise process Personal Data outside the United Kingdom or the European Economic Area without obtaining the Customer's prior written consent (which is deemed to be given in relation to any Sub-Processors located in third countries as expressly set out in the Sub-Processors policy).
- 7.2. Where such consent is granted, the Supplier may only process, or permit the processing, of the Personal Data outside the EEA under the following conditions:
 - 7.2.1. The Supplier is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. The Supplier must identify in ANNEX A the territory that is subject to such adequacy regulations; or
 - 7.2.2. The Supplier participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Supplier (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR. The Supplier must identify in ANNEX A the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and the Supplier must immediately inform the Customer of any change to that status; or
 - 7.2.3. the transfer otherwise complies with the Data Protection Legislation for the reasons set out in ANNEX A.
- 7.3. If any Personal Data transfer between the Customer and the Supplier requires execution of SCCs in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to the Supplier outside the EEA), the parties will complete all relevant details in, and execute, the SCCs contained in ANNEX E, and take all other actions required to legitimise the transfer.
- 7.4. If the Customer consents to appointment by the Supplier of a subcontractor located outside the EEA in compliance with the provisions of clause 8, then the Customer authorises the Supplier to enter into SCCs contained in ANNEX E with the subcontractor. The Supplier will make the executed SCCs available to the Customer on request.

8. Subcontractors

- 8.1. The Supplier may only authorise a third party (subcontractor) to process the Personal Data if:
 - 8.1.1. the Customer is provided with an opportunity to object to the appointment of each subcontractor within 30 days after the Supplier supplies the Customer with full details regarding such subcontractor;
 - 8.1.2. the Supplier enters into a written contract with the subcontractor that contains terms substantially the same, or offering at least the same protection, as those set out in this DPA, in particular, in relation to requiring appropriate technical and

- organisational data security measures, and, upon the Customer's written request, shall provide the Customer with copies of such contracts;
- 8.1.3. the Supplier maintains control over all Personal Data it entrusts to the subcontractor; and
 - 8.1.4. the subcontractor's contract terminates automatically on termination of this DPA for any reason.
 - 8.2. Those subcontractors approved as at the commencement of this DPA are as set out in Annex A. The Supplier must list all approved subcontractors in Annex A and include any subcontractor's name and location and contact information for the person responsible for privacy and data protection compliance.
 - 8.3. Where the subcontractor fails to fulfil its obligations under such written agreement, the Supplier remains fully liable to the Customer for the subcontractor's performance of its agreement obligations.
 - 8.4. The Parties consider the Supplier to control any Personal Data controlled by or in the possession of its subcontractors.
 - 8.5. On the Customer's written request, the Supplier will audit a subcontractor's compliance with its obligations regarding the Customer's Personal Data and provide the Customer with the audit results. Where the Customer concludes reasonably that the subcontractor is in material default of its obligations regarding the Personal Data, the Customer may in writing instruct the Supplier to instruct the subcontractor to remedy such deficiencies within 30 days.

9. Complaints, data subject requests and third-party rights

- 9.1. The Supplier must, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:
 - 9.1.1. the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
 - 9.1.2. information or assessment notices served on the Customer by any supervisory authority under the Data Protection Legislation.
- 9.2. The Supplier must notify the Customer immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 9.3. The Supplier must notify the Customer within five (5) working days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.
- 9.4. The Supplier will give the Customer its full co-operation and reasonable assistance in responding to any complaint, notice, communication or Data Subject request.
- 9.5. The Supplier must not disclose the Personal Data to any Data Subject or to a third party other than at the Customer's written instruction, as provided for in this DPA or as required by domestic law.

10. Term and termination

- 10.1. This DPA will remain in full force and effect so long as:
 - 10.1.1. the MSA remains in effect; or
 - 10.1.2. the Supplier retains any Personal Data related to the MSA in its possession or control (Term).

- 10.2. Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of the MSA in order to protect Personal Data will remain in full force and effect.
- 10.3. The Supplier's failure to comply with the terms of this DPA is a material breach of the MSA. In such an event, the Customer may terminate any part of the MSA authorising the processing of Personal Data effective immediately on written notice to the Supplier without further liability or obligation.
- 10.4. If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its MSA obligations, the parties will suspend the processing of Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation within 60 days, they may terminate the MSA on not less than 30 days written notice to the other party.

11. Data return and destruction

- 11.1. At the Customer's request, the Supplier will give the Customer, or a third party nominated in writing by the Customer, a copy of or access to all or part of the Customer's Personal Data in its possession or control in the format and on the media it is stored in, a common file format or the format it was provided in by the Customer. If the Customer requires reformatting of any data, if the Supplier confirms it is able to convert the data into such format, the Supplier may charge the Customer its reasonable costs of such re-formatting. For the avoidance of any doubt, there shall be no additional charge for the provision by return of Personal Data in the format it is stored in by the Supplier.
- 11.2. On termination of the MSA for any reason or expiry of its term, the Supplier will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any Personal Data related to this DPA in its possession or control, except for one copy that it may retain and use for audit purposes only as set out in Clause 11.3 below.
- 11.3. If any law, regulation, or government or regulatory body requires the Supplier or its subcontractors to retain any documents or materials that the Supplier would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends. For the avoidance of doubt the provisions of this DPA shall continue to apply to any such retained data for the duration it is retained, notwithstanding termination of the MSA or this DPA.
- 11.4. The Supplier will certify in writing that it has destroyed the Personal Data within 30 days after it completes the destruction.
- 11.5. The Supplier's subcontractors may retain Personal Data where strictly required by law and to the extent it relates to the provision of their services, for the handling and management of claims, insurance and accounting purposes and for no other purpose except as set out herein.

12. Records

- 12.1. The Supplier will keep detailed, accurate and up-to-date written records regarding any processing of Personal Data it carries out for the Customer, including but not limited to, the access, control and security of the Personal Data, approved subcontractors and affiliates, the processing purposes, categories of processing, any approved transfers of personal data to a third country and related safeguards, and a

general description of the technical and organisational security measures referred to in Clause 12.1 (Records).

12.2. The Supplier will ensure that the Records are sufficient to enable the Customer to verify the Supplier's compliance with its obligations under this DPA and the Supplier will provide the Customer with copies of the Records upon request.

12.3. The Customer and the Supplier may jointly review the information listed in the Annexes to this DPA once a year to confirm its current accuracy and update it when required to reflect current practices.

13. Audit

13.1. The Supplier will permit the Customer and its third-party representatives to audit the Supplier's compliance with its DPA obligations, on at least 30 days' notice, during the Term. The Supplier will give the Customer and its third-party representatives all necessary and reasonable assistance to conduct such audits. The assistance may include, but is not limited to:

13.1.1. physical access to, remote electronic access to, and copies of the Records and any other information held at the Supplier's premises or on systems storing Personal Data under its control;

13.1.2. access to and meetings with any of the Supplier's personnel reasonably necessary to provide all explanations and perform the audit effectively; and

13.1.3. inspection of all Records and the relevant infrastructure, electronic data or systems, facilities, equipment or application software used to store, process or transport Personal Data.

13.2. The notice requirements in Clause 13.1 will not apply if the Customer reasonably believes that a Personal Data Breach occurred or is occurring, or the Supplier is in breach of any of its obligations under this DPA or any Data Protection Legislation.

13.3. If a Personal Data Breach occurs or is occurring, or the Supplier becomes aware of a breach of any of its obligations under this DPA or any Data Protection Legislation, the Supplier will:

13.3.1. promptly conduct its own audit to determine the cause;

13.3.2. produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;

13.3.3. provide the Customer with a copy of the written audit report; and

13.3.4. remedy any deficiencies identified by the audit within 30 days.

13.4. At the Customer's written request, the Supplier will:

13.4.1. confirm it has carried out an information security audit within the last 12 months before it first begins processing any Personal Data and shall repeat that audit on an annual basis;

13.4.2. produce a written report that includes detailed plans to remedy any security deficiencies identified by the audit;

13.4.3. provide the Customer with a copy of the written audit report; and

13.4.4. remedy any deficiencies identified by the audit within 30 days.

14. Warranties

14.1. The Supplier warrants and represents that:

14.1.1. its employees, subcontractors, agents and any other person or persons accessing Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation relating to the Personal Data;

14.1.2. it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders,

- standards and other similar instruments;
- 14.1.3. it has no reason to believe that the Data Protection Legislation prevents it from providing any of the MSA's contracted services; and
 - 14.1.4. considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure a level of security appropriate to:
 - 14.1.4.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
 - 14.1.4.2. the nature of the Personal Data protected; and
 - 14.1.4.3. comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in Clause 5.1.
 - 14.2. The Customer warrants and represents that:
 - 14.2.1. the Supplier's expected use of the Personal Data for the Business Purposes and as specifically instructed by the Customer will comply with the Data Protection Legislation;
 - 14.2.2. that the Customer has acquired and shall maintain the requisite legal permissions and licenses for such purposes; and
 - 14.2.3. the Customer's usage and anticipated categories of data accords with the processing instructions and associated descriptions are adequately set out in ANNEX A.

15. Indemnification

- 15.1. The Supplier agrees to indemnify, keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this DPA or the Data Protection Legislation.
- 15.2. The limitations of liability expressed in the MSA shall apply to this DPA as though set out in full herein.

16. Notice

- 16.1. Any notice given to a party under or in connection with this DPA must be in writing and delivered to the data privacy contacts set out in the applicable Service Order Form entered into under the MSA, or to the Authorised Persons notified by the Customer to the Supplier in writing where applicable.
- 16.2. Clause 16.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.3. A notice given under this DPA is valid if sent by email, and invalid if sent by fax.
- 16.4. This DPA has been entered into on the date of last signature to the MSA incorporating this DPA, or the commencement of any Services by the Supplier, whichever occurs earlier.

Schedule 1: Change control procedure

1. The Host and the Customer shall discuss any change to this agreement (Change) proposed by the other and such discussion shall result in either:
 - 1.1. a written request for a Change by the Customer, including but not limited to Support Tickets; or
 - 1.2. a written recommendation for a Change by the Host,
or, if neither of the Customer nor the Host wishes to submit a request or recommendation, the proposal for the Change will not proceed.
 - 1.3. Where a written request for a Change is received from the Customer, the Host shall, unless otherwise agreed (for example, as part of a new SOF), submit a Change control note (CCN) to the Customer within the period agreed between them or, if no such period is agreed, within five Business Days from the date of receipt of such request for a Change [, or inform the Customer that the Host is not able to comply with such written request for a Change].
 - 1.4. A written recommendation for a Change by the Host shall be submitted as a CCN direct to the Customer at the time of such recommendation.
 - 1.5. Each CCN shall contain:
 - 1.5.1. the title of the Change;
 - 1.5.2. the originator and the date of the request or recommendation for the Change;
 - 1.5.3. the reason for the Change;
 - 1.5.4. the full details of the Change, including any specifications and user facilities;
 - 1.5.5. the price, if any, of or associated with the Change;
 - 1.5.6. a timetable for implementation, together with any proposals for acceptance of the Change;
 - 1.5.7. the date of expiry of validity of the CCN (which shall not be less than 10 working days); and
 - 1.6. For each CCN submitted, the Customer shall, within the period of validity of the CCN as set out in paragraph 1.4(g) of this Schedule 1:
 - 1.6.1. allocate a sequential number to the CCN;
 - 1.6.2. evaluate the CCN, and as appropriate either:
 - 1.6.2.1. request further information; or
 - 1.6.2.2. approve the CCN; or
 - 1.6.2.3. notify the Host of the rejection of the CCN; and
 - 1.6.3. if approved, arrange for two copies of the approved CCN to be signed for or on behalf of the Customer and the Host. The signing of the CCN shall signify acceptance of a Change by both the Customer and the Host.
 - 1.7. Once signed by the Customer and the Host in accordance with paragraph 1.5 of this Schedule 1, the Change shall be immediately effective and the Customer and the Host shall perform their respective obligations on the basis of the agreed amendment.

Schedule 2: Processing, personal data and data subjects

Personal Data processing purposes and details

Subject matter of processing

Service related data and other data that may be accessed either as required or peripherally as a result of the nature of processing.

Duration of processing

For the contractual Term set out in the MSA, or for such other period as the Supplier holds or in any way processes the personal data of the Customer (or that provided by the Customer).

Nature of processing

Peripheral processing only, personal data is not the main subject matter of the services and not foreseeably within the scope of anticipated services. In order to provide, deliver and manage the services the customer has procured from the supplier and to support the general objectives associated with the provision of those services, according to the instructions of the Customer from time to time.

Business purposes

For the strict purpose of the provision of professional services to the Customer, as described in writing (or as directed by the Authorised Persons where related to the Services) in this DPA, the MSA or any applicable Service Order Form.

Data subject types and anticipated personal data categories

Categories of data subjects	Categories of data
Prospective customers	When you contact us through our online contact form on our website or through email or any other communication mechanism, you typically provide Personal Data items such as your name, email, the subject matter of your inquiry and any other information you choose to provide at your option.
Customers	Account Data: If you engage with Mixd, you provide contact and/or account information, including Personal Data items such as your name, email, address, company information and financial information such as your bank details. Please note that we do not store your payment information, but the third-party payment processors we engage may retain your payment information in accordance with their own privacy policies and terms. Customer Data: In order for you to use our Services or if you contact us directly, we may receive additional information about you such as your phone number, the contents of the message and/or attachments you may send us, and any other information you may choose to provide. This includes all data (i.e. text, documents, videos, or image files) that is provided to Mixd or which a Customer uploads into or creates in a specific Service (for example, content which is uploaded into a Customer's WordPress website) by, or on behalf of a Customer through the use of our Services. For some Services this may include personally identifiable information.
Customer employees	Customer Employee Data (as determined by Customer): Customers collect personal data in connection with the Services we provide to them. For example, name, email and password for all administrative users (i.e. editors) of the Customers' WordPress website or in relation to authentication (i.e. single-sign-on functionality). With intranets, this may also include other personal information such as job title, employee ID, employee type, given name, position, department and mobile telephone number for the purpose of facilitating employee directories.
Users	User Data (as determined by Customer): Our Customers may collect personal data from users' of our Services. For example, our Services may include a forms module which lets Customers create online forms to collect information from people and organisations accessing a website (i.e. members of the public which may include children). Typically, forms are used to collect personal data items such as the name, email, NHS number, Postcode, DOB, free text, gender, title, IP address, web browser. Where applicable, Customers may use online forms internally (i.e. with Customers' employees) on intranets collecting employee feedback, details of performance, complaints, details of actions taken at work and other internal comments on experience.

Categories of data subjects	Categories of data
	Web Server Logs. As is true of most websites, we gather certain information automatically through your use of our Services. This information may include Internet protocol (IP) addresses, browser type, Internet service provider (ISP), referring or exit pages, the files viewed on the website (e.g., HTML pages, graphics, etc.), operating system, date/time stamp, and clickstream data to analyse trends in the aggregate and administer the Services. We use analytical software to help us understand this information. This software sends information to its licensor. Other sites and companies may also use this software. As a result, the licensor may collect information that, when aggregated by them, allows them to identify you individually. We have no responsibility for this collection and use.

Authorised Persons

As set out in the relevant Service Order Form.

Transfers

In accordance with Annex E where applicable.

Approved Subcontractors

The Sub-processors currently engaged by Mixd and authorised by Customer are listed in Schedule 3.

Schedule 3: Sub-processors

List of Mixd Sub-processors is available upon request.

Schedule 4: Security Measures

Mixd Information Security Policy is available upon request.

Schedule 5: Variation to DPA

This Variation to the Data Processing Agreement overrides the terms of the DPA and should be read alongside it.

1. Notwithstanding any other provision in the Agreement, the Supplier shall initially notify the Customer of any Data Breach (where required to do so under the DPA or MSA) in accordance with and using the Supplier's standard template/process. The Supplier shall provide such follow up information as is required by the Customer and shall use reasonable endeavours to adapt the format of its report to the Customer's requirements where reasonably possible.
2. **Clause 7.1** is amended to restrict any transfer of data outside of the United Kingdom, other than those approved by the Customer as set out in the Sub-Processor policy, unless such transfer is made after the Customer has provided express prior consent.
3. **Clause 8** is amended so that notwithstanding notification by the Supplier to the Customer of its appointment of a sub-processor or sub-contractor, the Supplier shall not be permitted to allow such sub-processing of the Personal Data unless and until it has received the Customer's written approval for the same, provided by an Authorised Person of the Customer.
4. **Clause 9.1** is amended to add the following new sub-paragraph 9.1.3 as follows:

"any legal obligation to which the Customer is subject, which relates to the provision of information regarding data held by the Supplier on the Customer's behalf (whether made pursuant to the Freedom of Information Act 2000 or any similar successor legislation made from time to time) to the strict extent required to comply with those legal obligations. This clause is without prejudice to any exemptions or legal exceptions the Supplier may avail itself of where it is legally permitted to do so in protection of its own commercial interest, relating to its own confidential information and other data which may fall within the scope of such requests by virtue of this agreement, and the Customer shall comply with the reasonable and lawful directions of the Supplier where any exemption applies in relation to a disclosure made pursuant to this clause."

5. **Clause 16** is amended to add the following clauses immediately after clause 16.3:

16.4 *At least once a year, the Supplier will conduct (or procure from its sub-processors where relevant) audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.*

16.5 *On the Customer's written request, the Supplier will make all of the relevant audit reports available to the Customer for review, including where applicable any of the Supplier's latest*

16.6 *reports relating to ISO/IEC 27001 and 9001. The Customer will treat such audit reports as the Supplier's confidential information under this Agreement.*

16.7 *The Supplier will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Supplier's management.*

Schedule 6: ICO International Data Transfer Agreement (IDTA) (UK)

[International Data Transfer Agreement](#)

Explanatory note to reader – this copy of the IDTA is provided as an example of the mechanism to be used if Mixd wishes to transfer personal data from the UK to a third country and does not require Mixd's Customer and Mixd to execute a copy unless Mixd is outside the UK/EEA and the Customer is transferring data to Mixd from inside the UK/EEA.