

Cogna – G Cloud Supplier Terms: Standard Master Services Agreement

This Master Services Agreement, together with the Cognia Data Processing Agreement, and Cognia Service Level Agreement (“SLA”) sets out the Cognia (also referred to as “**Supplier**”) “**Supplier Terms**” under each G Cloud 15 Contract (as defined in Joint Schedule 1).

To avoid doubt, this Master Services Agreement includes (each as defined in Joint Schedule 1) the “**Supplier AUP**”, “**Supplier Specific Shared Responsibility Model**” and, with the Cognia Data Processing Agreement, comprises the “**Supplier Standard Terms**”. This Master Services Agreement also contains the “**Supplier Licence Terms**”, and together with the SLA, comprises the “**Supplier Service Specific Terms**”.

To avoid doubt, these Supplier Terms apply in addition to, and must be read with, the remaining Contract terms. Please note that those terms contained in Cognia’s standard master services agreement that are duplicative of the Contract have been removed to avoid conflict.

1. **Interpretation**

1.1. The definitions and rules of interpretation in this clause apply in these Supplier Terms and, except in the event of an express conflict, the Contract.

“ Acceptance ”	the acceptance of the Customer Apps under clause 3 (and “ Accept ” shall be construed accordingly).
“ Acceptance Date ”	the date on which the Acceptance occurs under clause 3.
“ Acceptance Tests ”	the tests of the Customer Apps carried out in accordance with clause 2.
“ Additional User ”	as defined in clause 8.1.
“ Additional User Fee ”	in addition to the Licence Fee set out in the Order Form, the fees payable by the Customer to Cognia for any Additional User.
“ Agreement ”	the “Contract”, including the Supplier Terms, as defined in Joint Schedule 1.
“ App Container ”	the Cognia app repository within the Platform where it shall make the Customer Apps available to the Customer on the Acceptance Date.
“ App Licence Year ”	any twelve (12) month period ending on any anniversary of the Commencement Date.
“ App Proposal ”	the features and functions proposed by Cognia for the Customer Apps as agreed between Cognia and the Customer and as generated and stored in the Platform.
“ App Purchase Order ”	a purchase order submitted by the Customer to Cognia in writing for Customer Apps (in accordance with the bundling options set out in the Order Form).
“ Business Day ”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
“ Cogna ”	means Cognia Ltd, a company registered in England and Wales with company number 14854153 whose registered office is at LG02 Chancery House, 53-64 Chancery Lane, London, WC2A 1QS, also referred to as “ Supplier ” in the Contract.
“ Commencement Date ”	the date specified in the Order Form.
“ Confidential Information ”	as defined in Joint Schedule 1 of the Contract, except that, for the avoidance of doubt, Cognia’s Confidential Information includes: information relating to the Platform, Customer Apps or any of its constituent parts, Documentation and the Source Code relating to the Platform, Customer Apps or any such parts.
“ Customer ”	the “ Buyer ” as set out in the Order Form.
“ Customer App(s) ”	the application(s) to be developed for the Customer by Cognia under this Agreement in accordance with the App Proposal(s) and as set out in the Order Form.
“ Customer App Licence Fee ”	the annual fee payable in each App Licence Year by the Customer to Cognia for the Licence granted under clause 4.
“ Customer Data ”	any data inputted by the Customer, the Licensed Users, or Cognia on the Customer’s behalf for the purpose of using the Platform.
“ Customer Systems ”	the Customer (or its third party supplier’s) hardware, software, networks and technical infrastructure.
“ Defect ”	an error in a Customer App that causes it to fail to operate substantially in accordance with the App Proposal.
“ Documentation ”	the Specification, Supplier Service Description, App Proposal and all operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by Cognia relating to the Platform and/or Customer Apps.
“ Fees ”	the Platform Licence Fee and Customer Apps Licence Fee. To avoid doubt, all Fees are “ Charges ” as referred to in the Contract.
“ Intellectual Property Rights ”	as defined in Joint Schedule 1 of the Contract, except that, for the avoidance of doubt, Cognia’s IPRs include all: service marks, rights in get-up and trade dress, the right to sue for passing off or unfair competition, rights in designs, database rights, rights in software, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights listed at section (a) of the definition of IPRs and otherwise, 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, including the right to sue for

"Licence"	and recover damages for past infringements.
"Licensed Users"	the licence granted by Cognia to the Customer under clause 4.
"Minimum App Licence Term"	the employees and agents of the Customer who use the Customer Apps, up to the maximum number specified in the Order Form.
"Order Form"	the minimum term (as set out in the Order Form) of the Licence, commencing with effect from the Commencement Date.
"Platform"	any order form executed between the Customer and Cognia from time to time.
"Platform Licence Fee"	in these Supplier Terms, means Cognia's AI driven platform which is provided by Cognia and which includes the App Container.
"Source Code"	the annual fee payable in each year of the Agreement for the Licence granted under clause 4.
"Tools"	the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation.
"VAT"	any tools and know-how developed, and methods invented, by Cognia in the course of or as a result of carrying out the services, whether or not developed or invented specifically or used exclusively to carry out the services. To avoid doubt, all Tools are Supplier Existing IPR for the purposes of the Contract.
"Virus"	value added tax chargeable under the Value Added Tax Act 1994 or any equivalent tax chargeable in the UK or elsewhere.
"Vulnerability"	any thing or device (including any software, code, file or programme) which may: a) 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; b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
	any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term " Vulnerabilities " shall be construed accordingly.

1.2. The headings in these Supplier Terms shall not affect their interpretation.

1.3. A reference to legislation or a legislative provision in these Supplier Terms is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.4. Unless otherwise expressly stated, references to clauses and schedules in these Supplier Terms are to the clauses of and schedules of these Supplier Terms.

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. Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.7. A reference to **writing** or **written** includes email.

1.8. If any conflict arises between the terms of the Order Form and the Supplier Terms, the terms of the Order Form shall prevail.

2. Definition and Delivery of Customer Apps

2.1. Cognia and Customer shall work together in good faith to establish the App Proposal for the proposed Customer Apps outlined in the Order Form. For the avoidance of doubt, no Platform Licence Fee or Customer App Licence Fee shall be payable by the Customer under this Agreement until Acceptance of a Customer App has taken effect in accordance with clause 3.

2.2. The Customer shall purchase a Licence for Customer Apps by issuing an App Purchase Order.

2.3. Upon receipt of an App Purchase Order, Cognia shall use reasonable endeavours to:

2.3.1. develop the Customer Apps and Documentation relating to it in accordance with the App Proposal; and

2.3.2. carry out, in conjunction with the Customer, any required Acceptance Tests.

2.4. Subject to clause 2.5, the Customer may carry out Acceptance Tests for each Customer App within ten (10) days after the Customer App is submitted to the Customer. The Customer shall notify Cognia of the results of the Acceptance Tests promptly on completion, and such notice shall set out the reasons for any Acceptance Test failure in reasonable detail.

- 2.5. The user acceptance criteria and test data for the Acceptance Tests shall be such as are reasonably required to show that the Customer Apps complies with the App Proposal in all material respects.
- 2.6. If the Customer App fails to pass the Acceptance Tests as a result of a Defect, Cognia shall remedy the Defect and submit the remedied Customer Apps to the Customer. The relevant Acceptance Tests shall then be repeated within ten (10) days of the Customer being provided a remedied Customer App. This process shall continue until the Customer App passes the Acceptance Tests or the Customer (acting reasonably) rejects the Customer App. Cognia may withdraw a Customer App from this process at any time if, in its discretion and acting reasonably, it believes there is no reasonable likelihood of Acceptance.
- 2.7. If a Customer App is rejected prior to Acceptance, the App Purchase Order will be cancelled.

3. Acceptance

- 3.1. Acceptance of a Customer App shall be deemed to occur on any of the following events:
- 3.1.1. the Customer App meets the App Proposal in all material respects (as determined by the Customer in its reasonable discretion);
- 3.1.2. the expiry of ten (10) days after the Customer App is submitted to the Customer for the Acceptance Tests, unless the Customer App has failed the Acceptance Tests and the Customer has given Cognia written notice of the failure under clause 2 within the ten (10) day period; or
- 3.1.3. the use of the Customer App by the Customer in the normal course of its business.

4. Licence

- 4.1. The Customer shall have access to the Cognia Platform subject to the terms of this Agreement.
- 4.2. On Acceptance, Cognia shall deposit the Customer App in the App Container and grant, subject to the terms of this Agreement, the Customer a non-exclusive, revocable, non-transferable, non-sub-licensable right to permit the Licensed Users, from the Acceptance Date, to use the Customer App(s) and the Documentation.
- 4.3. The Customer undertakes that:
- 4.3.1. the number of Licensed Users shall not exceed the number set out in the Order Form; and
- 4.3.2. it shall permit Cognia or Cognia's designated auditor to audit the Customer's use of the Platform and / or Customer Apps in order to establish the Customer's compliance with this Agreement.
- 4.4. The Customer shall not, and it shall procure that the Licensed Users shall not:
- 4.4.1. access and/or use the Platform, the Customer Apps or Documentation outside the scope of the Licence and the express permissions set out in this Contract;
- 4.4.2. except as may be allowed by 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, develop, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform, Customer Apps and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to de-compile, reverse compile, disassemble, scan, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform or Customer Apps or attempt to discover any Source Code or underlying ideas or algorithms of the Platform or Customer Apps;
- 4.4.3. access or use the Platform, the Customer Apps and/or Documentation in order to build a product or service which competes with the business of Cognia;
- 4.4.4. use the Platform, Customer Apps and/or Documentation to provide services to third parties or for any unauthorised or unlawful purposes;
- 4.4.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Platform, Customer Apps and/or Documentation available to any person except the Licensed Users without Cognia's prior written consent;
- 4.4.6. attempt to obtain, or assist third parties in obtaining, access to the Platform, Customer Apps and/or Documentation, other than as permitted under this clause 4 and the express permissions set out in this Contract;
- 4.4.7. allow the transfer, transmission, export or re-export of the Platform, Customer Apps or Documentation whether in whole or in part; or

4.4.8. introduce or permit the introduction of any Virus or Vulnerability into Cogna's (or its supplier's) network and information systems.

4.5. The Customer shall prevent any unauthorised access to, or use of, the Platform, Customer Apps and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Cogna.

5. Payment

5.1. The Customer shall pay Cogna the Fees set out in the Order Form in accordance with this clause 5 and the Contract.

5.2. Cogna shall invoice the Customer for:

5.2.1. the Platform Licence Fee annually in advance (the first of which shall be invoiced on the Acceptance Date and thereafter shall be invoiced on each anniversary of the Commencement Date); and

5.2.2. each Customer App Licence Fee annually in advance (the first of which for each Customer App shall be invoiced on the relevant Acceptance Date of that Customer App and thereafter on the anniversary of each Commencement Date).

5.3. The Customer shall pay Cogna's invoices that are submitted in accordance with this Agreement within thirty (30) days of the invoice date.

5.4. All amounts and fees stated or referred to in this Agreement:

5.4.1. shall be payable in the currency on Cogna's invoice; and

5.4.2. are exclusive of VAT, which shall be added to Cogna's invoice(s) at the appropriate rate.

5.5. Cogna may increase the Fees on any anniversary of the Commencement Date falling on or after the expiry of the Minimum App Licence Term by giving the Customer at least three (3) months' written notice before such anniversary.

6. Intellectual Property

6.1. The Intellectual Property Rights in the Platform, Customer Apps, Tools and Documentation are, and shall remain, the property of Cogna (or its licensors) and the Customer acquires no rights in or to the Platform, Customer Apps, Tools or the Documentation other than those expressly granted by this Agreement. To avoid doubt, Supplier Existing IPRs include all Intellectual Property Rights in and to the Platform, Tools and Documentation and, unless (and then only to the extent) otherwise expressly agreed in an Order Form, in and to Customer Apps.

6.2. The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that Cogna may consider necessary or desirable to perfect the right, title and interest of Cogna in and to the Intellectual Property Rights in the Customer Apps.

6.3. The Customer shall use reasonable endeavours to prevent any infringement of Cogna's Intellectual Property Rights in the Platform, Customer Apps, Tools and Documentation and shall promptly report to Cogna any such infringement that comes to its attention. In particular, the Customer shall:

6.3.1. ensure that each Licensed User, before starting to use the Platform, Customer Apps or Documentation, is made aware that they are proprietary to Cogna and that they may only be used and copied in accordance with this Agreement; and

6.3.2. except as expressly permitted by the Contract, not permit third parties to have access to the Platform, Customer Apps or Documentation without the prior written consent of Cogna, who may require that such third party executes a written confidentiality agreement before being given access to the same.

7. Documentation

7.1. Cogna shall provide to the Customer, from time to time, copies of the Documentation containing up-to-date information for the proper use of the Platform and Customer Apps. Such Documentation may be supplied in electronic form, including by upload to the Digital Platform.

8. Additional Users

8.1. The Customer may, from time to time during the term of the Licence, purchase the right to increase the number of Licensed Users of the Platform, Customer Apps and Documentation in excess of the Licensed Users set out in the Order Form ("**Additional Users**").

8.2. If the Customer wishes to purchase Additional Users, the Customer shall notify Cogna in writing. Cogna shall evaluate such request for Additional Users and respond to the Customer with approval or rejection of the request in writing. Where the request for Additional Users is approved by Cogna, the definition of Licensed Users (and number set out in the Order Form) is automatically amended to include the Additional Users.

- 8.3. If Cognia approves the Customer's request to purchase Additional Users, the Customer shall, within thirty (30) days of the date of Cognia's invoice, pay to Cognia the relevant Additional User Fees as set out in the Order Form (or, if not set out in the Order Form, calculated at Cognia's pro rata rates as specified in the Order Form and increased in accordance with the Contract) for such Additional Users.

9. Customer obligations

- 9.1. The Customer warrants that:
- 9.1.1. it shall provide Cognia with:
- (a) access to such information as may be reasonably required by Cognia, in order to perform its obligations under this Agreement; and
 - (b) access to the Customer Data and Customer Systems as reasonably required by Cognia to perform this Agreement;
- 9.1.2. it will comply with the Customer's obligations in the Order Form (which includes ensuring the Customer Systems meet the requirements set out in the Order Form) and the Contract;
- 9.1.3. without affecting its other obligations under this Agreement, it will (a) comply with all applicable laws, relevant to its use of the Platform and Customer Apps, and (b) not cause Cognia or its licensors to breach such laws;
- 9.1.4. Cognia's use of the Customer Data as envisaged by this Agreement will not infringe the rights of any third party;
- 9.1.5. it shall take reasonable steps not to introduce any Virus or Vulnerability into the Platform, Customer Apps or the network and information systems of Cognia (or its suppliers); and
- 9.1.6. it will carry out its responsibilities under this Agreement in a timely and efficient manner. In the event of any delays caused by the Customer or its contractors or agents, Cognia may adjust any agreed timetable as reasonably necessary and otherwise permitted by the Contract.
- 9.2. As between the parties, the Customer shall own all right, title and interest in and to all the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. The Customer grants Cognia a non-exclusive, royalty-free, worldwide licence, transferable together with the right to grant sub-licenses, to:
- 9.2.1. access and use the Customer Data for the term of this Agreement to perform this Agreement.
- 9.3. The Customer acknowledges that Cognia and its licensors may collect metrics, analytics, metadata, statistics or other data related to the Customer's use of the Platform and Customer Apps:
- 9.3.1. to provide the Platform to and for the benefit of the Customer; and
- 9.3.2. to analyse, maintain and improve the Platform and Customer Apps, including for security purposes, except that Buyer Content shall only be used in connection with the Customer.

10. Cogna Obligations

- 10.1. Cognia warrants that:
- 10.1.1. the Platform, Customer Apps and Documentation are proprietary to Cognia and its licensors, and that it has the right to license the Intellectual Property Rights in and to the Platform, Customer Apps and Documentation to the Customer;
- 10.1.2. the Platform has the technical capability to deliver the Customer Apps; and
- 10.1.3. the Customer Apps, at the Acceptance Date, will perform in all material respects in accordance with the App Proposal.
- 10.2. Except as expressly set out in this Agreement, Cognia:
- 10.2.1. does not warrant that access to the Platform or Customer Apps will be uninterrupted or error-free; and
- 10.2.2. 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, and the Customer acknowledges that the use of the Platform and Customer Apps may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3. Whilst Cognia takes appropriate steps for an organisation of its size and resources to minimise the risk of the Platform and Customer Apps containing Vulnerabilities and Viruses, Cognia cannot guarantee the same, and the Customer acknowledges its responsibility to protect its hardware, software and network (which includes implementing appropriate firewalls and anti-virus software). In the event

of any scheduled works that may impact the service provided to the Customer, Cogna will use reasonable endeavours to notify the Customer in advance.

- 10.4. Any unauthorised modifications or use of the Platform or Customer Apps by, or on behalf of, the Customer shall render all Cogna's warranties and obligations under this Agreement null and void.

11. Confidentiality

- 11.1. Each party shall use at least the same degree of care with respect to the other party's Confidential Information as it uses to prevent the disclosure of its own Confidential Information, which in any event shall be no less than a reasonable standard of care.
- 11.2. The Customer acknowledges that the Platform, Customer Apps and the Documentation are part of Cogna's Confidential Information.
- 11.3. Subject to Customer's prior written consent, Cogna may use the Customer's name and logo(s) on Cogna's website and marketing materials to highlight how Cogna and the Customer are working together and Cogna shall comply with the Customer's reasonable branding guidelines in such usage. Otherwise, no party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12. Indemnities

- 12.1. In the event of an IPR Claim, Customer shall comply with the following:
- 12.1.1. give Cogna prompt written notice (in no event to exceed five (5) Business Days) once the Customer is aware of any such claim;
 - 12.1.2. the Customer shall not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Cogna in the defence and settlement of such claim, at Cogna's reasonable expense; and
 - 12.1.3. give Cogna sole authority to defend or settle the claim.
- 12.2. In no event shall Cogna, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.2.1. a modification of the Platform, Customer Apps or Documentation by anyone other than Cogna;
 - 12.2.2. the Customer's use of the Platform, Customer Apps or Documentation in a manner contrary to the instructions given to the Customer by Cogna;
 - 12.2.3. the Customer's use of any non-Cogna products, software, services or data;
 - 12.2.4. the Customer's use of the Platform, Customer Apps or Documentation after notice of the alleged or actual infringement from Cogna or any appropriate authority.
- 12.3. The foregoing states the Customer's sole and exclusive rights and remedies, and Cogna's entire obligations and liability, for infringement of any third party Intellectual Property Rights.
- 12.4. The Customer shall ensure its Licensed Users comply with the terms of this Agreement and the Customer is responsible for its Licensed Users' (and any persons to which it, with Cogna's written consent, grants access to the Platform, Customer Apps and/or the Documentation) acts and omissions.

13. Limitation of liability

- 13.1. To avoid doubt, the parties expressly acknowledge that the liability terms in the Order Form and the remainder of the Contract shall apply in addition to this clause 13.
- 13.2. Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law:
- 13.2.1. the Customer shall be solely responsible, as against Cogna, for any opinions, recommendations, forecasts, or other conclusions made or actions taken by the Customer, any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Platform or the Customer Apps by the Customer or any actions taken by Cogna at the Customer's direction;
 - 13.2.2. Cogna shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Cogna by the Customer in connection with the Platform or the Customer Apps; and
 - 13.2.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law

are excluded from this Agreement.

13.3. Neither party excludes or limits liability to the other party for:

13.3.1. fraud or fraudulent misrepresentation;

13.3.2. death or personal injury caused by negligence; or

13.3.3. for any other liability that cannot be lawfully limited or excluded.

13.4. The parties acknowledge and agree that any dates quoted for delivery of Customer Apps are approximate only, and that the time of delivery is not of the essence. Cognia shall not be liable for any delay in delivery of the Customer Apps that is caused by a force majeure event or the Customer's failure to provide Cognia with adequate instructions.

13.5. Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Cognia's Intellectual Property Rights.

14. Duration

14.1. This Agreement shall commence on the date of the Order Form and shall continue for the Initial Term and renewal periods as specified in the Order Form.

14.2. The Licence granted under clause 4 shall, unless this Agreement is terminated earlier, continue for the Minimum App Licence Term. Cognia shall notify Customer around ninety (90) days prior to the end of the Minimum App Licence Term, at which point the Customer may determine if it wishes to renew. Where the Customer gives notice for the Licence to renew in accordance with the Contract, thereafter, the Licence shall be automatically renewed for successive App Licence Years unless or until this Agreement is terminated in accordance with its provisions.

15. Termination

15.1. Subject to clause 16.1 and in addition to the termination rights in the rest of the Contract, after the Minimum App Licence Term, the Customer may terminate this Agreement at the end of the current App Licence Year by giving Cognia at least one (1) months' written notice prior to the end of the then current App Licence Year.

15.2. Where the Contract specifies that the Customer shall be entitled to receive a pro-rata refund of any pre-paid Fees for services not rendered, the refund amount shall be calculated based on the number of days remaining in the Agreement term divided by the total number of days in the Agreement term, multiplied by the total prepaid amount. The refund shall be issued within 30 days following the termination date. The calculation and process for such refund, defined as the "Refund Process".

16. Effects of termination

16.1. On termination of this Agreement for any reason, unless otherwise expressly stated in the Contract:

16.1.1. the Customer shall immediately pay any outstanding unpaid invoices and interest due to Cognia. Cognia shall submit invoices for any sums due, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

16.1.2. all licences granted under this Agreement shall immediately terminate and the Customer shall, and shall ensure its Licensed Users shall, cease all use of the Platform, Customer Apps and the Documentation;

16.1.3. each party shall return and make no further use of any Confidential Information, access rights, equipment, property, media, documentation and other items (and all copies of them) belonging to the other party;

16.1.4. 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; and

16.1.5. clauses which expressly or impliedly survive termination continue in force.

17. General

17.1. Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

17.2. 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.

17.3. Except as expressly provided for by the Contract, the Customer shall not be permitted to assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without Cognia's prior written consent. In accordance with the terms of the Contract, Cognia may assign, transfer, charge, sub-contract or deal in any other manner with all or

any of its rights or obligations under this Agreement with advanced notice to the Customer.

- 17.4. 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.
- 17.5. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.6. The definition of “Force Majeure Events” in Joint Schedule 1 includes, without limitation, strikes, lock-outs or other industrial disputes (excluding any industrial dispute relating to Cognia, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain), failure of a utility service or transport or telecommunications network, act of God, Covid-19, pandemic, endemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

Cogna – G Cloud Supplier Terms: Supplier Data Processing Agreement

This Data Processing Agreement ("DPA") is part of the Cognia Supplier Terms and supplements the Cognia Master Services Agreement, each as part of the Cognia G Cloud "Supplier Terms" appended to the Buyer Order Form and incorporated into the "Contract", as defined in Joint Schedule 1, referred to in this DPA as the "Agreement", entered into by and between the Customer (as defined in the Agreement) and Cognia Ltd ("Cognia").

Any terms not defined in this DPA shall have the meaning set forth in the Agreement. The rules of Interpretation set out in the Agreement apply to this DPA.

1. Definitions

The definitions in this clause apply in this DPA.

"Data Protection Laws"

means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of Personal Data including: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) ("EU GDPR") and the EU GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR") (together, collectively, the "GDPR"), (ii) the Swiss Federal Act on Data Protection, ; (iii) the UK Data Protection Act 2018; and (v) the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time. The terms "Data Subject", "Personal Data", "Personal Data Breach", "processing", "processor," "controller," and "supervisory authority" shall have the meanings set forth in the UK GDPR;

"EU SCCs"

means the standard contractual clauses approved by the European Commission in Commission Decision 2021/914 dated 4 June 2021, for transfers of personal data to countries not otherwise recognized as offering an adequate level of protection for personal data by the European Commission (as amended and updated from time to time);

"Restricted Transfer"

Means a transfer of Personal Data from the EEA or UK to a country which is not subject to an adequacy determination by the European Commission and the UK Government;

"Standard Contractual Clauses"

means the EU SCCs and the UK SCCs;

"UK GDPR"

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

"UK SCCs"

means the EU SCCs, as amended by the UK International Data Transfer Agreement Addendum.

2. Relationship of the Parties; Processing of Data

- 2.1. The parties acknowledge and agree that with regard to the processing of Personal Data, the Customer may act either as a controller or processor and, except as expressly set forth in this DPA or the Agreement, Cognia is a processor. The Customer shall, in its use of the Licence and the Services, at all times process Personal Data, and provide instructions for the processing of Personal Data, in compliance with Data Protection Laws. The Customer shall ensure that the processing of Personal Data in accordance with the Customer's instructions will not cause Cognia to be in breach of the Data Protection Laws. The Customer is solely responsible for the accuracy, quality, and legality of (i) the Personal Data provided to Cognia by or on behalf of Customer, (ii) the means by which the Customer acquired any such Personal Data, and (iii) the instructions it provides to Cognia regarding the processing of such Personal Data. The Customer shall not provide or make available to Cognia any Personal Data in violation of the Agreement or otherwise inappropriate for the nature of the Services.
- 2.2. Cognia shall not process Personal Data (i) for purposes other than those set forth in the Agreement (ii) in a manner inconsistent with the terms and conditions set forth in this DPA or any other documented instructions provided by the Customer, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by law to which Cognia is subject; in such a case, Cognia shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest, or (iii) in violation of Data Protection Laws. The Customer hereby instructs Cognia to process Personal Data in accordance with the foregoing and as part of any processing initiated by the Customer in its use of the Licence.
- 2.3. Cognia processes personal data related to the Customer's use of the Platform, the Licence and Customer Apps as the Customer's processor as follows:
 - 2.3.1. Scope and purpose of the processing: to supply the Platform, the Licence and Customer Apps to the Customer under the Agreement;
 - 2.3.2. Nature of the processing: the receipt, hosting, using, accessing, transferring, anonymisation and deletion of the personal data;
 - 2.3.3. Duration of the processing: the duration of the Agreement plus a short period afterwards to allow the personal data to be anonymised or deleted;
 - 2.3.4. Types of personal data: personal data related to individuals involved in the Customer's use of the Customer Apps including their names and details of work undertaken; and

- 2.4. Following completion of the Licence, at the Customer's choice, Cogna shall delete the Customer's Personal Data, unless further storage of such Personal Data is required or authorised by applicable law. If return or destruction is impracticable or prohibited by law, rule or regulation, Cogna shall take measures to block such Personal Data from any further processing (except to the extent necessary for its continued hosting or processing required by law, rule or regulation) and shall continue to appropriately protect the Personal Data remaining in its possession, custody, or control.

3. **Confidentiality**

- 3.1. Cogna shall ensure that any person it authorises to process Personal Data has agreed to protect Personal Data in accordance with Cogna's confidentiality obligations in the Agreement. The Customer agrees that Cogna may disclose Personal Data to its advisers, auditors or other third parties as reasonably required in connection with the performance of its obligations under this DPA, the Agreement, or the provision of the Licence and Services to the Customer.

4. **Cross-Border Transfers of Personal Data**

- 4.1. By entering into the Agreement, the Customer acknowledges and accepts that Personal Data may be transferred and/or processed by Cogna outside the UK and EEA where specified in an Order Form/agreed by the Parties in writing.
- 4.2. Where the processing of Personal Data involves the transfer of Personal Data from the Customer to Cogna and such transfer is a Restricted Transfer and Data Protection Laws require that appropriate safeguards are put in place, such transfer shall be subject to the Standard Contractual Clauses, which shall be deemed incorporated into and form an integral part of this DPA.
- 4.3. For purposes of the EU SCCs, they shall be deemed completed as follows:
- 4.3.1. Where Customer acts as a controller and Cogna acts as Customer's processor with respect to Personal Data subject to the EU SCCs, Module 2 applies.
 - 4.3.2. Where Customer acts as a processor and Provider acts as Customer's subprocessor with respect to Personal Data subject to the EU SCCs, Module 3 applies.
 - 4.3.3. Clause 7 (the optional docking clause) is not included.
 - 4.3.4. Under Clause 9 (Use of sub-processors), the parties select Option 2 (General written authorisation). A list of Cogna's sub-processors is appended to the Order Form and shall be updated in accordance with the Contract.
 - 4.3.5. Under Clause 11 (Redress), the optional requirement that data subjects be permitted to lodge a complaint with an independent dispute resolution body does not apply.
 - 4.3.6. Under Clause 17 (Governing law), the parties choose Option 1 (the law of an EU Member State that allows for third-party beneficiary rights). The parties select the law of Ireland.
 - 4.3.7. Under Clause 18 (Choice of forum and jurisdiction), the parties select the courts of Ireland.

- 4.3.8. Annexes I and II of the EU SCCs are as described in this DPA.
- 4.3.9. Annex III of the EU SCCs (List of subprocessors) is inapplicable.
- 4.4. For purposes of the UK SCCs, they shall be deemed completed as follows:
 - 4.4.1. Table 1 of the UK SCCs: The Parties' details shall be the Parties and their affiliates to the extent any of them is involved in such transfer, and the Key Contact shall be the contacts set forth in the Order Form.
 - 4.4.2. Table 2 of the UK SCCs: The Approved EU SCCs referenced in Table 2 shall be the EU SCCs as incorporated into this DPA.
 - 4.4.3. Table 3 of the UK SCCs: Annex 1A, 1B, and II shall be as set out in this DPA.
 - 4.4.4. Table 4 of the UK SCCs: Either party may end this Addendum as set out in Section 19 of the UK SCCs.
 - 4.4.5. By entering into this DPA, the Parties are deemed to be signing the UK SCCs and their applicable Tables and Appendix Information.

5. Sub-Processors

- 5.1. The Customer acknowledges and agrees that Cogna may engage Sub-Processors in connection with the provision of the Licence, Platform or Customer Apps, subject to this DPA and the remaining terms of the Agreement.
- 5.2. Cogna may only authorise a Sub-Processor to process Personal Data if:
 - 5.2.1. Cogna enters into a written contract with the Sub-Processor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures and SCCs;
 - 5.2.2. Cogna makes available to Customer, an up-to-date list of all Sub-Processors used for the processing of Personal Data upon request;
 - 5.2.3. Cogna maintains control over all of the Personal Data it entrusts to the Sub-Processor and remains liable to the Customer for the acts and/or omissions of the Sub-Processor; and
 - 5.2.4. the Sub-Processor's contract insofar as it involves the Processing of Customer's Personal Data terminates automatically on termination of the Agreement for any reason.

6. **Cogna Obligations**

- 6.1. Cogna shall, where Cogna processes personal data on the Customer's behalf:
 - 6.1.1. process that personal data only to supply the Platform and Licence, as permitted by the Agreement, and on the documented instructions of the Customer, unless Cogna is required by applicable laws to otherwise process that personal data;
 - 6.1.2. inform the Customer if, in the opinion of Cogna, the instructions of the Customer infringe Data Protection Laws;
 - 6.1.3. implement appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data which include but are not limited to:
 - (a) Encryption: Use of encryption technologies to secure personal data in transit and at rest.
 - (b) Access Controls: Restriction of access to personal data to authorised personnel only, based on the principle of least privilege.
 - (c) Network Security: Deployment of firewalls, intrusion detection systems, and other tools to monitor and protect network traffic.
 - (d) Data Minimisation: Limiting the collection, storage, and processing of Personal Data to what is necessary for the intended purpose.
 - (e) Regular Security Testing: Conducting periodic security assessments, vulnerability scans, and penetration testing to ensure ongoing protection.

- (f) System Updates: Regularly updating and patching systems, applications, and software to address security vulnerabilities.
 - (g) Backup and Recovery: Maintaining secure backups of personal data and implementing disaster recovery procedures to ensure data integrity and availability.
- 6.1.4. ensure that any personnel engaged and authorised by Cogna to process the personal data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 6.1.5. assist the Customer where reasonably practicable, and at the Customer's reasonable cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 6.1.6. notify the Customer without undue delay, and within a maximum of 48 hours, on becoming aware of a personal data breach involving the personal data;
 - 6.1.7. delete or return to the Customer the personal data on termination of this Agreement unless Cogna is required by applicable law to continue to process that personal data; and
 - 6.1.8. maintain records to demonstrate its compliance with this clause, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice, in accordance with the audit provisions of the Agreement.

7. Term and Termination

- 7.1. This DPA will remain in full force and effect so long as:
 - 7.1.1. the Agreement remains in effect; or
 - 7.1.2. Cogna retains any of the Personal Data related to the Agreement in its possession or control.
- 7.2. Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of the Agreement in order to protect the Personal Data will remain in full force and effect.
- 7.3. If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Agreement obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements.

