



Software-as-a-service agreement

Global IT Factory Ltd (**Supplier**)

[insert] (**Customer**)

Agreement

Details	3
Agreed terms	4
1. Defined terms & interpretation	4
2. Setup Services	7
3. Use of Product	8
4. Usage conditions and responsibility for users	8
5. Support Services	10
6. Service Levels	10
7. Consultancy Services	11
8. Intellectual Property Rights	12
9. Branding and marketing	12
10. Fees	13
11. GST	Error! Bookmark not defined.
12. Confidentiality and privacy	14
13. Exclusion, limitation of liability and indemnity	15
14. Suspension and termination	16
15. Force majeure	17
16. Notices and communications	17
17. Dispute resolution	18
18. Miscellaneous	19
Schedule 1 – Contract details	21
Schedule 2 – Services	22
Schedule 3 – Fees	23
Schedule 4 – Service Levels	24
Schedule 5 – Statement of Work	26
Signing page	30

Details

Date

Parties

Name	Global IT Factory Ltd
Company Number	15781940
Short form name	Supplier
Notice details	Global It Factory Ltd, City Tower, 13th Floor, Piccadilly Plaza, Manchester, United Kingdom, M1 4BT Email: office@gloabitfactory.co.uk Attention: Boris Rozenblat, Managing Director

Name	[insert]
ABN	[insert]
Short form name	Customer
Notice details	Address: [insert] Email: [insert] Attention: [insert]

Background

- A Supplier has developed and owns the Product.
- B Customer wishes to access and use (and to permit certain persons to access and use) the Product, and Supplier has agreed to grant such rights on the terms of this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Access Credentials is defined in clause 4.1.

Access Date means the date specified in Item 1 of Schedule 1, or if the Setup Services are not completed by that date, the date on which Customer is granted access to the Product following the completion of the Setup Services (as confirmed by Supplier to Customer in writing).

Administrative User means the Personnel of Customer who is or are authorised by Customer to access and use the Product for the purpose of administering, managing and monitoring the use of the Product by Authorised Users.

UK Consumer Law refers to the Consumer Rights Act 2015 as amended or replaced from time to time.

Authorised User means any Personnel of Customer, who is authorised by Customer to access and use the Product.

Business Day means:

- (a) for receiving a notice under clause **16**, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in the United Kingdom

Business Hours means any time between 9.00am and 5.00pm on a Business Day.

CMS means the Curriculum Management System, which forms part of the Product.

Commencement Date means the date on which Supplier executes this agreement (after it has been duly executed by Customer and submitted to Supplier for acceptance).

Confidential Information of a Disclosing Party means:

- (a) the following information, regardless of its form and whether the Receiving Party becomes aware of it before or after the date of this agreement:
 - (i) information that is by its nature confidential;
 - (ii) information that is designated by the Disclosing Party as confidential; and
 - (iii) information the Receiving Party knows, or ought to know, is confidential;
 - (b) all notes and other records prepared by the Receiving Party based on or incorporating information referred to in paragraph (a); and
 - (c) all copies of the information, notes and other records referred to in paragraphs (a) and (b), and:
 - (d) in the case of Supplier, includes the Product (including any data stored in the Product that is not Customer Materials); and
 - (e) in the case of Customer, includes the Customer Materials,
- but in all cases excludes information that:
- (f) the Receiving Party creates (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (g) is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted discloses).

Consolidation Period means the three months from the Production Service Instance Go-Live date.

Consultancy Fees means the fees payable by Customer in consideration of Supplier's provision of Consultancy Services, as specified in a Statement of Work.

Consultancy Services means those services specified in a Statement of Work.

CPI means the UK Consumer Price Index

Customer Materials means:

- (a) data, information (including Personal Information) and other materials entered or uploaded by Customer or Authorised Users into the Product; and
- (b) all works, documents or other materials that are created through the use of the Product by Customer or any of its Authorised Users,

but in all cases excludes the Product.

Designated Number of Users means the number of Authorised Users specified in Item 3 of Schedule 1.

Disclosing Party means a party to this agreement who discloses or makes available Confidential Information to the Receiving Party.

Documentation means all documentation provided or made available by Supplier to Customer under this agreement which sets out a description of the Product and instructions for its use, and includes changes (including additions) to that documentation.

Feedback is defined in clause 8.3(b)(ii).

Fees means:

- (a) the Setup Fees (or implementation project Fees);
- (b) the SaaS Fees (inclusive of infrastructure, license and support fees);
- (c) the Consultancy Fees; and

and any other amounts payable to Supplier under this agreement.

Force Majeure Event is defined in clause 15.

Go Live Date means the date, agreed by the Parties, upon which CMS is made available for general use by Authorised Users.

Initial Licence Period means the period specified in Item 2 of Schedule 1.

Insolvency Event means any of the following events:

- (a) a party disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (b) a party ceases to carry on business;
- (c) a party ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of a party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between a party and its creditors; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of a party's assets or business.

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;

- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including the United Kingdom),

whether or not such rights are registered or capable of being registered.

Licence Period means the Initial Licence Period and all Renewal Periods.

Licence Year means a twelve (12) month period commencing on the Access Date (or an anniversary of the Access Date).

Modification, in relation to any material, means any modification, translation, update, enhancement or new version of that material (and, in the case of software, also includes patches, fixes, service packs or upgrades), and **Modify** and **Modified** have corresponding meanings.

Non-Production Service Instance refers to a deployed SaaS service instance of the Supplier's CMS software that is used for testing, development, training, or other non-operational purposes. This SaaS service instance does not handle live business data or real-time transactions and is typically used for software testing, user training, system testing, and development tasks.

Personal Information has the same meaning as in the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. **Personnel** means, in relation to a party, the officers, employees, contractors and agents of that party.

Product means the hosted software application provided by Supplier to Customer under this agreement as more particularly described in the Documentation, as Modified by (or on behalf of) Supplier from time to time.

Production Service Instance refers to a deployed SaaS service instance of the Supplier's CMS software that is used for actual business operations by the Customer. This instance supports live data and real-time transaction processing.

Receiving Party means a party to this agreement who obtains Confidential Information of the other party to this agreement.

Renewal Period is defined in clause 3.2(b).

SaaS Fees means the annual Software as a Services fees payable by Customer for the access and usage rights granted in respect of the Product under clause 3.1, calculated in accordance with Schedule 3.

Service Desk means the online service desk used by Supplier (which, as at the date of this agreement, utilises the Jira Service Desk product).

Service Level means the target performance levels with respect to Support Services, which are specified in Schedule 4.

Services means:

- (a) the Setup Services;
- (b) the Support Services; and
- (c) the Consultancy Services,

as outlined at Schedule 2 and each Statement of Work.

Setup Fees means the fees payable by Customer for the Setup Services, as set out in Item 1 of Schedule 3.

Setup Services means the setup services described in Item 1 of Schedule 2.

Service Delivery Manager means the member of Supplier Personnel appointed by Supplier to manage the provision of the Services on a day-to-day basis.

Statement of Work means a document describing particular Consultancy Services requested by Customer, which is agreed under clause 7.

Support Services means the support services described in Item 2 of Schedule 2.

Term means the period commencing on the Commencement Date and ending on the effective date of termination of this agreement under clause 14.

User means an Authorised User or an Administrative User.

1.2 Interpretation

In this agreement, unless otherwise stated, or where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **£ or GBP** is to British currency;
- (f) a reference to time is to the time in the United Kingdom; being either Greenwich Mean Time (GMT) or British Summer Time (BST) as applicable depending on the date.
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity in favour of two or more persons (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Setup Services

2.1 Provision

Subject to Customer's payment of the Fees in accordance with this agreement, Supplier will provide the Setup Services to Customer as soon as practicable after the Commencement Date (or at such later date as the parties may agree in writing).

2.2 Information and assistance

Customer:

- (a) acknowledges that the provision of the Setup Services will require Customer to provide Supplier with certain information and access to Customer's systems, data and Personnel; and
- (b) agrees to promptly provide Supplier with all such information and access at Supplier's request.

3. Use of Product

3.1 Grant of licence

Subject to Customer's payment of the Fees in accordance with this agreement, and the terms of this agreement, Supplier grants to Customer a non-exclusive, non-transferable, revocable licence to access and use, and to permit the Designated Number of Users to access and use, the Product within the access levels and permissions set by Supplier.

3.2 Licence Period

The licence granted to Customer under clause 3.1 commences on the Access Date and will continue:

- (a) for the Initial Licence Period; and
- (b) automatically for successive 12 month periods thereafter (each, a **Renewal Period**), unless this agreement is terminated earlier in accordance with clause 14.

4. Usage conditions and responsibility for users

4.1 Access Credentials

In order to access the Product, each Authorised User will be issued (by Supplier or an Administrative User), or must create, a unique username and password through which that Authorised User may access the Product (**Access Credentials**). Customer acknowledges that Supplier may require Authorised Users to:

- (a) replace passwords used to access the Product; and/or
 - (b) adopt specific protocols for devising new or replacement passwords,
- and Customer will ensure that each Authorised User complies with such requirement.

4.2 Security

- (a) Customer will ensure that each Authorised User keeps his or her Access Credentials secret, and does not disclose or share those Access Credentials with any person.
- (b) Customer must notify Supplier if:
 - (i) an Authorised User ceases to be Personnel of Customer;
 - (ii) the security of the username and password issued to an Authorised User is, or becomes, compromised; or
 - (iii) Customer suspects that there has been unauthorised access to and/or use of the Product through particular Access Credentials.
- (c) Customer is responsible, and liable, for any access to and/or use of the Product, or Customer Materials or other materials stored on the Product, that is effected through the Access Credentials issued to any Authorised User, irrespective of whether such access and/or use is effected by the particular individual to whom such Access Credentials were issued.
- (d) Customer must ensure that, to the extent practicable, the Product is protected at all times from unauthorised access or use and from physical misuse, damage or destruction by any person.

- (e) Customer must ensure that each User:
 - (i) does not reverse engineer, disassemble, or decompile any software forming part of the Product unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
 - (ii) does not use the Product:
 - (A) for any unlawful purpose; and
 - (B) in a manner than contravenes any applicable laws.

4.3 Revocation of credentials by Supplier

- (a) Supplier may revoke Access Credentials issued to an Authorised User, or Authorised Users, where:
 - (i) that Authorised User, or those Authorised Users, cease to be Personnel of Customer;
 - (ii) the security of the username and password issued to an Authorised User has been, or has become, compromised; or
 - (iii) Supplier suspects that there has been unauthorised access to and/or use of the Product through such Access Credentials.
- (b) Supplier may revoke Access Credentials issued to an Authorised User, or Authorised Users, if Supplier considers that Customer has failed to adopt or implement reasonable security practices in respect of Access Credentials, or the use of the Product, or where Customer has engaged in conduct which breaches clause 4.2(e).

4.4 Conditions

Customer must:

- (a) comply with all reasonable directions issued by Supplier regarding use of the Product;
- (b) ensure that it uses the Product for lawful purposes and in accordance with this Agreement and applicable Laws; and
- (c) ensure that each User who accesses or uses the Product is properly trained in the operation of the Product.

4.5 Access and usage restrictions

Customer must not:

- (a) allow any person (other than Authorised Users) to access or use the Product for any purpose without Supplier's prior written consent;
- (b) modify, add to, adapt, delete or amend any part of the Product without Supplier's prior written consent;
- (c) sell, translate, network, publish, commercialise, rent, lease, assign, transfer, loan, or otherwise distribute all or part of the Product, or any adaptation, modification or derivative of all or part of the Product, except as expressly permitted by this Agreement;
- (d) reverse engineer, disassemble, or decompile any software forming part of the Product, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
- (e) use the Product:
 - (i) for any unlawful purpose; or
 - (ii) in a manner than contravenes any applicable laws;
- (f) remove, obscure or interfere with any copyright, acknowledgment, attribution, trademark, warning, disclaimer statement, rights management information or serial numbers affixed to, incorporated in or otherwise applied in connection with the Product;

- (g) (except in respect of Customer Materials) copy or download, in a systematic manner, any content, graphics, video, text or animation from the Product, or communicate or otherwise distribute such systematically-obtained content, graphics, video, text or animation (or allow any User to do so), except as expressly permitted by this Agreement;
- (h) transmit or introduce any Harmful Code into or via the Product; or
- (i) directly or indirectly, introduce or permit the introduction by its Personnel (including any User) of any virus, worm, trojan or other malicious code into the Product, or in any other manner whatsoever corrupt, degrade or disrupt the operation of the Product.

4.6 No guarantee of access

Customer acknowledges and agrees that to the extent permitted by law, Supplier makes no representations, warranties or guarantees in relation to the availability, continuity, reliability, accuracy, currency or security of the Product (or any services provided in connection with the Product). Supplier will not be liable if the Product (or any services provided in connection with the Product) are unavailable for any reason, including (without limitation) directly or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious or wilful acts or omissions of third parties (including Supplier's third party service providers);
- (c) maintenance or repairs carried out by Supplier or any third party service provider in respect of any of the systems used in connection with the provision of the Product;
- (d) services provided by third parties (including ISP Services and Oracle Cloud services) ceasing or becoming unavailable; or
- (e) Force Majeure Events.

5. Support Services

5.1 Provision of Support Services

Subject to Customer's payment of the Fees in accordance with this agreement, Supplier will provide the Support Services to Customer.

5.2 Scope of Support Services

Supplier can provide Customer with support and maintenance services for the Product as described in the table at Schedule 2.

5.3 Equipment, hardware and third party services

Customer is solely responsible for obtaining and maintaining all equipment, hardware and software, and all telecommunications services (where applicable), required by Customer to access and use the Product, including access to an account for the provision of internet services with an internet service provider in the United Kingdom.

6. Service Levels

- (a) Supplier will use commercially reasonable endeavours to achieve the Service Levels as outlined in Schedule 4.
- (b) If Supplier does not achieve the required minimum Service Levels, specified in Schedule 4, then the Customer is entitled to any performance rebates stated in Schedule 4. The payment or allowance of such performance rebates will be the Customer's sole financial remedy against the Supplier arising from its failure to achieve required minimum Service Levels.
- (c) During the Consolidation Period the Supplier will use its best efforts (but will not be liable for any failure) to meet or exceed the Service Levels.

7. Consultancy Services

7.1 Request for Consultancy Services

- (a) From time to time, Customer may, by notice in writing, request Supplier to perform Consultancy Services, which are for a fixed duration, and are non-recurring.
- (b) Each request will be initiated and actioned through the process set out in this clause 7.
- (c) Customer may terminate this process in respect of a given request at any time up until the parties agree in writing on the Statement of Work for the requested Consultancy Services.

7.2 Draft Statement of Work

- (a) Within 10 Business Days (or longer period as is agreed by the parties) of receiving a request for particular Consultancy Services for Customer, Supplier will prepare and provide to Customer a draft statement of work, in the form, or substantially in the form, of the template in Schedule 5, in respect of the requested Consultancy Services which will as necessary contain or specify:
 - (i) the scope of the Consultancy Services Supplier will provide, and any required deliverables to be supplied as part of those Consultancy Services;
 - (ii) the timetable for the provision of Consultancy Services and deliverables (if any);
 - (iii) the personnel of Supplier who will be employed or engaged to provide the required Consultancy Services;
 - (iv) the Consultancy Fees payable for the Consultancy Services; and
 - (v) any special conditions or terms that will apply in respect of the provision of the requested Consultancy Services.
- (b) Customer will review the draft statement of work provided by Supplier as promptly as possible and may request changes to the draft statement of work. A draft statement of work issued by Supplier under this clause 7.2 will lapse, and will no longer be capable of being accepted, 20 Business Days after it is received by Customer. If a draft statement of work lapses, Supplier may re-issue it on the same or amended terms, and if it does so, the provisions of this clause 7.2 will apply to it as if it were the original draft statement of work issued by Supplier.
- (c) If Customer wishes to engage Supplier to supply the particular Consultancy Services specified in the draft statement of work issued by Supplier under this clause 7.2:
 - (i) the parties will promptly sign the agreed Statement of Work; and
 - (i) Supplier must supply those Consultancy Services in accordance with the agreed Statement of Work and this agreement.
- (d) To the extent that the terms of this agreement and those in the Statement of Work conflict or are inconsistent, the terms of the Statement of Work will prevail to the extent of the conflict or inconsistency.
- (e) Notwithstanding paragraphs (a) to (d) (inclusive), a Statement of Work is not required (and Supplier is not obliged to prepare a draft statement of work) where the time required to effect a requested Consultancy Services is less than 4 hours. For the purposes of this agreement, the Fees payable for requested Consultancy Services to which this paragraph applies will be determined by multiplying the applicable rates by the number of hours spent providing the requested Consultancy Service.

7.3 Costs of preparing Statement of Work

- (a) The parties agree that Supplier may charge, and Customer agrees to pay, a fee calculated at its standard time and materials rates for the time required by Supplier to prepare a draft statement of work that must be provided for the purposes of clause 7.2(a).
- (b) Subject to paragraph (a), each party will bear its own costs of producing, negotiating, reviewing and/or agreeing each Statement of Work.

8. Intellectual Property Rights

8.1 Customer Materials

Subject to clauses 8.2 and 8.3, all rights, title and interest (including all Intellectual Property Rights) in the Customer Materials vest in Customer upon their creation. Customer grants to Supplier a non-exclusive licence to use, reproduce and communicate the Customer Materials to enable Supplier to perform its obligations under this agreement.

8.2 Product and Documentation

- (a) Save for the licence to use the Product granted under this agreement, all rights, title and interest (including all Intellectual Property Rights) in the Product and the Documentation vest in Supplier (and/or its third party licensors).
- (b) To the extent that any Customer Materials incorporate any element of the Product, Customer does not acquire any interest or rights in the Product. Notwithstanding the previous sentence, Supplier grants to Customer a non-exclusive, perpetual licence to use, reproduce and communicate any element of the Product incorporated into Customer Materials, but only as part of those Customer Materials and only for the internal business purposes of Customer.

8.3 Retained know-how and Feedback

Despite any other provision of this agreement:

- (a) Supplier is free to use any information in a non-tangible form which may be retained in the unaided memory of Supplier Personnel who have been in any way involved in the performance of the Services, including general knowledge, skills, ideas, concepts, tools, techniques, methodologies and know-how; and
- (b) Supplier is not prevented in any way from developing and using any:
 - (i) ideas, concepts, tools, techniques, methodologies and know-how relating to methods or processes of general application, including in the fields of information technology and business processes; or
 - (ii) ideas, comments, suggestions or feedback (including suggested improvements) in respect of the Product (collectively, **Feedback**),and all rights, title and interest (including all Intellectual Property Rights) in and to any Feedback vests in Supplier.
- (c) To the extent that Customer own any rights in any Feedback, Customer:
 - (i) irrevocably and unconditionally assigns to Supplier all rights, title and interest in and to the Feedback; and
 - (ii) agrees to perform all acts reasonably requested by Supplier give effect to that assignment.

9. Branding and marketing

Customer agrees that Supplier may:

- (a) publicly refer to Customer as a customer of Supplier; and
- (b) may use:
 - (i) Customer's name, trade name, trademarks and logo, and a general description of the Product and Services being provided to Customer, in its marketing, sales, financial material or reports (for the purpose set out in paragraph (a)); and
 - (ii) in any other way as may be agreed in writing between the parties.

10. Fees

10.1 Payment of Fees

Customer must pay the Fees in the manner specified in Schedule 3, or as otherwise invoiced by Supplier from time to time.

10.2 VAT

All fees payable under this Agreement are exclusive of Value Added Tax (VAT) at the applicable rate. Customer shall be responsible for payment of VAT as invoiced in accordance with UK tax laws

10.2 Fee increases

Supplier may, on an annual basis increase the SaaS Fees, by giving not less than 90 days prior written notice to Customer.

10.3 Interest on late payments

Each invoice is due and payable 30 days after the invoice date. If any amount payable under this agreement is in arrears for more than thirty (30) days, Supplier reserves the right to charge interest on such overdue amounts, calculated daily at the rate of 1% greater than the Bank of England Bank Rate then applying.

10.4 Audit

- (a) Customer must allow Supplier to audit Customer's use of the Product in order to:
 - (i) confirm that the number of Authorised User is less than or equal to the Designated Number of Users;
 - (ii) evaluate Customer's compliance with clause 4.
- (b) Such audit may be conducted no more frequently than once in any 12-month period, and in such a manner so as not to substantially interfere with Customer's normal conduct of business. Subject to paragraph (c), audits will be conducted at Supplier's expense.
- (c) If Supplier's audit under paragraph (a) reveals that Customer has exceeded the number of Designated Number of Users (**Additional Users**), Supplier will invoice Customer for:
 - (i) the Additional Users based on its standard licence fees at that time; and
 - (i) the cost of the conduct of the audit,and Customer must pay the amount of that invoice within 20 Business Days of receiving such invoice.

11. TUPE

11.1 For the purposes of this Clause 11, the following definitions shall apply:

"Customer Personnel" means all employees, staff, contractors, consultants, agents, officers and workers of the Customer or any Incumbent Supplier;

"Incumbent Supplier" means any third-party supplier engaged by the Customer to provide services that are to be replaced (wholly or in part) by the Consultancy and SaaS Services commencing from the effective date of any Order.

"Transfer Regulations" refers to, with respect to the UK, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended); with respect to the EU, the

Acquired Rights Directive 2001/23/EC (or implementing national legislation); and, with respect to other jurisdictions, any comparable or analogous local laws regarding the automatic transfer of employees.

- 11.2 **Non-Application of Transfer Regulations** The parties acknowledge and agree that it is not anticipated that the delivery of the Consultancy and SaaS Services, or the commencement or continuance of this Agreement or any Order under this Agreement, will constitute a transfer of undertaking under the Transfer Regulations. Accordingly, the Transfer Regulations shall not apply to the initiation or continuation of the SaaS Services or any related implementation services under this Agreement.
- 11.3 **Indemnity and Liability** Global IT Factory will not assume any liabilities for any Customer Personnel, former Customer Personnel, or any other person associated with the Customer or an Incumbent Supplier upon the commencement or during the execution of the SaaS Services or any associated implementation services. The Customer shall indemnify Global IT Factory and its Related Entities against all claims, costs, damages, and expenses arising from claims made by any Customer Personnel, former Customer Personnel, or any other person alleging that their employment has transferred to Global IT Factory or that any liabilities associated with their employment or its termination have transferred to Global IT Factory under the Transfer Regulations or equivalent legislation.

12. Confidentiality and privacy

12.1 Use and disclosure

A Receiving Party:

- (a) may use Confidential Information of the Disclosing Party only for the purposes of this agreement; and
- (b) must keep confidential all Confidential Information of the Disclosing Party except:
 - (i) (in the case of Customer) to the extent required to enjoy the benefit of the licence granted under clause 3.1;
 - (ii) for disclosures permitted under this clause **12**; and
 - (iii) to the extent (if any) the Receiving Party is required to disclose any Confidential Information by law.

12.2 Use and disclosure of Confidential Information

A Receiving Party may disclose Confidential Information of the Disclosing Party to persons who:

- (a) have a need to know for the purposes of this agreement (and only to the extent that each has a need to know); and
- (b) before disclosure:
 - (i) in the case of the Receiving Party's officers and employees, have been directed by the Receiving Party to keep confidential all Confidential Information of the Disclosing Party; and
 - (ii) in the case of other persons, have agreed in writing with the Receiving Party to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Receiving Party under this agreement,(each a direction).

12.3 Receiving Party's obligations

A Receiving Party must:

- (a) ensure that each person to whom it discloses Confidential Information of the Disclosing Party under clause 12.2(b) complies with its Direction; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a Direction.

12.4 Disclosure required by law

If a Receiving Party is required by law to disclose any Confidential Information of a Disclosing Party to a third person (including government) the Receiving Party must:

- (a) before doing so:
 - (i) notify the Disclosing Party; and
 - (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is confidential to the Disclosing Party.

12.5 Compliance with privacy laws

Each party agrees that, to the extent that they come into possession of any Personal Information in the course of exercising their rights or performing their obligations under this agreement, they will comply with the provisions of the *Privacy Act 1988* (Cth).

12.6 Remedy for breach of confidentiality or privacy obligations

Each party acknowledges that damages may be an insufficient remedy for a breach, or suspected breach by the Receiving Party of its obligations under this clause 12, and agrees that the Disclosing Party may seek such equitable relief (including injunctive relief) as is necessary to remedy or prevent such breach without having to prove or establish any special damage arising from such breach or suspected breach.

13. Exclusion, limitation of liability and indemnity

13.1 No exclusion or limitation

- (a) To the extent that Customer acquires goods or services from Supplier as a consumer within the meaning of the UK Consumer Law, Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.
- (b) Nothing in this clause 13 operates to exclude, restrict or modify the application of any condition, warranty or provision implied by law, the exercise of any right or remedy, or the imposition of any liability under UK Consumer Law or any other statute where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any term of this agreement to be void,**(Non-excludable Obligation).**

13.2 Exclusion of implied obligations and limitation of liability

Except in relation to Non-excludable Obligations:

- (a) all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this agreement; and

- (b) Supplier's liability to Customer arising directly or indirectly under or in any way connected with this agreement or the performance or non-performance of this agreement (and whether arising under any statute, in tort (for negligence or otherwise), or on any other basis in law or equity), is limited as follows:
 - (i) Supplier excludes all liability for loss of revenue, loss of goodwill, loss of customers, loss of capital, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any indirect, consequential or special loss, damage, cost or expense or other claims for consequential compensation, incurred by or awarded against Customer in relation to the Product or under or in any way connected with this agreement; and
 - (ii) Supplier's total aggregate liability in respect of the Product, or under or in any way connected with this agreement, is otherwise limited to the amounts paid by Customer to Supplier under this agreement in the 12 months immediately preceding the date on which the claim giving rise to such liability arose.

13.3 Indemnity

Customer indemnifies Supplier against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against Supplier), that Supplier may sustain or incur as a result, whether directly or indirectly, of any claim against Supplier:

- (a) by any third party arising from the use of the Product by Customer or any Authorised User; or
- (b) by any Authorised User in respect of that Authorised User's use of, or inability to use, the Product.

14. Suspension and termination

14.1 Suspension

Supplier may suspend Customer's access to, or use of, the Services if:

- (a) Supplier considers that:
 - (i) Customer or any of its Users are accessing or using the Services:
 - (A) to commit an illegal act; or
 - (B) in a manner that breaches this agreement; or
 - (ii) there is a material threat to the functionality, security, integrity or availability of the Services (or any applications, content or data contained within the Services).
- (b) Supplier will:
 - (i) to the extent reasonably practicable and lawfully permitted, provide Customer with reasonable prior notice of any such suspension; and
 - (ii) use reasonable efforts to re-establish the Services promptly after determining that the issue causing the suspension has been resolved.
- (c) No suspension effected under this clause 14 will excuse Customer from any obligation to make payments under this agreement.

14.2 Termination without cause

- (a) Either party may terminate this agreement without cause by giving not less than sixty (60) days' notice prior to the expiry of:
 - (i) the Initial Licence Period; and
 - (ii) any Renewal Period.
- (b) To avoid doubt, if neither party gives notice of termination within the timeframe specified in paragraph (a), then this agreement will automatically renew:

- (i) at the expiry of the Initial Licence Period – for the Renewal Period; and
 - (i) at the expiry of any Renewal Period – for a further Renewal Period,
- and Customer will be required to pay all applicable Fees for that Renewal Period in accordance with clause 10.

14.3 Termination for cause

Either party may terminate this agreement immediately by notice in writing if the other party:

- (a) breaches any term of this agreement that is not capable of remedy;
- (b) breaches any term of this agreement that is capable of remedy and fails to rectify that breach within fourteen (14) days of receiving a notice from the other party requiring it to do so; or
- (c) suffers an Insolvency Event.

14.4 Rights and obligations on expiry or termination

On the date of expiry or effective termination of this agreement:

- (a) the licence granted under clause 3.1 terminates;
- (b) Customer must immediately cease using (and must procure that all of its Users immediately cease using) the Product; and
- (c) Customer must within thirty (30) days of such termination send to Supplier, or otherwise dispose of in accordance with Supplier's directions, all of Supplier's Confidential Information relating to the Product (including the Documentation) then in Customer's (or its Users') possession or control.

15. Force majeure

The non-performance or delay in performance by a party of any obligation in this agreement is excused during the time and to the extent that such performance is prevented by a circumstance or event beyond its reasonable control (**Force Majeure Event**), provided that the party affected by the Force Majeure Event uses all reasonable endeavours to perform as soon as possible its obligations under this agreement (including by the use of reasonable workarounds and interim measures). This clause 15 does not apply to any obligation to pay money.

16. Notices and communications

16.1 Service of Notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in the Details page of this agreement, as varied by any Notice given by the recipient to the sender.

16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery to the relevant address;
- (b) if sent post, on delivery to the relevant address;
- (c) in the case of email, on the first to occur of:

- (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated in the Details page;
 - (ii) the time that the Notice enters an information system that is under the control of the recipient; and
 - (iii) the time that the Notice is first opened or read by the intended addressee,
- however, if the sender receives an out of office reply that states the recipient is out of the office until a later date, the notice will only be taken to be given on that later date,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

16.3 Notices that must not be sent by email

A Notice may not be sent by email if the Notice relates to termination of this agreement.

16.4 Effect of Notice

- (a) A Notice, approval, consent or other communication takes effect from the time it is received unless a different time or condition is specified in it.
- (b) A party may not specify an earlier time at which a Notice takes effect without the agreement of the party or parties to whom it is required to be given.

17. Dispute resolution

17.1 No court proceedings unless procedure followed

A party must not commence proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 17.

17.2 Notice of Dispute

A party claiming that a dispute, difference or question arising out of this agreement, including a question as to whether certain services are in scope or not, has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).

17.3 Negotiated resolution

- (a) When a Dispute Notice is given, each party's representatives must meet and attempt to resolve the Dispute.
- (b) If the parties' representatives cannot resolve the Dispute, then the parties' immediate managers must meet and attempt to resolve the Dispute.
- (c) If the immediate manager's meet and cannot resolve the Dispute, then the parties' chief executive officers (or their nominee) must meet and attempt to resolve the Dispute.

17.4 Mediation

- (i) If the chief executive officers (or their nominees) cannot resolve the Dispute under clause 17.3 within 60 days (or longer period as agreed between the parties), then the parties must refer to arbitration in the United Kingdom under the rules of a recognized international arbitration body such as the **London Court of International Arbitration (LCIA)**. The governing law shall be English law, and the courts of England and Wales shall have exclusive jurisdiction for any matters not resolved through arbitration.

17.5 Court proceedings if procedure fails

If the parties cannot resolve a Dispute in accordance with the escalation procedure in clauses 17.3 and 17.4, then any party may commence court proceedings.

17.6 Release if other party breaches

If a party breaches this clause 17 in relation to a Dispute, then the other party need not comply with this clause 17 in relation to that Dispute.

17.7 Obligations continue

The parties must continue to perform their respective obligations under this agreement pending the resolution of a Dispute.

17.8 Costs

Each party must pay its own costs of complying with this clause 17.

18. Miscellaneous

18.1 Alterations

This agreement may be altered only in writing signed by each party.

18.2 Assignment and novation

Neither party may assign this agreement (or any right under it) or purport to novate any of its obligations under this agreement to another person without the prior written consent of the other party.

18.3 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

18.4 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or any transaction contemplated by this agreement must be paid by Customer.

18.5 Counterparts

This agreement may be executed:

- (a) by electronic signature, which shall be considered as an original signature for all purposes and will have the same force and effect as an original signature; and
- (b) in counterparts and all such executed counterparts taken together will be deemed to constitute one and the same document.

18.6 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

18.7 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

18.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.9 Relationship

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

18.10 Governing law and jurisdiction

This agreement is governed by the laws of the United Kingdom and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the United Kingdom.

18.11 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Schedule 1 – Contract details

1. Access Date

Access Date is the earliest of:

- Successful completion of the customer's acceptance testing for the CMS Production Service Instance.
- The date when the Product is first used by the Customer's end users with the production service.
- The date the Customer requests SLA-based support for the production CMS Production Service Instance.

2. Initial Licence Period

[insert] from the Access Date

3. Designated Number of Users

User Type	Number
Authorised Users	[insert]

Schedule 2 – Services

1. Setup Services

[insert]

2. Support Services

Support Level	Responsible	Service Provided
1st Level	Customer's Help Desk	• Provide a 1st level response for Customer's business users as per the agreed Service Desk process. • Analyse and triage query and allocate to appropriate support queue. • Resolve operational/admin requests such creation of new users, configuration of access rights, password reset • Escalate any other incidents to Supplier Service Desk
2nd or 3rd Level	Supplier	• Use reasonable efforts to respond within applicable Service Level • Analyse and triage incident and resolve and/or implement temporary workaround if related to the configuration of CMS product. • Liaise with integrating parties to identify the root cause of any integration issues. • Liaise with Oracle to resolve any Infrastructure issue • Provide reports/updates on the incident resolution progress.

Schedule 3 – Fees

1. Setup Fees

[insert amount] (excluding VAT). Supplier may invoice Customer for this amount on or after the Access Date.

2. Annual SaaS Fees

[insert amount] per **[annum]** (excluding VAT). Supplier may invoice Customer for this amount:

- (a) on or after the Access Date; and thereafter
- (b) on or after each anniversary of the Access Date.

3. SaaS Fees for Non-Production Service Instances

[insert amount] per **[annum or month]** (excluding VAT). Supplier may invoice Customer for this amount:

- (a) on or after the date the Non-Production Service Instance has been made available; and thereafter
- (b) on each anniversary or month, as applicable, while the Non-Production Service Instance is required. The Customer may terminate the use of the Non-Production Service Instance upon providing 30 days' notice.

4. Consultancy Fees

[insert, including timing of payments]

Schedule 4 – Service Levels

1. Support Service Levels

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

2. System Availability Service Level

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

3. Definition of Incident Severities

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

4. Service Level Reporting

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

5. Performance Rebate

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

6. Incident and Service Request Management

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

7. Typical Incident or Service Request Management Process Steps

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

8. Incident or Service Request Escalations

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

9. CMS Release and Upgrade Policy

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

10. Software Version Requirements

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

11. Proactive System Health Check

[Insert details based on the supporting document "GITF CMS_SLA based support" submitted as part of the RFP response.]

Schedule 5 – Statement of Work

The form of Statement of Work is attached to this page.

Statement of Work

entered into pursuant to the Software-as-a-Service Agreement entered into on or about [●]
between Global IT Factory Ltd and [●]

Statement of Work number: [insert]

Global IT Factory Ltd
(Supplier)

and

[●]

(Customer)

[Insert title of statement of work]

Signed for and on behalf of **Global IT
Factory Ltd** by:

Signed for and on behalf of [●] by:

Signature of authorised officer

Signature of authorised officer

By executing this Statement of Work the
signatory warrants that the signatory is duly
authorised to execute this Statement of
Work on behalf of Supplier

By executing this Statement of Work the
signatory warrants that the signatory is duly
authorised to execute this Statement of Work on
behalf of Customer

Name and title of signatory (print)

Name and title of signatory (print)

Date

Date

1. Overview

1.1 Terms which apply to this Statement of Work

The terms of the Agreement apply to this Statement of Work. Once duly executed, this Statement of Work forms part of the Agreement.

2. Commencement date and expiry date

[Please insert details of when this Statement of Work is intended to commence and expire]

3. Deliverables

3.1 Consultancy Services

Service	Description
[insert service type]	[insert description of any Consultancy Services that will be provided and the bases on which they will be provided, for example based on time and material rates. If significant details are required, it may be worth attaching the details as Annexure A and writing 'See Annexure A' here]
[insert service type]	[insert as above]

3.2 Services timetable

Service	Timing
[insert service type/description]	[insert details of anticipated timing of completion of the services]
[insert service type/description]	[insert as above]

4. Personnel

[If applicable, insert details of Supplier Personnel that will be deployed to the Consultancy Services]

5. Fees

5.1 Price

Service	Fees
[insert service type/description]	£\$[insert]
[insert service type/description]	£\$[insert]
Total	£\$[insert] (excluding VAT/GST)

5.2 Invoicing

[Please insert details regarding an indication of when you intend to invoice the Customer, for example "invoiced monthly or 50% upon execution of agreement and 50% upon completion of the Consultancy Services. If any of the Services are not relevant, please write not applicable.]

Service	Invoicing
<i>[insert service type/description]</i>	<i>[insert]</i>
<i>[insert service type/description]</i>	<i>[insert]</i>

6. Special conditions

[Please insert any special conditions. Note that these will take precedence (and may therefore override) the terms of the agreement]

Signing page

EXECUTED as an agreement.

Signed for **Global IT Factory Ltd** by an authorised officer in the presence of

Signature of officer ←

Signature of witness ←

Name of officer (print)

Name of witness (print)

Office held

Signed for **[name of Customer]** by an authorised officer in the presence of

Signature of officer ←

Signature of witness ←

Name of officer (print)

Name of witness (print)

Office held