

MASTER SERVICES AGREEMENT

Between

[CUSTOMER]

and

VALCON GROUP UK LIMITED

MASTER SERVICES AGREEMENT

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MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT ("**Agreement**") is made on [INSERT DATE] (the "**Effective Date**"), by and between [CUSTOMER NAME], company number [xx] and registered offices located at [xxxx] and the Supplier.

each be referred to as a "**Party**" and jointly be referred to as the "**Parties**."

This Agreement is designed to provide a framework for a strong working relationship between the Parties. It is structured to allow the Supplier and the Customer to work together at a number of levels.

The Supplier may provide a number of Services for the Customer (Service Types) including but not limited to:

- **Application Development**, including analysis, design, build, and implementation of software.
- **Software Product Implementation**, including analysis, customisation, and implementation services
- **Managed Services**, including managed Hosted Services.
- **Application Support** - including managed tier 1 or tier 2 support of users and their business applications.
- **Consultancy Services** - including strategy, Operating Model design, business analysis, process improvement or technical investigations.

This Agreement includes the general terms and conditions related to Services that the Supplier will provide to the Customer. The specific terms for individual projects or assignments will be included and described in a separate Statement of Work (SOW) which should reference this Agreement. That means these terms and conditions will apply to projects and assignments ("Assignments") described in the SOW.

Where the Supplier has entered into this Agreement as the prime service provider the Supplier may as a prime service provider subcontract various services to any Affiliate within its group of companies (the "**Subcontractor**") pursuant to the terms of this Agreement or any Statement of Work agreed under this Agreement.

1 DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

Term	Meaning
Acceptance Tests	the tests of the Supplier Software after installation as set out in each SOW.
Affiliate	means in relation to Customer or Supplier any entity that from time to time directly or indirectly controls, is controlled by, or is under common control with Customer or Supplier.
Analytics Data	means that data that is processed by virtual machine intelligence that comprises the Licensed Software applications of the Supplier and which processing may or may not include Customer data and such processing will: (i) create de-identified and anonymized data that cannot identify persons or entities; (ii) be combined with the data of other customers or additional data sources making up the data underpinning the Licensed Software applications; (iii) be presented in a way which does not reveal Customer's identity and this analytical data is the essential part of the improvement of the Licensed Software's performance. This Analytics Data forms part of the Supplier's Intellectual Property Rights and Confidential Information
Applicable Laws:	all laws, statutes, regulations and codes from time to time in force that are directly applicable to the nature and scope of services provided by each applicable party.
Assignment	An instance of a Service or Deliverables, as defined in a SOW
Bespoke Software	software programs developed by the Supplier specifically for the Customer as set out in the relevant SOW.
Business	the business of the Customer.
Change Agreement	a document that must be agreed between the Customer and the Supplier describing the proposed change in requirement(s) that the Customer or Supplier requests to modify, enhance, or revise the Software including the assessment of time and cost to effect the change, and its impact on the overall project timescales.
Computer Hardware	the computers, other equipment and its Technical Environment to be used by the Customer in conjunction with the Supplier Software, as set out in the SOW.

Term	Meaning
Confidential Information	information marked as confidential including financial information, trade secrets, customer lists, trade and commercial details, computer software technical, marketing, employee, planning, databases and other confidential or proprietary information.
Customer Representative	a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and identified to the Supplier by written notice from the Customer.
Data Protection Legislation:	the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.
Deliverables	the Assignment deliverables, as documented in the SOW.
Documentation	the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier as specified in the SOW.
Due Date	the date when payment is due, as set out in the SOW.
Fees	Fees as set out in the SOW.
GDPR	General Data Protection Regulation ((EU) 2016/679).
Implementation Plan	the time schedule and sequence of events for the performance of the Service as set out in SOW.
Initial Term	the initial duration of this Agreement is 36 months from the Effective Date.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Licensed Software	the Supplier Software (except the Open-Source Software and the Third-Party Software) and all subsequent amendments and updates to, or new versions of, such Supplier Software as may be provided during the execution of the SOW.

Term	Meaning
Licensed Users	the employees and agents of the Customer who use the Licensed Software.
Master Services Agreement	This Agreement.
Modified Software	the standard software programs proprietary to the Supplier and/or third parties as set out in the relevant SOW, modified or to be modified by Supplier under this Agreement.
Modified Software (Third Party)	those elements of the Modified Software as set out in the SOW and identified as such.
Modified Software (Supplier)	those elements of the Modified Software as set out in the SOW and identified as such.
New Release	a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added, as agreed in a SOW.
New Version	a new version of the Licensed Software released by the Supplier after the Acceptance Date which provides additional or improved functionality or performance.
Open Source Software	software where the source code is freely available, subject to certain licence conditions.
Project Manager	the Supplier employee who has overall responsibility for the Service.
Ready for Service	installed, tested and having passed or deemed to have passed the Acceptance Tests.
Service(s)	The services as set out in the SOW.
Service Commencement Date	The date on which the Services commence as detailed in the SOW.
Site	the location(s) at which the Supplier Software is to be used as specified in the SOW.
Software	means any of Supplier Standard Software, Bespoke Software and/or Modified Software (Supplier) designed and built by the Supplier which forms part of the Service.
Software Delivery Date	the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver a Software Module to the Site(s).
Software Module	any one of the individual software programs in the Supplier Software.

Term	Meaning
Source Code	the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that software.
SOW	a Statement of Work describing an individual project or assignment which is incorporated by reference into this Master Agreement.
Subcontractor	FIRST CONSULTING GROUP LIMITED.
Supplier	VALCON GROUP UK LIMITED , incorporated and registered in England and Wales with company number 02123343 whose registered address is at MGR WESTON KAY LLP, 55 Loundon Road, St John's Wood, London, United Kingdom, NW8 0DL. including any affiliated companies within the group of companies.
Supplier Software	the Supplier Standard Software, the Third-Party Software, the Modified Software, the Open-Source Software, the Tools and the Bespoke Software.
Supplier Standard Software	the software programs proprietary to the Supplier, as set out in the SOW, which are to be provided to the Customer without modification.
Supported Software	the Supported Software detailed in SOW of the Application Support Service
Technical Environment	the Technical Environment as detailed in SOW of the Application Development, Software Product Implementation, Managed Services, and Application Support service descriptions.
Technical Specification	The specification of the Supplier Software and Deliverables contained in the SOW.
Third-Party Licences	the open-source software licences relating to the Supplier Software, including the general public licence (if applicable), and any proprietary Third-Party Software licences.
Third-Party Software	the software programs proprietary to third parties, as set out in SOW, which are to be provided to the Customer without modification.
Tools	any tools and know-how developed, and methods invented, by the Supplier 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.
UK Data Protection Legislation	any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Term	Meaning
Working Hours	means 09:00 until 17:00 UK time, Monday to Friday, excluding public holidays, with one hour for breaks.

- 1.1 A reference to one gender includes a reference to the other genders.
- 1.2 Words in the singular include the plural and those in the plural include the singular.
- 1.3 References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.5 Except where a contrary intention appears, a reference to a clause, SOW or annex is a reference to a clause of, or SOW or annex to, this agreement.
- 1.6 Clause and SOW headings do not affect the interpretation of this agreement.

2 SCOPE OF THIS AGREEMENT

- 2.1 The SOWs to this Agreement, together with any documents referred to in them, form an integral part of this Agreement and any reference to this Agreement means this Agreement together with the SOWs and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.
- 2.2 If any conflict arises between the terms and conditions of this Agreement and any provision of any SOW, the terms and conditions of the SOW shall prevail.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

3 SERVICES

- 3.1 Supplier will perform the Services as defined and described in the SOW according to the terms of this Agreement.

4 DELIVERY

- 4.1 Supplier shall carry out the Services as set out in the SOW exercising reasonable care and skill using appropriately qualified personnel in order to provide the Deliverables.
- 4.2 The Supplier will use all reasonable endeavours to deliver to the timescales as set out in the SOW. The Customer will undertake the tasks and obligations for which it is responsible as set out in Clause 8 (below) fully and promptly and in accordance with the SOW. If the Supplier's performance of its obligations under this Agreement is

prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Supplier shall (i) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay and the Supplier may charge the Customer for any losses it incurs as a direct result of the delays caused by the Customer and/or its agents, subcontractors, consultants or employees.

5 STANDARDS AND SERVICE LEVELS

- 5.1 The Supplier will undertake the Service in accordance with the methods and standards and service levels described in the SOW's.

6 SERVICE MODIFICATIONS and CHANGE CONTROL PROCEDURE

- 6.1 If the Customer or the Supplier finds it necessary or desirable to change modify, enhance or add to the Services provided as described in SOW, the Customer will notify the Supplier in writing
- 6.2 with the information that Supplier requires to specify and estimate the impact of the changes including the change in terms of Fees and timescales.
- 6.3 Within seven working days of receipt of such notice, Supplier shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase or decrease in the Fees, and of any effect that the requested change would have on the Implementation Plan.
- 6.4 Within fourteen working days of receipt of the written estimate referred to in clause 6. the Customer shall inform Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, Supplier shall not make the requested change until the parties have agreed and signed a written Agreement (Change Agreement) specifying in particular any changes to the Implementation Plan and Fees.
- 6.5 If Supplier discovers that the Services require modification by virtue of omission or error of the Customer in the material or information supplied or omitted then Supplier will promptly notify the Customer using the procedure outlined in 6.1 above.
- 6.6 Supplier will make a reasonable charge for investigating a proposed change whether or not the change is subsequently approved.
- 6.7 If the Customer does not wish to proceed with the change there shall be no change to the Services and related SOW including Fees, or any other terms of this Agreement.

7 FEES & PAYMENT

- 7.1 Supplier shall submit invoices in accordance with the SOW. The Customer shall make payment of each invoice by the Due Date stated in that invoice or within 30 days of receipt of the invoice, whichever is later.

- 7.2 The Customer shall pay the Supplier for the Services in accordance with the provisions set out in the SOW's. Payments shall not be subject to set off or deductions by the Customer.
- 7.3 All reasonable out of pocket subsistence, travelling and other expenses incurred by the Supplier or its staff in connection with the Services will be reimbursed at cost on production of reasonable evidence of expenditure to the Customer, subject to prior agreement with the Customer.
- 7.4 For any amounts payable by the Customer which remain unpaid after the Due Date, the Supplier reserves the right, without prejudice to any other right or remedy, to:
- (i) charge interest on the overdue amount on a day to day basis from the original Due Date until paid in full at a rate of 4% above Lloyds Bank base lending rate in force from time to time for the period beginning on the due date and ending with the date on which the sum is paid
- (and the period shall run after as well as before judgment); and/or
- (ii) suspend performance of the Services pending payment of all sums due to the Supplier and/or treat the contract as having been repudiated by the Customer, in the event of cessation of trading by, or the appointment of a receiving order against, or the compounding with its creditors by, or the commencement of the winding up of the Customer.
- 7.5 If after investigation, problems raised in relation to the Services are found to be caused by the Customer, third parties under the control of the Customer and/or outside of the scope of the Services, then the Customer shall pay the Supplier at the Fee rates specified in the SOW for all time properly spent by the Supplier on investigations into these problems. The Customer shall also pay for all additional Service carried out by the Supplier in remedying any problems including reimbursing the Supplier for any reasonable expenses incurred or materials used in fulfilling these investigations in those circumstances (but not otherwise).
- 7.6 The fee rates and/or the amounts comprising the payments schedule shown in the SOW do not include VAT or any similar taxes which will be paid additionally at the prevailing rate.
- 7.7 For an Assignment designated as time and materials the Customer will pay for time properly spent by the Supplier staff in the course of performing the Assignment, including any agreed travelling time, at the current daily rates specified in each SOW, according to the staff category of each person assigned. If during an Assignment there is a change in staff category for any of the Supplier's staff working on the Customer Assignment then the Supplier will notify the Customer in writing and the fee rate applicable to the individual's new category will be applied after 1 month from the notice in writing.
- 7.8 the Supplier will be entitled to increase the fee rates every twelve months from commencement date of any SOW by the percentage remuneration increase for each staff category as shown in the most recently published Computer Economics Survey using the tables for Inner London. (At the time of drawing up this Agreement

Computer Economics Surveys are published each November and May. The percentage increase applicable is therefore between the two most recent November editions).

- 7.9 Unless otherwise set out in a SOW Time worked in excess of standard working hours will be charged at 1.5 x the standard hourly rates for weekdays and 2 x the standard hourly rates for weekends and bank holidays (with the prior agreement of the Customer). The standard hourly rate is the above Daily Rate divided by the Customer standard working day.
- 7.10 For an Assignment designated as fixed price the stage payments are due according to the dates and amounts shown in the SOW, subject to the delivery conditions specified. The Supplier will submit invoices for each stage payment and payment is due 30 days after receipt of invoice and shall be deemed overdue if they remain unpaid thereafter.
- 7.11 For Managed Services and for Application Support payment is due in advance of service provision according to the schedule set out in the SOW.

8 CUSTOMER OBLIGATIONS

- 8.1 The Customer will cooperate with the Supplier and will provide the Supplier with such information as it may reasonably need concerning the Customer's operations and will provide answers to queries, decisions and approvals which may be reasonably necessary for the Supplier to undertake the Services. The Customer is responsible for the accuracy, completeness and timeliness of such information and answers and for access to its employees for the purposes of the Services.
- 8.2 The Customer will inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply to its business and in the provisions of the Services.
- 8.3 Further obligations of the Customer are detailed in the SOW.

9 DURATION, SERVICE MANAGEMENT AND TERMINATION

- 9.1 This Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in writing
- 9.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either Party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
 - 9.2.1 the other Party fails to pay any amount due under this Agreement on the Due Date for payment and remains in default not less than 14 days after being notified in writing by the CFO / finance director or equivalent to make such payment;

9.2.2 the other Party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so;

9.2.3 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

9.2.4 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

9.2.5 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

9.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

9.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;

9.2.8 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

9.2.9 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

9.2.10 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

9.2.11 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.4 to clause 9.2.10 (inclusive); or

9.2.12 the other Party suspends or ceases, or threatens to suspend or cease,

to carry on all or a substantial part of its business.

- 9.3 Unless otherwise set out in a SOW neither Party may terminate a SOW until such time the SOW and the associated Services under that SOW has been completed. If the Customer gives notice of termination of the Agreement or any SOW prior to the completion of the Services then the Customer shall remain liable for all fees due to the Supplier under the Agreement or the impacted SOW.
- 9.4 Termination of this Agreement will not affect the accrued rights or liabilities of the parties under this Agreement.
- 9.5 On termination of this Agreement howsoever arising each Party shall (except as otherwise agreed) promptly deliver up to the other Party all Documentation and other materials in its possession or under its control and belonging to the other party.

10 CONSEQUENCES OF TERMINATION

- 10.1 Other than as set out in this Agreement, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 10.2 Notwithstanding its obligations in this clause 10 if a Party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 10.3 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:

10.3.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by a Director) no later than 30 days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 14), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Supplier Software or to the extent necessary to allow it to make full use of the Services and any Supplier Software;

10.3.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by a Director) no later than 30 days after termination of this Agreement that this software has

been deleted;

10.3.3 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 10.3.3, that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.

- 10.4 On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied for which no invoice has been submitted, and for any projected fees as defined in Clause 9.3 and the Customer shall pay these invoices immediately on receipt.

11 NON-SOLICITATION

- 11.1 Without in any way restricting the right of an employee freely to select employment and changes in employment each of the Parties hereto recognises that any inducement by either of them to the staff of the other to leave their employment and join the staff of the other is likely to cause serious disruption to the efficient operation of the business of the one losing the staff. By way of genuine pre-estimate of the likely loss thereby to be suffered it is agreed that should any such inducement occur and staff leave one for the other as a result the loss would be not less than 30% of the solicited employee gross annual salary or £25,000 and such sum shall in such circumstances be recoverable as liquidated damages by the losing party against the gaining party. This clause shall remain in operation during the term of this Agreement and for 6 months thereafter.
- 11.2 The Customer will not, without the prior written consent of the Supplier, Recruit any personnel (including any personnel of the Supplier) assigned by the Supplier to perform any Services until one (1) year after completion of the applicable Services.
- 11.3 "Recruit" means to initiate personal contact (directly or indirectly via an agent) for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are, without the Customer's involvement, presented to the Customer by a recruiting firm.

12 DELEGATION AND PERSONNEL

- 12.1 The Supplier will select consultants to perform the Services using its own staff and appropriate individual Subcontractors as necessary. Where the Supplier uses Subcontractor consultants or sub-contracts any part of this Agreement to another organisation the Supplier will ensure that the third party executes an Agreement which includes clauses relating to confidentiality and intellectual property rights which support this Agreement (clauses 14 and 16).

- 12.2 Where it is agreed that the Assignment will involve named the Supplier consultants, the Supplier will use all reasonable endeavours to maintain continuity in respect of these named consultants for the duration of the Assignment. The Supplier will not substitute any named individual without the prior consent of the Customer that will not be unreasonably withheld. The Supplier will endeavour to provide a replacement of equivalent ability.
- 12.3 The Supplier shall at the Customer's written request provide the Customer with details of named Supplier consultants assigned to the Assignment (including details of their qualifications and experience).
- 12.4 The Supplier's personnel providing the Services to the Customer shall always remain personnel of the Supplier and it is not intended that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") shall apply. The Supplier will use all reasonable efforts to ensure the provision and/or use of its Services and supply of the personnel does not cause TUPE to apply to this Agreement. The Customer likewise will use all reasonable efforts to ensure that at the end of the provisions of the Services that none of its personnel have cause to rely upon TUPE to transfer to the Supplier or an Affiliate of the Supplier. The Party negatively impacted by the effect of TUPE shall be entitled to recover all direct costs and expenses arising from the TUPE event. Both Parties will use its best efforts to mitigate any such costs and expenses arising under this Clause 12.4.

13 PUBLICITY

The Customer agrees that the Supplier may for publicity purposes reveal that the Customer is a customer for whom the Supplier has or is carrying out Services and add the Customer to its client list. The Customer shall also allow case studies to be created for the benefit of the Supplier.

14 CONFIDENTIALITY

- 14.1 Each party (the "recipient") shall keep secret and not disclose to anyone, except only on a need to know basis:
- to (in the case of the Supplier) its employees or individual consultants bound by express written confidentiality obligations, or,
- to (in the case of the Customer) its employees, agents and sub-contractors and to other members of the Customer and their employees, agents and sub-contractors,
- without the prior written consent of the other (the "disclosing party") any information of a confidential nature relating to the business or affairs, customers or suppliers of the disclosing party received from or belonging to the disclosing party. Such confidential information shall, without limitation, include all data relating to the Customer's customers.

- 14.2 Confidential Information will be issued to the Supplier consultants limited to those immediately engaged in the Service.
- 14.3 The Supplier will and will ensure that its employees and sub-contractors will during the term of this Agreement and for 2 years thereafter keep all Confidential Information regarding the Services conducted under the terms of this Agreement and the business of the Customer gained by the Supplier as a result of these Services as confidential and shall not disclose it to any third party and shall not use it except as necessary for the performance of the Services.
- 14.4 The Supplier and its employees and sub-contractors will not make copies or duplicates of Confidential Information or record, store or transmit any Confidential Information in any manner except for the purpose of undertaking the Services and will on request return to the Customer or destroy any written documents or material in any form whatsoever as specifically requested by the Customer and if so, requested by the Customer confirm in writing that they have done so.
- 14.5 This Clause 14 shall not apply to:
- 14.5.1 any information which has become, or which becomes either before, on or after the date of this Agreement generally and freely available to the public through no fault of the recipient;
 - 14.5.2 any information which the recipient can otherwise show came into its possession without it owing a duty of confidence to the disclosing party in respect of such information; or
 - 14.5.3 the extent disclosure is required to or by any court, tribunal or government authority of competent jurisdiction;
 - 14.5.4 any information which is trivial or obvious.
- 14.6 This Clause 14 shall survive termination of this Agreement howsoever arising for a period of 24 months.
- 14.7 In relation to the Supplier's Confidential Information:
- 14.7.1 the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the Supplier Software or Documentation, or otherwise supplied to the Customer during the performance of this Agreement;
 - 14.7.2 the Customer shall not, without the Supplier's prior written consent, divulge any part of the Supplier's Confidential Information to any person other than:
 - (i) the Customer's Representative; and
 - (ii) other employees of the Customer who need to know it for the Permitted Purposes.
 - 14.7.3 the Customer undertakes to ensure that the persons mentioned in

clause (ii) above are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause (i) (which the Customer shall ensure is adhered to).

15 DATA PROTECTION

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove, or replace, a Party's obligations under the Data Protection Legislation.
- 15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller, and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 15.3 Without prejudice to the generality of clause 15.1, the Supplier shall use its commercial reasonable efforts, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

15.3.1 process that Personal Data only on the instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

15.3.2 it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

15.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

15.3.4 unless otherwise agreed under a SOW or accessed by an Affiliate for the sole purposes of performance of the Services the Supplier shall not transfer any Personal Data outside of the European

Economic Area unless the prior consent of the Customer has been obtained; and

15.3.5 notify the Customer without undue delay on becoming aware of a Personal Data breach.

15.4 The Customer acknowledges and accepts the Supplier may use third party processor of Personal Data under this Agreement.

16 INTELLECTUAL PROPERTY

16.1 Each of the Parties agree that this Agreement does not transfer any rights of ownership in the other's technology or Intellectual Property Rights or know how, and further agrees not to try to obtain ownership of each other's or a third party vendors' intellectual property rights, source code or other trade secrets.

16.2 All natural and statutory rights and powers including but not limited to all copyright and design right in all written and tangible work created by the Supplier which arises out of Services undertaken under this Agreement (including but not limited to Analytics Data reports, survey questionnaires, case studies, artwork, drawings, photographs, pictures, new methodologies, design documents, plans, manuals, specifications and computer programs) shall belong exclusively to the Supplier under the Services or arising out of the same, except where explicitly varied in the SOW.

16.3 The only exception to the above 16.2 relates to methods, designs and routines which are the property of the Customer and are utilised or included in the performance of the Service then the Customer grants full and unfettered rights of use to the Supplier.

16.4 In the event that any third party claims that material used by the Supplier during the process of the Service infringes the rights of such party and it is based upon information or materials supplied to the Supplier by the Customer, the Customer agrees to indemnify the Supplier in respect of all loss or injury including damages costs expenses and fees reasonably incurred by the Supplier in relation to such claim whether the subject of legal proceedings or not. The Supplier may compromise such claim by payment of a lump sum or other sum or consideration if it is deemed that such compromise provides reasonable improvement (with or without advice from Counsel) but before so doing it shall notify the Customer giving particulars of such proposed compromise and the Customer shall reimburse the Supplier in respect thereof.

16.5 In the event the Customer wishes for the Supplier to create a bespoke software solution ("Bespoke Solution") whereby the Customer shall own the Intellectual Property Rights of that Bespoke Solution the Parties enter into a SOW that sets out such Bespoke Solution and associated ownership rights. Notwithstanding the ownership of the Bespoke Solution belong to the Customer the Customer shall grant the Supplier and its Affiliates a non-exclusive, royalty-free, uninterrupted, irrevocable, world-wide licence to use, exploit, modify and adapt the know-how, technical

information, computer programs, formulas, processes, techniques, and designs relating to the Bespoke Software and any associated Documentation.

17 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

17.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses directly suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Deliverables, Supplier Software, any New Release, New Version or Documentation, or receipt of the benefit of the Services, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Customer:

17.1.1as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

17.1.2does not make any admission of liability, Agreement or compromise in relation to the Claim;

17.1.3gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

17.1.4takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

17.2 The Supplier shall have no liability for any claim of infringement of Intellectual Property Rights:

17.2.1caused or contributed to by the Customer's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified in writing of the identity of this operating system before this Agreement was entered into) or used on equipment other than that for which it was specifically designed and built;

17.2.2based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or

17.2.3where the claim for infringement arises in respect of a feature of the

Supplier Software which was requested or specified by the Customer in the Technical Specification.

- 17.3 If use of the Supplier Software becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, the Supplier may:

17.3.1 replace all or part of the Supplier Software, the New Releases or New Versions (as the case may be) with functionally equivalent software or documentation without any charge to the Customer;

17.3.2 modify the Supplier Software, the New Releases or New Versions (as the case may be) as necessary to avoid such claim, provided that the System (as amended) functions in substantially the same way as the Supplier Software, the New Releases or New Versions (as the case may be) before modification;

17.3.3 procure for the Customer a licence from the relevant claimant to continue using the Supplier Software or the New Releases (as the case may be),

and the Customer will provide the Supplier with all reasonable assistance required to exercise such options.

- 17.4 If:

17.4.1 the Supplier Software or any New Release (as the case may be) is determined in a court of law to be infringing;

17.4.2 the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this Agreement is likely to constitute infringement of a third party's rights; or

17.4.3 if an injunction or similar order is granted in connection with a claim of the types referred to in clause 17.1 which prevents or restricts the use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this Agreement; and the Supplier is unable, after using all reasonable efforts, to procure for the Customer the right to continue using the Supplier Software, the New Releases or New Versions (as the case may be) or to provide the Customer with functionally equivalent non-infringing software, this Agreement and the Licence will be terminated.

- 17.5 Notwithstanding any other provision in this agreement, clause 17.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or through the breach of any Third-Party Licence relating to any Open-Source Software by the Customer.

- 17.6 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

18 LIMITATION OF LIABILITY

- 18.1 Save for liability that cannot be excluded by an Applicable Law in no event shall the Customer or the Supplier be liable to the other Party for indirect or consequential losses howsoever arising including but not limited to:

18.1.1 loss of profits;

18.1.2 loss of business;

18.1.3 depletion of goodwill or similar losses;

18.1.4 loss of anticipated savings;

18.1.5 loss of goods;

18.1.6 loss of use; or

18.1.7 loss or corruption of data or information,

provided that this clause 18.1 shall not prevent claims for direct financial loss that are not excluded by any of categories 18.1.1 to 18.1.6 inclusive.

- 18.2 The Supplier shall not be liable to the Customer for any loss or injury to the Customer caused or arising by act or omission of the Customer or any third party under the control of the Customer including but not limited to:

18.2.1 failure to properly check reports, specifications, expected results or other material and advice submitted by the Supplier to the Customer for checking by the Customer;

18.2.2 supply to the Supplier by the Customer of incorrect material or data;

18.2.3 failure to provide suitable test data whereby faults are not identified;
or

18.2.4 failure to maintain the agreed Computer Hardware or Technical Environment.

- 18.3 In the event of any of the matters in clause 18.2 occurring, the Supplier will advise the Customer of any additional cost which will be incurred in correcting such errors and of any extended time of completion which will be required and the Customer shall pay such amounts promptly upon notification by the Supplier.

- 18.4 Subject to clauses 18.5 and 18.6, the Supplier's entire aggregate liability under this Agreement or for any cause of action related to the Supplier Software, shall be limited

to the amount of the Fees paid to the Supplier under the SOW from which the liability arose.

- 18.5 Nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, breach of any of the obligations under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982 and breach of Confidentiality and/or which may not be excluded by contract.
- 18.6 Each Party accepts liability for physical damage to or loss of the other Party's tangible property as it results from the negligence of its employees, agents and sub-contractors and while engaged in the provision or receipt of the Services up to £250,000 in respect of each incident or series of related incidents.
- 18.7 The Customer and the Supplier agree that the allocation of risk contained in this Clause 8 is reflected in the fees to be charged and it is also a recognition that specifications, documentation, and Deliverables cannot be checked and/or tested in every possible combination.

19 WAIVERS

No delay or failure by either Party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

20 WHOLE AGREEMENT

- 20.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Agreement and supersedes all previous communications, representations and other arrangements, written or oral. The Customer acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms of any purchase order or other correspondence and documents of the Customer issued in connection with this Agreement will not apply unless expressly accepted in writing by the Supplier.
- 20.2 Except as otherwise permitted by this Agreement, no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.

21 SEVERABILITY

In the event that any provision of this Agreement is found to be invalid unlawful or unenforceable, then the remaining provisions of the Agreement will remain in full force and effect.

22 ASSIGNMENT AND SUBCONTRACTING

- 22.1 The Customer may not assign, novate or otherwise dispose of its rights under this Agreement whether in whole or in part without the prior written consent of the Supplier.
- 22.2 The Supplier may subcontract the whole or part of the Services to either an Affiliate of the Supplier or a subcontractor in order for the Supplier to fulfil, its obligations under this Agreement or any SOW. The Supplier may, acting reasonably, replace a subcontractor to (i) ensure the Supplier is able to provide its Services, (ii) security reasons, (iii) maintain industry standards, (iv) ensure the ongoing improvement of the Software or Services supplied by the Supplier. Notwithstanding such sub-contracting shall cause any material impairment for the Customer.

23 FORCE MAJEURE

- 23.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement caused by events beyond its reasonable control ("Force Majeure Event"). However any delay or failure by a sub-contractor or supplier of the Supplier will not relieve the Supplier from liability for delay or failures except where that delay or failure is also beyond the reasonable control of the sub-contractor or supplier concerned.
- 23.2 The party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.
- 23.3 If that party has complied with Clause 23.2 its performance under this Agreement will be suspended for the period that the Force Majeure Event continues, and the party will have an extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage. As regards such delay or stoppage:
- 23.3.1 Any costs arising from the delay or stoppage will be borne by the party incurring those costs;
- 23.3.2 Either party may, if the delay or stoppage continues for more than 180 continuous days, terminate the Services with immediate effect on giving written notice to the other and neither party will be liable to the other for such termination;
- 23.3.3 The party claiming the Force Majeure Event will take all necessary steps to bring the Event to a close or to find a solution by which the Service may be performed despite the Event; and
- 23.3.4 If termination occurs under clause 23.3.2 all sums paid to the Supplier by the Customer under this Agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Supplier takes

all reasonable steps to mitigate the amount due.

24 NOTICES

Save for the purposes of effectively operating the delivery of the Services where all notices may be provided via email all other notices to be given under this Agreement will be in writing and will be sent to the address of the recipient shown on the front page of this Agreement or any other address that the recipient may designate by notice given in accordance with this clause. Notices may be delivered personally, by first class pre-paid letter or facsimile transmission. Notices will be deemed to have been received:

- (i) by hand delivery - at the time of delivery
- (ii) by first class post - 48 hours after the date of mailing

25 DISPUTE RESOLUTION

25.1 Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the Project Manager and Customer Representative for discussion and resolution at or by the next progress meeting or at an earlier date if so requested by either party. If the dispute is not resolved at that meeting, the dispute will be referred to the second management level that must meet within 5 working days of the reference to attempt to resolve the dispute. If the dispute is not resolved at that meeting, the escalation will continue with the same maximum time interval up to the 3rd management level. If the unresolved dispute is having a material effect on the Services, the parties will use all reasonable endeavours to reduce the elapsed time in reaching a resolution of the dispute.

25.2 The levels of escalation are:

	<u>The Customer</u>	The Supplier
Second Level	[To be confirmed] Project Sponsor	Practice Leader/VP
Third Level	[To be confirmed] Director	Managing Director, UK

If any of the above is unable to attend a meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved dispute.

25.3 Each party will use all reasonable endeavours to reach a negotiated resolution through the above dispute resolution procedure. The specific format for such resolution will be left to the reasonable discretion of the relevant management level but may include the preparation and submission of statements of fact or of position.

25.4 If the dispute is not resolved at the meeting of the second or third management level, then either party may (at such meeting or within 14 days of its conclusion) request that the dispute be referred to an expert to be agreed between the parties.

- 25.5 If the parties cannot agree on an expert to act within 14 days of the date of the request to appoint an expert, such independent expert will be appointed by the President for the time being of the BCS — The Chartered Institute for IT on the application of either party.
- 25.6 Any person to whom a reference is made under Clause 25.4 or 25.5 will act as an expert and not as an arbitrator. The parties agree that the decision of the expert (which will be given in writing stating reasons) will be final and binding on the parties.
- 25.7 Each party will provide the expert to whom a reference is made under this Clause 25 with such information as he may reasonably require for the purposes of his determination. If either party claims any such information to be confidential to it then, provided in the opinion of the expert that party has properly claimed the same as confidential, the expert will not disclose the same to the other party or to any third party.
- 25.8 The costs of the reference to an expert (including the costs of any technical expert appointed by him) will be borne in the first instance by the party making the reference. The expert will in his decision determine the liability for such costs, which decision will be final and binding on the parties.
- 25.9 Nothing in this Clause 25 will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any intellectual property or trade secret right.

26 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

27 GOVERNING LAW

This Agreement will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and will not be used in construing any provision in this Agreement.

IN WITNESS WHEREOF, the Customer and the Supplier cause this Agreement to be executed by their duly authorised representatives identified below.

[CUSTOMER]

VALCON GROUP UK LIMITED

("THE CUSTOMER ")

("SUPPLIER")

Signed by..... (Director)

Signed by(Director).

Name

Name

Title

Title

Date of Signature

Date of Signature