

DANBURYKLINE LIMITED

and

[CUSTOMER]

SOROS Subscription Agreement

THIS AGREEMENT is made on

BETWEEN

- (1) **DANBURYKLINE LIMITED** incorporated and registered in England and Wales with company number 08085378 whose registered office is at The Annexe, Saxon House, 28 Castle Street, Guildford, Surrey, GU1 3UW (**Danburykline**); and
- (2) **[NAME]**, incorporated and registered in England and Wales with company number [Co. Number] whose registered office is at [Address] (the **Customer**).

BACKGROUND

- (A) Danburykline has developed certain software applications and platforms (SOROS) which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of improving rolling stock availability and reliability through improved control and coordination of engineering maintenance activities in rail undertakings.
- (B) The Customer wishes to use Danburykline's service in its business operations.
- (C) Danburykline has agreed to provide and the Customer has agreed to take and pay for Danburykline's service subject to the terms and conditions of this agreement.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance	the date Danburykline receives a notice from the Customer confirming acceptance of the Test Instance, envisaged to be DATE .
Anti-Bribery and Corruption Policy	means the Customer's anti-bribery and corruption policy which will be made available to the Danburykline upon request to the Customer.
Applicable Laws	means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law, or any legislation at any time or from time to time in force in the United Kingdom which relate to this Agreement or documents referred to in this Agreement including the Control of Substances Hazardous to Health Regulations 2002, in each case, to the extent that they are so applicable.
Authorised Users	those employees, agents, customers and independent contractors of the Customer who are authorised by the Customer to use the Services and the Service Level Agreement.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Commencement Date	the date of Acceptance.

Confidential Information	all information relating to the business, customers, financial or other affairs of a Party which is not in the public domain and all personal information and personal data.
Configuration Data	data provided by the Customer to Danburykline to enable Danburykline to configure the SOROS Application to reflect the Specification.
Configuration Fees	a one-off, non-refundable fees payable by the Customer to Danburykline on the Effective Date in relation to the configuration of SOROS Application as detailed in Schedule 1.
Control	means (i) in the case of an entity that is a corporate entity, direct or indirect ownership of more than fifty per cent. (50%) of the stock or shares having the right to vote (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) for the election of directors of such entity or (ii) in the case of an entity that is not a corporate entity, the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise; and “ Controls, Controlled, Controlling ” and the expression “ Change of Control ” shall be construed accordingly.
COVID-19	means the infectious disease known as COVID-19 and caused by the novel coronavirus SARS-CoV-2 first detected in 2019;
COVID-19 Event	(a) the occurrence of any COVID-19 infection, including any treatment or measures recommended to control, address or otherwise manage COVID-19; (b) any law or other rule, regulation, determination or other finding in relation to or in connection with COVID-19 which is binding on either or both of the parties; (c) any quarantine, expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree, executive order, or other order from any government or other competent authority for the purpose of responding to COVID-19 with which either of or both of the parties must comply; or (d) any material impact on the supply, location or availability of materials, labour, power, transportation, availability of equipment, parts, inspection or other inputs required to undertake, progress and complete the performance of the Services which is directly caused by COVID-19.
Customer Data	the data inputted by the Customer, Authorised Users, or Danburykline on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and the Configuration Data.

Customer's Policies	means all policies and processes in place at each of the Customer's Sites and premises including but not limited to policies regarding to health and safety, welfare, inductions and control of contractors and any security requirements as made available to Danburykline upon request to the Customer, which shall include the Customer's Environmental Policy, Inbound Goods Policy, the SOROS Change Management Procedure and Customer policies from time to time available on the Customer's external website.
Effective Date	the date of this agreement.
Extended Term	means the term of this Agreement as extended pursuant to the Variation Agreement.
Force Majeure Event	means any of the following events: (a) war, hostilities, invasion or act of foreign enemies; (b) rebellion, military or usurped power or civil war; (c) any act of terrorism; (d) ionising radiation or contamination by radio-activity from any nuclear accident; (e) epidemic or pandemic (including a COVID-19 Event); (f) earthquake or extreme weather conditions; (g) strike, blockade, lock-out or labour dispute of whatever nature (provided that a strike, blockade, lock-out or labour dispute involving any staff or employees of the affected party or any sub-contractor or any related company to the affected party or any sub-contractor shall not be treated as a Force Majeure Event unless it is part of a nationwide or rail industry-wide strike), but only to the extent that: (i) in all cases (excluding cyber security incidents) it directly prevents a party from carrying out all or a material part of its obligations under this Agreement; and that the event is not caused by, and its consequences are beyond the reasonable control of, or could not reasonably have been mitigated, avoided or provided against by the affected party (using reasonable endeavours).
Live Instance	a production environment for normal routine use of the SOROS Application as part of the Services, which shall be enacted at any time by agreement with the Customer, but no later than DATE .

Normal Hours	Business	8.00 am to 6.00 pm local UK time, each Business Day.
Persistent Breach		means in in any six (6) month period beginning on the Effective Date Danburykline receives three (3) Remedial Notices.
Poor Performance Level		means, with respect to each Service Level, the score detailed in the column entitled "Poor Performance Level" in the table in Schedule 2 (Service Credits);
Remedial Notice		means a written notice issued by the Customer in accordance with Schedule 2 (Service Credits) to Danburykline: (a) specifying that it is a notice issued in accordance with Schedule 2 (Service Credits) of this Agreement; and (b) requiring the production of a remedial plan acceptable to the Customer within fourteen (14) days of such notice.
Reporting Period		means a calendar month provided that: (a) the first and last such period in any year may be varied by up to seven (7) days with the prior agreement of Danburykline; (b) each such period shall start on the day following the last day of the preceding such period; and (c) the last such period shall end on the termination or expiry of this Agreement.
Retail Price Index		or "RPI" means the retail consumer prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Customer reasonably determines to be appropriate in the circumstances as meaning the Retail Prices Index.
Services		the subscription services provided by Danburykline to the Customer under this agreement or any relevant website notified to the Customer by Danburykline from time to time, as more particularly described in the Specification and the Service Level Agreement.
Service Credits		means monetary sums to which the Customer is entitled in respect of a failure to meet the standard specified in accordance with a relevant Service Level as set out in schedule 2 (Service Credits).
Service Levels		means the services levels which Danburykline shall comply with in its provision of the Services as set out in the table in Schedule 2 (Service Credits).

Service Agreement	Level	the document made available to the Customer by Danburykline, online or via other means, notified by Danburykline to the Customer from time to time which sets out a description of the Services and maintenance support for the Services.
SOROS Application		the web application provided by Danburykline comprising of the SOROS software and the SOROS modules configured to, and as described in the Specification and delivered to the Customer as part of the Services.
Specification		the SOROS Application modules as detailed in Schedule 1.
Subscription Fees		the monthly fees payable by the Customer to Danburykline for the Services as detailed in Schedule 1.
Subscription Term		the subscription term beginning on the Commencement Date, and extended pursuant to any Variation Agreement (and as may be further extended from time to time).
Test Instance		an environment mirroring the Live Instance of the SOROS Application to allow the Customer to check the configuration is in accordance with the Specification, to test enhancements to the SOROS Application, to develop operational processes and to enable the Customer to train Authorised Users.
Variation Agreement		means the variation agreement entered into between the parties to amend the Agreement.
Virus		any thing or device (including any software, code, file or programme) which may: 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; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
1.2	Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.	
1.3	A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.	
1.4	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.	
1.5	Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.	

- 1.6 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.
- 1.7 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.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. Customer Subscription

- 2.1 Subject to the Customer accepting the Test Instance, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, Danburykline hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's business operations.
- 2.2 The Customer shall not, and shall ensure that the Authorised Users shall not; access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - 2.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.2.2 facilitates illegal activity;
 - 2.2.3 depicts sexually explicit images;
 - 2.2.4 promotes unlawful violence;
 - 2.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.2.6 is otherwise illegal or causes damage or injury to any person or property;and Danburykline reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any Authorised Users' access to any material that breaches the provisions of this clause.
- 2.3 The Customer or any Authorised User shall not:
 - 2.3.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SOROS Application and/or Service level Agreement (as applicable) in any form or media or by any means; or

- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SOROS Application; or
- 2.3.2 access all or any part of the Services in order to build a product or service which competes with the Services; or
- 2.3.3 use the Services to provide services similar to the Services to third parties; or
- 2.3.4 subject to clause 28.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- 2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; and
- 2.4 The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Danburykline.
- 2.5 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3. Configuration and Test Instance**
- 3.1 No later than 14 days following receipt of the Configuration Fee, Danburykline shall begin the configuration of the SOROS Application using the Configuration Data and in accordance with the agreed Specification in Schedule 1.
- 3.2 Upon completion of the configuration, Danburykline shall provide to the Customer the Test Instance to enable the Customer to verify that the functionality is in accordance with the Specification.
- 3.3 The Test Instance shall be made available as soon as reasonably practicable, during Normal Working Hours, at the dates and times as previously agreed with the Customer. If the Test Instance is acceptable, the Customer shall notify such to Danburykline as soon as reasonably practical.
- 3.4 If a Test Instance reveals faults in the SOROS Application configuration, the Customer shall notify Danburykline as soon as reasonably practicable, giving details of such faults. Danburykline shall remedy the faults and make a Test Instance available to the Customer as soon as reasonably practicable for further testing. If the Customer discovers further faults, Danburykline shall continue to remedy the faults and make a Test Instance available until the Customer accepts the configuration is in accordance with the Specification.
- 3.5 If the Customer concludes that the configuration of the SOROS Application materially fails to meet the Specification within three months from any Test Instance being made available to the Customer under clause 3.4 then the Customer may reject the SOROS Application as not being in conformity with the agreement, in which event the Customer may terminate this agreement.

4. Live Instance and Subscription

- 4.1 Following the Acceptance, Danburykline shall agree with the Customer the date on which it shall make the Live Instance available to the Customer, subject to clause 16. Danburykline shall continue to make the Live and Test Instance available to the Customer during the term of this Agreement (including the Extended Term) and shall continue to remedy faults pursuant to clause 3.4 above.
- 4.2 The Subscription to the Services shall begin on the Commencement Date and the Subscription Fee shall become payable.

5. Services

- 5.1 Danburykline shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this agreement.
- 5.2 Danburykline shall make the Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during a maintenance window that Danburykline will notify the Customer of, no less than 14 days prior to the commencement of the maintenance activity; and
 - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Danburykline has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 Danburykline will, as part of the Services and at no additional cost to the Customer, provide the Customer with Danburykline's standard customer support services during Normal Business Hours in accordance with Danburykline's maintenance support as detailed in the Service Level Agreement in effect at the time that the Services are provided. Danburykline may amend the maintenance support arrangements in its sole and absolute discretion from time to time.

Danburykline acknowledges that it is not being engaged as an exclusive supplier of any of the Services, and the Customer may at any time procure them from a third party.

6. Customer Data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Danburykline shall follow its archiving procedures for Customer Data which are disclosed to the Customer during the procurement process. Danburykline shall promptly inform the Customer if any Customer Data is lost or destroyed or becomes damaged, corrupted, or unusable. In the event of any loss or damage to Customer Data, Danburykline shall use all reasonable commercial endeavours to restore, at its expense, the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Danburykline. Danburykline shall not be responsible for any loss, destruction, alteration or disclosure of

Customer Data caused by any third party (except those third parties sub-contracted by Danburykline to perform services related to Customer Data maintenance and back-up).

- 6.3 Danburykline shall, in providing the Services, comply with the processes to the privacy and security of the Customer Data which are disclosed to the Customer during the procurement process.
- 6.4 The provisions addressing the processing and transfer of any personal data in connection with this Agreement are set out in schedule 2 (Data Protection) to this Agreement.

Danburykline agrees to indemnify and 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 Danburykline or its employees or sub-contractor to comply with any of its obligations under this Clause 6.

7. Third Party Providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Danburykline makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Danburykline. Danburykline recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Danburykline does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. Danburykline's Obligations

- 8.1 Danburykline undertakes that the Services will be performed in accordance with the Service Level Agreement and with the degree of skill, care, diligence, prudence and foresight which would reasonably be expected from a person skilled and experienced in providing services similar to the Services ("**Good Industry Practice**").
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Danburykline's instructions, or modification or alteration of the Services by any party other than Danburykline or Danburykline's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Danburykline will, at its expense, correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, Danburykline:
 - 8.2.1 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, (unless such delays, failures, loss or damage is caused as a result of Danburykline's acts or omissions) and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 8.3 This agreement shall not prevent Danburykline from entering into similar agreements with third parties, or from independently developing, using, products and/or services which are similar to those provided under this agreement.
- 8.4 Danburykline warrants that:
- 8.4.1 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement;
 - 8.4.2 the Services will be provided in accordance with all Applicable Laws, and Danburykline will use reasonable endeavours to inform the Customer as soon as it becomes aware of any changes in Applicable Laws;
- 8.5 Danburykline shall:
- 8.5.1 co-operate with the Customer in all matters relating to the Services, and comply with the Customer's reasonable requests;
 - 8.5.2 observe and comply, and ensure that the Danburykline team observe and comply, with the Customer's Policies communicated to Danburykline only so far as necessary to deliver the Services and where compliance with the Customer's Policies does not hinder the supply of services to other customers of Danburykline.
 - 8.5.3 The Customer reserves the right to refuse Danburykline's team access to the Customer's Sites and premises, which shall only be given to the extent necessary for the performance of the Services;
 - 8.5.4 use reasonable endeavours to follow the Customers software change policies; and
 - 8.5.5 notify the Customer in writing immediately upon the occurrence of a Change of Control of Danburykline.
- 8.6 Performance management
- 8.6.1 A meeting to review Danburykline's performance of its obligations under this Agreement ("**Performance Review Meeting**") shall be held within five (5) Business Days following the end of each Reporting Period (or such other date or frequency agreed by the parties) and shall be attended by at least the representatives of each party. The meeting may be virtual and the standing agenda for each Performance Review Meeting shall be agreed in advance. Each party shall give reasonable notice to the other party of any other items it proposes to be added to the agenda for a Performance Review Meeting.
 - 8.6.2 The Customer may request and Danburykline will not unreasonably refuse that a further Performance Review Meeting takes place whenever it reasonably believes that the performance of Danburykline's obligations has fallen below, in the Customer's reasonable opinion, an acceptable level ("**Additional Performance Review Meeting**"). The date of such Additional Performance Review Meeting shall be as agreed between the parties or, in the absence of such agreement within ten (10) Business Days of notice being served requiring such Additional Performance Review Meeting, at a time specified by the Customer on not less than five (5) and no more than thirty (30) days' written notice.

- 8.6.3 The Danburykline's Representative shall use reasonable endeavours to prepare the minutes of any Performance Review Meeting or Additional Performance Review Meeting and issue them to the Customer's Representative within five (5) Business Days of the date upon which such meeting was held (and in any event within ten (10) Business Days of the date upon which such meeting was held).

8.7 Performance Reports

- 8.7.1 No later than three (3) Business Days prior to any Performance Review Meeting, Danburykline shall provide to the Customer's representative a Performance Report relating to the Reporting Period immediately preceding that Performance Review Meeting and which shall:
- (a) detail the Danburykline's performance with respect to each Service Level;
 - (b) cover the issues of the proposed agenda;
 - (c) include a commentary on all key issues;
 - (d) include a review of significant issues that have arisen during the preceding Reporting Period; and
 - (e) include a review of risks and issues and associated actions.

9. Insurance

- 9.1 For the duration of this Agreement (and for six (6) years after the expiry or termination of this Agreement), Danburykline shall, at its sole expense, maintain the following insurance with a reputable insurer on commercially reasonable terms and, where applicable, in statutorily required amounts:

- 9.1.1 commercial general liability;

- 9.1.2 if any product is being supplied under this Agreement, then product liability insurance in an amount not less than ten million pounds Sterling (£10,000,000) for claims arising from any single event and not less than ten million pounds Sterling (£10,000,000) in aggregate for all claims arising in a year;

- 9.1.3 public liability insurance in respect of Danburykline's liability for:

death or injury for any person in an amount not less than ten million pounds Sterling (£10,000,000) per claim; or

loss or damage for any property in an amount not less than ten million pounds Sterling (£10,000,000) per claim;

- 9.1.4 employers' liability insurance in an amount not less than ten million pounds Sterling (£10,000,000) per claim;

- 9.1.5 professional indemnity insurance sufficient to cover Danburykline's potential liability under this Agreement; and

such other insurances as a prudent provider of services similar to the Services shall take out.

10. Customer's Obligations

10.1 The Customer shall:

10.1.1 provide Danburykline with:

- (a) access to the complete and accurate Configuration Data;
- (b) all necessary co-operation in relation to this agreement; and
- (c) all necessary access to such information as may be required by Danburykline;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

10.1.2 comply with all Applicable Laws with respect to its activities under this agreement;

10.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Danburykline may adjust any agreed timetable or delivery schedule as reasonably necessary;

10.1.4 ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

10.1.5 obtain and shall maintain all necessary licences, consents, and permissions for any third party products which the Customer requires Danburykline to interface with in order for Danburykline, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

10.1.6 ensure that its network and systems comply with the relevant specifications provided by Danburykline from time to time; and

10.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Danburykline's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11. Services – Scope of Work

11.1 Danburykline and the Customer shall meet at least every 6 months to discuss matters relating to the Services.

11.2 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

11.3 If either party requests a change to the scope or execution of the Services, Danburykline shall, within a reasonable time, provide a written estimate to the Customer of:

11.3.1 the likely time required to implement the change;

- 11.3.2 any necessary variations to Danburykline's charges arising from the change; and
 - 11.3.3 any other impact of the change on this agreement.
 - 11.4 If the Customer wishes for Danburykline to proceed with the change, Danburykline has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 19.
 - 11.5 Danburykline may, from time to time change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature or quality of the Services and it will give the Customer at least two (2) weeks' notice of any such change. In the event the Customer fails to object to any changes within the relevant notice period, the Customer will be deemed to consent to such changes.
 - 11.6 If Danburykline intends to make a change to the Service which is material, which for the purpose of this Agreement, means a change to the User Interface which would require significant user acceptance testing and or large-scale end user training, and is not in response to a category one or two defect as described in Schedule 2, Danburykline shall provide the Customer with not less than three (3) weeks' notice of the change. In the event the Customer fails to object to any changes within the relevant notice period, the Customer will be deemed to consent to such changes.
- 12. Charges and Payment**
- 12.1 The Customer shall pay to Danburykline the fees as detailed in Schedule 1.
 - 12.2 The parties agree that:
 - 12.2.1 The rates set out schedule 1 (Specification) (and as amended pursuant to the Variation Agreement) shall be fixed for all services and products provided on or before **DATE**.
 - 12.2.2 If the Customer continues with the subscription beyond the Extended Term in accordance with clause 17.1.2, such rates shall thereafter be adjusted on **DATE** in accordance with the Retail Prices Index in January and thereafter on 1 January in each year provided that the maximum adjustment in any year shall be limited to a maximum of 3% of the amount applicable before such adjustment.
 - 12.3 The Customer shall, on the Commencement Date, provide its approved purchase order information to Danburykline and Danburykline shall submit a monthly invoice for the Subscription Fees payable for the month in which the Services commence and thereafter each month on the anniversary of the Commencement Date (an "**Invoice**").
 - 12.4 The Customer shall respond to the Invoice within thirty (30) days, and either:
 - 12.4.1 provide Danburykline with a notice setting out the total Service Credits to be applied to an Invoice calculated in accordance with schedule 2 (Service Credits) to this Agreement (the "**Service Credit Notice**"); or
 - 12.4.2 confirm that no Service Credits are applicable to the Invoice, provided that if no confirmation is given within thirty (30) days Danburykline should assume that no Service Credits are applicable.

- 12.5 Subject to clause 12.6, if the Customer indicates that Service Credits are applicable to an Invoice, Danburykline will issue a credit note to the Customer for the total Service Credits amount set out in the Service Credit Notice within ten (10) Business Days of receipt of the Customer's Service Credit Notice.
- 12.6 The parties agree that Service Credits payable under this Agreement:
- 12.6.1 represent a price adjustment by way of refund for Contract Price for the value of Danburykline's failure to meet the standard specified in the relevant Service Level;
 - 12.6.2 reflect the Customer's legitimate interest in preventing Danburykline from failing to meet the standard specified in the relevant Service Level because of the adverse impact that such failure would have on the business of the Customer; and
 - 12.6.3 shall not preclude the Customer from recovering damages for the actual Losses suffered by it (provided that such damages shall be reduced by an amount equal to the Service Credits paid Danburykline in respect of the same Losses).
- 12.7 The Customer shall pay the undisputed fees stated in any Invoice submitted pursuant to this clause 12 less any Service Credits set out in any Service Credit Notice referable to that Invoice issued by the Customer within 30 days after the receipt of such invoice.
- 12.8 If Danburykline has not received payment within 60 days after the due date, and without prejudice to any other rights and remedies of Danburykline, Danburykline may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Danburykline shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.
- 12.9 If either party fails to make payment due hereunder on the due date for payment, that late payment shall bear interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank PLC from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.10 If the Customer disputes any Invoice or other statement of monies due, the Customer shall notify Danburykline in writing and the parties shall then negotiate in good faith to attempt to resolve the dispute promptly. Danburykline shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within thirty (30) days of the Customer giving notice to Danburykline, the dispute shall be resolved by the party's senior management.
- 12.11 Invoices covering payment in respect of materials purchased by, or services provided to, Danburykline, or for reimbursement of expenses, shall be payable by the Customer only if accompanied by relevant receipts.
- 12.12 Without prejudice to any other rights or remedies it may have, the Customer may at any time, without notice to Danburykline, set off any liability of Danburykline to the Customer against any liability of the Customer to Danburykline, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 12.13 All amounts and fees stated or referred to in this agreement:

12.13.1 shall be payable in pounds sterling;

12.13.2 are exclusive of value added tax, which shall be added to Danburykline's invoice(s) at the appropriate rate.

13. Proprietary Rights

13.1 The Customer acknowledges and agrees that Danburykline and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this agreement does not grant the Customer (or any of its affiliates) any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

13.2 Danburykline confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

14. Confidentiality

14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

14.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

14.1.2 was in the other party's lawful possession before the disclosure;

14.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

14.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

14.2 Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

14.4 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 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 and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

14.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 14.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Danburykline's Confidential Information.
- 14.7 Danburykline acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.8 The above provisions of this clause 14 shall survive termination of this agreement, however arising.

15. Indemnity

- 15.1 Danburykline shall indemnify the Customer, its officers, directors and employees against:
- 15.1.1 all losses suffered or incurred by the Customer arising in connection with the performance or non-performance of Danburykline or any of its subcontractors of Danburykline's obligations under this Agreement (including any negligence or wilful misconduct), in respect of any:
- (a) death or personal injury;
 - (b) third party action, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis); and
 - (c) taxes due from Danburykline in respect of any Services,
- except to the extent that such Loss is caused by, or is attributable to, the wilful misconduct or gross negligence of the Customer or breach by the Customer of its obligations under this Agreement; and
- 15.1.2 any claim that the Services infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right, right of confidentiality or third party's intellectual property right, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Danburykline is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to Danburykline in the defence and settlement of such claim, at Danburykline's expense; and
 - (c) Danburykline is given sole authority to defend or settle the claim.
- 15.2 In no event shall Danburykline, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 15.2.1 a modification of the Services by anyone other than Danburykline (unless mutually agreed between the parties); or
- 15.2.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Danburykline; or
- 15.2.3 the Customer's use of the Services after notice of the alleged or actual infringement from Danburykline or any appropriate authority.

15.3 On any termination of this Agreement by the Customer in whole or in part pursuant to clauses 17.3 and/or 17.5 Danburykline shall indemnify the Customer against all Losses suffered or incurred by the Customer as a consequence of or in connection with such termination.

16. Limitation of Liability

16.1 Neither party excludes or limited liability to the other party for:

- 16.1.1 death or personal injury caused by negligence;
- 16.1.2 fraud or fraudulent misrepresentation; and
- 16.1.3 any matter for which it would be unlawful for the parties to exclude liability.

16.2 Except as expressly and specifically provided in this agreement:

- 16.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Danburykline shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Danburykline by the Customer in connection with the Services, or any actions taken by Danburykline at the Customer's direction; and
- 16.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this agreement.

16.3 Subject to clause 16.1 and clause 16.2 and 16.3.3 :

- 16.3.1 Both parties shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 16.3.2 Each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid in the previous 12 months.
- 16.3.3 Nothing in this Agreement shall exclude or in any way limit Danburykline's liability:
 - (a) for any obligation in this Agreement to refund any amounts (plus interest thereon) paid by the Customer in respect of any Services pursuant to this Agreement;
 - (b) for the costs reasonably and properly incurred by or on behalf of the Customer in pursuing or enforcing any right against (including any award of costs against), or enforcing any obligation of, or defending any claim made by, Danburykline;

- (c) to pay Losses to the Customer arising out of a breach of clauses 13 (Proprietary rights), 14 (Confidentiality), 20 (Anti-Bribery and Corruption), 21 (Modern Slavery Act), Schedule 3 (Data Protection) and clause 29(TUPE); and/or
- (d) to the extent that Danburykline is entitled to recover amounts corresponding to such liability pursuant to insurance policies required to be effected and maintained by either party in accordance with this Agreement or pursuant to any legislation or in respect of which Danburykline would have been entitled but for any:
 - (i) act or omission of Danburykline which vitiates such insurance policies and otherwise results in an inability to recover any relevant amounts under such insurance policies; or
 - (ii) any failure by Danburykline to pursue all claims and exercise all rights it may have to recover to the fullest extent possible under such insurance.

17. Term and Termination

17.1 The parties agree that:

- 17.1.1 This agreement shall commence on the Effective Date and shall continue until **DATE** (the **Fixed Term**) unless the Customer notifies Danburykline in writing of its intention to continue with the subscription by a date which is no later than the expiry date of the Fixed Term.

17.2 Notwithstanding 17.3, either Party may terminate this agreement (no-fault termination) in whole or in part at any time by giving not less than ninety (90) days' notice in writing.

17.3 The Customer may terminate this Agreement at any time by written notice to Danburykline if Danburykline:

- 17.3.1 attempts to assign, novate or transfer this Agreement or any obligation hereunder without the Customer's consent;
- 17.3.2 if a Change of Control occurs in relation to Danburykline to which the Customer has not consented;
- 17.3.3 commits a Persistent Breach; or
- 17.3.4 achieves a Breach Level score in respect of one or more Service Levels ,

such notice to take effect in accordance with its terms.

17.4 Notwithstanding the above provision, the Customer may terminate this agreement in accordance with clause 3.5 of this agreement.

17.5 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:

- 17.5.1 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 30 days after being notified in writing to make such payment;
 - 17.5.2 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 30 days after being notified in writing to do so;
 - 17.5.3 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;
 - 17.5.4 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 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;
 - 17.5.5 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;
 - 17.5.6 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;
 - 17.5.7 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;
 - 17.5.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 17.5.9 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;
 - 17.5.10 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 17.5.3 to clause 17.5.9 (inclusive);
 - 17.5.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 17.5.12 any warranty given by Danburykline in clause 8.4 of this agreement is found to be untrue or misleading.
- 17.6 On termination of this agreement for any reason:
- 17.6.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;

- 17.6.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- 17.6.3 upon receipt of a written request, no later than 10 days after the effective date of the termination of this agreement, Danburykline shall deliver to the Customer all Customer Data including the most recent back-up of the Customer Data in its possession. If such request has not been received, Danburykline may destroy or otherwise dispose of any of the Customer Data in its possession. Danburykline shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Danburykline in returning or disposing of Customer Data if this agreement is terminated under clause 17.1;
- 17.6.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced;

[On termination of this Agreement, the following clauses shall survive and continue in force and effect: clauses 13 (Proprietary rights), 9 (Insurance), 15 (indemnity), 17 (Term and Termination), 16 (Liability), 14 (Confidentiality), 28 (Assignment), Schedule 3 (Data Protection), 29 (TUPE), 33 (Notices), 31 (Third Party rights), and 34 (Governing Law and Jurisdiction) and Schedule 3 (Data Protection).]

18. Force Majeure

- 18.1 Neither party shall have any liability to the other party under this agreement if it is prevented from or delayed in performing its obligations under this agreement if such delay or failure is caused, in whole or in part, by a Force Majeure Event.
- 18.2 Within two (2) Business Days of either party being delayed or unable to perform its duties and obligations under the Agreement as a direct result of a Force Majeure Event, that party shall give written notice to the other of the inability which sets out full details of the Force Majeure Event (including the likely impact on the Key Dates) and the steps taken to minimise or overcome the effects of the Force Majeure Event. The operation of the Agreement shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. If the Force Majeure Event comes to an end during that suspension, the Agreement shall continue as if it the notice had never been served.
- 18.3 If the Force Majeure Event prevents, hinders or delays Danburykline's performance of its obligations for a continuous period of more than 1 month, the Customer may terminate this agreement by giving 2 weeks' written notice to Danburykline.

19. Cyber Security

- 19.1 Danburykline shall, and shall procure that its sub-contractors and agents shall, comply with this clause.

- 19.2 The Customer shall have the right to verify Danburykline's compliance with its obligations under this clause including the right to conduct intrusion testing to test the safety and security of the systems.
- 19.3 Danburykline shall ensure that no Virus is coded or otherwise introduced into any of the Customer's or any member of the Customer Group's systems or networks, or into any systems used and/or owned by the Customer or any member of the Customer Group, as a result of the acts or omissions of Danburykline and/or any of its team, sub-contractors or agents. If a Virus is found to have been coded or otherwise introduced as a result of the action or inaction of Danburykline (and/or any of its team, sub-contractors or agents), Danburykline shall immediately and at its own cost:
- 19.3.1 take all necessary remedial action to eliminate the Virus; and
- 19.3.2 if the Virus causes a loss of operational efficiency and/or any loss of Customer Data, take all reasonable steps necessary and provide all assistance reasonably required by the Customer or any member of the Customer Group to mitigate the loss of or damage to such Customer Data and to restore the efficiency of such Customer Data.
- 19.3.3 Danburykline shall immediately notify the Customer of any actual or suspected breaches of this clause. The Customer shall be entitled to investigate any actual or alleged breaches with the full co-operation of Danburykline and the Supplier shall immediately rectify any breaches identified. The costs of such co-operation and rectification shall be borne by Danburykline.

20. Anti Bribery and Corruption

- 20.1 Each party shall:
- 20.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**Act**") (together, the "**Relevant Requirements**");
- 20.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act if such activity, practice or conduct had been carried out in the UK;
- 20.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Act, to ensure compliance with the Relevant Requirements and clause 20.1.1, and will enforce them where appropriate; and
- 20.1.4 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the first party in connection with the performance of this Agreement.
- 20.2 Danburykline agrees at all times to comply with the Customer's Anti-Bribery and Corruption Policy and procedures and shall ensure that all of its personnel, subcontractors, agents, directors, officers and employees do not act in such a way which is inconsistent with the Customer's Anti-Bribery and Corruption Policy and procedures.

20.3 For the purpose of this clause 19, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Act (and any guidance issued under section 9 of the Act).

20.4 A breach of this clause 19 shall be deemed be a material breach.

21. Modern Slavery Act

21.1 Danburykline shall:

21.1.1 comply, and ensure that its sub-contractors and all affiliates comply with all Applicable Laws relating to slavery, servitude, forced or compulsory labour and human trafficking including (without limitation) the Modern Slavery Act 2015;

21.1.2 undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labour in its operations or practices;

21.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure its compliance with clauses 21.1.1 and 21.1.2 and will enforce them where appropriate;

21.1.4 immediately notify the Customer in writing if it becomes aware of any breach or alleged breach of this clause 21 by it or any of its sub-contractors; and

21.1.5 ensure that any sub-contractor and all its affiliates performing services or work in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Danburykline in this clause 21.

21.2 Danburykline warrants that it has not been convicted of any offence involving slavery and human trafficking or otherwise and, having made reasonable enquiries, it is not and has not been and/or none of its affiliates have been or are, the subject of any investigation, enquiry, or enforcement proceedings by any governmental, administrative or regulatory body regarding an offence or alleged offence of or in connection with slavery and human trafficking.

22. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

23. Variation

Subject to clause 10, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

24. 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.

25. 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.

26. Severance

26.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

26.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

27. Entire Agreement

27.1 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.

27.2 Each party acknowledges that in entering into this agreement it does not rely on, and 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.

28. Assignment

28.1 Danburykline shall not subcontract, assign, novate or deal in any way with all or any part of the benefit of, or its rights or benefits under, this Agreement, without the prior written consent of the Customer.

28.2 The Customer may, at any time, subcontract, assign, novate or deal in any other manner with all or any of its rights or obligations under this Agreement.

28.3 Danburykline shall remain primarily and directly liable to the Customer for the performance and non-performance of Danburykline's obligations and exercise of the Danbury's rights under this Agreement notwithstanding any subcontracting and the acts or omissions of any subcontractor shall be deemed to be the acts or omissions of Danburykline.

28.4 Any attempted assignment in violation of this clause 21 shall be void.

29. TUPE

29.1 Danburykline and the Customer do not intend the Regulations to apply to this Agreement, the Services and/or the supply of Spares or the expiry or termination of this Agreement.

29.2 Danburykline and the Customer acknowledge and agree that Danburykline Employees will remain employed or engaged by Danburykline and nothing in this agreement shall have the effect of transferring to the Customer, nor is it intended that any provision of law shall have the effect of transferring to the Customer, the contract of employment of any of

Danburykline Employees or other persons whether on the Commencement Date, during the Term of this Agreement, on its expiry or termination, or thereafter. Before termination or partial termination of the Services, Danburykline shall be entitled to redeploy Danburykline Employees to avoid such employees being wholly or mainly assigned to the provision of the relevant Services to the Customer at the date of termination or partial termination of the Services.

29.3 Danburykline shall discharge and hereby undertakes to indemnify the Customer and shall keep the Customer indemnified against all liabilities, obligations, costs, claims and demands arising directly or indirectly in respect of:

29.3.1 the employment or termination of employment of Danburykline Employees or any of them; and

29.3.2 any claim by any trade union, works council, staff association, worker representative (whether or not recognised by Danburykline or the relevant member of Danburykline Group) or employee in respect of all or any of Danburykline Employees, arising out of a failure or alleged failure by the Customer or the Supplier to comply with any legal obligations to inform and/or consult any of Danburykline Employees (or their representatives) under any applicable law or regulation.

29.4 If the contract of employment of any Danburykline Employees is found or alleged to have effect after the date of termination or partial termination of the Services ("Termination of the Services") as if originally made with the Customer then:

29.4.1 in consultation with the Customer, Danburykline will within seven (7) days of being informed of such finding or allegation make to that employee an offer in writing to employ him under a new contract of employment to take effect on the termination date referred to below; and

29.4.2 any such offer of employment made by Danburykline will be on terms and conditions which when taken as a whole do not differ in any material way from the terms and conditions of employment of that employee immediately before Termination of the Services.

29.5 Upon that offer being made (or at any time after the offer should have been made if no offer is made) the Customer is entitled to terminate the employment of the employee concerned, and Danburykline shall indemnify the Customer against all liabilities, obligations, costs, claims and demands arising directly or indirectly out of both the employment of that employee and the termination of such employment.

30. No Partnership or Agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

31. Third Party Rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

32. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

33. Notices

33.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as follows:

- To Danburykline:
 - rob@danburykline.co.uk;
 - wayne@danburykline.co.uk; or
- To the Customer:
 - Email here

33.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9 am on the next Business Day after transmission.

34. Governing Law and Jurisdiction

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 and 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).

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

Signed by
for and on behalf of Director
DANBURYKLINE LIMITED

Signed by
for and on behalf of Director
CUSTOMER

Schedule 1 –Specification

Module Packages and Pricing [HERE](#)

Schedule 2 : Service Credits

The objectives of the Service Levels are to ensure that the Services are of a consistently high quality, delivered on time.

Danburykline shall provide the Services so as to meet or exceed the Service Levels. The Service Levels for the Services are as set out below:

Ref.	Service Level	Service Level Output	Target Performance Level	Poor Performance Level	Breach Level	Service Credits
	Service Availability	SOROS Live instance will have an uptime measured in minutes of greater than 98% per month	98%	96%	92%	
2.2	Incident Management Priority One	Service is "down" or there is a critical impact to business operations, caused by an act or omission of Danburykline.	Response time within 5 minutes and system fix within 4 hours (provided 24/7, 365 days per year)	System Fix more than 6 hours	System Fix more than 24 hours, Occurring twice or more in the Reporting Period	£250 per hour for any unplanned outage below the Target Performance Level and limited to a maximum of one month's subscription fees.
2.3	Incident Management Priority Two	Loss of resilience, operation of an existing Service is severely degraded or significant aspects of business	Response time within 30 minutes and system fix within 4 hours (provided within	System Fix more than 6 hours	System Fix more than 24 hours, Occurring twice or more in the	£125 per hour for any unplanned outage below the Target Performance Level and limited to a

		operation are negatively affected and caused by an act or omission of Danburykline.	Normal Business hours)		Reporting Period	maximum of half of one month's subscription fees.
2.4	Incident Management Priority Three	Operational performance of a service is impaired with most business operations remaining functional	Response time within 1 hour and system fix within 24 hours (provided within Normal Business Hours)		Not Applicable	
2.5	Incident Management Priority Four	There is a minor transactional failure, which has no or limited operational impact.	Response time within 1 Business Day and system fix within 5 Business Days.		Not Applicable	

1. Danburykline's performance against each of the Service Levels will be calculated in respect of each Reporting Period by Danburykline and shall be provided to the Customer with the Performance Report in accordance with clause 10.8 (Performance Reports).
2. The consequences of Danburykline failing to achieve some or all of the Service Levels shall be as follows:

where the performance in respect of one or more Service Levels falls below the Poor Performance Level in a three month Reporting Period then the Customer shall be entitled to serve a Remedial Notice on Danburykline

Schedule 3 : Data Protection

131385984. For the purposes of this Schedule 2:

131385984.131387904 **"Controller to Processor SCCs"** means the Standard Contractual Clauses contained in Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC including any amended, extended, re-enacted or consolidated version in force from time to time;

131385984.131387905 the terms **"Data Subject"**, **"Personal Data"**, **"Process"** and **"Processing"** shall have the meaning prescribed under the Data Protection Laws;

131385984.131387906 **"Data Protection Laws"** means any laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including (in the UK) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) from 25 May 2018, EU Regulation 2016/679 (**"GDPR"**); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; and (d) any guidance or codes of practice issued by a regulator; in each case, to the extent in force, and as such are updated, amended or replaced from time to time;

131385984.131387907 **"Data Controller"** and **"Data Processor"** have the meanings set out in the Data Protection Act 1998 until 25 May 2018, and thereafter the meaning given to the term "controller" and "processor" (respectively) in Article 4 of GDPR; and

131385984.131387908 **"Personal Data Breach"** means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data received from or on behalf of the Customer and/or Danburykline (as applicable), or otherwise obtained in connection with the performance of the Customer's obligations and/or Danburykline's obligations.

131385985. Danburykline shall comply with all applicable Data Protection Laws in the Processing of Customer Personal Data and Danburykline shall:

131385985.131387904 process Customer Personal Data solely on the documented instructions of the Customer (as set out in this Schedule 2 or as otherwise communicated to Danburykline by the Customer from time to time), for the purposes of providing the Services and as otherwise necessary to perform its obligations under this Agreement including with regard to transfers of Customer Personal Data to a third country outside the European Union or an international organisation (unless required by European Union or Member State law to which Danburykline is subject, in which case Danburykline shall inform the Customer of that legal requirement before such Processing, unless that law prohibits such information on important grounds of public interest);

131385985.131387905 ensure that persons authorised to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

131385985.131387906 take all measures required pursuant to Article 32 of the GDPR to ensure the security of Processing of Customer Personal Data;

131385985.131387907 be generally authorised to engage another Processor to Process Customer Personal Data ("**Sub-Processor**"), subject to Danburykline meeting the conditions set out in Article 28 (2) and (4) of the GDPR;

131385985.131387908 promptly notify the Customer of any communication from a Data Subject regarding the Processing of Customer Personal Data, or any other communication (including from a supervisory authority) relating to the Customer's and any Customer client's obligation under the Data Protection Laws in respect of Customer Personal Data and, taking into account the nature of the Processing, assist the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR;

131385985.131387909 notify the Customer without undue delay of any Personal Data Breach, and in any event within 24 hours, upon the Consultancy Company becoming aware of a Personal Data Breach, such notice to include all information reasonably required by the Customer to comply with its obligations under the Data Protection Laws and assist the Customer with its obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the Processing and information available to Danburykline;

131385985.131387910 cease Processing the Customer Personal Data upon the termination or expiry of this Agreement and at the Customer's option either return, or delete all copies of the Customer Personal Data Processed by Danburykline (confirming and evidencing the same to the Customer) unless (and solely to the extent and for such period as) European Union or Member State law requires storage of the Personal Data; and

131385985.131387911 in addition to any audit rights granted pursuant to this Agreement, make available to the Customer on request all information necessary to demonstrate compliance with this Schedule 2 and with Article 28 of the GDPR and shall allow for and contribute to audits, including inspections, by the Customer or an auditor mandated by the Customer.

131385986. Transfers

131385986.131387904 Danburykline shall not transfer any Customer Personal Data outside the European Economic Area without the prior written consent of the Customer. Where or if such consent is given by the Customer, paragraph 3.2 below shall apply.

131385986.131387905 The Customer (as "data exporter") and Danburykline, as appropriate (as "data importer") with effect from the commencement of the relevant transfer hereby enter into the Controller to Processor SCCs in respect of any transfer from the Customer to Danburykline (or onward transfer) where such transfer would otherwise be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address Data Protection Laws). Appendix 1 to the Controller to Processor SCCs shall be deemed to be prepopulated with the relevant sections of Annex A to this Schedule 2 and the processing operations are deemed to be those described in this Agreement. Appendix 2 to the Controller to Processor SCCs shall be deemed to be prepopulated with the following "*Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood for the rights and freedoms of natural persons, Danburykline shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including as appropriate the specific*

controls described in Article 32(1), (a) to (d) inclusive of GDPR and including any other controls mandated by applicable data protection laws."

131389888. Where the Customer is the Data Processor and Danburykline is Data Controller in respect of Personal Data necessary for the performance of this Agreement, then:

131389888.131393664 the Customer shall comply with the obligations in paragraphs 2 and 3 of this Schedule 2 as if it were Danburykline; and

131385986.131387906 Danburykline shall comply with the obligations in paragraphs 2 and 3 of this Schedule 2 as if it were the Customer.

Annex A Description of Processing of Customer Personal Data and Danburykline Personal Data

This Annex A includes certain details of the Processing of Customer Personal Data and Danburykline Personal Data as required by Article 28(3) GDPR.

1. Subject matter and duration of the Processing of the Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Agreement.

2. The nature and purpose of the Processing of the Personal Data

The nature and purpose of the Processing of the Personal Data are set out in the Agreement.

These purposes include, but are not limited to the provision of the Services and any ancillary related services.

Danburykline may also transfer Customer Personal Data to the Customer and any other data recipients specified in the Agreement and/or this Annex A, to the extent permitted under the Agreement and as required for Danburykline to provide the Services and any related services under the Agreement.

The Customer may also transfer Danburykline Personal Data to Danburykline Company and any other data recipients specified in the Agreement and/or this Annex A, to the extent permitted under the Agreement and as required for Danburykline to provide the Services and any related services under the Agreement.

3. The categories of Data Subject to whom the Personal Data relates

Employees, contractors, agents, officers, directors and other representatives of the Customer and its Group ("Customer Staff").

Employees, contractors, agents, officers, directors and other representatives of the Danburykline and its Group ("Danburykline Staff").

4. The types of Customer Personal Data and Danburykline Personal Data to be Processed

No sensitive Personal Data is Processed under this Agreement.

The Customer Personal Data and Danburykline Personal Data includes, without limitation, the following categories of data:

- (i) *Staff related data*, including title, forename, middle name(s) and surname, birth name, preferred name, any additional names, gender, nationality, second nationality, civil/marital status, date of birth, age, home contact details (e.g. address, telephone number, e-mail), national ID number, immigration and eligibility to work data, languages spoken; next-of-kin/dependent contact information;
- (ii) *Data related to staff engagement with the Customer and Customer Affiliates and Consultancy Company and Consultancy Company Affiliates*, including work contact details (e.g. address, telephone number, e-mail), work location default hours, default language, time zone and currency for location, worker ID and various system IDs, performance review information, work biography, reporting line, employee/contingent worker type, hire/contract begin and end dates, cost center, job title and job description, working hours and patterns, whether you are full or part time; termination/contract end date; the reason for termination, last day of work, exit interviews, references, status (active/inactive/terminated), position title, the reason for any change in job and date of change, benefit coverage start date, charge out rates of Consultancy Company staff;
- (iii) *Recruitment data*, including qualifications, references, CV and application, interview and assessment data, vetting and verification information;

- (iv) *Regulatory data*, including records of registration with any applicable regulatory authority, regulated status and any regulatory references;
 - (v) *Remuneration and benefits data*, including remuneration information (including salary/hourly plan/contract pay information as applicable, allowance, bonus and merit plans), bank account details, grade, social security number, tax information, third party benefit recipient information;
 - (vi) *Leave information*, including absence records (including dates and categories of leave/time-off), holiday dates and information related to family leave;
 - (vii) *HR processes data*, including allegations, investigations and proceeding records and outcomes, colleague and manager feedback, appraisals, talent programmes, formal and informal performance management processes, flexible working processes, restructure and redundancy plans, consultation records, selection and redeployment data, health and safety audits, risk assessments, incident reports, data relating to training and development needs or training received;
 - (viii) *Monitoring data* (to the extent permitted by Applicable Laws), including Closed Circuit TV footage, system and building login and access records, keystroke, download and print records, call recordings, data caught by IT security programmes and filters; and
 - (ix) *Employee claims, complaints and disclosures data*, including termination arrangements and payments, subject matter of employment based litigation and complaints, employee involvement in incident reporting and disclosures.
5. The obligations and rights of the Customer and Danburykline and their Groups

The obligations and rights of the Customer and Danburykline and their Groups are set out in the Agreement.