

ACCORD

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Unlocking Success
Through Digital Solutions

Standard Terms

Terms and Conditions

1. INTERPRETATION

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

1.1. Definitions.

Authorised Service Recipients: any of the Customer's Group Company.

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Customer's Manager: the Customer's manager for the Works appointed under clause 5, and as may set out in a Statement of Work.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Works in any form.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

holding company: has the meaning given in clause 1.6.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Group Company: in relation to a company, any member of its Group.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services including computer programs, data, reports and specifications.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, 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.

Milestones: a date by which a part of the Works is to be completed, as may be set out in a Statement of Work.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Works which existed prior to the commencement of a Statement of Work, including computer programs, data, reports and specifications.

Purpose: the purposes for which the Customer Personal Data is processed, as set out in Clause 10.7 (a)

Services: the ongoing services to be provided by the Supplier under this agreement, as set out in the Statement of Work and the Supplier's obligations under this agreement, together with any other services which the Supplier provides or agrees to provide to the Customer.

Statement of Work: the detailed description of the Works setting out (where appropriate) the Works plan and timetable (including any Milestones) and responsibilities for the provision of the Works, all as contained at section 1.1 at the beginning of this agreement, and as agreed in accordance with clause 3.

Subsidiary: has the meaning given in clause 1.6.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier's Manager: the Supplier's manager for the Works appointed under clause 4.3 and as may be set out in a Statement of Work.

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Works: the Services which are provided under a Statement of Work.

1.2. Clause and paragraph headings shall not affect the interpretation of this agreement.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a

vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11. A reference to writing or written includes email.
- 1.12. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.14. References to clauses are to the clauses of this agreement.
- 1.15. 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.

2. COMMENCEMENT AND DURATION

- 2.1. The Supplier shall provide the Services to the Customer in accordance with this agreement.
- 2.2. The Supplier shall provide the Works from the date specified in the relevant Statement of Work.
- 2.3. This agreement shall continue on an ongoing basis unless it is terminated in accordance with clause 13.

3. NEW STATEMENTS OF WORK

- 3.1. Other than the Statement of Work already contained at section 1.1 of this agreement, each new Statement of Work shall be agreed in the following manner:
 - (a) the Customer shall provide the Supplier with a request for a Statement of Work, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which is to be started and finished, Deliverables, In-put Materials and such other information as the Supplier may request to allow the Supplier to prepare the draft Statement of Work;
 - (b) the Supplier shall, as soon as reasonably practicable, provide the Customer with a draft Statement of Work; and
 - (c) the Supplier and the Customer shall discuss and agree the draft Statement of Work. When it has been agreed, they shall both sign a copy of it.
- 3.2. Once a Statement of Work has been agreed and signed in accordance with clause 3.1(c), no amendment shall be made to it except in accordance with clause 6 and clause 16.
- 3.3. The Statements of Work shall not form separate contracts from this agreement, and shall be part of this agreement.

4. SUPPLIER'S RESPONSIBILITIES

- 4.1. The Supplier shall use reasonable endeavours to manage and complete the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects.
- 4.2. The Supplier shall use reasonable endeavours to meet any Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.3. The Supplier shall appoint the Supplier's Manager in respect of the Works, who shall have authority under this agreement contractually to bind the Supplier on all matters relating to the Works. The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of this agreement, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 4.4. The Supplier shall use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 5.1(d), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

- 4.5. The Supplier shall comply with any additional responsibilities as set out in the relevant Statement of Work.
- 4.6. The Supplier shall not permit, for what-ever reason, any of the Customer's data from being stored, sent to, or accessed from out-with the European Economic Area.

5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall use all reasonable endeavours to:
 - (a) co-operate with the Supplier in all matters relating to the Works and appoint the Customer's Manager who shall have the authority contractually to bind the Customer on matters relating to the Works;
 - (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them;
 - (c) provide, in a timely manner, such In-put Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
 - (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (e) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements.
 - (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Works, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Works are to start;
 - (g) keep, maintain and insure the Supplier's Equipment in good condition and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;
 - (h) comply with any additional responsibilities as set out in the relevant Statement of Work.
- 5.2. If the Supplier's performance of its obligations under this agreement is solely and directly prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 5.3. The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier that arise directly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses in writing to the Customer's satisfaction (acting reasonably).
- 5.4. The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of six months after the completion of any of the Works solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Works.
- 5.5. Any consent given by the Supplier in accordance with clause 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

6. CHANGE CONTROL

- 6.1. If either party wishes to change the scope or execution of the Works, it shall submit details of the requested change to the other party in writing (Change Request).
- 6.2. If the Supplier originates a Change Request, it shall provide, with the Change Request, written details of the impact which the proposed change will have on:
 - (a) the Works;
 - (b) the Supplier's existing charges;
 - (c) the timetable of the Works; and
 - (d) any of the terms of this agreement and any relevant Statement of Work.
- 6.3. The Supplier may, from time to time and without notice, change the Works solely and directly to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Works.
- 6.4. If the Customer originates a Change Request, the Supplier shall, as soon as reasonably practicable after receiving the Change Request, provide a written estimate to the Customer setting out:
 - (a) the likely time required to implement the proposed change;
 - (b) details of the impact which the proposed change will have on:
 - I. the Works;
 - II. the Supplier's existing charges;
 - III. the timetable of the Works; and
 - IV. any of the terms of this agreement and any relevant Statement of Work.

- 6.5. Unless both parties consent to a Change Request, there shall be no change to the Works and any other terms of this agreement and any other relevant Statements of Work.
- 6.6. If both parties consent to a Change Request, it shall be signed by the authorised representatives of both parties, upon which the Change Request becomes a Change Order.
- 6.7. If either party is unwilling to accept a Change Request suggested by the other (or a term of any proposed Change Order), then the other party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26.
- 6.8. The Supplier may charge for the time it spends on dealing with Change Requests originating from the Customer on a time and materials basis in accordance with clause 7.

7. CHARGES AND PAYMENT

- 7.1. In consideration of the provision of the Works by the Supplier, the Customer shall pay the charges as set out in a Statement of Work.
- 7.2. The Statement of Work may specify whether the charges shall be on a time and materials basis, a fixed price basis or a combination of both.
- 7.3. Where the Works are provided on a time and materials basis:
 - (a) the charges payable for the Works shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time in accordance with clause 7.6;
 - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between Business Hours on a Business Day;
 - (c) the Supplier shall be entitled to charge an overtime rate on top of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Works outside the hours referred to in clause 7.3(b);
 - (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate; and
 - (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 7.3 and clause 7.5.
- 7.4. Where the Works are provided for a fixed price:
 - (a) The total price for the Works shall be the amount set out in a Statement of Work as amended from time to time in accordance with clause 7.6.
 - (b) The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in a Statement of Work. At the end of a period specified in a Statement of Work in respect of which an instalment is due, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials (and VAT, where appropriate), calculated as provided in clause 7.5.
- 7.5. Any fixed price and daily rate contained in a Statement of Work excludes:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Works. Such expenses, materials and third party services shall be invoiced by the Supplier at cost, and any third party services shall be detailed in a Statement of Work; and
 - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 7.6. The parties agree that the Supplier may review and increase the charges set out in a Statement of Work, provided that such charges cannot be increased more than once in any 12 month period. The Supplier shall give the Customer written notice of any such increase one month before the proposed date of that increase.
- 7.7. The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 7.8. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date:
 - (a) the Customer shall pay interest on the overdue amount at the rate of 2% per annum above Bank of Scotland'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
 - (b) the Supplier may suspend all Works until payment has been made in full.
- 7.9. All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.9 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 7.10. All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 8.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Works. If this agreement expires or is terminated in accordance with clause 12, this licence will automatically terminate.
- 8.2. The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 8.3. All data and information (the data) pertaining to the Customer, the Customer's clients and others and possessed by the Customer, shall remain the exclusive property of the Customer, along with all intellectual property rights in or pertaining to such data.

9. COMPLIANCE WITH LAWS

- 9.1.1. In performing their respective obligations under this agreement each party shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

10. DATA PROTECTION

- 10.1. For the purposes of this clause 10, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.
- 10.2. Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 10.3. The parties have determined that for the purposes of Applicable Data Protection Laws, the Supplier shall act as controller of the personal data.
- 10.4. Should the determination in clause 10.3 change, the parties shall use all reasonable endeavours make any changes that are necessary to this clause 10.
- 10.5. Without prejudice to clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier for the duration and purposes of this agreement.
- 10.6. Without prejudice to clause 10.2, the Supplier shall, in relation to Customer Personal data:
 - (a) process that Customer Personal Data only on the documented instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (Purpose). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement its technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
 - (g) maintain records to demonstrate its compliance with this clause 10.
- 10.7. The Customer provides its prior, general authorisation for the Supplier to:
 - (a) appoint processors to process the Customer Personal Data, provided that the Supplier:

- I. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 10;
 - II. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - III. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 10.8. Either party may, at any time on not less than 30 days' notice, revise this clause 10 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

11. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 11.1. The Customer undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors or of any member of the group of companies to which the Supplier belongs and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 11.2(a).
- 11.2. The Customer may disclose the Supplier's confidential information:
- (a) to its employees, officers, representatives 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. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information comply with this clause 11; and
 - (b) as may be required by applicable law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3. The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 11.4. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times:
- (a) be and remain as between the Supplier and the Customer the exclusive property of the Supplier;
 - (b) be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier; and
 - (c) not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

12. LIMITATION OF LIABILITY

- 12.1. Nothing in this agreement shall limit or exclude a party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 12.2. Subject to clause 12.1, each party shall not be liable to the other, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information; and
 - (g) any indirect or consequential loss.
- 12.3. Subject to clause 12.1, each party's total liability to the other, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to One Hundred per cent

(100%) of the average annual charges (calculated by reference to the charges in successive 12 month periods from the date of this agreement) paid by the Customer to the Supplier under this agreement.

13. TERMINATION

- 13.1. Minimum term will be agreed as part of the framework.
- 13.2. 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:
 - (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (c) 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;
 - (d) 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;
 - (e) 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) 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;
 - (f) 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);
 - (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) 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;
 - (i) 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;
 - (j) 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 13.2 (c) to clause 13.2(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3. For the purposes of clause 13.2(a) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 13.4. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
 - (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment; or
 - (b) there is a change of Control of the Customer.

14. CONSEQUENCES OF TERMINATION

- 14.1. The termination of this agreement pursuant to clause 13 shall result in the automatic termination of all Statements at Work in place at the time of termination.
- 14.2. On termination or expiry of this agreement:
 - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may, upon giving the Customer 7 days written notice, attend the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

- (c) the following clauses shall continue in force: clause 8 (Intellectual property rights), clause 11 (Confidentiality and the Supplier's property), clause 12 (Limitation of liability), clause 22 (Conflict), clause 27 (Governing law) and clause 28 (Jurisdiction).
 - (d) All data and copies held by the Supplier will remain the exclusive ownership of the Customer together with the Intellectual Property Rights pertaining to such data and under no circumstances will such data be (i) held by, or copied by the Supplier post termination, for whatever cause other than fulfilment of the Supplier's obligations under this clause, or (ii) deleted (whether partially or wholly), by the Supplier unless on written instruction of the Customer. For the avoidance of doubt, all data and copies to enable the Customer to continue its lawful operation as normal post-termination will be returned by the Supplier to the Customer, or its next authorised contractor, in a format that is acceptable to the Customer, (such data format to be a recognised and industry accepted data format) and all relevant access keys / codes and other such information required in order that it is readable as provided for elsewhere in this contract.
 - (e) Without prejudice to clause 14.2 (d) the Supplier shall co-operate fully with the Customer and its nominees in order to ensure an orderly and smooth migration of the Services and all the Customer's data to the Customer or, at the Customer's request, any new service provider nominated by the Customer.
- 14.3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. FORCE MAJEURE

- 15.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident; and
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (i) interruption or failure of utility service.
- 15.2. Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4. The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving one week's written notice to the Affected Party.
- 15.6. If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate this agreement by giving seven days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

16. ASSIGNATION AND OTHER DEALINGS

- 16.1. Subject only to clause 16.1, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

- 16.2. A party may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement with the consent of the other party (not to be unreasonably withheld).

17. VARIATION

- 17.1. Subject to clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

- 18.1. A waiver of any right or remedy under this agreement or by applicable law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 18.2. A failure or delay by a party to exercise any right or remedy provided under this agreement or by applicable law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3. A party that waives a right or remedy provided under this agreement or by applicable law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

19. RIGHTS AND REMEDIES

- 19.1. The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by applicable law.

20. SEVERANCE

- 20.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 20.2. If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

- 21.1. 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.
- 21.2. 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.

22. CONFLICT

- 22.1. If there is an inconsistency between any of the provisions of this agreement and the provisions of any other communication between the parties, the provisions of this agreement shall prevail.

23. NO PARTNERSHIP OR AGENCY

- 23.1. 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.
- 23.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. THIRD PARTY RIGHTS

- 24.1. No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms and the parties agree that the Contract (Third Party Rights) Scotland Act 2017 shall not apply to this agreement.

25. NOTICES

- 25.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
 - 25.1.1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 25.1.2. sent by email to the address specified in the relevant Statement of Work.
- 25.2. Any notice or communication shall be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.
 - (c) if sent by email, at 9.00am on the next Business Day after transmission.
- 25.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 26.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
 - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Customer and the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the Customer and the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the Customer and the directors of the Supplier who shall attempt in good faith to resolve it; and
 - (c) if the directors of the Customer and directors of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by external mediation proceedings.
- 26.2. The commencement of external mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 27 which clause shall apply at all times.
- 26.3. If either party fails to participate or to continue to participate in the mediation, or the mediation terminates without resolution, the Dispute shall be finally resolved by the courts of Scotland in accordance with clause 27 in this agreement.

27. GOVERNING LAW

- 27.1. 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 laws of Scotland.

28. JURISDICTION

- 28.1. Notwithstanding the terms of clause 26, each party irrevocably agrees that the courts of Scotland 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.