



Iken Software as a Service terms

Between

Iken Business Ltd

And

[Customer name]

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PART 1:
Commercial Term Sheet

"We", "Our", "Us"	Iken Business Limited (a company registered in England with Company No. 02776536) whose registered office is at First Floor, PS21, 21 Prince Street, Bristol, BS1 4PH
Customer Name (" You ", " Your "):	[Customer Name]
Customer Address:	[]
Customer Telephone:	[]
Start Date:	[]
Subscription Services:	Iken Cloud: [Select: Yes/No] Iken Connect: [Select: Yes/No]
Initial Consultancy Services:	[Select: Yes/No]
Your Premises:	[Known location] and other of Your offices as reasonably defined and as notified to Us from time to time.
The individuals signing this Commercial Term Sheet confirm that they are duly authorised to execute this Agreement on behalf of their organisations. Those organisations agree to be bound by the provisions of this Agreement (which include the Terms and Schedules attached).	
Acceptance [Customer Name] Authorised Customer Signature Printed Name: [] Title: [] Date: []	Acceptance Iken Business Limited Iken Business Limited Signature Printed Name: Tanya Corsie Title: Director Date: []

PART 2: **Principal Terms**

1. Scope and Definitions

- 1.1. This Agreement shall apply to the provision by Us to You of the Services and the Documentation in consideration of the payment by You of the Fees.
- 1.2. In the event of any inconsistency between these documents, these will be interpreted in the following order of priority:
 - (a) the Commercial Term Sheet;
 - (b) the Terms;
 - (c) the Schedules.
- 1.3. This Agreement shall prevail over any terms and conditions in Your order, invitation to tender, request for proposal or acceptance. No conduct by Us shall be deemed to constitute acceptance of any terms put forward by You.
- 1.4. This Agreement may only be amended by express agreement in writing signed by an authorised representative of You and Us.
- 1.5. In this Agreement, unless the context otherwise requires, the following words have the following meanings:

<u>Term</u>	<u>Definition</u>
Account Manager	the person(s) appointed by Us to manage Your account and such other replacement account manager as We may notify to You from time to time;
Additional Consultancy Services Request Date	the date upon which You agree in writing to receive additional Consultancy Services;
Agreement	together the Commercial Term Sheet, the Terms and the Schedules;
Authorised Users	Your employees (and, only if We agree in writing, consultants and/or contractors) who You authorise to use the Services and the Documentation, as further set out in clause 12, but excluding Portal Users;
Booked Consultancy Days	any days, including the Initial Consultancy Days, on which We have agreed to provide Consultancy Services;
Change	a modification, improvement, or extension of the Services requested by You or Us in accordance with clause 6;
Confidential Information	all identifiable methodology, know-how, experience, data, databases, flow charts, reports, tables or other material produced in relation to this Agreement (including the negotiations leading to it) and any other information of whatever kind (whether commercial,

	technical, financial, operational or otherwise, whether communicated verbally, in writing or in any other form and whether or not expressly stated to be confidential) relating to a Party including its business, products, suppliers and customers;
Consultancy Fee Rates	as specified in Schedule 1 and updated from time to time in accordance with this Agreement;
Consultancy Services	any consultancy services provided by Us to You under this Agreement as referred to in Schedule 1, together with any additional consultancy services agreed by Us in writing to be provided to You from time to time;
Customer Data	any data (including any personal data relating to the staff, customers, contacts or suppliers of Yours), documents, text, drawings, diagrams, images or materials, embodied in any medium, that are supplied to Us by or on Your behalf (including any data inputted into the Subscription Services), but excluding the Usage Data, methodology and database forming part of the Subscription Services;
Data Protection Legislation	the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations and the UK GDPR, together with: a) any legislation implemented in connection with them; b) any replacement legislation coming into effect from time to time; and c) any other applicable data protection or privacy legislation and regulations;
Disclosing Party	the Party disclosing Confidential Information and/or to whom Confidential Information relates;
Documentation	any user or other documentation We may provide to You from time to time as part of the Subscription Services, including user manuals, training materials and onboarding materials;
Expenses	reasonable travelling, hotel and subsistence expenses or the cost of materials and external services incurred in the provision of the Consultancy Services;
Fees	all fees, expenses and other charges due to be paid by You under and in accordance with this Agreement;
Force Majeure Event	events beyond Our reasonable control, including acts of God, natural disasters, epidemic or pandemic, war, terrorism, riots, labour disputes, governmental orders or

	actions, strikes, lock-outs or other industrial disputes, failures or interruptions of the internet or telecommunications networks, denial-of-service or other cyberattacks, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm, or failures of third-party hosting, cloud infrastructure, or utility providers;
Go Live Date	the date when the System is first available for Your Authorised Users to access;
Good Industry Practice	that degree of reasonable skill, care, prudence and practice which would ordinarily be expected of a reasonably skilled and experienced person engaged in the same or similar trade;
Group Company	any body corporate that Controls, is Controlled by, or is under common Control with the Party in question and " Control " shall mean the power of a person to secure directly that the affairs of that body are conducted in accordance with the wishes of that person, whether by means of the exercise of voting power or other contractual right;
Iken Connect Portal	Our online portal made available by Us to You and Your Portal Users via Connect.Iken.Cloud (or any other website notified by Us to You from time to time), as more particularly described in the Documentation;
Incidents	the Operational Incidents and/or Technical Incidents, as applicable;
Initial Consultancy Days	as specified in Schedule 1;
Initial Consultancy Fees	together the Implementation Services Fee and, if applicable, the Tailored Training Package Fee as specified in Schedule 1 or as otherwise agreed in writing;
Initial Consultancy Services	the initial consultancy services, including the Implementation Services and, if applicable, the Tailored Training Package, provided by Us to You under this Agreement, as specified in Schedule 1;
Initial Period	the initial period of twelve (12) months from the Start Date;
Intellectual Property Rights	all patents, trade marks, trade secrets, copyright, database rights, designs, inventions, know how and any other industrial or intellectual property rights of any nature whatsoever, whether registered, registrable or not, whether present or future, in any part of the world;

Normal Business Hours	9.00 am to 5.30 pm Monday to Friday in each week, excluding Public and Bank Holidays, in the UK;
Operational Incident	guidance on the use of the Subscription Services, ad hoc training provided over the telephone and/or advice on achieving best value from the Subscription Services;
Party	You or Us, as applicable;
Portal Users	any persons who You or your Authorised Users authorise and grant access to use the Iken Connect Portal;
Receiving Party	the Party receiving Confidential Information from or relating to the Disclosing Party;
Renewal Period	has the meaning given in clause 2.1;
RPI	the Retail Price Index published by the Office for National Statistics in the UK or, if superseded, the nearest equivalent;
Schedule	a schedule to this Agreement;
Services	the services provided by Us to You under this Agreement including any Consultancy Services, the Subscription Services (including, where relevant, Iken Connect Portal) and the Support Services (in each case, as applicable);
Specification	Our written specification(s) relating to the Subscription Services contained within Our proposal(s) which are made available to You and updated from time to time in accordance with clause 6.1;
Start Date	the start date specified in the Commercial Term Sheet;
Subscription Fees	the Iken Cloud Subscription Fee and, where applicable, the Iken Connect Subscription Fee payable by You to Us, as set out in Schedule 1;
Subscription Services	the subscription services as selected by You in the Commercial Term Sheet (or as otherwise purchased by You in accordance with clause 15) and provided by Us to You under this Agreement via www.iken.cloud (or any other website notified by Us to You from time to time), as more particularly described in Schedule 1 and the Documentation;
Subscription Terms	the subscription terms in Part 3 of the Terms relating to Your use of the Subscription Services;
Support Data	the data, including any personal data, that We collect when an Authorised User logs a support ticket, including

	name, email address, telephone number and information about the support query;
Support Services	the support services for the Subscription Services referred to in the Support Terms;
Support Terms	the terms relating to the provision by Us of Support Services as defined in Part 4 of the Terms;
System	Your instance of the applicable Subscription Services;
System Requirements	the technical and performance requirements that Your Operating Environment must meet, as set out in the Specification or as otherwise made known by Us to You from time to time, together with any additional requirements agreed between You and Us as being necessary for the satisfactory operation of the Subscription Services;
Technical Incidents	a failure of the Subscription Services to comply with the Specification in any material respect as reported by You;
Terms	collectively the provisions in Parts 2 - 7 of this Agreement;
UK GDPR	the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
Usage Data	any autogenerated, anonymised machine or system data on the performance, operation, utilisation or availability of the Subscription Services;
Users	the Authorised Users and Portal Users;
User Subscriptions	the user subscriptions purchased by You pursuant to clause 12 and Schedule 1 which entitle Authorised Users to access and use the applicable Subscription Services and the Documentation in accordance with this Agreement;
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the

	reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
Working Days	any day other than a Saturday, Sunday or public holiday in England and Wales;
Year	each consecutive twelve (12) month period during this Agreement starting with the Start Date;
You, Yours	the customer specified in the Commercial Term Sheet;
Your Operating Environment	the software, hardware, servers or other equipment, network, systems and communications links by which You access and interact with the Subscription Services;
Your Premises	the premises specified in the Commercial Term Sheet or such other premises at which any Services are to be delivered or to which We require access to perform any Services;
Your Project Manager	Your project manager as being appointed by You and such other replacement individual as You may notify to Us in writing from time to time; and
Your Support Rep	Your representative appointed by You under clause 18.2 or such other replacement individual as You may notify to Us in writing from time to time.
1.5.1. any reference to any legislation or legislative provision shall be construed as a reference to that legislation or provision as amended, re-enacted or extended at the relevant time; 1.5.2. references to any legislation, legislative provision or English legal term shall in respect of any jurisdiction other than England be deemed to include that which most approximates in that jurisdiction to the English legal term; 1.5.3. any reference to a person shall be construed as a reference to any natural person, corporate entity, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing, as well as that person's representatives, successors and permitted assigns; 1.5.4. any words that follow 'include', 'includes', 'including' 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term or definition preceding those words; 1.5.5. a reference to 'writing' or written includes any method of reproducing words in a legible and non-transitory form; 1.5.6. any reference to the masculine gender shall include the feminine and neuter and vice versa;	

- 1.5.7. the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Agreement; and
- 1.5.8. any reference to a clause shall mean a clause of this Agreement unless specifically stated otherwise.

2. Start and Duration of this Agreement

- 2.1. This Agreement shall start on the Start Date and shall continue for the Initial Period. At the end of the Initial Period the Agreement will automatically continue for consecutive periods of twelve (12) months or such other period(s) as may be agreed between the Parties in writing (each a "**Renewal Period**") unless terminated by either Party in accordance with this Agreement.
- 2.2. Either Party may give to the other Party not less than sixty (60) days' written notice before the end of the Initial Period or the then current Renewal Period to terminate this Agreement, in which case this Agreement shall terminate on expiry of the Initial Period or the then current Renewal Period (as applicable).

3. Our Services

- 3.1. During the term of this Agreement, We agree to provide, and You agree to purchase, the Subscription Services on and subject to the terms of this Agreement.
- 3.2. We shall use reasonable endeavours to make the Subscription Services available [99.5%] of the time during Normal Business Hours, except for:
 - 3.2.1. planned maintenance of which We have given You at least [five (5) Working Days] notice; and
 - 3.2.2. unscheduled maintenance that is required to be performed during Normal Business Hours on an emergency basis, provided that We have used Our reasonable endeavours to give You such notice as is reasonable in the circumstances.
- 3.3. We shall use reasonable endeavours to carry out planned or unscheduled maintenance outside Normal Business Hours.
- 3.4. We will provide the Support Services in accordance with this Agreement, including the Support Terms in Part 4 of these Terms.
- 3.5. We will provide any Consultancy Services as agreed and purchased by You in accordance with this Agreement, including the Consultancy Terms in Part 5 of these Terms.
- 3.6. We will use our reasonable endeavours to meet any agreed, written performance dates, but any such dates shall be estimates only and time shall not be of the essence of this Agreement.

4. Your Obligations

- 4.1. You agree to:
 - 4.1.1. comply with all applicable laws and regulations with respect to Your activities under this Agreement;
 - 4.1.2. comply with Your obligations referred to in this Agreement in a timely manner;

- 4.1.3. co-operate with Us in good faith in all matters relating to this Agreement;
- 4.1.4. appoint Your Project Manager, who shall have the authority to contractually bind You on matters relating to this Agreement;
- 4.1.5. obtain and maintain all necessary licences, consents and permissions necessary for Us, Our contractors and agents to perform Our obligations under this Agreement;
- 4.1.6. provide in a timely manner such reasonable access to Your Operating Environment and all necessary information as We may require to provide the Services (including the Customer Data) and such other facilities or resources, as may be reasonably requested by Us to enable us to perform the Services in accordance with this Agreement;
- 4.1.7. ensure that all information provided to Us is accurate and complete in all material respects; and
- 4.1.8. ensure that Our personnel are protected in accordance with all applicable health, safety and environmental laws when working at Your Premises.
- 4.2. If Our performance of Our obligations under this Agreement is prevented or delayed by any act or omission of Yours or Your agents, sub-contractors or employees, You will pay to Us for all additional time and expenses reasonably incurred by Us as a result of that act or omission at Our then Consultancy Fee Rates.
- 4.3. During the term of this Agreement and for a period of six (6) months following termination of this Agreement (for any reason whatsoever), You will not, without Our prior written consent, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged by Us as an employee or sub-contractor and who has worked for Us in connection with the provision of the Services in the immediately preceding twelve (12) months.

5. Materials Supplied by You, including Customer Data

- 5.1. You warrant and undertake that any information or materials provided by You and Your Users to Us for the purposes of this Agreement (including any Customer Data) will be free from any defamatory or unlawful content and that they will not infringe any rights (including Intellectual Property Rights) of any third party.
- 5.2. On receipt by either Party of notice of termination from the other Party, We will provide reasonable assistance to enable You to extract any Customer Data from the Subscription Services, provided that You shall pay Our then standard charges for doing so. Once Customer Data has been extracted and thereby returned to You, We shall delete Customer Data that remains within the Subscription Services within ninety (90) days of termination of this Agreement or such other timeframe as agreed in writing between You and Us.

6. Change Requests

- 6.1. We reserve the right to make modifications to the Subscription Services from time to time where such modifications will not result in any changes to the Fees, provided that such modifications shall not materially reduce the functionalities of the Subscription Services or be detrimental to Your use of the Subscription Services.

- 6.2. Either Party may request a Change by providing the other Party with full particulars of any requested Change and such further information as the other Party may reasonably require (“**Change Request**”).
- 6.3. After the raising of a Change Request, We will inform You in writing of any changes required to be made to this Agreement and any impact to the Fees previously approved by You in order to cater for the Change Request. We will provide You with an estimate of time and costs required to carry out any Change Requests and any such time shall be charged at Our then Consultancy Fee Rates or such other fees as agreed in writing with You.
- 6.4. If both You and Us agree with the Change then the Agreement and the Fees (if applicable) will be deemed to be amended in the manner advised by Us under clause 6.3 and You shall pay those Fees in accordance with the requirements of clause 7 and Schedule 1, unless otherwise agreed by Us in writing.
- 6.5. For the avoidance of doubt, You will be liable for any work which We agree to carry out at Your request that is not specifically required by Schedule 1 (as may be varied by this clause 6), which shall be charged by Us at Our then Consultancy Fee Rates.

7. Fees and Payment

- 7.1. You will pay the Fees to Us in the amounts and in accordance with the payment terms set out in Schedule 1.
- 7.2. Except as may be expressly stated in Schedule 1, the Fees do not include the provision of training, implementation services, customised development or bespoke software services nor any additional services.
- 7.3. Unless expressly specified in Schedule 1, the Fees do not include the provision of third party products, hardware or operating systems. You acknowledge that it is Your responsibility to obtain these items.
- 7.4. We will make an additional charge in accordance with Our standard scale of charges for the time being in force for any services provided by Us and agreed by You, but which do not fall within the Services as described in Schedule 1.
- 7.5. Invoices raised by Us for the Fees shall be raised in accordance with Schedule 1 and You must pay Our invoices within thirty (30) days of the date of invoice.
- 7.6. Without prejudice to any other remedies We may have, if You fail to pay any Fees by the due date, We may serve a notice in writing on You requesting payment within fourteen (14) days of that notice.
- 7.7. Without prejudice to any other remedy which We may have, if any sums due under this Agreement are not received by Us by the due dates referred to in Our invoice, We may:
 - 7.7.1. charge interest on the overdue amount at the rate of 4% above the base rate of National Westminster Bank Plc for the time being from the due date until the overdue sums have been received by Us in cleared funds;

- 7.7.2. suspend the provision of the Services or any other obligations required to be performed by Us under this Agreement until such time as payment of the overdue sums (together with any interest) have been received by Us; and/or
- 7.7.3. terminate the Agreement by giving thirty (30) days' notice in writing to You..
- 7.8. All payments made by You under this Agreement shall be made without set-off or counterclaim of any description. If You are required at any time by any applicable law to make any such deduction from any payment due that payment shall be increased by such amount and will result in receipt by Us of a net sum equal to the sum that We would have received had no such deduction been required.
- 7.9. All sums due under this Agreement are exclusive of Value Added Tax or other applicable sales tax and all other duties and charges which (where applicable) will be paid to Us by You in addition to the sums due.

8. Confidential Information

- 8.1. The Receiving Party undertakes to the Disclosing Party that:
 - 8.1.1. it shall treat and safeguard as private and confidential all Confidential Information;
 - 8.1.2. it shall only use the Confidential Information to the extent that such use is necessary for the purposes of performing its obligations or exercising its rights under this Agreement;
 - 8.1.3. it shall not at any time disclose or reveal any part of the Confidential Information to any person other than a person needing to know that information in order to fulfil the obligations of, or exercise rights under, this Agreement ("**Permitted Recipient**");
 - 8.1.4. it shall ensure that each Permitted Recipient to whom Confidential Information is to be disclosed is made aware of and observes the terms of this clause 8 as if that person had given the undertakings contained in this clause 8 directly;
 - 8.1.5. it shall immediately upon written request by the Disclosing Party deliver to the Disclosing Party a list of all individuals to whom the Confidential Information has been disclosed.
- 8.2. The provisions of clause 8.1 above shall not apply to any Confidential Information to the extent that such Confidential Information:
 - 8.2.1. is publicly available or becomes publicly available through no act or omission of the Receiving Party; or
 - 8.2.2. was created independently by the Receiving Party prior to the date of this Agreement as demonstrated by documentary evidence; or
 - 8.2.3. is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority provided that (to the extent it is permitted to do so) the Receiving Party gives all reasonable notice of that disclosure to the Disclosing Party.
- 8.3. Whenever requested by the Disclosing Party:

- 8.3.1. the Receiving Party shall immediately return, and ensure that all Permitted Recipients immediately return, to the Disclosing Party all matter provided by the Disclosing Party in tangible form which constitutes the Confidential Information, or any part of it, together with all copies; and
- 8.3.2. the Receiving Party shall immediately destroy (or if kept electronically, expunge), and ensure that all Permitted Recipients immediately destroy or expunge, any notes, memoranda or other records or working materials (in whatever medium) which contain any Confidential Information.

9. Data Protection

- 9.1. For the purposes of this Agreement, "**personal data**", "**controller**", "**processor**", "**data subject**" and "**process**" have the respective meanings given to them in the Data Protection Legislation.
- 9.2. You and We acknowledge that, for the purposes of the Data Protection Legislation, You are the controller and We are the processor of any personal data within the Customer Data and any other personal data We process on Your behalf during the term of this Agreement ("**Customer Personal Data**"). A description of the personal data and the processing activities We will undertake is set out in Schedule 2. We shall process all other personal data in connection with this Agreement as a controller in accordance with our privacy policy, as updated from time to time and available on Our website.
- 9.3. Where We process Customer Personal Data, You shall:
 - 9.3.1. ensure that the Customer Personal Data is accurate and up-to-date, and remains so during the period of the processing;
 - 9.3.2. comply with Your obligations under the Data Protection Legislation;
 - 9.3.3. ensure that all necessary consents under the Data Protection Legislation have been obtained for the supply of the Customer Personal Data and its processing by Us and, if We request, promptly provide written confirmation of the same; and
 - 9.3.4. not do anything in connection with the Customer Personal Data that would or might cause Us to be in breach of any Data Protection Legislation or other law and/or to incur liability to any data subject.
- 9.4. To the extent that We process Customer Personal Data, We shall:
 - 9.4.1. solely process the personal data for the purposes of fulfilling Our obligations under this Agreement and in compliance with Your lawful written instructions as set out in this Agreement (including Schedule 2);
 - 9.4.2. notify you if we believe that Your instructions infringe Data Protection Legislation;
 - 9.4.3. ensure that any persons authorised to process Customer Personal Data are required to treat the Customer Personal Data confidentially;
 - 9.4.4. take appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Personal Data and against accidental

loss or destruction of, or damage to, the Customer Personal Data taking into account the nature of the processing and the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the personal data to be protected including, without limitation, all such measures that may be required to ensure compliance with Article 32 of the UK GDPR;

9.4.5. taking into account the nature of the data processing activities We undertake and the information available to Us:

- 9.4.5.1. provide all reasonable assistance and co-operation to enable You to fulfil Your obligations to respond to requests from data subjects exercising their rights under the Data Protection Legislation;
- 9.4.5.2. notify You as soon as reasonably practicable if We or any sub-contractor engaged by Us or on Our behalf suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Customer Personal Data;
- 9.4.5.3. following a notification under clause 9.4.5.2, provide reasonable co-operation, information and assistance to You as may be necessary to enable You to notify relevant supervisory authorities and data subjects of the data security breach to the extent such notification is required under the Data Protection Legislation;
- 9.4.5.4. assist You with carrying out data protection impact assessments and consulting with relevant supervisory authorities where such assessments and/or consultation are required pursuant to the Data Protection Legislation, provided that the scope of such assistance shall be agreed between You and Us in advance and You shall pay Our reasonable costs incurred in providing such assistance;
- 9.4.5.5. upon termination of processing, delete and/or return all Customer Personal Data in accordance with clause 5.2; and
- 9.4.5.6. upon reasonable request with not less than four (4) weeks' notice, and provided that You shall not make more than one (1) request in any rolling twelve (12) month period, make available to You all information necessary to demonstrate compliance with the obligations set out in this clause 9.4 and allow for and contribute to audits, including inspections, conducted by You or on Your behalf.

9.4.6. In performing Our obligations under this Agreement, We may appoint one or more third party as sub-processors in accordance with clause 30.3. We as a processor remain responsible to You for the actions of Our sub-processors and We remain bound by Our obligations under this clause 9.4. You hereby consent to Us appointing the sub-processors set out on Our website and available at www.iken.co.uk. In the event of any change to any such sub-processors, We will notify You of the change and give You a reasonable opportunity to object to the change. If We do not receive any objection within five (5) Working Days after notifying You of the change, You will be deemed to have no objection. If You object to a change to the list of sub-processors, You and We will work

together in good faith to address and attempt to resolve Your objection. In the event that Your objection cannot be resolved within a reasonable period of time, either (at Our option): a) We will not use the relevant sub-processor; or b) We may terminate this Agreement in whole or in part of and/or cease provision of the Services that requires the use of the relevant sub-processor without further liability to You (except that We shall refund, on a pro-rata basis, any pre-paid Subscription Fees for the remaining period of unused Subscription Services following termination of this Agreement); and

- 9.4.7. We will not transfer any Customer Personal Data outside the UK and the European Economic Area (as applicable) without Your prior written consent or Your specific instruction to do so.

10. Anti-bribery

10.1. You and We shall each:

- 10.1.1. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
- 10.1.2. have and maintain throughout this Agreement Your and Our own respective policies and procedures to ensure compliance with the Relevant Requirements; and
- 10.1.3. promptly report to the other any request or demand for any undue financial or other advantage of any kind that We or You respectively receive.

11. Intellectual Property

- 11.1. All Intellectual Property Rights and all other rights in the Services, the Documentation and the Usage Data ("**Supplier Materials**") shall be owned by Us or Our licensors. Except as set out in clause 11.2 and (where applicable) the Subscription Terms, You will have no rights in, or to, any of the Supplier Materials. You will, at Our request, sign all such documents and do all such things as are reasonably necessary to confirm Our ownership of the Supplier Materials and the Intellectual Property arising in the Supplier Materials.
- 11.2. The Customer Data and any other documentation or materials provided by You to Us shall be owned by You and You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. You warrant that the Customer Data shall not infringe the Intellectual Property of any third party. We may use the Customer Data and any other documentation or materials provided by You to Us for all purposes necessary to perform Our obligations and exercise Our rights under this Agreement. On termination of this Agreement for any reason this right will immediately cease, except that we may continue to use the Customer Data to the extent necessary to fulfil our obligations at clause 5.2.
- 11.3. Subject to clauses 11.4 to 11.7 below, We shall indemnify You from and against all direct costs, reasonable expenses, losses and damages suffered or incurred by You and arising from a claim that the use by You of the Subscription Services (excluding any Customer Data) in accordance with this Agreement infringes the Intellectual Property Rights of any third party ("**IP Claim**").

- 11.4. The indemnity given by Us in clause 11.3 above is subject to the following conditions:
- 11.4.1. You shall promptly give Us notice and details of the IP Claim, giving Us sufficient time to contest any proceedings;
 - 11.4.2. You shall take such action and give such information and assistance as We may reasonably request to allow Us to conduct and/or settle any and all proceedings and negotiations in respect of the IP Claim, provided that We shall keep You informed about material conduct and progress of the proceedings and negotiations;
 - 11.4.3. subject to clause 8, You shall provide Us and Our professional advisers in connection with the IP Claim reasonable access to Your premises and personnel and to any relevant records within Your possession;
 - 11.4.4. We are given sole authority to defend or settle the claim; and
 - 11.4.5. You shall make no statement or take any other action that might be prejudicial to Us in Our conduct of any proceedings or negotiations in relation to the IP Claim and shall not admit liability or settle the matter without Our prior written consent.
- 11.5. As soon as reasonably practicable after We have become aware of an IP Claim, We may, at Our discretion, do one or more of the following:
- 11.5.1. obtain for You the right to use the alleged infringing item;
 - 11.5.2. modify the alleged infringing item so that it becomes non-infringing;
 - 11.5.3. replace the alleged infringing item with a non-infringing item;
- and in each case You shall provide such co-operation and assistance as We may reasonably require.
- 11.6. If We are unable to carry out the steps set out in clause 11.5, We may terminate this Agreement on five (5) Working Days' written notice to You without any further liability to You (except that We shall refund, on a pro-rata basis, any pre-paid Subscription Fees for the remaining period of unused Subscription Services following termination of this Agreement).
- 11.7. We shall not have any liability to You in respect of any IP Claim (or any costs, expenses, losses, damages or other liabilities of Yours in connection with such IP Claim) to the extent that such IP Claim arises out of, was caused or contributed to by, one or more of the following:
- 11.7.1. the use by You or any of Your employees, sub-contractors or other sub-licensees of the alleged infringing item in combination with other items not supplied by Us under this Agreement;
 - 11.7.2. the incorporation by Us into the Subscription Services of specific designs, workflows, templates, data or modifications produced by You;
 - 11.7.3. any breach of this Agreement by You and/or any negligence or wilful misconduct by You or any of Your employees, agents, Users or sub-contractors.

PART 3:
Subscription Terms

12. User Licences

12.1. In consideration of You agreeing to abide by these Subscription Terms and subject to you purchasing the User Subscriptions and paying any other Fees in accordance with this Agreement, We hereby grant to You a non-exclusive, non-transferable, world-wide, royalty-free right, without the right to grant sub-licences, for the duration of the Agreement only, to permit the Authorised Users to use the Subscription Services and the Documentation during this Agreement.

12.2. You may:

12.2.1. allow the Authorised Users to access and use the Subscription Services for Your internal business purposes only, but except as may be expressly set out in Schedule 1, You shall not copy the Subscription Services or the Documentation or access them for any purposes other than as set out in this Agreement; and

12.2.2. receive and use any updates, upgrades or new versions of the Subscription Services incorporating "patches" and corrections of errors as may be provided by Us from time to time.

13. Iken Connect Portal

13.1. In consideration of You agreeing to abide by these Subscription Terms and subject to you paying the Iken Connect Subscription Fee in accordance with this Agreement, We hereby grant to You a non-exclusive, non-transferable, world-wide, royalty-free right, without the right to grant sub-licences, for the duration of the Agreement only, to permit the Portal Users to access and use the Iken Connect Portal during this Agreement for Your internal business purposes only.

13.2. You shall remain responsible for any and all information shared with, or access granted to, an Portal User (whether by error or not), and We shall not accept any liability in relation to the same, except to the extent caused by Our negligence.

14. Your Undertakings

14.1. You shall ensure that the maximum number of Authorised Users that you authorise to access and use the Subscription Services and the Documentation shall not exceed the number of User Subscriptions You have purchased from time to time.

14.2. You shall not allow or suffer any User Subscription to be used by more than one individual Authorised User unless that User Subscription has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Subscription Services and/or the Documentation.

14.3. You shall ensure that each Authorised User shall keep a secure and confidential password for his or her use of the Subscription Services and the Documentation.

- 14.4. You shall maintain a written, up-to-date list of current Authorised Users and shall provide such list to Us within a reasonable period of time after written request by Us from time to time.
- 14.5. You shall not access, store, distribute or transmit any Viruses during your use of the Subscription Services. You shall not (and shall procure that Your Users shall not) use the Subscription Services, or upload any material or Customer Data to the Subscription Services, in any manner that:
- 14.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or is otherwise prohibited by law, regulation, governmental order or decree;
 - 14.5.2. facilitates illegal activity;
 - 14.5.3. depicts sexually explicit images;
 - 14.5.4. promotes unlawful violence;
 - 14.5.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability;
 - 14.5.6. violates the rights of others, including any third party Intellectual Property;
 - 14.5.7. is otherwise illegal or causes damage or injury to any person or property;
- unless otherwise permitted by law, and We reserve the right, without liability or prejudice to Our other rights, to disable Your access to the Subscription Services if you upload any material that breaches the provisions of this clause 14.5;
- 14.6. You shall not (and shall procure that Your Users shall not) use the Subscription Services:
- 14.6.1. to try to gain unauthorised access to or disrupt any service, device, data, account or network;
 - 14.6.2. to send spam or distribute malware;
 - 14.6.3. in a way that could harm the Subscription Services or impair any other person's use of the Subscription Services;
 - 14.6.4. in any situation where failure of the Subscription Services could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or
 - 14.6.5. to assist or encourage anyone to do any of the above.
- 14.7. Except as expressly set out in this Agreement or as permitted by any local law, You undertake:
- 14.7.1. not to copy the Subscription Services and/or the Documentation except where that copying is incidental to normal, internal use of the Subscription Services or where it is necessary for the purpose of back-up or operational security;
 - 14.7.2. not to disassemble, decompile, reverse engineer, reduce to human-perceivable form or create derivative works based on the whole, or any part,

of the Subscription Services and/or Documentation nor attempt to do any such things;

- 14.7.3. access all or part of the Subscription Services in order to build a product or services that compete with the Services;
 - 14.7.4. not to (subject to clause 30.2) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or Documentation, in whole or in part, in any form available to any person other than Your Users without prior written consent from Us;
 - 14.7.5. to supervise and control use of the Subscription Services and ensure that the Users use the Subscription Services in accordance with the Subscription Terms;
 - 14.7.6. to be responsible for any User's breach of the Subscription Terms;
 - 14.7.7. to ensure that Your Operating Environment complies with the System Requirements and is suitable for use of the Subscription Services;
 - 14.7.8. to obtain Our agreement to any proposed changes to Your Operating Environment before making such changes; and
 - 14.7.9. be solely responsible for procuring, maintaining and securing Your Operating Environment and Your network connections and telecommunications links from Your systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.
- 14.8. You acknowledge that We will not audit the suitability of Your Operating Environment.
- 14.9. You shall permit Us or Our designated auditor to audit the Subscription Services in order to establish compliance with this Agreement. Any such audit may be conducted no more than once per quarter, at Our expense, with reasonable prior notice and in such a manner as not to substantially interfere with Your normal conduct of business.
- 14.10. If any audit referred to in clause 14.8 reveals that any password has been provided to any individual who is not an Authorised User, then without prejudice to Our other rights, You shall promptly disable such passwords and We shall not issue any new passwords to any such individual.

15. Additional User Subscriptions and Subscription Services

- 15.1. Where You wish to increase the number of Authorised Users or access additional Subscription Services, You may submit a written request to Us ("**User Request**") specifying the number of additional User Subscriptions requested and/or the additional Subscription Services required (as applicable).
- 15.2. Following receipt of Your User Request, We shall either provide you with a quotation of the applicable Subscription Fees based on Your User Request or notify you if We reject Your User Request at Our discretion, acting reasonably and without delay.

- 15.3. Where You accept Our quotation and We approve the User Request, We shall activate the additional User Subscriptions and/or Subscription Services (as applicable) within a reasonable period of time following such approval.
- 15.4. Once We approve Your User Request, You shall, within thirty (30) days of the date of Our invoice, pay to Us the relevant Fees in accordance with Our then-current fees and rates as made known to You on approval of the User Request.

16. Warranty

- 16.1. We warrant to You that the Subscription Services will be performed with reasonable skill and care and substantially in accordance with the Specification.
- 16.2. The warranty at clause 16.1 shall not apply to the extent of any non-conformance which is caused by use of the Subscription Services contrary to Our written instructions, or modification or alteration of the Subscription Services by any person other than Us or Our duly authorised contractors or agents. If the Subscription Services do not conform with the foregoing undertaking, We will, at our expense and at our option, use all reasonable endeavours to correct any such non-conformance promptly, or provide You with an alternative means of accomplishing the desired performance. If We cannot correct the non-conformance or provide an alternative means of accomplishing the desired performance, You may terminate this Agreement and receive a refund in respect of any pre-paid, unused Subscription Fees. This clause 16.2 sets out Your sole and exclusive remedy for any breach of the warranty at clause 16.1.
- 16.3. Notwithstanding clause 16.2, We:
- 16.3.1. do not warrant that Your use of the Subscription Services will be uninterrupted or error-free, or that the Subscription Services or Documentation will meet Your requirements; and
- 16.3.2. are not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Subscription Services and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 16.4. You acknowledge and agree that the Subscription Services may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of any of Our obligations in the Agreement.
- 16.5. We reserve the right to suspend Your access to the Subscription Services:
- 16.5.1. if You breach any of the terms of this Agreement; or
- 16.5.2. if suspension is required as a result of suspension of services by a third party service provider whose services are required in order for us to provide the Subscription Services, for example Our hosting provider.
- 16.6. If You commit any breach of this Agreement that results in the suspension of any third party services that are required in order for Us to provide the Subscription Services (as set out in clause 16.5.2), We shall be entitled to treat such breach as a material breach for the purposes of clause 27.1.4.

17. Effect of Termination on Subscription Terms

17.1. Upon termination of the Agreement for whatever reason:

- 17.1.1. all licences granted under this Agreement shall immediately terminate and You shall immediately cease all use of the Subscription Services and the Documentation; and
- 17.1.2. We may destroy or otherwise dispose of any of the Customer Data in Our possession in accordance with clause 5.2.

PART 4:
Support Terms

18. Support Services

- 18.1. We will use our reasonable endeavours to provide You with Support Services in accordance with these Support Terms.
- 18.2. You will nominate one (1) individual who will act as Your Support Rep. Your Support Rep will be the person responsible for liaison with Us concerning overall delivery of Support Services in accordance with these Support Terms.
- 18.3. You may report Incidents to Us by telephone or email, to the numbers and email address set out below in clause 22 during Normal Business Hours.
- 18.4. You will:
 - 18.4.1. co-operate with Us in the diagnosis of any Incident and provide technical and logistical support and backups to enable Us to provide the Support Services;
 - 18.4.2. be responsible for the maintenance and support of all proprietary or third party systems and networks that are not owned by or licensed to Us;
 - 18.4.3. appropriately back up the data and documentation submitted to the Subscription Services;
 - 18.4.4. provide Us with such access (whether physical or remote access) as We may reasonably require in order to diagnose and/or resolve Incidents; and
 - 18.4.5. install, upgrade and regularly run anti-virus software and implement system management policies (e.g. control of discs) which minimise the likelihood of problems arising from Viruses.
- 18.5. You acknowledge that, subject always to Our obligations under clauses 8 and 9 of the Agreement, We may need to access the System and the Customer Data in the course of providing the Support Services.
- 18.6. If You do not comply with Your obligations in clause 18.4 of these Support Terms, We reserve the right to charge for the additional time We spend in the provision of the Support Services.

19. Technical Incident Priority Definitions

- 19.1. Technical Incidents reported to Us will have an initial severity category assigned to them by You (acting reasonably) and You must advise Us of the severity categorisation when notifying the Technical Incident to Us.
- 19.2. We will review the severity category assigned to a Technical Incident and will confirm that severity category, or We may change the severity category if We reasonably believe that You have incorrectly reported the Technical Incident.
- 19.3. The severity categories are as follows:

Severity Category	Definition	Actual Examples
1 Critical	Business impact is immediate and major. Use of the Subscription Services is not possible due to a Technical Incident and no workaround has been implemented. You require a resolution urgently due to financial, legal and public risk exposure.	Subscription Services not responding to any user access attempts.
2 Urgent	Business impact is immediate and major but a business workaround is in place. Use of the Subscription Services is possible, but due to a Technical Incident a business function is disabled.	Unable to access certain components within the Subscription Services
3 Standard	Business impact is small or moderate. Production and/or implementation is not impacted severely for one of the following reasons: a. an acceptable workaround is in place; b. the Technical Incident is resolved onsite; c. the Technical Incident is not severe; or d. the extent of the Technical Incident is limited.	One or more parts of the Subscription Services running slowly

20. Service Levels

20.1. We will use our reasonable efforts to ensure that We respond to Technical Incidents within the Service Levels referred to in the table below. A 'response' shall include where we acknowledge the Incident reported by You by email or instant chat notification, or upon answering Your telephone call to Us.

Incident Category	Severity	Response Time	Service Level
1 Critical		Within one Normal Business Hour of receipt of the Incident report from You in accordance with the Agreement.	In 98% of Critical Technical Incidents reported to the Iken helpdesk by all clients in the previous 24 months

Incident Category	Severity	Response Time	Service Level
2 Urgent		Within three Normal Business Hours of receipt of the Incident report from You in accordance with the Agreement.	In 98% of Urgent Technical Incidents reported to the Iken helpdesk by all clients in the preceding 12 months
3 Standard		Within 24 Normal Business Hours of receipt of the Incident report from You in accordance with the Agreement.	In 95% of Standard Technical Incidents reported by You in accordance with the procedure set out in this Agreement in the previous 12 months

20.2. We will undertake the Service Level calculation within thirty (30) days of the end of each twelve (12) month period during this Agreement and will report the results to You if requested.

21. Exclusions From Support

21.1. The Support Services do not include, and We are not required to provide:

- 21.1.1. support for software, hardware, accessories, attachments, machines, systems, database platform integrity, availability and integrity of externally sourced data and network and email availability or other devices which are not part of the Subscription Services;
- 21.1.2. rectification of lost or corrupted data caused by You or any third party, other than Our sub-contractors, unless such data is lost or corrupted due to negligence of Ours or Our sub-contractors;
- 21.1.3. diagnosis and/or rectification of any Incident resulting from any modifications of any Subscription Services not made by Us;
- 21.1.4. diagnosis and/or rectification of any Incident resulting from circumstances where any assumptions or conditions set out in Schedule 1 do not prevail;
- 21.1.5. diagnosis and/or rectification of any Incident that is caused or contributed to by the failure of Your Operating Environment to comply with the System Requirements;
- 21.1.6. diagnosis and/or rectification of any Incident that is caused or contributed to by the failure of any software, equipment or systems which are not part of the Subscription Services;
- 21.1.7. diagnosis and/or rectification of any Incident that is caused or contributed to by Your or any Authorised User's failure to use the Subscription Services properly and in accordance with instructions for use; or
- 21.1.8. any on-site services to respond to or resolve any Incident.

21.2. With regard to Operational Incidents reported under the Support Terms:

- 21.2.1. We are not obliged to respond within any specific timescale, although We will use reasonable efforts to respond as soon as practicable; and
- 21.2.2. the provision of Support Services in response to an Operational Incident is subject to reasonable use, so We reserve the right to make a charge for provision of additional Support Services in response to an Operational Incident where We consider, in our sole discretion, that the costs of providing that additional support are disproportionate to the benefit derived by Us from this Agreement and where we have informed you in advance that such a charge will be made.

22. Contact Details For Support Services

Access to Our help desk is by:

Telephone

+44 (0) 117 373 0795 or

08448 933 910 (calls to this number will be charged at four pence per minute plus Your standard network operator charge)

Email

support@iken.co.uk

or by such other means as notified to You by Us from time to time.

PART 5: **Consultancy Terms**

23. Consultancy Services

- 23.1. We will use Our reasonable endeavours to provide the Consultancy Services in accordance with the description set out in Schedule 1 or otherwise agreed by Us in writing from time to time.
- 23.2. In consideration of the Initial Consultancy Services, You will pay Us the Initial Consultancy Fees.
- 23.3. Subject to clause 23.5, We will provide the Implementation Services for the number of Initial Consultancy Days.
- 23.4. Subject to clause 23.6, We will provide any additional Consultancy Services agreed in writing between You and Us from time to time which will be charged in accordance with the Consultancy Fee Rate or such other sums as agreed in writing with You.
- 23.5. The Initial Consultancy Days are valid for one (1) year from the Start Date (“**Initial Consultancy Period**”). We shall not be required to deliver any Initial Consultancy Days that remain unused at the end of the Initial Consultancy Period and We shall not be required to refund or rebate to You any part of the Initial Consultancy Fees that relate to Initial Consultancy Days that remain unused at the end of the Initial Consultancy Period.
- 23.6. Any additional Consultancy Services ordered by You are valid for one (1) year from the applicable Additional Consultancy Services Request Date (an “**Additional Consultancy Period**”). We shall not be required to deliver additional Consultancy Services that remain unused at the end of an Additional Consultancy Period and We shall not be required to refund or rebate to You any part of any additional fees for any additional Consultancy Services that remain unused at the end of an Additional Consultancy Period.
- 23.7. We reserve the right to make an additional charge at the Consultancy Fee Rates for any Booked Consultancy Days that have been agreed with You and that are cancelled by You less than ten (10) Working Days prior to the first of the Booked Consultancy Days being cancelled.
- 23.8. The Consultancy Fee Rates do not include Expenses. We will invoice for Our Expenses incurred on a pro rata basis, on or after the end of the month in which the Consultancy Services to which they relate have been delivered. You will pay those Expenses within thirty (30) days of the date of invoice.

PART 6:
General Terms

24. General warranties

24.1. We warrant and undertake to You that:

- 24.1.1. We have the power and authority to enter into this Agreement and to perform Our obligations under this Agreement;
- 24.1.2. We will comply with Our obligations under this Agreement using reasonable skill and care in accordance with Good Industry Practice; and
- 24.1.3. We will comply with all legislation and statutory regulations which apply to Us when performing Our obligations under this Agreement.

24.2. You warrant and undertake to Us that:

- 24.2.1. You have the power and authority to enter into this Agreement and to perform Your obligations under this Agreement;
- 24.2.2. You will comply with Your obligations under this Agreement using reasonable skill and care in accordance with Good Industry Practice; and
- 24.2.3. You will comply with all legislation and statutory regulations which apply to You when performing Your obligations under this Agreement.

25. Liability

25.1. Whilst We will use Our reasonable efforts to provide the Services and perform Our other obligations in the manner envisaged by this Agreement, there are a number of external influences and risks which may mean that You are unable to benefit from the Services and You agree that We will not have any liability for these which include:

- 25.1.1. other software, services or equipment not supplied by Us operating in conjunction with the Subscription Services or used by any Users;
- 25.1.2. where any assumptions or conditions set out in Schedule 1 do not prevail;
- 25.1.3. the failure of or interruption in any third party communication link;
- 25.1.4. any inherent defect in Your Operating Environment; and
- 25.1.5. the user settings applied by, and the skill of, Your Users.

25.2. We will not be liable for any failure to perform any part of the Services to the extent that failure was caused or contributed to by a breach of Your obligations under this Agreement.

25.3. You acknowledge We have agreed to provide the Support Services to You and accordingly, except as set out in clauses 16.1 and 24, the Services are provided "as is" without any warranty as to functionality or performance and We will have no other liability for any defect in the Services. You acknowledge that You are responsible for ensuring that the Services meet Your requirements and are suitable for any intended purposes.

- 25.4. Except as expressly set out in this Agreement and to the maximum extent permitted by law:
- 25.4.1. all representations, conditions, warranties and all other terms of any kind whatsoever implied by statute or common law are excluded from this Agreement; and
 - 25.4.2. We do not warrant that the Services will meet Your requirements, or that the operation of the Subscription Services will be uninterrupted or error-free, or that defects in the Services will be corrected.
- 25.5. Except as expressly stated in this Agreement, no oral or written information or advice given by Us shall create any additional warranties or in any way increase the scope of Our obligations under this Agreement.
- 25.6. Subject to clauses 25.7 and 25.8, We will be liable to You for the direct losses You incur as a result of Our negligence or breach of this Agreement subject to the other qualifications and limitations in this Agreement and provided that We will not be liable to You for any of the following (whether direct or indirect and whether caused by reason of any negligence by Us or any of Our employees or sub-contractors any breach of contract or any express or implied warranty, condition or other term, or otherwise):
- 25.6.1. loss of profits;
 - 25.6.2. damage to reputation;
 - 25.6.3. loss of anticipated savings;
 - 25.6.4. loss of anticipated revenues;
 - 25.6.5. loss of business opportunities;
 - 25.6.6. loss of contracts;
 - 25.6.7. loss of goodwill;
 - 25.6.8. loss or corruption of any data;
 - 25.6.9. liabilities incurred for the reinstatement of data, or claim, action or demand made against You by any third party; or
 - 25.6.10. indirect, consequential or special loss, damage, cost, expense, claim or other such liability whatsoever which arises out of or in connection with this Agreement.
- 25.7. Subject to clauses 25.6 and 25.8, Our total aggregate liability (inclusive of interest and legal and other costs) to You in respect of all claims arising under or in connection with or contemplation of this Agreement in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall not in any event exceed the greater of:
- 25.7.1. an amount equal to six (6) times the Fees payable by You for the Services that are the subject of the claim in the first full calendar month in which Fees are charged under the Agreement; or

25.7.2. the total amount paid by You to Us for the Services that are the subject of the claim in the twelve (12) months immediately preceding the event(s) that first gave rise to the claim.

25.8. Nothing in this Agreement shall operate to limit or exclude Our liability to You for fraud or fraudulent misrepresentation or for any death or personal injury caused by Our negligence or any of Our employees or agents, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

25.9. Each Party shall use reasonable endeavours to mitigate its losses under this Agreement.

26. Events Outside Our Control

26.1. We will not be liable for, or be deemed to be in breach of this Agreement as a result of, any delay in performing or failure to perform any of Our obligations under this Agreement where that delay or failure is caused by any Force Majeure Event.

26.2. Where any delay or failure arises as a result of the circumstances described in clause 26.1, We shall promptly notify You of these circumstances and the expected duration.

27. Termination

27.1. Either Party may terminate this Agreement as a whole immediately by serving written notice to that effect on the other Party if at any time any one or more of the following events occurs:

27.1.1. the other Party makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

27.1.2. a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other Party; or

27.1.3. anything analogous to any of the foregoing occurs to the other Party under the law of any jurisdiction; or

27.1.4. the other Party commits a material breach of any of the provisions of this Agreement which is irremediable or, in the case of a breach capable of remedy, fails to remedy that breach within sixty (60) days after being served with a written notice specifying the breach and requiring it to be remedied.

28. Consequences of Termination

28.1. Any termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including clauses: 1.2-1.5 (inclusive), 4.3, 5.2, 7, 8, 11.1, 17, 25, 26 and 28-36 (inclusive), and paragraph 4.

28.2. On termination of this Agreement (for any reason whatsoever):

- 28.2.1. except as otherwise stated in clause 28.1, the Schedules and all Terms shall immediately terminate;
- 28.2.2. You shall at Our request immediately cease using, and ensure that Your Users cease using, the Subscription Services, Iken Connect Portal and Documentation;
- 28.2.3. We will comply with our obligations to assist you with the extraction of Customer Data in accordance with clause 5.2; and
- 28.2.4. You shall immediately pay any outstanding invoices raised under this Agreement.
- 28.3. For the avoidance of doubt, Your and Your Authorised Users' rights to use the Subscription Services shall terminate automatically on termination of this Agreement.
- 28.4. If the Agreement is terminated by Us as a consequence of a material breach of the Agreement by You (including Your failure to protect Our Intellectual Property), You shall pay to Us all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the Subscription Services, enforcement of the Subscription Terms or otherwise.

29. Exclusion of Third Party Rights

- 29.1. Unless expressly stated in this Agreement, nothing in this Agreement shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

30. Assignment and Sub-contracting

- 30.1. Except as set out in clause 30.2, You shall not be entitled to novate, assign, sub-contract or otherwise dispose of any of Your rights or obligations under this Agreement without Our prior written consent.
- 30.2. You may assign or sub-contract or otherwise dispose of any of Your rights or obligations under this Agreement upon prior written notice to Us if:
 - 30.2.1. You are a public authority assigning its rights and obligations under this Agreement to another public authority as a result of reorganisation; or
 - 30.2.2. You are a private company assigning its rights and obligations under this Agreement to a Group Company as a result of reorganisation,

provided that in each case (a) the assignment is for the purpose of the on-going use and receipt of the Services by the assignee; (b) the assignee agrees in writing with Us to be bound by all the terms of this Agreement in Your place from the date of that assignment; (c) the assignee is of sufficient financial standing and creditworthiness to meet its actual and contingent obligations under this Agreement at the time of the assignment and will continue to be so in the foreseeable future; and (d) the assignee is not engaged in business which is competitive with Us.
- 30.3. We may sub-contract Our obligations under this Agreement at any time without Your consent provided that We shall remain directly liable to You for any failure of Our

sub-contractors to comply with Our obligations under this Agreement when performing those duties.

- 30.4. We may at any time and without seeking Your consent assign, transfer, charge or deal in any other manner with Our rights and/or obligations under this Agreement.

31. Waiver

- 31.1. No delay or failure on the part of either Party in enforcing any provision in this Agreement shall be deemed to operate as a waiver or create a precedent or in any way prejudice that Party's rights under this Agreement, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy.
- 31.2. The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.

32. Severability

- 32.1. If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect.

33. Notices

- 33.1. Any notice under this Agreement shall be in writing and shall be sent by:
- 33.1.1. email by You to Your Account Manager or by Us to any person(s) appointed by You, or otherwise notified to the other Party for this purpose; or
 - 33.1.2. pre-paid, first class recorded delivery post or hand delivery to the address for the relevant Party as stated in the Commercial Term Sheet or otherwise notified to the other Party for this purpose.
- 33.2. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address or email address):
- 33.2.1. if despatched by first class, recorded delivery post: 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
 - 33.2.2. if despatched by email: one (1) Working Day after transmission (provided a proof of delivery receipt is received); or
 - 33.2.3. if delivered by hand: at the time of actual delivery.

34. Entire Agreement

- 34.1. This Agreement shall constitute the entire agreement and understanding, and shall supersede any previous agreement(s) between the Parties in connection with the subject matter of this Agreement.
- 34.2. You acknowledge and agree that You have not been induced to enter into this Agreement in reliance upon, and in connection with this Agreement do not have any

remedy in respect of, any representation or other statement or promise of any nature whatsoever other than as expressly set out in this Agreement.

- 34.3. Nothing in this Agreement shall operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.

35. Dispute Resolution

- 35.1. All and any disputes or differences arising out of or in connection with this Agreement, including any dispute or difference in respect of the breach, termination or invalidity of this Agreement ("**Dispute**") shall be resolved and finally settled in a manner provided for in this clause 35.
- 35.2. The Parties will seek in good faith to resolve any Dispute by negotiation without recourse to proceedings. In the event of a Dispute either Party may serve written notice ("**Dispute Notice**") on the other proposing that the Parties resolve the Dispute by negotiation. Within ten (10) days after service of the Dispute Notice, one or more representatives of each Party at senior director level shall meet in good faith to attempt to resolve the Dispute by agreement.
- 35.3. If the Dispute is not resolved within twenty-one (21) days of the Dispute Notice, either Party may upon written notice to the other refer the Dispute to mediation in accordance with clause 35.4.
- 35.4. If any Dispute arises and is not resolved under the procedure set out in clauses 35.2 and 35.3, the Parties will attempt to settle it by mediation under the auspices of the ADR Group. To initiate the mediation a Party shall give written notice ("**Mediation Notice**") to the other Party requesting a mediation. The mediator shall be agreed upon within sixty (60) days of the date of the Mediation Notice, failing which the mediator shall be appointed by the President of the Law Society of England and Wales.
- 35.5. If the Parties cannot agree on any issue as to the conduct of the mediation (other than as to the appointment of the mediator), then at the request of either Party the ADR Group will decide the issue.
- 35.6. If the Dispute is not resolved within seven (7) days of starting the mediation or within such further period as the Parties may agree in writing, either Party may then give written notice to the other to refer the Dispute to the English Courts for final determination in accordance with clause 36 below.
- 35.7. Nothing in this clause shall prevent any Party seeking injunctive or interim relief or any action in relation to debt recovery.

36. Governing Law and Jurisdiction

- 36.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 36.2. Any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.

PART 7: **Additional Terms**

37. Freedom of Information

- 37.1. This Part 7 shall only have effect if You are designated as a public authority under the Freedom of Information Act 2000 ("**FOIA**") or You are any other entity having all the rights and obligations of a public authority under the terms of the FOIA. Following termination of this Agreement for any reason the provisions of Part 7 shall continue to apply.
- 37.2. We recognise that You have obligations under the FOIA to disclose information to third parties ("**Requester**") when requested, subject to certain exemptions and considerations. We further recognise that information requested from You may include information relating to Us.
- 37.3. In the event that a Requester seeks information that might lead to disclosure of information about Us, including to Our Services, products and/or prices (a "**Request**"), You agree that the following procedure shall apply:
- 37.3.1. Upon receipt of the Request, You shall notify Us in writing that a Request has been made under the FOIA, and shall provide Us with copies of the information relating to Us, Our products, services and/or prices, that You consider to be relevant to the Request;
- 37.3.2. Upon receipt of such notification, We shall use reasonable endeavours to promptly provide a response to You identifying:
- 37.3.2.1. information that We consider may be released ("**Releasable Information**"); and
- 37.3.2.2. information that We consider is subject to an exemption under the FOIA and that should not be released ("**Protected Information**") together with reasons why the relevant exemption(s) should be applied.
- 37.4. Notwithstanding the above, You acknowledge that We consider that:
- 37.4.1. disclosure of the information set out in clause 37.7 below would prejudice Our commercial interests and that the exemption set out in section 43 of the FOIA applies to such information; and
- 37.4.2. disclosure of the information set out in clause 37.8 below would result in a breach of a duty of confidentiality and that the exemption set out in section 41 of the FOIA applies to such information.
- 37.5. Notwithstanding the above, if You decide to release any or all of the Protected Information, You will use reasonable efforts to give Us notice of Your intention to do so.
- 37.6. We acknowledge that You are responsible for determining whether any of the Protected Information is exempt from disclosure in accordance with the FOIA.
- 37.7. We consider that exempted information under section 43 of the FOIA (prejudicial to commercial interests) includes:

Information:	Date when information will cease to be commercially sensitive and when it may be disclosed:
Information relating to special financial offers made to You as a part of the procurement process	Three years from the date of this Agreement
Know how of Our directors and employees embedded in Our proposals and other documentation other than that in the public domain	Six years from the date of this Agreement
Our training, project management and implementation methodologies	Six years from the date of this Agreement
Documentation relating to disagreements, issues or difficulties that may arise from time to time between You and Us	Three years from the date of the Documentation

37.8. We consider that exempted information under section 41 of the FOIA (disclosure prohibited under a duty of confidentiality) includes:

Information:	Date when information will cease to be confidential and when it may be disclosed:
Macros and other code developed by Us for use in conjunction with third party products	Information remains confidential indefinitely
Detailed responses made by Our personnel to questions raised by You during the procurement process (and subsequently) that describe the way the Subscription Services work, and how they meet the business and operational requirements of Yours	Information remains confidential indefinitely
Our training manuals and other materials that describe the use of the Subscription Services	Information remains confidential indefinitely
Screen shots, design documentation and other materials describing the design and use of the Subscription Services	Information remains confidential indefinitely
Scripts and database schemes that describe the structure of the Subscription Services database design	Information remains confidential indefinitely
Our Help files	Information remains confidential indefinitely

Information:	Date when information will cease to be confidential and when it may be disclosed:
Information relating to Our support of You	Information remains confidential indefinitely
Information about Our employees and directors other than that in the public domain	Information remains confidential indefinitely
Financial information about Us (and any associated companies) other than the abbreviated accounts as available at Companies House	Information remains confidential indefinitely

Schedule 1: Service Descriptions and Fees

1 Iken Cloud - Subscription Services and Subscription Fees

- 1.1 Iken Cloud Subscription Services shall be as described in the Specification.
- 1.2 The Iken Cloud Subscription Fee shall be calculated by multiplying the User Subscription Fee by the number of User Subscriptions purchased by You, as set out below:

User Subscription Fee	Number of User Subscriptions
£[xx] per Authorised User per month	[insert]

2 Iken Connect - Subscription Services and Subscription Fees

- 2.1 Iken Connect Subscription Services shall be as described in the Specification.
- 2.2 The Iken Connect Subscription Fee shall be calculated as the sum equal to [] percent ([]%) of the total Iken Cloud Subscription Fee and payable in addition to the Iken Cloud Subscription Fee.

3 Consultancy Services and Consultancy Fees

- 3.1 We shall agree a project plan with You detailing the implementation of the Initial Consultancy Services (“**Project Plan**”). The Project Plan may be amended by mutual written agreement from time to time.
- 3.2 As part of the Implementation Services, We will conduct such acceptance tests as may be agreed between You and Us in writing as forming part of the Implementation Services or as We see fit to test the Subscription Services. Your use of the Subscription Services following completion of the Implementation Services shall be deemed to be Your acceptance of the Subscription Services.
- 3.3 The Initial Consultancy Services shall consist of the Implementation Services and, if applicable, the Tailored Training Package (and the “**Initial Consultancy Fees**” shall mean the total fees payable in relation to the same) as follows:

Implementation Services Description	Initial Consultancy Days	Cost at List Price	Discount Applied	Implementation Services Fee
Configuration and training services and associated project management services related to the implementation of the Subscription Services and/or otherwise as	[...]	£[]	(£[])	£[]

defined in the Specification and Project Plan.				
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Consultancy Fee Rates
£[] per day

Tailored Training Package	Tailored Training Package Fee
[N/A or specify selected services]	[Insert as agreed based on selected services: £[] and/or [...] days at the Consultancy Fee Rate.]

Fee Dependencies:

- 3.4 The Initial Consultancy Fees quoted and any pre-agreed charges for additional Consultancy Services are subject to:
- (a) You providing us with information of a satisfactory quality and to timescales defined in the Project Plan;
 - (b) Your Operating Environment meeting the System Requirements;
 - (c) Your personnel and other representatives being available at times agreed in the Project Plan;
 - (d) training and other facilities being made available at agreed times and to a satisfactory standard in accordance with the Project Plan;
 - (e) no Changes being required;
 - (f) Your Project Manager having authority to agree to and implement the Project Plan and variations as mutually agreed from time to time; and
 - (g) any other dependencies expressly set out in the Project Plan as being Your responsibility.

4 Payment Terms

- 4.1 We will invoice You for the Initial Consultancy Fees on or after the Start Date.
- 4.2 The Subscription Fees are payable annually in advance. We will invoice You:
- (a) on or after the earlier of the Go Live Date or one (1) month after the Start Date for the applicable Subscription Fees payable for the first Year; and
 - (b) thereafter, subject to clause 2.2 and 27.1, for the applicable Subscription Fees prior to commencement of each subsequent Year, provided that such invoice shall not be submitted more than sixty (60) days before the expiry of the current Year.

- 4.3 Where You have requested additional User Subscriptions and/or Subscription Services in accordance with clause 15, we will invoice You for the Subscription Fees due for the remainder of the Initial Period or the then current Renewal Term (as applicable), and annually in advance thereafter in accordance with paragraph 4.2 of this Schedule 1.
- 4.4 We will invoice You at the Consultancy Fee Rates or such other sums as agreed in writing with You for any additional Consultancy Services on or after the Additional Consultancy Services Request Date.

Schedule 2:
Data Processing Activities

Categories of Data	Any personal data that You submit to the Subscription Services, including [insert example categories], but excluding the Support Data.
Categories of Data Subjects	Your employees, agents, contractors, consultants, workers and other staff members; Your customers, prospects and contacts; other third parties, members of the public and individuals (including Portal Users) about whom personal data is held on your systems and uploaded to the Subscription Services and/or which may be shared by Your Authorised Users via the Support Services.
Processing Operations	Hosting, organising, migrating, storing, retrieving, using, combining, accessing and erasing personal data.
Purposes	For the performance of Our obligations to You under this Agreement, including: • providing the Subscription Services to You. • migrating personal data on Your behalf from Your systems or third party systems to the Subscription Services. • providing the Support Services. • extracting personal data from the Subscription Services and providing it to You on expiry or termination of this Agreement.
Duration	For the duration of this Agreement, subject to any extraction process conducted post-termination in accordance with clause 5.2.