

Kainos | G-Cloud 15

Terms and Conditions

Status
Security
Version No.

Definitive
Commercial - In Confidence
1/0

Unless otherwise specifically agreed in an Order Form, any and all third-party products, services or software will be supplied by the Supplier (**Kainos**) in the capacity of reseller only passing through to the Buyer directly the standard supply terms of the respective third party vendor(s).

Index of Terms & Conditions	
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Kainos Services Order Form

Status
Security
Version No.

Definitive
Confidential
6.0

KAINOS | SERVICES ORDER FORM

Customer Details	
Customer Name	
Registered Office Address	
Customer Contact, Number & Email	XXX XXX XXX
Invoice Contact, Number & Email	XXX XXX XXX

Kainos Details	
Kainos Name	Choose an item.
Registered Office Address	Choose an item.
Kainos Contact, Number & Email	XXX XXX XXX
Kainos Reference	PIDXXXXXX v0.1

Service Period	
Term	
Start Date	Day Month Year
End Date	Day Month Year
Notice period for termination	A minimum of [X] working days written notice is required for termination of this Order Form.

Description of Services
Kainos will carry out the services detailed below (Services): [DN: Insert a brief description of the services.] To provide the Services Kainos relies on the following assumptions and dependencies, failure of which may have an impact on the provision of the Services, timescales and/or cost: (a) [X] (b) [X] [DN: Include any relevant assumptions, dependencies or customer responsibilities which may impact on delivery, price or timelines]

Location
[DN: Specify where the Services will be carried out or delete drafting note and rely on default statement below] Services will be carried out remotely. Onsite work may be agreed on a case by case basis where necessary to progress the Services.

GDPR
Kainos and the Customer will comply with their respective GDPR obligations in line with this Data Processing Annex which forms part of the Agreement. The data that Kainos is authorised to process is set out in the Data Table. Changes to the Data Table will be managed operationally and the Data Table will be updated by the Customer where the information in the Data Table changes.

Charges												
[DN: Include the following wording if charging basis is Fixed Price and delete the T&M wording below] [Kainos will charge the Customer the <u>fixed price</u> of [£/€/€/\$] for the provision of the Services, plus VAT and expenses (if any) (Fixed Price). Invoices for the Services shall be raised in line with the Payment Profile below. Payment terms are thirty (30) days net. Trigger dates should be objective and line as closely as possible with WIP.]												
<table> <tr> <th colspan="3">Payment Profile</th> </tr> <tr> <th>Invoiced on</th> <th>%</th> <th>Amount</th> </tr> <tr> <td>Signature of Order Form</td> <td></td> <td></td> </tr> <tr> <td>Delivery of X by Kainos</td> <td></td> <td></td> </tr> </table>	Payment Profile			Invoiced on	%	Amount	Signature of Order Form			Delivery of X by Kainos		
Payment Profile												
Invoiced on	%	Amount										
Signature of Order Form												
Delivery of X by Kainos												

Completion of the Services by Kainos		

[DN: Include the following wording if charging basis is **T&M** and delete the Fixed Price wording above]

Kainos will charge the Customer on a time and materials basis, [at the Man Day Rate of [£/€/€] per Man Day] OR [in accordance with the Rate Card set out below.]

The estimated cost for the provision of the Services is [£/€/€] plus VAT and reasonable expenses (if any) **(Estimated Cost)**.

The Customer will be invoiced for actual utilisation which may be more or less than the Estimated Cost. Invoices shall be raised monthly in arrears and shall be paid by the Customer within thirty (30) calendar days of the invoice date.]

[Rate Card DN: Insert Rate Card (if applicable)]

Terms & Conditions

These Services Terms and Conditions apply to this Services Order Form (**Terms and Conditions**) and signature confirms acceptance by the authorised representatives of both Parties. Order Forms should be completed in full and returned to Kainos (with a physical or electronic copy of the purchase order, where applicable) before the start of the Service Period. Kainos is not responsible for delivering the Services where Order Forms are incomplete or unsigned.

Special Conditions

[DN under the terms and conditions the Customer will own all Intellectual Property Rights (IPR) in Services performed by Kainos exclusively for the Customer. If Kainos is seeking to retain (or reuse) any aspect of the IPR in the Services, please raise this with the Commercial Team so an appropriate special condition can be drafted]

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos Services Terms

KAINOS SERVICES TERMS

1. Kainos will provide the Services set out under a Services Order Form in accordance with these terms and conditions (**Terms**).
2. Unless set out in these Terms, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the Services are excluded by the Parties to the fullest extent permitted by law.
- 3. LIABILITY**
 - 3.1. Each Party's liability in connection with, or in relation to, the Services whether in contract, tort under an indemnity or otherwise (a **Default**) shall be as set out in this clause 3. Each Party's entire liability for actual damages in respect of a Default shall (except as provided in clause 3.3) be limited to a sum equal to 150% of the Charges actually paid under the Services Order Form in the twelve (12) month period immediately preceding the event giving rise to the liability.
 - 3.2. To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of: (i) profits (actual or anticipated); (ii) loss of revenue; (iii) loss of business; (iv) loss or damage to goodwill; (v) loss of savings (whether anticipated or otherwise); or (vi) any indirect, special or consequential loss or damage.
 - 3.3. Neither Party excludes or limits its liability for: (i) death or personal injury; (ii) bribery or fraud by it or its employees; or (iii) liabilities which cannot be excluded or limited by law.
 - 3.4. Kainos is not: (i) responsible for delivering any additional benefits or services which is not provided for under any Third Party Software contract; (ii) liable for any act, omission or breach of contract by any Third Party Software vendor; (iii) responsible for the provision of any services to be provided by the Third Party Software vendor or the Customer; (iv) responsible for the consequences of early termination of any Third Party Software contract, for whatever reason; (v) providing services which are reliant on Third Party Software, where there is not associated Third-Party Software contract in place.
- 4. CONFIDENTIALITY**

For a period of two (2) years from the Start Date, the Parties will not disclose or use any Confidential Information (except as necessary for the legitimate performance of the Services) without the prior written consent of the other Party. This clause 4 shall not apply to: (i) Any information in the public domain other than in breach of the Agreement; (ii) Information already in the lawful possession of the receiving Party before its receipt from the disclosing Party; (iii) Information obtained from a third party who is free to and legally entitled to divulge it; (iv) Disclosure of information which is required by law; (v) information developed or created by one Party independently of the other.
- 5. INTELLECTUAL PROPERTY RIGHTS**
 - 5.1. The IPR (if any) in any third party or Kainos proprietary or commercial software remains vested in Kainos and/or the third party software vendor(s); the IPR in pre-existing Kainos components, tools and implementation techniques together with the Usage Metrics derived from the operation of the Services, and including (but not limited to) AI models, algorithms, training methods and materials, re-trained datasets, methodologies, frameworks, playbooks, onboarding guides and design blueprints or similar, used to run and/or enhance the Services, vest in and will remain vested in Kainos; the IPR in Customer data and Customer developments vests in the Customer (provided that customisations made to any third party software and/or Kainos proprietary or commercial software will be made subject to its associated end user licence agreement which shall take precedence); subject to the carve outs in this clause 5.1, the IPR in Services performed by Kainos exclusively for the Customer under a Services Order Form shall vest in the Customer on creation, provided that in consideration for such assignment the Customer hereby grants an unrestricted, non-time limited, non-exclusive licence to Kainos to use as it sees fit, the IPR in the Services.
 - 5.2. Nothing in this clause 5 shall operate to restrict either Party's ability to use for any purpose it thinks fit any know how or experience (including programming tools, skills and techniques and AI-related methods, materials, tools or techniques or similar), gained or arising from the performance of the Services, provided it complies with any obligations of confidentiality owed to the other Party and these Terms.
- 6. DATA PROTECTION**

The Parties will comply with their respective obligations under the applicable data protection legislation when carrying out the Services.
- 7. MANAGING DISPUTES**

Any dispute arising out of or in connection with the Agreement will in the first instance be referred to the Project Managers for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Head of Delivery level, who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Managing Director level who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.
- 8. TERMINATION**
 - 8.1. The Agreement may be terminated with immediate effect, without penalty, by either Party serving on the other a written notice to terminate if (a) the other Party commits a Material Breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within a period of thirty (30) calendar days of being notified in writing to do so; (b) an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business; or (c) a

- Force Majeure Event occurs for a period of more than thirty (30) consecutive calendar days.
- 8.2. If the Agreement is terminated for any reason before the Services are completed, Kainos will provide (and will only be responsible for completing) such Services that can be reasonably completed up to and including the date of termination.
- 8.3. Termination, cancellation, or expiration of the Agreement will not affect the accrued rights or liabilities of either Party
- 9. FORCE MAJEURE Neither Party shall be liable to the other for any delay or failure to perform arising from a Force Majeure Event.**
- 10. ADDITIONAL WORK**
- 10.1. Kainos will where possible accommodate the Customer's reasonable requests for Additional Work. Where Kainos agrees to carry out Additional Work, the Parties will confirm the scope of and charges for the Additional Work, any related assumptions or dependencies and any special terms using this [Change Request Form](#). Signed Change Requests Forms shall constitute authorisation for Kainos to undertake the Additional Work set out in it and shall be treated as a variation of the Agreement. Change Request Forms may be authorised by email. An email authorisation by a Customer shall have the same status as a Customer signature and Kainos is entitled to treat the Customer representative providing any email authorization as having actual authority to enter into contracts on the Customer's behalf.
- 10.2. Where the Customer asks for the Services to be provided (outside standard Working Day hours (**Overtime**), Kainos will subject to availability endeavour to accommodate the Customer's requests. Overtime will be charged (pro-rated hourly) at the applicable Working Day Rate plus ½ plus VAT and expenses (at cost).
- 11. PREMISES**
- The Customer shall arrange access to and shall provide and procure Kainos such facilities, if any, for the performance of the Services as are reasonably necessary. Kainos shall ensure that any personnel provided to perform the Services comply with all reasonable rules, regulations, orders and directions as are advised by the Customer, in relation to the Customer's premises.
- 12. PREVENTION OF BRIBERY AND CORRUPTION**
- Each Party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, and shall not engage in any activity, practice or conduct which would constitute an offence under the relevant anti-corruption laws.
- 13. NON-SOLICITATION**
- Neither Party will for the Service Period set out in a Services Order Form or within twelve (12) months of its termination or expiry solicit, canvass or entice away, directly or indirectly any developer, manager or senior employee of the other. Recruitment arising out of an employee responding to a general recruitment campaign will not be deemed 'solicitation' under this clause 13.
- 14. ASSIGNMENT**
- The Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under the Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party.
- 15. ENTIRE AGREEMENT**
- 15.1. The Agreement constitutes the entire agreement between the Parties relating to the Services, and supersedes any previous agreement between the Parties relating to the Services.
- 15.2. Each of the Parties agrees that in entering into the Agreement it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as set out in the Agreement.
- 15.3. No variation of the Agreement shall be valid unless it is in writing (email will not satisfy the requirement for writing under this clause 15.3) and is signed by each Party. The terms on either Party's purchase orders, invoices or other business forms are not binding on the other Party unless they are incorporated into a signed written agreement which is expressly stated to vary the Agreement.
- 16. GENERAL**
- 16.1. The Services may be supported by Generative AI. No responsibility is assumed by Kainos for the accuracy, completeness or suitability of the content generated by Generative AI or for Customer's reliance on Generative AI, or its operations or outputs.
- 16.2. Each Party reserves all rights which are not expressly granted under the Agreement. No person who is not a party to the Agreement shall acquire rights under it or be entitled to benefit from any of its terms even if that person has relied on such term.
- 16.3. If any term or condition is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion shall be deemed severed and the Agreement shall not fail in its entirety, but the surviving terms and conditions shall continue in full force and effect.
- 16.4. A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both, from time to time and any subordinate legislation made under the statutory provision.
- 16.5. Nothing in the Agreement shall make either Party an employee, partner or agent of the other Party and the relationship between Customer and Kainos shall be one of principal and independent contractor.
- 17. GOVERNING LAW AND JURISDICTION**
- The Agreement is governed by the laws of England and the Parties submit to the non-exclusive jurisdiction of the Courts of England.
- 18. DEFINITIONS**
- The following definitions apply to the Agreement:

Additional Work	means work in addition to the Services which Kainos agrees to carry, as set out in a signed Change Request Form, or authorized by email.
Agreement	means a signed Services Order Form, read with these Terms and any related signed Change Requests.
Confidential Information	includes but is not limited to: any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above any other information clearly designated as being confidential or which ought reasonably to be considered confidential (whether it is marked 'confidential').
Day Rate	means the applicable pro-rata time and materials charging rate, detailed in the Services Order Form for per personnel, per Working Day exclusive of VAT and Expenses (which shall be invoiced in addition where applicable). Annual indexation shall apply to Day Rate(s).
Force Majeure Event	means any event beyond the reasonable control of a party
Generative AI	means artificial intelligence capable of generating text, images, or other media, using generative models. Generative AI models learn the patterns and structure of their input training data and then generate new data that has similar characteristics.
Insolvency Event	may be: a voluntary arrangement; a winding-up petition; the appointment of a receiver or administrator; an unresolved statutory demand; and or a Schedule A1 moratorium.
Intellectual Property Rights or IPR	means: - copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; - applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and - all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off.
Material Breach	means a single serious breach of, or persistent failure to perform as required in the Agreement.
Services	means the work to be carried out by Kainos as detailed in a signed Services Order Form and/or any Additional Work.
Third Party Software	means any commercial off the shelf (COTS) or productised software, or SaaS, or other software, applications, tools or systems developed in whole or in part by parties other than the Parties to this Agreement.
Usage Metrics	means the aggregated and statistical metrics and performance results derived from the operation of the Services.
Working Day	means 7.5 hours per day worked, by Kainos, Monday-Friday between the hours of 8am-6pm, excluding Public Holidays.

CLOUD MIGRATION SERVICES – PROJECT ASSUMPTIONS

The Customer will:

- Provide software licenses and subscriptions required by Kainos to undertake the delivery. Where Kainos has not been engaged to act as reseller for Azure/AWS services, the customer will be responsible for provision of the required AWS Account/Azure Subscription, as directed by Kainos.
- Provide on-request Kainos Administrator\Root access for infrastructure to be migrated and if not possible, mutually agree a process to ensure data collection agents tooling can be installed.
- Provide network access to the networks and facilitate remote access from Kainos offices/employees home via a corporate VPN or other remote access (to facilitate remote working).
- Ensuring outbound internet access is of sufficient speed to support migration of workloads within agreed time-window.
- Provide technical support for migration activities e.g. assisting to unblock any items deemed to cause issues during migration activity (firewall changes, network routing etc.)
- Provide a “Product Sponsor” (with the requirement to be defined in the Project Initiation Document) to align with the Kainos delivery team for the duration of the work. This person will attend stand-ups, meetings, planning exercises and any other items deemed reasonably necessary by Kainos to ensure agreed migration outcomes can be delivered.
- Provide local domain expertise and technical team input [on request] to the Kainos delivery team e.g. attendance at stand-ups, meetings, planning exercises and any other items deemed reasonably necessary by Kainos.
- To support enablement of your team post-migration, be open to your team(s) being involved with and supporting migration activities on request e.g. rebuilding operating systems, deploying cloud-native services, testing cloud backup/restore processes.
- Provide any documentation or other artefacts to support Kainos discovery, migration planning, migration activity and post-migration remediation.
- Own interactions with internal business overs in relation to change management (including when the migration takes place, testing, downtime and sign-off).
- Provide support in testing activity (User Acceptance Testing, Disaster Recovery testing etc.), as agreed with by the Kainos Delivery Manager and Architects. A test plan will be provided during the delivery to define the requirement.
- With Kainos direction and co-ordination, ensure third party suppliers and workstreams are aligned to support the migration.
- Support the rebuild of application services in the cloud when there is no alternative migration path.
- Provide timely signoff at agreed milestones against deliverables aligned to any cloud vendor funding which Kainos obtains on behalf of the customer.
- Accept that estimates costs and/or timelines may be impacted where:
 - It is a requirement for discovery tools to be run on the customer’s estate, which differ from Kainos’ standard tooling or the customer’s platform provides unforeseen complexities.
 - Discovery uncovers more complex workloads/dependencies than originally envisaged.
 - The customer’s business has complex requirements around ‘application downtime’ windows for applications which are being migrated to the cloud.
 - Migration is impacted by activities with a long-lead time for change e.g. constrained bandwidth for data transfer.

- Significant upgrade/modernisation/optimisation work is required which is not originally planned for the customer's internal teams require further enablement to support future operation of migrated workloads.
- Customer does not adhere to agreed turnaround times on documents and requests for information as agreed at during the planning phase.

Kainos will:

- Advocate on the customer's behalf with the cloud vendor around any available funding which could support the migration activity. Where funding can be achieved, Kainos will pass this back to the customer in full as a discount on works delivered.
- Support the customer in Agile delivery best practice.
- For migration activity, undertake a Discovery exercise early in the project, working alongside customer teams to determine a migration approach and plan, to include running tools on the wider estate to gather supporting information.
- Provide Discovery "Playback", providing oversight of all information gathered and inviting input from the customer on any incorrect information or changes required.
- With the customer's support, establish rigorous delivery governance through the migration including the transparent reporting of progress against timelines.
- Where one does not already exist, use Kainos accelerators to design and deploy a cloud landing zone as a target for migrated workloads. Where a landing zone is already in place, Kainos will review this and recommend any changes required to support the migrated workloads.
- Provide and agree a migration plan, taking inputs from customer business requirements, technical teams, and stakeholders to inform the overall approach for migration of workloads to the cloud.
- Migrate the agreed workloads set out in the migration plan to the cloud in the order defined, supporting the agreed approach, test plan and requirements around application uptime/Service Level Agreements.
- Provide customer with a pragmatic, best practice approach to dealing with unsupported workloads or deprecated operating systems/software working in conjunction with customer business and technical teams to agree steps to remediate workloads.
- Use standard tooling to support both Discovery and Migration activity where possible, using custom scripts (i.e. PowerShell, BASH scripts) only where necessary.
- Engage customer IT teams to advise where workloads require low level changes to support their running in the cloud, providing advice on the changes required and direct the customer IT teams, where possible, to make these changes. Where applications require further remediation, Kainos will provide guidance and best practice on the best approach.
- Fully participate in any customer-owned change management activity, where required.
- Identify opportunities to pragmatically modernise or optimise customer services through the course of migration. Where this can be achieved within existing timelines, to collaborate with customer teams to make these changes.
- Agree with customer the acceptance criteria for the migration of services and a collaborative signoff approach.
- Support any customer test activity, as per the agreed test plan.
- Agree during the planning phase turnaround times for communications, requests for information and documentation reviews/sign-off.
- Provide appropriate and agreed reporting throughout the delivery on progress and cost.
- Support the customer in undertaking any requested change, via the standard change management process.

Master Services Agreement Between (“Customer”) And Kainos (“Kainos”)

Part A – Order Form

Part B – The Terms and Conditions

- [1. Term](#)
- [2. Kainos Staff](#)
- [3. Swap-out](#)
- [4. Staff vetting procedures](#)
- [5. Due diligence](#)
- [6. Warranties, representations and acceptance criteria](#)
- [7. Business continuity and disaster recovery](#)
- [8. Payment terms and VAT](#)
- [9. Recovery of sums due and right of set-off](#)
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- [11. Confidentiality](#)
- [12. Conflict of Interest](#)
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- [14. Data Protection and Disclosure](#)
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- [16. Document and source code management repository](#)
- [17. Records and audit access](#)
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- [21. Incorporation of terms](#)
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- [26. Notices](#)
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- [29. Handover to replacement supplier](#)
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[Schedule 1 – Template Statement of Work \(SOW\)](#)

[Schedule 2 – Form of Change Request \(Change Request\)](#)

1. Part A – Order Form

General	
Customer	[xx]
Customer Contact	Name: Title: e-mail: Phone:
Invoice Details and Contact	Invoices shall be sent to: Name: Title: e-mail: Phone: <i>[Detail any specific invoicing requirements]</i>
Kainos	Kainos [xx] [Address] Company number: [xx]
Kainos Contact	Name: [xx] Title: [xx] e-mail: [xx] Phone: [xx]
Contract Reference	SOXXXXXX
Project	
Project Name	[xx] (the “ Project ”)
Project Description	The Agreement is entered into between the Customer and Kainos for the following purposes: [xx] Work packages will be contracted using Statements of Work (“SOWs”) in the form set out in Schedule 1. As at the Start Date, it is envisaged that the Project will involve [DN: include a high-level description of the overall Project and/or purpose of entering into this Agreement] [and that [xx] SOWs will be required under this Agreement].
Methodology	Kainos uses an agile process, starting with user needs. The agile methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional and limited circumstances, where it can be shown to best meet user needs and where it is confirmed as the appropriate approach in the relevant SOW.
Location	The Services will be carried out at the location set out in the SOW.

Project Governance	Each of the Parties shall name a senior member of its staff in the SOW (the Kainos Senior Staff Member and Customer Senior Staff Member respectively), who, together with the Kainos Project Manager and the Customer Product Owner, shall form the project board (the "Project Board"). The Project Board shall meet on a regular basis to consider: 1. Project progress against plans and budget; 2. Timelines and any issues caused by delays; 3. Escalations and resolutions; and 4. Such other relevant matters as may be tabled by either Party on the Project Board's agenda.
Warranties and Representations	Kainos warrants and undertakes to the Customer that it: 1. shall use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice. 2. shall perform the Services in a timely manner in line with Good Industry Practice; 3. shall promptly bring to the Customer's attention any delays, quality or performance issues arising during the delivery of the Services; 4. has full right, power and authority to undertake the Services and furnish the Deliverables. Customer warrants and undertakes to Kainos that it: 1. shall meet the assumptions, responsibilities and dependencies set out in a SOW on which Kainos relies for the timely provision of the Services and Deliverables; 2. will procure timely access to its premises; 3. will facilitate access to key stakeholders to participate in scheduled workshops and otherwise participate in the provision of the Services and Deliverables; 4. has full right power and authority to enter into this Agreement.
Acceptance	Unless otherwise set out in a SOW, acceptance of the Services shall be satisfied by sign-off, operationally, at sprint reviews by the Customer's product owner in line with the agreed Definition of Done.
Insurance	Kainos shall throughout the Term of this Agreement abide by the Terms and Conditions of Clause 10 and shall maintain minimum levels of insurance.
Commercially Sensitive Information	The Parties agree the following constitutes Commercially Sensitive Information: 1. Kainos staff CVs 2. The Rate Card 3. [Placeholder for other project specific commercially sensitive information]
Term	[xx]
Start date	XX/XX/20XX
End date	XX/XX/20XX
Agreement value	[xx]

Charging Method	The Charging Method is either Time and Materials or Fixed Price or such other Charging Method, as set out in the SOW.
Charges	Charges will be calculated in line with the Charging Method agreed between the Parties and set out in the SOW. Due to the agile-based delivery methodology it is not possible to exactly define the consumption of Services over the duration of the Agreement in a static Order Form or a SOW. The Agreement value is an indicative and estimated initial value of the Services that are likely to be consumed under the Agreement. The actual spend is calculated by reference to the cumulative value of the executed SOWs.
Notice period for termination of the Agreement	A minimum of ninety (90) calendar days is required for termination of the Agreement. The notice period (if any) for termination of a SOW will be set out in the SOW.
Purchase order No.	Unless agreed to the contrary and detailed in a SOW, the Customer shall issue Kainos with a Purchase Order Number for each SOW on signature of the SOW or such later period as set out in a SOW.

CONTRACT FORMATION AND ORDER OF PRIORITY

47.1 The Agreement, which becomes binding on signature of the Order Form, comprises:

- The Order Form (Part A); and
- The Terms and Conditions (Part B); and
- Schedules 1 and 2; and
- All executed Statements of Work (SOWs); and
- All executed Change Requests

collectively (the "**Agreement**").

47.2 During the Term, Customer shall have the right, but not the obligation to request Services from Kainos and Kainos shall have the obligation to either accept or decline requests for Services from the Customer.

47.3 Signature of the Order Form and the existence of an Agreement does not in itself oblige the Customer to buy, or oblige Kainos to supply the Services, to the Agreement value set out in the Order Form or at all. The Agreement becomes operational only on the execution of a Statement of Work ("**SOW**").

47.4 Each signed SOW will be read in conjunction with the Agreement and will form part of the Agreement. Each SOW contains supplementary terms and conditions, specific to the Services to be carried out under that SOW.

47.5 Any Special Conditions detailed in a SOW take priority over, vary and exclude any conflicting provisions within the other documents comprising the Agreement. Any variations made and detailed in a SOW are Statement of Work specific and amend the Agreement **ONLY** in respect of the SOW in which they appear.

47.6 Where Kainos agrees to provide Services, Kainos will complete a draft SOW and submit it to the Customer for review. Once agreed, the Parties will complete and sign a SOW.

47.7 Kainos will provide the Services set out in the SOW, in consideration of which, the Customer will pay for the Services in accordance with the Charging Method set out in the SOW.

47.8 The following order of priority shall apply to the Agreement and in the event and to the extent of any conflict or inconsistency between the documents comprising the Agreement, such documents shall have precedence as listed:

- Any executed Change Request; then
- the Special Conditions contained within a Statement of Work; then
- the Statement of Work; then
- the Order Form; then
- the Terms and Conditions; then
- the Schedules; then
- any documents appended to or incorporated in the Statement of Work by express reference.

47.9 No person other than the Parties to this Agreement shall have any rights to enforce any term of this Agreement and this Agreement shall not confer any rights on any person or party other than the Parties to this agreement and, where applicable, their successors and permitted assigns.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Part B – Terms and conditions

1. TERM

- 1.1. The Agreement comes into effect and is made on the Start Date set out in the Order Form.
- 1.2. Unless the Term has been amended in accordance with Clause 1.3, the Term of the Agreement will end on the earliest of:
 - 1.2.1 the End Date set out in the Order Form; or
 - 1.2.2 early termination of the Agreement in line with the provisions for early termination set out in the Agreement
- 1.3. The Term of the Agreement may be amended by the mutual consent of the Parties, using the Change Request process set out in clause 31.

2. KAINOS STAFF

- 2.1 Kainos Staff will:
 - 2.1.1. act on the Customer's reasonable instructions in performance of the Services;
 - 2.1.2. apply all due skill, care and diligence to the provisions of the Services;
 - 2.1.3. be appropriately experienced, qualified and trained to supply the Services;
 - 2.1.4. respond to any enquiries about the Services as soon as reasonably possible; and
 - 2.1.5. complete any necessary vetting procedures specified by the Customer.
- 2.2 Kainos will strive to ensure that Key Staff are not removed from the provision of the Services during the dates specified in the relevant SOW. Where Kainos requires a change to Key Staff for operational or other reasons within Kainos' control, Kainos will ensure that any replacement staff will be of a similar competency.
- 2.3 Kainos will promptly replace any Key Staff that the Customer considers unsatisfactory at no extra charge. Kainos will promptly replace anyone who resigns with someone who is acceptable to the Customer. If Kainos cannot provide an acceptable replacement, the Customer may terminate the SOW, subject to Clause 23.
- 2.4 Kainos Staff will comply with Customer requirements for the conduct of staff when on Customer's premises.

3. SWAP-OUT OF KAINOS STAFF

- 3.1 Kainos Staff providing the Services may only be swapped out with prior notification to the Customer.

4. STAFF VETTING PROCEDURES

- 4.1 All Kainos Staff will need to be cleared to the level determined by the Customer prior to the commencement of the Services and the Customer will provide such advance notice of its vetting requirements to Kainos, to facilitate sufficient time to achieve clearance, so as not to impact Project timelines.

5. DUE DILIGENCE

- 5.1 The Parties acknowledge that information will be needed to provide the Services throughout the Term and the Parties agree to share such information freely.
- 5.2 Unless otherwise set out in a SOW, each Party agrees that they:
 - 5.2.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party;
 - 5.2.2 are confident that they can fulfil their obligations according to the terms of the Agreement;
 - 5.2.3 have raised all due diligence questions before signing the Agreement; and
 - 5.2.4 have entered into the Agreement relying on their own due diligence.

6. WARRANTIES, REPRESENTATIONS AND ACCEPTANCE CRITERIA

- 6.1 Kainos will use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice.
- 6.2 Kainos warrants that all Kainos Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services.
- 6.3 Kainos represents and undertakes to the Customer that the Deliverables will meet the Definition of Done, or other agreed acceptance criteria relevant to the Deliverables, as set out in a SOW.
- 6.4 Kainos warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform the Services and discharge its responsibilities under the Agreement.
- 6.5 Kainos is not aware of any material facts or circumstances that have not been disclosed to the Customer and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether to enter into this Agreement with it.
- 6.6 The Customer warrants to Kainos that it has obtained, and will for the duration of the Agreement obtain, all authorisations, certificates, consents, approvals, licences, permits and registrations required by law to enable it to perform its obligations under this Agreement.
- 6.7 Except as expressly set forth in this Agreement, all warranties, terms and conditions, whether oral or written, express or implied by law, custom or otherwise including all warranties, terms and conditions of fitness for purpose, description and quality, are hereby excluded.

7. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 7.1 If required by the Customer, Kainos will ensure a disaster recovery approach for the Project is captured in a clear disaster recovery plan.

8. PAYMENT TERMS AND VAT

- 8.1 The Customer will pay Kainos within thirty (30) days of receipt of a valid invoice submitted in accordance with the Agreement.
- 8.2 Kainos will ensure that each invoice contains the information specified by the Customer in the Order Form.
- 8.3 Unless otherwise stated in a SOW, all payments under this Agreement will be by electronic funds transfer in pounds sterling.
- 8.4 Sums payable to Kainos under this Agreement shall be made free and clear of and without deduction for or on account of taxes.
- 8.5 All charges and estimates are quoted exclusive of VAT, which will be invoiced in addition, at the then prevailing rate, if applicable. Where VAT is due, it will be itemised separately, the invoice will state Kainos' VAT registration number and it will be compliant with relevant VAT legislation.
- 8.6 In the event of persistent late payment by Customer, Kainos may cancel or suspend the Services until payment is received in full.
- 8.7 Unless otherwise set out in the SOW:
 - 8.7.1. Annual indexation shall apply to agreed charging rates/Rate Card; and
 - 8.7.2. Unless a per diem is agreed in lieu of expenses in a SOW, expenses incurred in the provision of the Services, to include travel and subsistence, shall be charged to the Customer at cost.
- 8.9 Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.
- 8.10 Customer will notify Kainos in writing within ten (10) calendar days of receipt of an invoice if Customer considers such invoice incorrect or invalid for any reason.
- 8.11 Further details in relation to payments are set out in the Order Form and the SOW.

9. RECOVERY OF SUMS DUE AND RIGHT OF SET-OFF

- 9.1 If Kainos owes an undisputed amount to the Customer, the Customer may deduct that sum from the total due to Kainos under a SOW.

10. INSURANCE

- 10.1 Kainos will maintain the following insurance cover during the Agreement and for six (6) years after the

termination or expiry of the Agreement:

- 10.1.1. Professional indemnity insurance with a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Customer requires (and as required by law); and
- 10.1.2. Employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by law.

10.2 **SUBCONTRACTORS, AGENTS AND PROFESSIONAL CONSULTANTS**

Kainos will ensure that, during the Agreement, Subcontractors hold third-party public and product liability and professional indemnity insurance.

10.3 **ADDITIONAL OR EXTENDED INSURANCE**

- 10.3.1 If requested by the Customer, Kainos will obtain additional insurance policies, or extend existing insurance policies procured under the Agreement.
- 10.3.2 If requested by the Customer, Kainos will provide the Customer, with the following evidence of insurance:
 - 10.3.2.1. a broker's verification of insurance; or
 - 10.3.2.2. receipts in respect of the insurance premium; or
 - 10.3.2.3. other satisfactory evidence of payment of the latest premiums due.

10.4 **KAINOS LIABILITIES:**

- 10.4.1 Insurance will not relieve Kainos of any liabilities under the Agreement.
- 10.4.2 Without limiting the other provisions of the Agreement, Kainos will:
 - 10.4.2.1. take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers; and
 - 10.4.2.2. promptly notify the insurers in writing of any relevant material fact under any insurances of which Kainos is, or becomes, aware.
- 10.4.3 Kainos will not knowingly do or omit to do anything, which would entitle any insurer to refuse to pay any claim under any of the insurances.

10.5 **INDEMNITY TO PRINCIPALS**

- 10.5.1 Where specifically outlined in the Agreement, Kainos will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Customer will be compensated for both of the following claims against the Customer:
 - 10.5.1.1. death or bodily injury; and
 - 10.5.1.2. third-party Property damage arising from connection with the Services and for which Kainos is legally liable.

10.6 **CANCELLED, SUSPENDED, TERMINATED OR UNRENEWED POLICIES**

- 10.6.1. Kainos will notify the Customer as soon as possible if Kainos becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

10.7 **PREMIUM, EXCESS AND DEDUCTIBLE PAYMENTS**

- 10.7.1 Where any insurance requires payment of a premium, Kainos will:
 - 10.7.1.1. be liable for the premium; and
 - 10.7.1.2. pay such premium promptly.
- 10.7.2 Where any insurance is subject to an excess or deductible Kainos will be liable for it. Kainos will not be entitled to recover any sum paid for insurance excess or any deductible from the Customer.

11. **CONFIDENTIALITY**

- 11.1 Except where disclosure is clearly permitted by the Agreement, neither Party will disclose the other Party's Confidential Information without the other Party's prior written consent.
- 11.2 Disclosure of Confidential Information is permitted where information:

- 11.2.1. must be disclosed to comply with legal obligations placed on the Party making the disclosure;
 - 11.2.2. belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner;
 - 11.2.3. was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party;
 - 11.2.4. is, or becomes, public knowledge, other than by breach of this Clause or the Agreement;
 - 11.2.5. is independently developed without access to the other Party's Confidential Information; or
 - 11.2.6. is disclosed to obtain confidential legal professional advice.
- 11.3 The Customer may disclose Kainos' Confidential Information:
- 11.3.1. if the Customer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
 - 11.3.2. on a confidential basis to exercise its rights or comply with its obligations under the Agreement; or
 - 11.3.3. on a confidential basis, to a proposed transferee, assignee or successor in title to the Customer.
- 11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Customer under this Clause.
- 11.5 Kainos may only disclose the Customer's Confidential Information to Kainos Staff or Customer authorised third parties who are directly involved in the provision of the Services and who need to know the information to provide the Services. Kainos will ensure that its supplier's staff will comply with these obligations.
- 11.6 Either Party may use techniques, ideas or knowledge gained during the Agreement unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Agreement or is an infringement of Intellectual Property Rights.
- 12. CONFLICT OF INTEREST**
- 12.1 The Parties will take all appropriate steps to ensure that neither Party nor their respective staff are in a position where there is or may be an actual conflict between the financial or personal interests of Kainos and the Customer.
- 12.2 Where Kainos identifies a risk of a conflict or potential conflict, they will inform the Customer of such conflicts of interest and how they plan to declare, mitigate or avoid the conflict. Details of such arrangements are to be sent to the Customer as soon as possible. On receiving this notification, the Customer will, at its sole discretion, notify Kainos if the arrangements are acceptable.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Unless otherwise specified in a SOW:
- 13.1.1. the Customer will not have any right to the Intellectual Property Rights ("IPRs") of Kainos or its licensors, including Kainos Background IPRs and any IPRs in Proprietary Software.
 - 13.1.2. Kainos will not, without prior written approval from the Customer, include any Kainos Background IPRs or third party IPRs in any Deliverable in such a way to prevent its publication or assignment to the Customer.
 - 13.1.3. Kainos will not have any right to the Intellectual Property Rights of the Customer or its licensors, including:
 - 13.1.3.1. the Customer Background IPRs;
 - 13.1.3.2. the Project-Specific IPRs;
 - 13.1.3.3. IPRs in the Customer Data.
- 13.2 Where either Party acquires, by operation of law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).
- 13.3 Except where necessary for the performance of the Agreement (and only where the Customer has given its prior approval), Kainos will not use or disclose any of the Customer Background IPRs, Customer

Data or the Project-Specific IPRs to or for the benefit of any third party.

- 13.4 Kainos will not include any Kainos Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Customer under the Agreement, without approval from the Customer.
- 13.5 Unless agreed to the contrary and detailed in a SOW, Kainos will grant the Customer (and any replacement supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use Kainos Background IPRs comprised in any Deliverable or output of the Services for any purpose connected with the receipt of the Services under the Agreement and which may be required to enable the Customer:
 - 13.5.1. to receive the Services;
 - 13.5.2. to make use of the Services provided by any replacement supplier; and/or
 - 13.5.3. to use any Kainos Deliverables.
- 13.6 The Customer grants Kainos a non-exclusive, non-assignable, royalty-free licence to use the Customer Background IPRs, the Customer Data and the Project-Specific IPRs during the Term of the Agreement for the sole purpose of enabling Kainos to provide the Services.
- 13.7 At the end of the Term of the Agreement, the Customer grants Kainos a licence to use the Project-Specific IPRs (excluding any information which is the Customer's Confidential Information, or which is subject to the Data Protection Legislation).
- 13.8 Neither Party gives any warranty as to the suitability of any IPRs licensed to the other party under this Agreement. Any such licence:
 - 13.8.1. includes the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part of them) provided that any such Subcontractor has entered into a confidentiality undertaking with the licensee on the same terms as in Clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
 - 13.8.2. is granted solely to the extent necessary for the provision of the Services in accordance with the Agreement and each Party will ensure that the Subcontractors do not use the licensed materials for any other purpose.
- 13.9 No unlicensed software or Open Source Software (other than the OSS specified by the Customer) shall be interfaced with or embedded within any Customer Software or Deliverable. The Customer's specification or approval shall be managed by Kainos at an operational level.
- 13.10 Where Kainos is granted permission to use third-party IPRs, they will be provided subject to the third-party IPR owner's standard licence terms. Where changes to such terms are required, Customer will liaise directly with the third-party IPR owner to negotiate these.
- 13.11 Kainos will, on written demand, indemnify the Customer for Losses incurred as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer by Kainos in accordance with the Agreement or the performance by Kainos of the Services or the possession or use by the Customer of the Services or Kainos Deliverables, allegedly infringes a third party's Intellectual Property Rights (an "**IPR Claim**").
- 13.12 Clause 13.11 will not apply if the IPR Claim arises from:
 - 13.12.1. designs supplied by the Customer;
 - 13.12.2. the use of data supplied by the Customer;
 - 13.12.3. work carried out by the Customer's staff (where they are working with Kainos as part of a joint delivery team); or
 - 13.12.4. other material provided by the Customer necessary for the provision of the Services.
- 13.13 The Customer will promptly notify Kainos in writing upon receipt of any IPR Claim made against the Customer and the Customer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. Kainos will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that Kainos:
 - 13.13.1. consults the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 13.13.2. takes due and proper account of the interests of the Customer;
 - 13.13.3. considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and

- 13.13.4. does not settle or compromise the IPR Claim without the prior approval of the Customer (such decision not to be unreasonably withheld or delayed).
- 13.14. If an IPR Claim is made (or in the reasonable opinion of Kainos is likely to be made) in connection with the Agreement, Kainos will, at Kainos' own expense and subject to the prompt approval of the Customer, use all reasonable endeavours to:
- 13.14.1. modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement;
 - 13.14.2. buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer (such decision not to be unreasonably withheld or delayed); and
 - 13.14.3. promptly perform any responsibilities and obligations in relation to the Agreement.
- 13.15. If an IPR Claim is made (or in the reasonable opinion of Kainos is likely to be made) against Kainos, Kainos will immediately notify the Customer in writing.
- 13.16. If Kainos does not comply with provisions of this Clause within 20 Working Days of receipt of notification by Kainos from the Customer under Clause 13.13 or receipt of the notification by the Customer from Kainos under Clause 13.15 (as appropriate), the Customer may terminate the Agreement for Material Breach and Kainos will, on demand, refund to the Customer all monies paid for the Service or Deliverable that is subject to the IPR Claim.
- 13.17. Kainos will, as an enduring obligation throughout the term of the Agreement, where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the Customer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and assist in minimising the impact of Malicious Software (or as otherwise agreed between the Customer and Kainos).
- 13.18. If Malicious Software is found, Kainos will co-operate with the Customer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, Kainos will use all reasonable endeavours to help the Customer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.
- 13.19. Any costs arising from the actions of the Customer or Kainos taken in compliance with the provisions of the above Clause 13.8, and Clause 20.3, will be dealt with by the Customer and Kainos as follows:
- 13.19.1. by Kainos, where the Malicious Software originates from Kainos Software or the Customer Data while the Customer Data was under the control of Kainos, unless Kainos can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to Kainos.
 - 13.19.2. by the Customer if the Malicious Software originates from the Customer Software or the Customer Data, while the Customer Data was under the control of the Customer.

14. DATA PROTECTION AND DISCLOSURE

- 14.1. Kainos shall comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
- 14.2. Where Kainos is processing Customer Personal Data, Kainos shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Customer Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Customer Personal Data).
- 14.3. Kainos shall provide the Customer with such information as the Customer may reasonably request to satisfy itself that Kainos is complying with its obligations under the Data Protection Legislation including:
- 14.3.1. to promptly notify the Customer of any breach of the security measures to be put in place pursuant to this Clause; and
 - 14.3.2. to ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the Data Protection Legislation; and
 - 14.3.3. not to cause or permit to be processed, stored, accessed or otherwise transferred outside the United Kingdom and/or European Economic Area, as applicable, any Customer Data supplied to it by the Customer without approval.

15. CUSTOMER DATA

- 15.1 Kainos will not remove any proprietary notices relating to the Customer Data.
- 15.2 Kainos will not store or use Customer Data except where necessary to fulfil its obligations.
- 15.3 If Customer Data is processed by Kainos, Kainos will supply the data to the Customer as requested, and where applicable, in the format specified, by the Customer.
- 15.4 Kainos will preserve the integrity of Customer Data processed by Kainos and prevent its corruption and loss.
- 15.5 Kainos will ensure that any system which holds any Customer Data complies with the security requirements prescribed by the Customer.
- 15.6 Kainos will ensure that any system on which Kainos holds any protectively marked Customer Data will be accredited to then current industry assurance standards.
- 15.7 If at any time Kainos suspects that the Customer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then Kainos will notify the Customer immediately and will agree remedial action with the Customer.
- 15.8 Kainos will provide, at the request of the Customer, any reasonable information relating to Kainos' compliance with its obligations under the Data Protection Legislation. Kainos will also ensure that it does not knowingly or negligently fail to do something that places the Customer in breach of its obligations of Data Protection Legislation.
- 15.9 Kainos agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Customer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 15.10 Kainos shall not share, distribute or provide access to Customer Data to any third party without the prior consent of the Customer.

16. DOCUMENT AND SOURCE CODE MANAGEMENT REPOSITORY

- 16.1 Kainos will comply with any reasonable instructions given by the Customer as to where it will store documents and source code, both finished and in progress, during the Term of the Agreement.
- 16.2 Kainos will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

17. RECORDS AND AUDIT ACCESS

- 17.1 Kainos will allow the Customer to access its information and conduct audits of the Services provided under the Agreement (subject to reasonable and appropriate confidentiality undertakings and upon fifteen (15) days' prior written notice) and not more than once annually.

18. FREEDOM OF INFORMATION (FOI) REQUESTS

- 18.1 Kainos will transfer any Request for Information to the Customer within 2 Working Days of receipt.
- 18.2 Kainos will provide all necessary help reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (or equivalent local legislation).
- 18.3 To the extent it is permissible and reasonably practical for it to do so, Customer will make reasonable efforts to promptly notify Kainos when it receives a request under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (or equivalent local legislation), so that Kainos may make appropriate representations.

19. STANDARDS AND QUALITY

- 19.1 Kainos will have in place appropriate mechanisms to assess the quality of the Services and to comply with Good Industry Practice in the provision of the Services.
- 19.2 The Customer will have the right to conduct reviews of Kainos' quality management system and to verify compliance with the requirements of this Agreement. Such reviews may be performed by the Customer, or by its appointed representatives, provided always that Kainos is given not less than fifteen (15) days' prior written notice.

20. SECURITY

- 20.1 Kainos shall perform the Services in accordance with Customer's Data security policies, provided to Kainos for review and agreement in advance of the Start Date. Kainos will promptly bring to the Customer's attention any aspect of the Customer's Data security policies that it is unable to comply with or which conflicts with the Kainos security protocols and the Parties will agree a definitive Data security policy to govern this Agreement.
- 20.2 Kainos will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 20.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, Kainos will help the Customer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 20.4 Kainos will immediately notify the Customer of any breach of security in relation to the Customer's Confidential Information.
- 20.5 The Customer will specify any security requirements for this project in the relevant SOW.

21. INCORPORATION OF TERMS

- 21.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into the Agreement.

22. MANAGING DISPUTES

- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this Agreement prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:
- 22.3.1. any technical aspect of the delivery of the digital services;
 - 22.3.2. the underlying technology; or
 - 22.3.3. is otherwise of a financial or technical nature.
- 22.4 An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 22.5 The expert will act on the following basis:
- 22.5.1. they will act as an expert and not as an arbitrator and will act fairly and impartially;
 - 22.5.2. the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 22.5.3. the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
 - 22.5.4. any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties;
 - 22.5.5. the process will be conducted in private and will be confidential;
 - 22.5.6. the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.
- 22.6 Without prejudice to any other rights of the Customer under the Agreement, the obligations of the Parties under the Agreement will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination.

23. TERMINATION

- 23.1 The Customer will have the right to terminate the Agreement at any time for convenience by giving

the notice to Kainos specified in the Order Form. Kainos' obligation to provide the Services will end on the date set out in the Customer's notice. Where the Customer terminates the Agreement for convenience, the Customer will continue to pay Kainos for the Services, for the duration of the notice period, calculated on a pro-rated average consumption basis, on each of the then current SOWs.

- 23.2 Either Party will have the right to terminate the Agreement at any time, with immediate effect by written notice to the other Party if the other Party commits a Default and if such Default cannot, in the opinion of the non-Defaulting Party (acting reasonably), be remedied.
- 23.3 Either Party may terminate the Agreement at any time with immediate effect by written notice to the other if:
- 23.3.1. the other Party commits a Material Breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within a period of thirty (30) calendar days of being notified in writing to do so;
 - 23.3.2. an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business;
 - 23.3.3. a Force Majeure Event occurs for a period of more than thirty (30) consecutive calendar days.
- 23.4 The Parties acknowledge and agree that:
- 23.4.1. the Customer's right to terminate under this Clause 23 is reasonable in view of the subject matter of the Agreement and the nature of the Service being provided.
 - 23.4.2. the Agreement Charges paid during the notice period given by the Customer in accordance with this Clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or Losses incurred by Kainos which may arise either directly or indirectly as a result of the Customer exercising the right to terminate under this Clause without cause.
 - 23.4.3. If the Customer terminates the Agreement, it will indemnify Kainos against any commitments, liabilities or expenditure which result in any unavoidable Loss by Kainos, provided that Kainos takes all reasonable steps to mitigate such Loss. Kainos will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by Kainos as a result of termination.

24. CONSEQUENCES OF TERMINATION

- 24.1 If the Customer contracts with another supplier, Kainos will comply with Clause 29.
- 24.2 The rights and obligations of the Parties in respect of the Agreement (including any executed SOWs) will automatically terminate upon the expiry or termination of the Agreement, except:
- 24.2.1. Where a SOW sets out a minimum term or subscription period for any Services or Deliverables AND includes a Special Condition that the SOW will continue, even if the Agreement is terminated then, if the Agreement is terminated:
 - 24.2.1.1. such SOW(s) will be deemed to continue on, and for the purpose of the surviving SOWs only, the Agreement will be deemed to be continuing and effective up to and including the end date of the surviving SOW (or if more than one SOW, the end date of the later SOW);
 - 24.2.1.2. no new SOWs may be entered into under the Agreement;
 - 24.2.1.3. Change Requests may be raised against the surviving SOW(s) and the Agreement to facilitate the continued provision of the Services under such SOW(s);
 - 24.2.1.4. the Customer may 'buy out' the SOW by electing to pay for the Services or Deliverables that are subject to the minimum term/subscription period by paying an equivalent sum; This election should be formalised using the Change Request process set out at Clause 31.
 - 24.2.2. Those rights and obligations set out in Clause 24.6.
- 24.3 At the end of the Term of the Agreement (howsoever arising), Kainos must:
- 24.3.1. immediately return to the Customer:

- 24.3.1.1. all Customer Data including all copies of Customer Software and any other software licensed by the Customer to Kainos under the Agreement;
- 24.3.1.2. any materials created by Kainos under the Agreement where the IPRs are owned by the Customer; and
- 24.3.1.3. all equipment provided to Kainos. This equipment must be handed back to the Customer in good working order (allowance will be made for reasonable wear and tear).
- 24.3.2. immediately upload any items that are or were due to be uploaded to the repository when the Agreement was terminated (as specified in Clause 16);
- 24.3.3. cease to use the Customer Data and, at the direction of the Customer, provide the Customer and the replacement supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and the replacement supplier;
- 24.3.4. destroy all copies of the Customer Data when they receive the Customer's written instructions to do so or 12 months after the date of expiry or termination (whichever is the earlier), and provide written confirmation to the Customer that the data has been destroyed, except where the retention of Customer Data is required by law;
- 24.3.5. vacate the Customer premises;
- 24.3.6. subject to Clause 29, work with the Customer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- 24.3.7. return any sums prepaid for Services which have not been delivered to the Customer by the date of expiry or termination;
- 24.3.8. subject to Clause 29, provide all information requested by the Customer on the provision of the Services so that:
 - 24.3.8.1. a competent IT professional can understand how the Services have been provided; and
 - 24.3.8.2. the Customer and the replacement supplier can conduct any necessary due diligence.
- 24.4. Each Party will return all the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where the Agreement states otherwise.
- 24.5. Unless otherwise provided in a SOW or in this Agreement, all licences, leases and authorisations granted by the Customer to Kainos in relation to the Services will be terminated at the end of the Term (howsoever arising) without the need for the Customer to serve notice.
- 24.6. Termination or expiry of the Agreement will not affect:
 - 24.6.1. any rights, remedies or obligations accrued under the Agreement prior to termination or expiration;
 - 24.6.2. the right of either Party to recover any amount outstanding at the time of such termination or expiry;
 - 24.6.3. the continuing rights, remedies or obligations of the Customer or Kainos under Clauses:
 - 24.6.3.1. 8 - Payment Terms and VAT
 - 24.6.3.2. 9 - Recovery of Sums Due and Right of Set-Off
 - 24.6.3.3. 11 - Confidentiality
 - 24.6.3.4. 12 - Conflict of Interest
 - 24.6.3.5. 13 - Intellectual Property Rights
 - 24.6.3.6. 24 - Consequences of Termination
 - 24.6.3.7. 28 - Staff Transfer
 - 24.6.3.8. 34 - Liability
 - 24.6.3.9. 35 - Waiver and cumulative remedies
 - 24.6.4. any other provision of the Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry.

25. KAINOS' STATUS

- 25.1 Kainos is an independent contractor and no contract of employment or partnership is created between Kainos and the Customer. Neither Party is authorised to act as an agent of, or in the name of, or on behalf of, the other Party.

26. NOTICES

- 26.1 Any notices sent must be in writing.

- 26.2 For the purposes of this Agreement:

26.2.1. references to "writing" in this Agreement if provided in an electronic form (for example, email) shall be deemed to be "writing" for the purposes of all applicable legislation where "writing" is required; and

26.2.2. words in an electronic form (using e-signature software) shall be deemed to be "signed" for the purposes of all applicable legislation where a "signature" is required.

- 26.3 The following table sets out the method by which notices may be served under the Agreement and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

- 26.4 The address and email address of each Party will be the address and email address in the Order Form.

27. EXIT PLAN

- 27.1 Where agreed under a SOW, the Customer and Kainos will agree an exit plan during the Term to enable Kainos Deliverables to be transferred to the Customer and/or supported for the benefit of the Customer at the end of the Term. The exit plan will be updated to reflect any material changes to the Services.

28. STAFF TRANSFER

- 28.1 The Parties agree that nothing in the Agreement or the provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.

- 28.2 Kainos will indemnify the Customer against claims arising as a result of any claims brought against the Customer due to any act or omission of Kainos, or any Kainos Staff, which are in breach of the Employment Regulations.

29. HANDOVER TO REPLACEMENT SUPPLIER

- 29.1 When requested, Kainos will (at the Customer's expense) help the Customer to migrate the Services to a replacement supplier in line with an agreed exit plan (Clause 27) to ensure continuity of the Services. Such help may include Supplier demonstrations of the existing code and development documents, software licences used and Customer approval documents. Kainos will also answer Service and development-related clarification questions.

- 29.2 Within 10 Working Days of a request by the Customer (at the Customer's expense), Kainos will provide any information needed by the Customer to prepare for any procurement exercise or to facilitate any potential replacement supplier undertaking necessary due diligence or to understand how the Services work in the absence of Kainos. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case Kainos will provide the information in a redacted form.

30. CHANGES TO SERVICES

- 30.1 The flexibility inherent in agile projects means that it is likely that there will be changes to the scope of the Services during the Term. Agile projects are not static and have a scope that will change over time. The detailed scope (e.g. as defined in user stories) evolves and items can be de-prioritised or reprioritised during the Term and during sprints. These changes do not require formal Change Request or contract changes but do require the Customer and Kainos to agree and document these changes operationally (e.g. through the backlog).

- 30.2 Any changes to the high-level scope of the Services must be agreed between the Customer and Kainos.
- 31. CHANGE REQUESTS**
- 31.1 All changes to the Agreement or to an individual SOW which cannot be accommodated at a Project level as described in Clause 30, will require a Change Request.
- 31.2 Either Party may raise a Change Request by completing and sending a draft Change Request Form in the form set out in Schedule 2, to the other Party, giving sufficient information to enable the other Party to assess the extent of the change and any additional cost that may be incurred.
- 31.3 The Party making the Change Request will bear the costs of preparation of the Change Request Form. Neither Party will unreasonably withhold or delay consent to a Change Request.
- 31.4 The Parties shall process each Change Request promptly.
- 31.5 Any Change Request may be withdrawn at any time prior to execution.
- 31.6 Until any Change Request is signed by both Parties, Kainos will continue to perform and be paid for the Services as if the Change Request had not been proposed.
- 31.7 Those parts of the Agreement or SOW affected by the Change Request will be deemed to be contractual modification/variation upon signature of the Change Request or receipt by Kainos of an authorisation email from the Customer.
- 32. FORCE MAJEURE**
- 32.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Agreement (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Each Party will use all reasonable endeavours to continue to perform its obligations under the Agreement for the length of a Force Majeure Event. If a Force Majeure Event prevents a Party from performing its obligations under the Agreement for more than 15 consecutive calendar days, the other Party may terminate the Agreement with immediate effect by notice in writing.
- 33. ENTIRE AGREEMENT**
- 33.1 The Agreement constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.
- 33.2 Each of the Parties agrees that in entering into the Agreement it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in the Agreement.
- 33.3 Nothing in this Clause or Clause 34 will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.
- 34. LIABILITY**
- 34.1 Neither Party excludes nor limits its liability for:
- 34.1.1. death or personal injury;
 - 34.1.2. bribery or fraud by it or its employees;
 - 34.1.3. any liability to the extent it cannot be excluded or limited by law.
- 34.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) and Clause 28 (Staff Transfer) Kainos' total liability will be unlimited.
- 34.3 Subject to the above, each Party's total aggregate liability relating to all Losses due to a Default in connection with this agreement:
- 34.3.1. resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in the aggregate.
 - 34.3.2. For all other claims, will be limited to a sum equal to 150% of the Charges paid in the 12-month period immediately preceding the event giving rise to the liability.
- 34.4 Subject to Clause 34.1, in no event will either Party be liable to the other for any (i) loss of profits; (ii) loss of business; (iii) loss of revenue; (iv) loss of or damage to goodwill; (v) loss of savings (whether anticipated or otherwise); or (vi) any indirect, special or consequential loss or damage.

- 34.5 Unless otherwise expressly provided, the obligations of each Party under the Agreement are obligations in a Party's capacity as a contracting counterparty and nothing in the Agreement will be an obligation on, or in any other way constrain either Party in any other capacity, nor will the exercise by either Party of its duties and powers in any other capacity lead to any liability under the Agreement on the part of either Party to the other.

35. WAIVER AND CUMULATIVE REMEDIES

- 35.1 The rights and remedies provided by this Agreement may be waived only in writing by the Customer or Kainos representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.
- 35.2 Unless a right or remedy of the Customer is expressed to be exclusive, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

36. THIRD PARTY SOFTWARE

- 36.1 Where the procurement, resale, customisation, configuration or integration of Proprietary Software forms part of the Services:
- 36.1.1 The Customer will ensure that all such End User Licence Agreements (or subscription agreements) ("**EULA(s)**") are suitable for their intended purpose(s), and that their terms are complied with.
- 36.1.2 No liability is accepted by Kainos for defects with, or delays or issues caused by any defect in Proprietary Software, or the consequences of those defects, whether latent or manifest and Kainos assumes no responsibility for rectifying any such defects. The Customer's rights and remedies for issues with and in Proprietary Software (if any) are as set out in the associated EULA.
- 36.1.3 Kainos will assist with minimising the consequences of delays to the provision of its Services occasioned by issues with Proprietary Software provided by it under this Agreement and will liaise with the Proprietary Software vendor to rectify such issues (where possible) and/or establish a work around or propose an alternative way forward provided that where such assistance constitutes additional effort which is not met by the Proprietary Software vendor, it will be at the Customer's cost and subject to prior agreement of a Change Request.
- 36.1.4 No warranty is conferred by Kainos in respect of any Proprietary Software. The full extent (if any) of the warranties offered for Proprietary Software are as set out in the accompanying EULA or subscription agreement. Where on occasion, Kainos is also the Proprietary Software vendor, the remedies lie under the respective EULA governing the use of the Proprietary Software and not under this Agreement.
- 36.1.4.1 Proprietary Software shall be provided in the format it is received from the Proprietary Software vendor and shall be supplied subject to the terms and conditions of any associated EULA.
- 36.1.4.2 Kainos shall not be responsible for identifying or planning replacements and/or upgrades of Proprietary Software unless specifically requested by the Customer as part of the Services and set out (together with the associated capital, implementation and run costs) in a SOW.
- 36.1.5 Where Kainos is provided with Proprietary Software, or access to third party systems by the Customer for the performance of the Services, the Customer will ensure that all relevant EULAs or subscriptions are obtained and fully paid for the periods of development and use and that Kainos is authorised to use the Proprietary Software or access the relevant system for the performance of the Services.
- 36.1.6 Nothing in this Clause 36 or in this Agreement shall operate to make Kainos responsible for the consequences of or rectification of problems attributable to the Customer's systems.

37. PREVENTION OF BRIBERY AND CORRUPTION

- 37.1 Kainos will not commit any Prohibited Act.
- 37.2 Kainos will, on demand, compensate the Customer in full of and against:
- 37.2.1. the amount of value of any such gift, consideration or commission; and

37.2.2. any other loss sustained by the Customer in consequence of any breach of this Clause.

38. LEGISLATIVE CHANGE

- 38.1 Kainos will neither be relieved of its obligations under the Agreement nor be entitled to increase the Agreement prices as the result of a general change in law without prior written approval from the Customer.
- 38.2 Notwithstanding the general provisions of clause 38.1, if a Brexit Trigger Event occurs, the impacted Party may require the other Party to negotiate, in good faith, an amendment to this Agreement to alleviate the Brexit Trigger Event. In the event that the Parties are unable to agree an amendment to this Agreement within thirty (30) calendar days, the impacted Party may terminate this Agreement by giving the other Party not less than thirty (30) days' written notice. In the event of termination under this clause 38.2, the provisions of clause 24 (Consequences of Termination) shall apply.
- 38.3 For the purposes of clause 38.2 "**Brexit Trigger Event**" shall mean any of the following events occurring at any time after the United Kingdom (regardless of which countries comprise the United Kingdom at such date) ceases to be a Member State of the European Union, member of the European Economic Area and/or member of the European Union customs union: (i) a substantial adverse impact on a Party's ability to perform the Agreement in accordance with its terms and the law; or (ii) a significant increase in the costs incurred by a Party in performing the Agreement.
- 38.4 In the event that the United Kingdom (regardless of which countries comprise the United Kingdom at such date) leaves the European Union and where: (i) no adequacy decision has been made by the European Commission concerning the United Kingdom under Article 45 of the GDPR; and (ii) the United Kingdom is not subject to a legal transition period under which it is treated by the European Union as a Member State for the purposes of European Union law, any transfer of Personal Data from the European Economic Area to the United Kingdom shall be governed by the Standard Contractual Clauses as set out at: <https://publications.europa.eu/en/publication-detail/-/publication/473b885b-31d6-4f3b-a10f-01152e62be6e> or such other valid safeguard as may be introduced by a relevant supervisory authority or European Commission. For the purposes of this clause 38.4, "Standard Contractual Clauses" shall mean the standard data protection clauses adopted by the European Commission under Article 46(2)(c) of the GDPR (and which remain valid under the GDPR pursuant to Article 46(5) of the GDPR), in relation to the transfer of personal data from a controller established in the European Economic Area to a processor established in a third country.

39. PUBLICITY, BRANDING, MEDIA AND OFFICIAL ENQUIRIES

- 39.1 Each Party will take all reasonable steps to not do anything which may damage the public reputation, or which may cause material adverse publicity to the other.
- 39.2 Neither Party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party except as required by law or by any legal or regulatory authority in which case it shall notify the other Party of the announcement as soon as is reasonably practicable.
- 39.3 Kainos may reference the Customer as a client of Kainos on its website and in marketing literature. The Customer may request that Kainos desists from referencing the Customer at any time.
- 39.4 Kainos shall only offer the Customer as a client reference to any prospective client in accordance with such terms as shall be agreed with the Customer.

40. SOCIAL RESPONSIBILITY

- 40.1 Kainos will, in the performance of the Agreement, observe the requirements and standards of any international conventions, covenants and agreements to which the United Kingdom is a signatory or contracting party and which may be directly effective and justiciable in the United Kingdom.
- 40.2 Kainos shall pay rates of wages and observe hours and conditions of labour not less favourable than those established in the trade or industry in the district where the Agreement is carried out.
- 40.3 In the absence of any established rates and conditions as described in Clause 40.2 above Kainos shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which would be considered within the bounds of industry norms and verifiable by an independent third-party source.
- 40.4 Kainos will ensure that the employers of all Kainos staff:
- 40.4.1. pay all wages and other money due to each work person;
 - 40.4.2. ensure that Kainos staff wages are paid in accordance with the Employment Rights Act 1996 (or equivalent local legislation) and are never more than one (1) month in arrears or unpaid;

- 40.4.3. pay all required pension contributions and other amounts due to be paid on behalf of each of Kainos staff;
- 40.4.4. make all deductions from payments to work persons required by law, and pay them as required by law;
- 40.4.5. keep proper records (including time sheets copies of pay slips) showing the wages and other sums paid to and the time worked by each of Kainos staff, deductions including pension and other contributions made in respect of Kainos staff;
- 40.4.6. respect the right under law of Kainos staff to be members of trade unions; and
- 40.4.7. observe, in relation to the employment of Kainos staff on Customer sites, the Health and Safety at Work Act 1974, and all employment law including the Employment Act 2002, Working Time (Amendment) Regulations 2001, Equality Act 2010 and regulations, codes of practice, legally binding determinations of the Employment Tribunals and employment agreements under those laws (or equivalent local legislation).

- 40.5 The Customer may seek information under the provisions of this Clause 40 only for the purpose of ensuring the obligations described in this Clause 40 to Kainos staff have been properly discharged. All information provided under the provisions of this Clause 40 will be returned or destroyed if the Customer is satisfied that Kainos has complied with its legal obligations to Kainos staff.
- 40.6 If Kainos has not complied with this Clause 40, the Customer may (without limiting its other rights or remedies) withhold the estimated amount required for compliance from any payment due to Kainos, until such time as the Customer is satisfied that the employees have been paid correctly and Kainos is in compliance.

41. PREMISES

- 41.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 41.2 Kainos will use the Customer's premises solely for the Agreement.
- 41.3 Kainos will vacate the Customer's premises upon termination or expiry of the Agreement.
- 41.4 This Clause does not create a tenancy or exclusive right of occupation.
- 41.5 While on the Customer's premises, Kainos will:
- 41.5.1. ensure the security of the premises;
 - 41.5.2. comply with Customer requirements for the conduct of personnel;
 - 41.5.3. comply with any health and safety measures implemented by the Customer;
 - 41.5.4. comply with any instructions from the Customer on any necessary associated safety measures; and
 - 41.5.5. notify the Customer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

42. EQUIPMENT

- 42.1 Unless otherwise set out in a SOW, any Equipment brought onto Customer premises will be at Kainos' own risk and the Customer will have no liability for any loss of, or damage to, any Equipment.
- 42.2 Upon termination or expiry of the Agreement, Kainos will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

43. LAW AND JURISDICTION

- 43.1 The Agreement will be governed by the laws of England and Wales.
- 43.2 Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England.

44. NON-SOLICITATION

- 44.1 Neither Party will directly or indirectly solicit any employee of the other, involved in the provision of the Services, for a period of twelve (12) months from completion of the Services. Nothing in this clause shall operate to restrict either Party from employing staff of the other Party who apply unsolicited in response to a general advertising or other general recruitment campaign.

45. NON-ASSIGNMENT

45.1 This Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that:

45.1.1 either Party may assign this Agreement without such consent in connection with a merger, demerger, corporate reorganisation or asset sale; and

45.1.2 Kainos may assign this Agreement without such consent to any member within the Group.

Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

46. GENERAL

46.1 If any term or condition is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion shall be deemed severed and the Agreement shall not fail in its entirety, but the surviving terms and conditions shall continue in full force and effect.

46.2 A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both, from time to time and any subordinate legislation made under the statutory provision.

46.3 No variation of this Agreement or of any of the documents referred to in them shall be valid unless it is in writing (email will not satisfy the requirement for writing under this clause 46.3) and is signed by or on behalf of each Party. The terms on either Party's purchase orders, invoices or other business forms are not binding on the other Party unless they are incorporated into a formal written agreement which is expressly stated to vary this Agreement, and which is signed by both Parties.

46.4 The terms and conditions of this Agreement will prevail over any inconsistent term or condition in, contained, or referred to in Customer's correspondence, purchase orders, or elsewhere, or implied by trade, practice or course of dealings.

47. DEFINED TERMS

The following terms shall have the following meanings in this Agreement:

'Background IPRs'	For each Party: - IPRs owned by that Party before the date of the Agreement, including IPRs contained in any of the Party's know-how, documentation, processes and procedures; - IPRs created by the Party independently of the Agreement; and/or but excluding: - IPRs owned by that Party subsisting in Customer Software or Kainos Software; - Proprietary Software; - OSS.
'Customer'	The entity set out in the Order Form who is entering into the Agreement and procuring the Services from Kainos.
'Customer Background IPRs'	Background IPRs of the Customer
'Customer's Confidential Information'	means all Customer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above. Any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked 'confidential')
'Customer Data'	means data that is owned or managed by the Customer, including Personal Data gathered for user research, e.g. recordings of user research sessions and lists of user research participants

'Customer Software'	means Software owned by or licensed to the Customer (other than under or pursuant to this Agreement), which is or will be used by Kainos for the purposes of providing the Services
'Charges'	means the prices (excluding any applicable VAT), payable to Kainos by the Customer under the Agreement, as set out in the applicable SOW(s), in consideration of the performance by Kainos of the Services under the Agreement and the specific obligations in the applicable SOW
'Commercially Sensitive Information'	Information, identified in the Order Form which Kainos deems to be commercially sensitive
'Confidential Information'	Customer's Confidential Information or Kainos' Confidential Information, which may include (but is not limited to): - any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above - any other information clearly designated as being confidential or which ought reasonably to be considered confidential (whether or not it is marked 'confidential')
'Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer'	Each take the meaning given in the GDPR.
Data Loss Event	Any event that results, in unauthorised access to Personal Data held by Kainos under this Agreement, and/or actual loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
'Data Protection Impact Assessment'	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
'Data Protection Legislation'	(i) The GDPR, the LED and any applicable national implementing laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable laws related to the processing of personal data and privacy.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
'DPA 2018'	Data Protection Act 2018.
'Default'	Any material breach of the obligations of a Party or any other default, act, omission, negligence or negligent statement of a Party, or its subcontractors in connection with or in relation to the Agreement.
Definition of Done	The Definition of Done applies a set of acceptance criteria to each user story and is a tool used by the development team in agile projects during the course of sprints to evaluate user stories and decide if they are completed. The Definition of Done is not static and may be revisited and iterated by the Project team during sprint retrospective meetings.
'Deliverable'	A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Customer by Kainos as part of the Services as defined in the Order Form and all subsequent Statements of Work.
'Employment Regulations'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
'Equipment'	means Kainos' hardware, computer and telecoms devices, plant, materials and such other items supplied and used by Kainos (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Agreement
'FoIA'	means the Freedom of Information Act 2000
'Force Majeure Event'	Means any event beyond the reasonable control of a party including, without limitation, acts of God, war, riot, civil commotion, malicious

	damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, accident, fire, flood, storm and strikes or any industrial action by employees of any person other than the Party relying on the event.
'GDPR'	The General Data Protection Regulation (Regulation (EU) 2016/679).
'Good Industry Practice'	Standards and procedures conforming to the law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances.
'Group'	means a company plus any subsidiary or holding company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
'Insolvency Event'	may be: • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium
'Intellectual Property Rights' or 'IPR'	means: a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off
'Kainos Background IPRs'	Background IPRs of Kainos
'Kainos Staff'	all persons employed by Kainos including Kainos' agents and consultants used in the performance of its obligations under the Agreement
'Kainos Staff Liabilities'	any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment
'Key Staff'	means Kainos Staff named in the SOW as such
'LED'	Law Enforcement Directive (Directive (EU) 2016/680).
'Loss'	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly
'Malicious Software'	any software program or code intended to destroy or cause any undesired effects. It could be introduced wilfully, negligently or without Kainos having knowledge of its existence
'Material Breach'	A single serious breach of, or persistent failure to perform as required in the Agreement
'Open Source Software' or 'OSS'	OSS or Open Source Software means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) included or used by Kainos in the provision of the Services.
'Order Form'	An order in the form set out in Part A of the Agreement for Services placed by a Customer with Kainos;
'Party'	Kainos or the Customer, and 'Parties' will be interpreted accordingly,
'Personal Data'	As described in GDPR
'Prohibited Act'	To directly or indirectly offer, promise or give any person working for or engaged by a Customer a financial or other advantage to: • induce that person to perform improperly a relevant function or activity

	• reward that person for improper performance of a relevant function or activity • commit any offence: ◦ under anti-bribery and anti-corruption legislation ◦ under legislation creating offences concerning fraud ◦ at common law concerning fraud ◦ committing or attempting or conspiring to commit fraud
'Project-Specific IPRs'	• Intellectual Property Rights in items, including Deliverables, created by Kainos (or by a third party on behalf of Kainos) specifically for the purposes of the Agreement and updates and amendments of these items including (but not limited to) database schema; and/or • Intellectual Property Rights arising as a result of the performance of Kainos' obligations under the Agreement; but not including Kainos Background IPRs, Proprietary Software or any OSS.
'Property'	The property, other than real property and IPRs, issued or made available to Kainos by the Customer in connection with an Agreement
'Proprietary Software'	Commercial Off-the Shelf (COTs) software which is proprietary to Kainos, or its licensors or to third parties and which is, or will be, used by Kainos for the purposes of providing the Services.
'Protective Measures'	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.
'Rate Card'	The Kainos time and material charging rates applicable to a SOW as set out in the SOW.
'Request for Information'	A request for information or an apparent request under the FOIA or the Environmental Information Regulations 2004.
'Services'	The Services to be provided by Kainos to Customer under an Agreement as more particularly described in a SOW.
'Special Conditions'	the special conditions detailed in a Statement of Work (if any), applicable only to that Statement of Work, which take precedence over the provisions of this Agreement.
'Statement of Work' (SOW)	the document outlining discrete packages of work, to be read in conjunction with the Order Form and to be undertaken as part of the Agreement between the Customer and Kainos. Multiple SOWs can apply to one Agreement
'Subcontractor'	each of Kainos' Subcontractors or any person engaged by Kainos in connection with the provision of the Services
'Sub-processor'	Any third party appointed to process Personal Data on behalf of Kainos related to this Agreement.
'Working Day'	any day other than a Saturday, Sunday or public holiday, from 9am to 5pm unless otherwise agreed with the Customer and Kainos in a SOW.

Schedule 1: Template Statement of Work (SOW)**A. SOW Details**

SOW DETAILS					
Order Form Reference:	SOXXXXXX				
Purchase Order Number:	[xx] or [Shall be provided [xx] days after signature of this SOW]				
SOW Number:	SOW 1_20XX				
SOW Start Date:	XX/XX/20XX				
SOW End Date:	XX/XX/20XX				
Duration of SOW:	[xx] (or until completion of the Services, if earlier). Where the provision of the Services extends beyond the SOW End Date, the Parties may agree in writing (email will suffice) to extend the Duration of SOW to facilitate completion of the Services.				
Requirements	The high-level requirements for this SOW are set out in Section C.				
Services	The Services to be delivered under this SOW are set out in Section C.				
Location	The Services will be carried out at [• [and at Kainos' premises]]				
Methodology	The [agile] methodology used in the provision of the Services is set out in Section C.				
Charging Method for this SOW:	<table border="1"> <tbody> <tr> <td>Time and materials (T&M)</td> <td>☐</td> </tr> <tr> <td>Fixed price</td> <td>☐</td> </tr> </tbody> </table>	Time and materials (T&M)	☐	Fixed price	☐
Time and materials (T&M)	☐				
Fixed price	☐				
Project Board	Kainos Senior Staff Member: [xx] Customer Senior Staff Member: [xx] Kainos Project Manager: [xx] Customer Product Owner: [xx]				
Key Staff:	The Key Staff for the Project are set out in Section F of this SOW.				
Hardware and Proprietary Software:	[DN: Include a table detailing the specification and cost of any Hardware and/or Proprietary Software being procured under the SOW and any associated terms].				
SOW Charges:	[xx] Estimated (T&M) or [xx] Fixed Price				
Rate Card:	The Rate Card for this SOW is set out in Section E.				
Currency:	[xx]				
Open Source Software:	The Open Source Software which will be used by Kainos in the provision of the Services under this SOW (if any) is set out in Section I.				

SOW Notice Period:	The Customer may terminate this SOW by giving Kainos not less than [xx] ([xx]) days' prior written notice of such termination.
Special Conditions	The following Special Conditions shall apply to this SOW and shall take either supplement or take precedence over any conflicting provisions in the Agreement. [xx]

B. OPERATION OF SOWS

- 1.1 The Parties will execute a SOW for each tranche of Services undertaken under the Agreement.
- 1.2 This SOW supplements and incorporates the terms and conditions contained in the Agreement and when signed by Kainos and the Customer establishes the terms and conditions under which Kainos shall supply the Services detailed within it. References in this SOW to clauses and schedules refer to clauses and schedules of the Agreement.
- 1.3 Multiple SOWs can operate concurrently.
- 1.4 The rights, obligations and details agreed by the Parties and set out in this SOW are SOW specific, apply only in relation to the Services that are to be delivered under this SOW and will not apply to any other SOW's executed or to be executed under this Agreement.

C. SERVICES, REQUIREMENTS AND METHODOLOGY

- 1.1 Kainos will provide man days of professional services work to achieve such of the requirements, deliverables and objectives detailed below and arising out of sprints, within the duration of the SOW and the available SOW Charges.
- 1.2 Requirements and outcomes may be varied or subject to further elaboration as part of the agile process and any indicative staff profiles may flex to accommodate changes to the Customer's requirements.
- 1.3 *[DN: Where required, detail the agile methodology project requirements and/or processes (if any) specific to this SOW.]*

D. CHARGES

- 1.1 The Charging Method is selected on a per SOW basis. The Charging Method agreed by the Parties for this SOW is set out in Section A.
- 1.2 Where **Time and Materials** (T&M) is the agreed Charging Method for this SOW, the following terms shall apply:
 - (a) Kainos will provide a detailed monthly breakdown of rates based on time and materials Charges, expenses (if any) and VAT (if any) with enough detail to enable the Customer to verify the accuracy of the T&M Charges incurred.
 - (b) The detailed breakdown for the provision of Services during the term of the SOW will include (but will not be limited to):
 - a role description per Kainos staff;
 - the agreed relevant rate per day;
 - any expenses charged per day, or at cost;
 - the number of days, or pro rata for every part day, they will be actively providing the Services during the term of the SOW;
 - Total amount spent of the estimated SOW Charges;
 - Overall Agreement value;
 - Remainder, where:
 - Remainder of value under overall Agreement value = overall Agreement value - sum of total value of all SOWs
 - Whether there is any risk of exceeding overall Agreement value (and thereby requiring a Change Request to continue delivery of Services).

- (c) Kainos will keep accurate records of the time spent by Kainos staff in providing the services and will provide records to the Customer for inspection on request.
- (d) If the estimated SOW Charges are exceeded and Kainos staff are still required to deliver the Services, under a T&M Charging Model, the Customer may elect to continue until the Services are completed.
- (e) Where the overall Agreement value set out in the Order Form is exceeded, then a Change Request must be used to increase the Agreement value, in order to facilitate further Services being carried out under the SOW.

1.3 Where **Fixed Price** is the agreed Charging Method for a SOW, the following terms shall apply:

- (a) The Fixed Price will be set out in the SOW and, subject to the terms of this SOW and the Agreement, Kainos will continue at its own cost and expense to provide the Services even where the Fixed Price has been exceeded.
- (b) When calculating the Fixed Price, Kainos has relied on:
 - the Customer fulfilling its responsibilities and dependencies as set out in Section G;
 - the assumptions set out in Section H;
 the failure of any of which may impact the Fixed Price and/or the Project timeline.
- (c) Customer requested changes to the Services which are subject to the Fixed Price, do not fall within the Fixed Price and will be impacted and dealt with using the Change Request process at the agreed Rate Card.
- (d) For Fixed Price SOWs, the amounts, method and timing of the payment of the Fixed Price will be as per the following payment profile:

FIXED PRICE PAYMENT PROFILE:

Description	Due Date	%	Amount

- (e) Where there are staged payments of the Fixed Price on, payment will fall due on the Due Date if the failure of Kainos to meet the Due Date is not attributable to Kainos' default or is as a result of any act or omission of the Customer, (for example, failure of an assumption, dependency or responsibility).

E. RATE CARD

1.1 The Rates applicable to this SOW are detailed in the following Rate Card:

[xx]

[insert Day Rate(s)/Hourly Rates]

- (a) The rates set out in the Rate Card are role specific, are quoted in [insert currency] and shall apply per Kainos staff member carrying out that role [per hour/per Day] (or a pro-rata apportionment of it).
- (b) The Rate Card will be revised on an annual basis, in line with indexation.

- (c) The rates are exclusive of VAT and expenses which will be invoiced in addition (where applicable) at the then prevailing rate and expenses, which, in the absence of an agreed and stated per diem, will be invoiced in addition at cost.
- (d) Where Kainos staff work any additional hours at Customer's request or on the Customer's approval, an overtime rate calculated as either Day rate or Hourly Rate + ½ (or a pro-rata apportionment of it) shall apply.

F. KEY STAFF

- 1.1 The Key Staff for this SOW during [DN: specific the time period within which staff will be considered "Key Staff"] are:

Key Staff (name or role)

G. CUSTOMER RESPONSIBILITIES

- 1.1 The Customer will:
- [xx]
 - make available a suitable and sustainable working environment and ensure suitable provision of seating, desks and internet connectivity are available for Kainos staff where there is a requirement to work at the Customer's location;
 - provide information reasonably requested by Kainos in a timely manner;
 - provide a designate Product Owner for each SOW;

H. ASSUMPTIONS AND DEPENDENCIES

- 1.1 The following assumptions and dependencies apply to the Project:
- [xx]
 - A Change Request will be raised for time spent by Kainos staff where they were available to perform the Services but could not do so by virtue of a delay caused by the Customer or a failed assumption, dependency or Customer responsibility. The Parties will use all reasonable endeavours and work together collaboratively to mitigate the consequences of any delay.

I. OPEN SOURCE SOFTWARE

- 1.1 The following Open Source Software has been identified for use in this SOW: [xx]

J. GDPR - DATA AND DATA PROCESSING FOR THE SERVICES TO BE CARRIED OUT UNDER THE SOW:

- 1.1 The parties to the Agreement acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorised to do is listed in section J by the Customer and may not be determined by Kainos.
- 1.2 Kainos shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.3 Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services set out in the SOW;

- 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
- 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 Kainos shall, in relation to any Personal Data processed in connection with its obligations under this SOW:
 - 1.4.1 process that Personal Data only in accordance with Section J, unless Kainos is required to do otherwise by law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - 1.4.2.1 nature of the data to be protected;
 - 1.4.2.2 harm that might result from a Data Loss Event;
 - 1.4.2.3 state of technological development;
 - 1.4.2.4 cost of implementing any measures;
 - 1.4.3 ensure that:
 - 1.4.3.1 Kainos staff do not process Personal Data except in accordance with the Agreement (and in particular Section J of the SOW);
 - 1.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Kainos personnel who have access to the Personal Data and ensure that they:
 - 1.4.3.2.1 are aware of and comply with Kainos' duties under this Section J;
 - 1.4.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
 - 1.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
 - 1.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 1.4.4 not transfer Personal Data outside of the United Kingdom and/or European Economic Area as applicable unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 1.4.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - 1.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 1.4.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations);
 - 1.4.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 1.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by law to retain the Personal Data.
- 1.5 Subject to sub-section 1.7 of Section J, Kainos shall notify the Customer immediately if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

- 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law;
- 1.5.6 becomes aware of a Data Loss Event.
- 1.6 Kainos' obligation to notify under sub-section 1.6 of Section J shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under sub-section 1.6 of Section J (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 1.7.1 the Customer with full details and copies of the complaint, communication or request;
- 1.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 1.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- 1.7.4 assistance as requested by the Customer following any Data Loss Event;
- 1.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.8 Kainos shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.9 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to this Agreement, Kainos must:
- 1.9.1 notify the Customer in writing of the intended Sub-processor and processing;
- 1.9.2 obtain the written consent of the Customer;
- 1.9.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
- 1.9.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.10 The Customer may, at any time on not less than 30 Working Days' notice, revise this policy by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.11 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to Kainos amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.12 **DESCRIPTION OF DATA AND DATA PROCESSING**

Personal Data	
Data Subject(s)	
Description of Data	

Type of processing (How is the data processed?)	
1.1 Location of processing (Geographically, incl. location for disaster recovery/back-up/mirror)	
1.2 Purpose of processing (What is the processing scope)	
Processor (Kainos or Subcontractor)	
Duration of processing	

K. Kainos Support Services [DN: Only to be used where Kainos is providing support services, otherwise, please delete or mark as 'Not Used'.]

Supported Items	XXX software developed by Kainos XXX 3 rd Party Software [Delete if not applicable] (i) Supported Software: (ii) Infrastructure: [Delete if not applicable]
Service Period:	[Insert dates or Support Services will commence on the earliest of (i) go live of the Software; (ii) the first support call received by Kainos or (iii) [insert longstop date] (Commencement Date) and will end [12] months following the Commencement Date]
Service Hours:	XXX Monday to Friday excluding UK/ROI public holidays
Service Desk Number:	All Incidents must be logged by the Customer in KIM (Kainos Incident Management). The Customer may also access the Kainos Service Desk on: +44 28 9057 1200 or for ROI Customers +353 (0) 1 6369530

Kainos Manager:	Service	[Name] [Email Address] [Contact Telephone Number]
Annual On-Call Service Charge		£/€
3rd Party Software		
Contract		
Start Date		
End Date		
3rd Party Charge		£/€

For the purposes of Support Services, the supplemental terms and conditions in Kainos Support Services as at https://www.kainos.com/wp-content/uploads/2019/05/Kainos-Support-Services-Terms-and-Conditions-Word_RH-1.0.pdf will apply (the “**Support Services Terms and Conditions**”)

[DN: Delete 1 or 2 below or above if no software / IaaS supported items as applicable]

1. The following Support Services will be provided by Kainos in respect of Supported Items comprising the Supported Software detailed in the table above:
 - 1.1. Kainos using all reasonable endeavours to maintain the Supported Software in good working order.
[Delete if not applicable]
 - 1.2. The provision of 3rd and 4th Line support, comprising telephone advice and assistance relating to enquiries by the Customer in respect of the use or operation of the Supported Software during the Service Hours, for the Service Period; and
 - 1.3. The entering into, administration and renewal of contracts for the 3rd Party Software (if any) set out in the table above with third parties (**3rd Party Contracts**).
2. The following Support Services will be provided by Kainos in respect of Supported Items comprising Infrastructure:
 - 2.1. the General IaaS Support Activities as set out below in response to Incidents raised in KIM; and
 - 2.2. Core Support, as defined in the Support Services Terms and Conditions.
3. The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will provide professional services on a time and materials basis at the relevant Day Rate as detailed above in the Rate Card at Section E, to support the Customer in their design, implementation and support of their cloud environment. These General IaaS Support Activities will be supplied in response to incidents raised in KIM or otherwise on reasonable notice in respect of a specific Customer request. The following is an indicative list of the activities with which Kainos shall assist the Customer (**General IaaS Support Activities**):

3.1. CONSULTANCY

- Advice and guidance on technical design of cloud environment;
- Estimation and budgetary calculation assistance on efficient costing of potential environments;
- Analysis of potential hosted applications to assess suitability and effective architectural design;
- Advice and guidance on security and accreditation;
- Advice and guidance on data security assessment levels;
- Best practice disaster recovery design consultancy;
- Review of requirements and recommendation of infrastructure environment;
- Setup and Environment Implementation;
- Engagement with IaaS hosting provider;
- Set up and configuration of designed architecture;

- Creation of access provision;
- Testing of environment; and
- Hardening of environment.

3.2. MIGRATION

- Secure transfer of existing applications and data to cloud environment by either:
 - Lift and shift of existing application and data; and/or
 - Application installation and data transfer.
- Testing assistance of migrated environments.

3.3. ONGOING MANAGED IAAS SUPPORT ACTIVITIES

- Incident response and resolution including remedial actions to issues identified under Core Support;
- Implementation of changes to environment;
- Firewall and infrastructure configuration and management;
- Restore services including disaster recovery scenarios;
- Assistance in disaster recovery test events; and
- Application level support service.

3.4. Where Core Support is stipulated in this SOW as applicable Kainos will supply the following support services in respect of the relevant virtual server or machine:

- Deployment of virtual servers from pre-configured templates;
- Monitoring and Alerting / Event Monitoring;
- Capacity monitoring;
- Availability monitoring;
- Anti-virus management of installed anti-virus software;
- Backups management;
- Operating System Security patching;
- Agreed system failure process;
- Help desk support;
- Incident logging and tracking service;
- Application of service level agreement;
- Agreed escalation procedures; and
- Monthly standard reporting against any agreed SLAs.

4. The Core Support is up to and including the operating system level for the server. Support for items above the operating system, can be provided under General IaaS Support Activities, where mutually agreed.
5. At any time during the Service Period, the Customer may request Kainos to place a virtual server under Core Support. This can be completed by email or KIM exchange between the Customer and the Kainos Service Manager. The variation will be validly contracted once Kainos has issued an email or KIM confirmation to the Customer in response to a Customer request detailing the virtual server(s) to be put into Core Support. Core Support comprises the above services in respect of the relevant virtual server. The Customer may remove a virtual server from Core Support by giving Kainos thirty (30) days written notice of same (email will suffice).
6. The Customer will provide 1st and 2nd Line Support for all Supported Items comprising software and is responsible for fulfilling the following Customer responsibilities:
 - 6.1. The Customer responsibilities set out in the Support Services Terms and Conditions; and
 - 6.2. [List any additional Customer or engagement specific responsibilities].
7. Additional Invoicing Provisions for Kainos Support Services:
 - 7.1. The Service Fee shall be invoiced at the start of the Service Period.
 - 7.2. Pre-Paid days shall be invoiced at the start of the Service Period and must be used during the Service Period. No refund or credit shall be given for unused Pre-Paid days remaining at the end of the Service Period.
 - 7.3. 3rd Party Software shall be invoiced in advance of the order for 3rd Party Software being placed and/or before any renewal.

7.4. Additional days, On-Call Support, Change Requests, Overtime, or expenses (if any) shall be invoiced monthly in arrears based on the preceding month's usage.

8. Kainos will not be responsible for providing Support Services where SOWs are incomplete, unsigned or, do not have an associated purchase order number.

BY SIGNING this SOW, the parties agree to be bound by the terms and conditions set out in this SOW:

This SOW is made between the Customer and Kainos and shall take effect on the date signed by both Parties.

This SOW is read in conjunction with the Agreement and words and expressions in this SOW shall have the meanings given to them in the Agreement.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Schedule 2: Template Change Request Form

The Agreement between the Customer and Kainos is varied as set out in this Change Request Form and shall take effect on the date signed by both Parties.

CHANGE REQUEST DETAILS	
Date:	XX/XX/20XX
Order Form ref. for the Agreement being varied:	SOXXXXXX
Change Request to SOW reference:	SOW
Raised by:	[xx]
Reason for the change:	[xx]
Description of the change:	[xx]
Timeline:	[xx]
Cost:	[xx]
Impact:	[xx]
Risks:	[xx]

Words and expressions in this Change Request Form shall have the meanings given to them in the Agreement. Save as expressly set out in this Change Request Form, the Agreement shall remain in full force and effect.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos Support Services Order Form

Status
Security
Version No.

Definitive
Confidential
7.0

KAINOS | SUPPORT SERVICES ORDER FORM

Customer Details	
Customer Name	
Invoice Address	
Contact Name and Number	XXX XXX
Contact Email	
Purchase Order Number	
Kainos Ref	PIDXXXXXX

Kainos Details	
Kainos Name	Choose an item.
Registered Office Address	Choose an item.
Contact Name and Number	XXX XXX
Contact Email	

Supported Items	[XXX] software developed by Kainos [XXX] 3 rd Party Software [NB: Delete if not applicable]
(i) Software (ii) Infrastructure [NB: Delete if not applicable]	[Detail items subject to General IaaS Support and VMs to go into Core Support]
Service Period	[Insert dates or Support Services will commence on the earliest of (i) go live of the Software; (ii) the first support call received by Kainos or (iii) [insert longstop date] (Commencement Date) and will end [12] months following the Commencement Date]
Service Hours	[XXX] Monday to Friday excluding UK/ROI public holidays
Service Desk Number	All Incidents must be logged by the Customer in the Kainos Incident Management System. The Customer may also access the Kainos Service Desk on: +44 28 9057 1200 or for ROI Customers +353 (0) 1 6369530
Kainos Service Manager	XXX XXX XXX
Data Protection	Kainos and the Customer will comply with this Data Processing Annex (GDPR). A Data Table has been completed for this engagement and where the nature of the processing changes, this Data Table can be edited. [N.B. Insert the following wording if the Support Services are hosted on AWS: At least one month prior to the expiry of this agreement Kainos will agree an exit plan with the Customer that includes: - An agreed time period within which any data and/or IAM accounts are handed over to the Customer; - An agreed mechanism for transferring data and/or account credentials to the Customer; and - If applicable, the process for removal of non-Customer IAM accounts, groups, roles and federation.]

Support Services	
1.	The following Support Services will be provided by Kainos in respect of Supported Items comprising Software: (a) Kainos using all reasonable endeavours to maintain the Software in good working order. [NB: Delete if not applicable] (b) the provision of 3 rd and 4 th Line support, comprising telephone advice and assistance relating to enquiries by the Customer in respect of the use or operation of the Software during the Service Hours, for the Service Period; (c) The entering into, administration and renewal of contracts for the 3 rd Party Software (if any) set out in the table below with third parties (3rd Party Contracts). [NB: Delete 1 or 2 below or above if no software / IaaS supported items as applicable]
2.	The following Support Services will be provided by Kainos in respect of Supported Items comprising Infrastructure: (a) the General IaaS Support Activities as set out below in response to Incidents raised in the Kainos Incident Management System; and (b) Core Support, as defined in the Terms and Conditions.
The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will provide professional services on a time and materials basis at the relevant Man Day Rate (subject to specification of a fixed price	

in the Order Form) to support the Customer in their design, implementation and support of their cloud environment. These General IAAS Support Activities will be supplied in response to incidents raised in the Kainos Incident Management System or otherwise on reasonable notice in respect of a specific Customer request. The following is an indicative list of the activities with which Kainos shall assist the Customer (**General Iaas Support Activities**):

- Consultancy
 - Advice and guidance on technical design of cloud environment
 - Estimation and budgetary calculation assistance on efficient costing of potential environments
 - Analysis of potential hosted applications to assess suitability and effective architectural design
 - Advice and guidance on security and accreditation
 - Advice and guidance on data security assessment levels
 - Best practice disaster recovery design consultancy
 - Review of requirements and recommendation of infrastructure environment
 - Setup and Environment Implementation
 - Engagement with IAAS hosting provider
 - Set up and configuration of designed architecture
 - Creation of access provision
 - Testing of environment
 - Hardening of environment
- Migration
 - Secure transfer of existing applications and data to cloud environment by either:
 - o Lift and shift of existing application and data
 - o Application installation and data transfer
 - Testing assistance of migrated environments
- Ongoing Managed IAAS Support Activities
 - Incident response and resolution including remedial actions to issues identified under Core Support
 - Implementation of changes to environment
 - Firewall and infrastructure configuration and management
 - Restore services including disaster recovery scenarios
 - Assistance in disaster recovery test events
 - Application level support service

Where Core Support is stipulated in this Order Form as applicable Kainos will supply the following support services in respect of the relevant virtual server or machine:

- Deployment of virtual servers from pre-configured templates
- Monitoring and Alerting / Event Monitoring
- Capacity monitoring
- Availability monitoring
- Anti-virus management of installed anti-virus software
- Backups management
- Operating System Security patching
- Agreed system failure process
- Help desk support
- Incident logging and tracking service
- Application of service level agreement
- Agreed escalation procedures
- Monthly standard reporting against any agreed SLAs

The Core Support is up to and including the operating system level for the server. Support for items above the operating system, can be provided under General Iaas Support Activities, where mutually agreed.

At any time during the Service Period the Customer may request Kainos to place a virtual server under Core Support. This can be completed by email or Kainos Incident Management System exchange between the Customer and the Kainos Service Manager. The variation will be validly contracted once Kainos has issued an email or Kainos Incident Management System confirmation to the Customer in response to a Customer request detailing the virtual server(s) to be put into Core Support. Core Support comprises the above services in respect of the relevant virtual server. The Customer may remove a virtual server from Core Support by giving Kainos thirty (30) days written notice of same (email will suffice).

The Customer will provide 1st and 2nd Line Support for all Supported Items comprising software and is responsible for fulfilling the following Customer responsibilities: (a) The Customer responsibilities set out in the Terms and Conditions and [List any additional Customer or engagement specific responsibilities].

[NB: Complete applicable charging basis and delete the other]

Fixed Price [Detail Supported Items to which this relates]	
Fixed Price	[£/€]
Annual On-Call Service Charge	[£/€]
Total	[£/€]

Additional Rates	
Man Day Rate	[£/€]
On-Call Daily Rate	[£/€]
On-Call Hourly Charging Rate	[£/€]

Time & Materials	
Service Fee	[£/€]
Number of Pre-Paid Man Days	
Pre-Paid Man Day Rate	[£/€]
Annual On-Call Service Charge	[£/€]
Total	[£/€]

3 rd Party Software	
Contract	
Start Date	
End Date	
3 rd Party Charge	[£/€]

Invoicing
[NB: Delete what is not relevant] The Service Fee shall be invoiced at the start of the Service Period. Pre-Paid Man Days shall be invoiced at the start of the Service Period and must be used during the Service Period. No refund or credit shall be given for unused Pre-Paid Man Days remaining at the end of the Service Period. 3rd Party Software shall be invoiced in advance of the order for 3rd Party Software being placed and/or before any renewal. The Fixed Price will be invoiced on [insert details]. Additional Man Days, On-Call Support, Change Requests, Overtime, or expenses (if any) shall be invoiced monthly in arrears based on the preceding month's usage. All invoices shall be paid by the Customer within thirty (30) calendar days of issue (the Due Date).

Special Conditions
[DN: In the event Artificial Intelligence (AI) and/or Intelligent Automation (IA) Services are being contracted under this Services Order Form, include the following wording: The Terms and Conditions are amended as follows: Clause 5 is deleted and replaced with: 5. Customer's Rights of Use The Customer may use the Service(s) and any pre-existing Kainos intellectual property required to make use of the Services, without restriction. Kainos reserves all other rights, title and interest in and to the Service(s), including all related intellectual property rights.

Terms & Conditions
The Kainos Support Services Terms and Conditions, which govern the provision of the Support Services set out in this Order Form, may be accessed at: Kainos Support Services Terms and Conditions v3.0 (Terms and Conditions). By signing below, you are accepting the Terms & Conditions on behalf of the Customer and confirming that you are authorised to do so. Order Forms must be completed in full and returned to Kainos (with a physical

or electronic copy of the purchase order) before the start of the Service Period. Kainos will not be responsible for providing Support Services where Order Forms are incomplete, unsigned or, do not have an associated purchase order number.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

ANNEX 1 | CHANGE REQUEST

Part A	
Kainos Entity:	Kainos Contact:
Change Request Reference: SOXXXXXX v1.0	Original Contract Reference: SOXXXXXX
Original Contract Name:	
The Terms and Conditions of the Original Contract apply except to the extent amended in this Change Request.	

Part B	
Company Name:	
Customer Reference:	
Raised By:	
Priority:	Date Required:
Title of Change Request:	

Part C
[Fixed Price/T&M] Cost (plus VAT and expenses, if any):
Impacted By:
Operational Impact(s):
Details of Change:
Assumptions/Dependencies:

DELETE AS APPROPRIATE
SIGNATURE

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

OR

EMAIL AUTHORISATION

This Change Request can be authorised in writing (email will suffice). Kainos will start the work detailed in this Change Request upon receipt of this authorisation.

DATA TABLE | DESCRIPTION OF DATA & DATA PROCESSING

Personal Data	Data Subject(s)	Description of the data	Type of processing (how is the data processed)	Purpose of processing (What is the processing scope)	Processor (Kainos or subcontractor)	Duration of processing
Personal Data				On the instructions of the Data Controller in respect of the services set out in the Agreement: - accessing data records to provide consultancy/development/delivery/technical support and professional services as required by the Data Controller.	The Kainos entity set out in the Agreements.	For the Service Period (or any agreed extensions to it) set out in the Agreements.

Kainos Support Services Terms and Conditions

KAINOS | SUPPORT SERVICES TERMS AND CONDITIONS

By signing an Order Form and/or contacting Kainos for Support Services, the Customer agrees that the following terms and conditions ("the Terms and Conditions") apply to and govern the delivery of Support Services. The Terms and Conditions will be effective from the earliest of Kainos receiving a signed Order Form from the Customer or the Customer contacting Kainos with a Support Services request.

DEFINITIONS

1st and 2nd Line Support means in relation to Supported Items comprised of Software:

- i. initial investigation and assessment of Incidents on-site (to include liaising with users to obtain the relevant detail, monitoring software and log error analysis);
- ii. prioritisation of Incidents on-site;
- iii. logging of Incidents in the Kainos Incident Management System;
- iv. providing Incident feedback to users and appropriate workarounds on how to fix incidents;
- v. distribution of 3rd Party Software patches (if any) to End Users;
- vi. supplying details on the provision of new software, if required;
- vii. determining as much information as possible in relation to the Incident and logging/tracking the escalation of support items to 3rd and 4th Line Support where they remain unresolved);
- viii. interfacing between End User and 3rd and 4th Line Support;
- ix. monitoring Software in operation;
- x. providing information, gathering diagnostics and implementing patches;
- xi. completing a Kainos System Problem Report form and forwarding to the Kainos Incident Management System;
- xii. closing Incidents.

3rd and 4th Line Support means in relation to Supported Items comprised of Software:

- i. the provision of suitably qualified personnel to man the telephone support service during the Service Hours;
- ii. the provision of temporary or permanent corrections to the Software where Incidents have been escalated from 1st and 2nd Line Support and where such correction demands the modification of source code held under version control by Kainos;
- iii. the provision of information on known 3rd Party Software problems and available modifications or avoidance actions to 1st and 2nd Line Support;
- iv. the provision of support documentation, tools and utilities;
- v. the provision of consultancy services to 1st and 2nd Line Support if required;
- vi. ensuring system documentation and software release versions are kept up-to-date to reflect any changes to the

Software applied by Kainos as a result of Incidents raised;

- vii. providing estimates on the length of time to correct non-trivial Incidents;
- viii. developing and issuing emergency patches.

Change Request means a request for a change to the Support Services or to these Terms and Conditions, for example and without limitation: an increase in the scope of the Support Services; a change to the supported "Supported Items" or "3rd Party Software" to incorporate new projects or work-streams; a request for work outside the Services Hours; a requirement to attend the Customer's premises, or a request to process the renewal of a 3rd Party Software Contract.

Current Release means a supported version of the 3rd Party Software.

Customer means the individual or entity specified on the Order Form, or the individual or entity contacting Kainos.

Equipment means the computer and operating system hardware, network and all other system hardware, of various specifications, provided, owned, controlled by or the responsibility of the Customer and maintained by or for the Customer, the adequacy of which the Customer warrants as enabling optimal performance of the Software;

Expenses means travel, subsistence and other out-of-pocket expenses incurred by Kainos in respect of the provision of the Support Services. Kainos reserve the right to charge the Customer for exceptional expenses incurred, provided that Kainos obtain the prior written consent of the Customer before incurring any such expenses. Expenses will typically relate to instances where Kainos is required to travel outside Belfast to provide the Support Services and shall be invoiced at cost.

Group Company means Kainos, its Subsidiaries or Holding Company from time to time and any Subsidiary of any Holding Company from time to time.

Incident means a problem, issue or query, interruption or reduction in quality or productivity with regard to the Supported Items.

Kainos Incident Management System means the Kainos Incident Management web-based utility used for logging and tracking Incidents.

Man Day means 7.5 hours per day (pro-rata), Monday-Friday during the Service Hours, excluding Public Holidays.

Man Day Rate means the pro-rata time and materials charging rate set out in the Order Form, chargeable per Man Day exclusive of VAT (which, where applicable, shall be invoiced in addition at the then prevailing rate) and exclusive of Expenses (which, where applicable, shall be invoiced in addition at cost).

Pre-Paid Man Day Rate means in respect of time and material support engagements the discounted pro-rata time and materials charging rate set out in the Order Form, applicable to pre-purchased Man Days, exclusive of VAT (which, where applicable,

shall be invoiced in addition at the then prevailing rate) and exclusive of expenses (which, where applicable, shall be invoiced in addition at cost).

Overtime Rate means the Man Day Rate and ½ plus VAT and expenses, pro-rated for each hour (or part hour worked).

Service Fee means in respect of time and material support engagements, the basic annual fee charged to cover: the provision of appropriately skilled personnel (specific to the Customer solution) to respond to requests for service within the SLA and progress appropriately; a flexible approach to use pre-paid Man Days for support, consultancy, Change Requests (not prescriptive to Incidents alone); set up and maintenance of a client environment in Kainos to facilitate Incident investigation and resolution; set up and ongoing access to the Kainos Incident Management System for the Customer including Incident history and traceability until resolution; Service desk facility; monthly Incident (and Timesheet) Reporting; availability of a named Service Manager.

Subsidiary or Holding Company as defined in section 1159 of the Companies Act 2006.

3rd Party Software means productised software or software developed by parties other than Kainos.

1. NOTIFICATION OF INCIDENTS & TARGET RESPONSE TIMES SLA

The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will use all reasonable endeavours to commence investigatory and corrective work within the Target Response Times attributable to the Incident Classification set out below. Kainos will have met the Target Response Time where it has confirmed to the Customer, within the stated time, that the Incident has been received by Kainos and that a suitably qualified support analyst has begun working on the resolution of the Incident. For the purposes of calculating whether a Target Response Time has been met, the calculation of time elapsed will be suspended at the end of the Service Hours for that day and recommence at the start of the next applicable Service Hours day. Target Response Times are applicable from the date/time the incident is logged in the Kainos Incident Management System. Kainos will respond either by email, call or through the Kainos Incident Management System, or any combination of the above. Where the provision of the Support Services necessitates Kainos liaising with any 3rd Party Software vendors or infrastructure hosting service, it is acknowledged that Kainos may be constrained in its provision of the Support Services by the absence of a then current support contract with the 3rd Party Software vendor and/or by the response times (if any) provided by the relevant third party. Kainos shall update the Customer at regular intervals, within the Service Hours, until the Incident is resolved. The Customer acknowledges that the Target Response Times detailed in the Order Form

apply only to the Support Services and not to any work carried out in relation to Change Requests.

The following Target Response Times and Incident Classifications apply to the provision of the Support Services in respect of Supported Items comprising Software:

Incident	Classifications	Target Response Times
High	System not usable for any purpose	4 hours
Medium	Software malfunction impacting critical piece of functionality	8 hours
Low	Software malfunction impacting non-critical piece of functionality	2 days
Minor/Query	Routine advice and guidance request, documentation deficiency or usability suggestion	5 days
Change Request	Request for change or enhancement to software	5 days
Problem	Investigation of underlying root cause of incident	5 days
Service Request	Standard change that does not require approval, for example, password reset, set up of new the Kainos Incident Management System user	5 days

The following Target Response Times and Incident Classifications apply to the provision of the Support Services in respect of Supported Items comprising Infrastructure:

Priority / Severity	Classification	Business Impact	Target Response Time
High	VM not usable for any purpose.	Multiple users unable to transact business. Business customers affected.	1 hour
Medium	VM malfunction impacting critical piece of functionality.	Multiple users impacted. Single user unable to transact business.	4 hours
Low	Malfunction impacting non-critical piece of functionality.	Business continues but multiple users inconvenienced. Single user inconvenienced.	1 day
Minor / Query	Routine advice and guidance request, documentation deficiency or	No impact on business. Cosmetic modification. Information request.	2 days

	usability suggestion.		
Service Request	Standard change that does not require approval.	No impact on business. Password reset. Set up of new the Kainos Incident Management System user.	2 days
Change Request	Request for change or enhancement.	No impact on business.	2 days

2. LOCATION

Unless otherwise stated in the Order Form, the Support Services will be provided from Kainos Belfast premises. Kainos shall, at the Customer's request and where necessary for the provision of the Support Services, attend the Customer's site. Attendance at the Customer's site will be undertaken subject to the terms and conditions governing the provision of on-site attendance set out in clause 15 of the Terms and Conditions.

3. WARRANTY

Kainos warrants that the Support Service will be carried out with reasonable care and skill and in a timely, workmanlike and cost-effective manner using qualified staff sufficiently familiar with the functions and operation of the Supported Items and its implementation and application by Kainos. Save as expressly set out in these Terms and Conditions, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the Support Services and any deliverables are hereby excluded by the parties to the fullest extent permitted by law including (without limitation) as to the condition, quality, performance, merchantability or fitness for purpose of the Support Services or any part of them. Kainos will not be liable to remedy any problem arising from or caused by any modification, (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) or the Equipment by persons other than Kainos, without its express prior written consent. Each Party warrants and represents to the other that on entering into this contract and on an ongoing basis for the duration of this contract it (and its senior officers, employees and sub-contractors) has not been investigated, prosecuted or convicted of any offence under The Bribery Act 2010.

4. LIABILITY

The parties' liabilities in connection with, or in relation to, the Support Services carried out under these Terms and Conditions, whether in contract, tort or otherwise (a "Default") are exhaustively defined in these Terms and Conditions. Each party's entire liability for actual damages in respect of any one Default shall not in any event (except for death or personal injury caused by the negligence of either party, or its employees, to which no limit shall apply) exceed the lesser of the amount paid by the

Customer under the associated Order Form (excluding VAT and expenses) or £100,000 To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of:

- i. profits (actual or anticipated);
- ii. revenue;
- iii. Business;
- iv. goodwill;
- v. business opportunities;
- vi. potential savings;
- vii. loss of production;
- viii. loss of or corruption to data;
- ix. loss of operation time,

whether or not the loss or losses arising out in each of the foregoing categories (i) to (ix) are direct, indirect, consequential in nature and whether or not the other party was informed, was aware or should have been aware of the possibility of such loss arising. The Customer is responsible for the consequences of any use of the Support Services.

5. 3RD PARTY SOFTWARE

Kainos does not accept liability for and is not responsible for problems arising with any 3rd Party Software, whether latent or manifest.

6. TERM & TERMINATION

These Terms and Conditions shall endure for the Service Period set out in the Order Form and any agreed extensions to it, subject only to termination under clause 7 (termination for insolvency/corruption). Where an Order Form has expired and Kainos continues to provide the Support Services to the Customer, the provision of such Support Services will be strictly subject to these Terms and Conditions. Notwithstanding the limitations of liability set out in these Terms and Conditions, Kainos reserves the right to levy the full outstanding balance, if any, of the Service Charge and/or Fixed Price (together with any outstanding Charges) in the event of early termination during the Service Period ("Early Termination Charge") which will be paid by the Customer within thirty (30) calendar days of invoice. The parties agree that the Early Termination Charge represents a genuine pre-estimation of the loss that Kainos will suffer as a result of termination of the provision of Support Services prior to the end of the Service Period and does not constitute a penalty.

7. TERMINATION FOR INSOLVENCY/CORRUPTION

The provision of the Support Services will come to an end with immediate effect, without penalty, by either party serving on the other a written notice to terminate if the other:

- i. presents a petition or have a petition presented by a creditor for its winding up (which shall not be dismissed, adjourned or otherwise rendered ineffective), or shall convene a meeting to pass a resolution for voluntary winding up, or is subject to a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the

benefit of) its creditors (other than for the purposes of a bona fide reconstruction or amalgamation) or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a trustee, receiver, administrative receiver or similar officer appointed in respect of all or any of its undertakings or assets, or shall be deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall cease to carry on business as a going concern; or

- ii. is (or any senior officer or employee of that Party is) convicted of an offence under The Bribery Act 2010.

8. RIGHTS FOLLOWING TERMINATION

Termination, cancellation or expiration of these Terms and Conditions shall not affect the accrued rights or liabilities of either party.

9. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure to perform arising from a force majeure event.

10. DATA PROTECTION

The parties will duly observe and comply with all of their respective obligations under the then current and applicable data protection legislation when carrying out obligations or exercising rights in respect of the Support Services.

11. VARIATIONS

Subject only to variations authorised under and in accordance with the Kainos Change Request procedure and/or set out in the Special Conditions section of an Order Form, no variation of these Terms and Conditions will be effective unless evidenced in writing and signed by both parties. These Terms and Conditions supersede all prior or contemporaneous oral or written statements, proposals, communications and representations. For the avoidance of doubt, in relation to the provision of the Support Services, the terms on either party's purchase orders, invoices or other business forms are not binding on the other party whether or not they pre-date or post-date these Terms and Conditions unless they are expressly incorporated into a formal written agreement signed by both parties which specifically states the parties' intention to vary these Terms and Conditions.

12. NON-SOLICITATION

Neither Party will for the duration of the Service Period set out in the Order Form or within (12) twelve months of its termination or expiry solicit, canvass or entice away, directly or indirectly any developer, manager or senior employee of the other. The parties agree that breach of this clause 12 would involve the other in significant expense and will entitle the other to liquidated damages of an amount equivalent to three (3) months of the

basic annual salary (calculated as at the termination date) of the employee so solicited, invoiced on the leaving date and paid within thirty (30) calendar days of issue.

13. ASSIGNMENT

These Terms and Conditions are personal to the parties and neither party shall, without the prior written consent of the other assign, transfer, charge or deal in any other manner with the Terms and Conditions save that Kainos may on written notice to the Customer assign, transfer or novate its rights and obligations under these Terms and Conditions to any Group Company. The Terms and Conditions are not made for the benefit of, nor shall any of their provisions be enforceable by, any person other than the parties to the Order Form.

14. THIRD PARTIES

Kainos reserves the right to engage third party consultants/contractors in the performance of the Support Services but such sub-contracting will not relieve Kainos from its obligations under these Terms and Conditions.

15. ON-SITE ATTENDANCE

Unless otherwise provided in the Order Form, the following terms apply to on-site attendance: i) on-site attendance shall be billed at the Man Day Rate and shall be undertaken subject to available Man Days; ii) Expenses associated with on-site attendance shall be billed in addition at cost, to include travel, accommodation (where an overnight stay is necessary) and subsistence; iii) time spent on-site in the provision of the Support Services outside the Service Hours shall be charged at the Overtime Rate; iv) travel time is chargeable, provided that travel time shall be drawn down at the Man Day Rate and not the Overtime Rate irrespective as to the time that such travel is undertaken.

16. CUSTOMER RESPONSIBILITIES

The Customer shall be responsible for: (i) providing 1st and 2nd Line Support and for supporting any software with which the Software interacts; (ii) supplying any 3rd party VPN software required to remotely access the Customer's platforms; (iii) providing remote access to Kainos or required third parties to its test and production environments as required; (iv) ensuring in advance of Kainos entering into any 3rd Party Software Contract for the benefit of the Customer that the terms and conditions of such 3rd Party Contract(s) (or subsequent renewals) are acceptable to it and sufficient for its purposes; (v) providing timely authorisation for the renewal of 3rd Party Contracts; (vi) the consequences on the provision of the Support Services where the Customer elects not to renew support for any 3rd Party Contract (or does not communicate its decision regarding renewal to Kainos on time or at all); (vii) securing the consent of any 3rd Party Software vendor (where the Customer has entered into a support agreement for 3rd Party Software directly or a stated 3rd Party

Software Contract) for Kainos to use such 3rd Party Software in the provision of the Support Services and/or to receive the support services from the 3rd Party Software vendor directly for the benefit of the Customer; (viii) ensure at Customer's expense that Kainos is adequately licensed to use the software and/or hardware installed and/or required in the supported environment to the extent necessary to enable Kainos to provide the Support Services; (ix) the appointment of a member of its staff ('the Support Representative') to act as the principal point of contact between the Parties who will act as the first point of contact with Kainos Support Services in the resolution of Incidents and other support requirements; (x) ensuring that the Software and the Equipment are used in a proper manner by competent trained technical employees only or by persons under their supervision; (xi) notifying Kainos promptly if the Supported Items are not operating correctly; (xii) co-operating to a reasonable extent with the Kainos in the diagnosis, investigation and correction of any fault in the Supported Items; (xiii) making available to Kainos free of charge all information, facilities and services reasonably required by Kainos to enable Kainos to perform the Support Services including, without limitation, computer runs, core dumps, print-outs, data preparation and access to the Customer's staff, the Supported Items and the Equipment; (xiv) keep full security copies of the Software and of the Customer's databases and computer records in accordance with good computing practice; (xv) provide permission to Kainos in respect of Customer's third party cloud services and / or environments on the basis of the minimum privileges required by Kainos to complete the relevant Support Services; (xvi) ensure that all Support Service requests are formally logged; (xvii) provide suitable office accommodation and services, including telephone, facsimile and photocopying facilities to Kainos staff where there is a requirement for Kainos to work on-site; and (xviii) in the case of Supported Items comprising infrastructure, ensure continuance of the cloud environment relevant to the Supported Items and Kainos access to same. Customer acknowledges that failure to discharge its responsibilities may impact the price, the provision of the Support Services and/or the timely resolution of Incidents.

17. 3RD PARTY SOFTWARE

Where the procurement of and/or support for 3rd Party Software forms part of the Support Services to be provided by Kainos:

- i. Kainos will, at the Customer's request, effect renewal of support for 3rd Party Software at;
- ii. where the Customer wishes to effect any renewal of the 3rd Party Software Kainos will supply the Customer with details of its charges to effect such renewal plus VAT and expenses (if any) which shall be invoiced in addition) and the Contract the Change Request procedure will be used to contract any such renewal;

- iii. invoices in respect of the 3rd Party Charge(s) (if any) shall be raised in advance of the order for the 3rd Party Software Contract being placed and/or prior to any renewal. Kainos is not responsible for placing an order with, or for effecting the renewal of any 3rd Party Software Contract until payment of the associated 3rd Party Charge has been received from the Customer;
- iv. where Kainos has (in accordance with the Customer's instructions) placed an order for the 3rd Party Software Contract the Customer shall be responsible for paying the 3rd Party Charge(s) plus VAT and expenses (if any) in full, irrespective of any change in the Customer's requirements or the subsequent termination of Support Services;
- v. Kainos is responsible for passing to the Customer the benefit and burdens of the 3rd Party Contracts ONLY and nothing in these Terms and Conditions will operate to make Kainos: (a) responsible for furnishing the Customer with any additional benefits or services under any 3rd Party Software Contract which is not provided for in the 3rd Party Software Contract; (b) liable for any act, omission or breach of contract by the third party contractor(s); (c) responsible for the provision of any services to be provided under the 3rd Party Software Contract by the third party vendor or by the Customer; (d) responsible for the consequences of early termination of any 3rd Party Contract or the Customer declining to use a Current Release of the 3rd Party Software, for whatever reason. Kainos' responsibilities in respect of the 3rd Party Software Contracts will expire upon the earliest of expiry of the relevant 3rd Party Contract (without subsequent renewal) and/or expiration, termination and/or cancellation of the Support Services. Where Kainos is providing support for 3rd Party Software and/or entering into any 3rd Party Contract it is acknowledged that the support term for the 3rd Party Software and/or the start of the 3rd Party Contract will commence on dispatch of the 3rd Party Software and/or the Start Date set out in the 3rd Party Contract(s) section of the Order Form and may not be synchronised with the Service Period.

18. MARKETING

Kainos reserves the right to reference the Customer as a customer of Kainos in publicity and marketing literature, the Customer has the right to object to the use of its name at any time, whether with regard to a specific use or at all, by advising the SM in writing. Kainos will desist from any further use of the Customer's name upon receipt of such a notification from the Customer.

19. CHARGES

Where the Support Services are being undertaken on a Fixed Price basis, unless otherwise stated in the Order Form the Fixed Price does not include the provision of the Support Services in respect of, resulting from and/or due to:

- i. any defect error or other problem resulting from any modifications, made to the Software made by any person other than Kainos and its sub-contractors without Kainos' prior written approval;
- ii. any defect, Incident, error or other problem in any version of the 3rd Party Software other than a Current Release in respect of which there is a current 3rd Party Software Contract in place;
- iii. incorrect use of the Software or operator error;
- iv. the Equipment, the Customer's incorrect operational or environmental conditions, media or consumables, or other equipment and programs used in conjunction with the Software or to any other reason external to the Software;
- v. the Customer's data management, data file copying and distribution, system housekeeping, administration and other routine operational activities;
- vi. system training;
- vii. the management and/or implementation of any Software release;
- viii. support of the Software during anything other than normal operation;
- ix. the provision of documentation of system procedures;
- x. the support of networks, operating systems, databases, data cabling and electrical cabling;
- xi. site go live support;
- xii. retrieval of report information from system data;
- xiii. management of generic system problems;
- xiv. management or co-ordination of system fault calls with external service providers;
- xv. system applications rebuilds or disc rebuilds;
- xvi. on-site evidence collection;
- xvii. system failure due to criminal or malicious or accidental damage;
- xviii. installation and configuration of software supplied but not produced by Kainos.

If at the request of the Customer Kainos agrees to provide any Support Services in respect of any of the exclusions referred to in this clause 19 (but it is confirmed that Kainos is under no obligation to do so) Kainos will endeavour to undertake the work as soon as reasonably practicable under and in accordance with the Change Request procedure. Subject to the Change Request procedure, Kainos will endeavour to accommodate Customer requests for the provision of the Support Services outside the stated Service Hours (although it is under no contractual obligation to do so). Customer should provide Kainos with at least two (2) working days' notice of any such requirement.

Where the Support Services are provided on a Time and Materials basis they are subject to the number of available Man Days. Kainos is not responsible for providing the Support Services where there are no (or no sufficient) available Man Days. If the number of available Man Days is deemed insufficient to provide the Support Services Kainos shall advise the Customer in writing (email will suffice). The Customer will be invoiced for actual staff utilisation; however, each support call will be subject to a minimum ½ hour charge. Kainos will furnish the Customer with a monthly report detailing the preceding month's utilisation and the remaining available Man Days.

20. LATE PAYMENT & RATE REVIEWS

If any sum payable to Kainos is in arrears for more than thirty (30) calendar days after the due date, Kainos reserves the right without prejudice to any other right or remedy to:

- i. charge interest on such overdue sum on a day to day basis from the original due date until paid in full at an annualised rate of 2% above Bank of Ireland base lending rate in force from time to time; and/or
- ii. suspend the provision of the Support Services on fourteen (14) days prior written notice.

The Customer will notify Kainos in writing within five (5) days of receipt of an invoice if the Customer considers such invoice incorrect or invalid for any reason failing which the Customer will raise no objection to any such invoice and shall make full payment in accordance with it. Kainos reserves the right to increase the Man Day Rate and/or the charges for the provision of the Support Services set out in the Order Form, during the Service Period, on an annual basis, PROVIDED THAT unless otherwise agreed with the Customer, any such increases shall not exceed the then current rate of RPI + 2%.

21. DESCRIPTION OF CUSTOMER

Where the Customer is entering into a support contract with Kainos in order to ensure that the Supported Items is supported and maintained for the benefit of the Customer and wholly owned subsidiaries within the Customer's group (it being contemplated that the Supported Items will be used by the Customer group wide), it is agreed between the parties that any warranties, benefits and limitations of liability (whether liquidated or non-liquidated) in and or under these Terms and Conditions apply only as between the Customer and Kainos. The inclusion of wholly owned subsidiaries and/or references to the Customer group in the description of the Customer is solely to ensure that the right to avail of any benefit of the Support Services, *as provided to the Customer* and not that such subsidiaries or group companies can avail directly of the Support Services. In all other respects, any wholly owned subsidiary or group company is to be treated as a third party under these Terms and Conditions.

22. OVERTIME & ON-CALL SUPPORT

Any time spent by Kainos in the provision of the Support Services outside the Service Hours will be undertaken subject to the following terms and conditions governing the provision of out-of-hours support. Work to be undertaken outside the Service Hours (depending on its nature and duration) will be classified by Kainos (in advance of it being undertaken) as either "Overtime" or "On-Call Support". (i) Overtime will be charged at the Overtime Rate. (ii) On-Call Support comprises two charging elements: (a) A flat daily charge for the provision of the On-Call Support facility which will be billed at the "On-Call Daily Rate" set out in the Order Form plus VAT and expenses (if any); and (b) An hourly charge for each call made during an On-Call Support period which will be billed at the "On-Call Hourly Charging Rate" set out in the Order Form, per hour, plus VAT and expenses (if any). (iii) Calls made during an On-Call Support period will be logged at a minimum of two (2) hours irrespective of their duration subject to the following: (a) Once the two (2) hour minimum period has been triggered, the Customer will not be charged for any additional calls made (if any) within that two (2) hour period; (b) Where a call (or calls) exceed(s) the initial (2) hour period, or where additional calls are received after the initial two (2) hour period has expired then, subject to 23 (iii) (c) below, further time will be charged at a minimum of one (1) hourly increments. Once the one (1) hour minimum period has been triggered, the Customer will not be charged for any additional calls made (if any) within that one (1) hour period. (c) In the event that more than one (1) hour has passed from the end of the last call received then the minimum call charge will revert to the standard two (2) hour minimum period.

23. CHANGE REQUESTS

During the Service Period, the Customer may ask Kainos to undertake Change Requests. Change Requests shall be undertaken in accordance with the following procedure:

- i. Change Requests are submitted via the Kainos Incident Management System by completing an electronic version of the Change Request Form which will be provided to you by the Kainos Services Manager;
- ii. Change Requests may be submitted and authorised by email.

Receipt of an email confirmation from the Kainos Services Manager in response to a Change Request raised by the Customer confirming that the Change Request is accepted, or receipt of an email confirmation from the Customer verifying the content of a Change Request Form which has been raised by the Kainos Services Manager will contract the Change Request and will constitute a variation to the Support Services and these Terms and Conditions; (iii) unless stated to the contrary in the Change Request Form, Change Requests will: (a) be undertaken on a Time and Materials basis; (b) typically be charged at the Man Day Rate, SAVE THAT where larger project(s) are to be

undertaken (in excess of twenty (20) Man Days) and which requires project management, consultancy and/or technical architect resources in addition to software engineers, then the rate(s) for such additional resources will be agreed between the parties on a case by case basis; (c) be billed monthly in arrears.

24. HARDWARE PURCHASE

Where the purchase of hardware by Kainos on behalf of the Customer forms part of the Support Services, the specification, quantity, price and terms relating to support for the hardware will be set out in the Special Conditions section of the Order Form (the "Hardware"). The risk of loss or damage to the Hardware will pass to the Customer on the date of delivery of Hardware to the Customer. The Customer is responsible for ensuring that the Hardware listed is suitable for its requirements. If the Customer has any complaints upon taking delivery of the Hardware it must notify Kainos immediately of its complaint with as much information as possible, and provide Kainos with a detailed written statement of its complaint (email will suffice) within five (5) working days of the date of delivery. Kainos is entitled to assume that the Customer is completely satisfied with Hardware if it has not received any such written statement within the specified time frame. The Customer is solely responsible for: (i) ensuring that once it has taken possession of Hardware that it is in good working order; (ii) ensuring that Hardware is used only in the normal course of business and in accordance with the manufacturer's instructions and/or guidelines and in compliance with all health and safety legislation; (iii) liaising directly with the manufacturer to address any operating issues with the Hardware (unless it has a current support contract for the Hardware in place with Kainos). The Customer shall indemnify Kainos from and against any loss, damage or injury to people or property caused by the Hardware or its use, except for death or personal injury caused by Kainos' negligence.

25. HARDWARE SUPPORT

Where support of Hardware by Kainos forms part of the Support Services, unless otherwise stated:

- i. support for the Hardware will commence at the start of the Service Period, even if the Hardware has not been at the time fully set-up, installed or connected to a network;
- ii. Kainos will advise the Customer of the need for renewal and the associated charges in advance of the renewal date (where charges are set out in the Order Form, these are stated exclusive of VAT and expenses (if any) which shall be invoiced in addition);
- iii. where the Customer wishes to effect any renew of Hardware support the Change Request procedure should be used;
- iv. invoices in respect of the Hardware support shall be raised in advance of the order for Hardware support being placed and/or prior to any renewal. Kainos is not

- responsible for placing an order with, or for effecting the renewal of any Hardware support until payment of the associated charges have been received from the Customer;
- v. where Kainos has (in accordance with the Customer's instructions) placed an order for Hardware support the Customer shall be responsible for paying the charge(s) plus VAT and expenses (if any) in full, irrespective of any change in the Customer's requirements or the subsequent termination of Support Services;
 - vi. Kainos is responsible for passing to the Customer the benefit and burdens of the Hardware support contracts ONLY and nothing in these Terms and Conditions will operate to make Kainos: (a) responsible for furnishing the Customer with any additional benefits or services under any Hardware support contract which is not provided for in the Hardware support contract; (b) liable for any act, omission or breach of contract by the third party contractor(s); (c) responsible for the provision of any services to be provided under the Hardware support contract by the third party vendor or by the Customer; (d) responsible for the consequences of early termination of any Hardware support contract or the Customer declining to renew a Hardware support contract, for whatever reason.

Kainos' responsibilities in respect of any Hardware support contract will expire upon the earliest of expiry of the relevant Hardware support contract (without subsequent renewal) and/or expiration, termination and/or cancellation of the Support Services. Where Kainos is providing support for Hardware and/or entering into any Hardware support contract on behalf of the Customer it is acknowledged that the support term for the Hardware support contract and/or the start of the Hardware support contract will commence on dispatch of the Hardware and/or the Start Date set out in the Special Conditions section of the Order Form relating to the provision of Hardware support and may not be synchronised with the Service Period.

26. ESCALATION

The following order of escalation will apply to the resolution of issues arising out of or in connection with the provision of the Support Services: (i) The Customer shall refer any issues arising: (a) in the first instance to the Services Manager whose contact details are set out in the Order Form; with escalation to: (b) the Head of Support Services; (c) with escalation to the Managing Director.

27. COMPLIANCE WITH LAWS

Each Party shall and shall procure that persons associated with it or other persons who are performing services in connection with this Order Form shall (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-

bribery and anti-corruption, including but not limited to the Bribery Act 2010 of the UK, and (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 of the UK.

28. LAW & JURISDICTION

These Terms and Conditions are governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England.

Kainos Microsoft Azure Subscription Order Form

Status
Security
Version No.

Definitive
Confidential
4.0

KAINOS | MICROSOFT AZURE SUBSCRIPTION ORDER FORM

Customer Details			
Customer Name			
Registered Office Address			
Customer Contact, Number & Email	XXX	XXX	XXX
Invoice Contact, Number & Email	XXX	XXX	XXX
Purchase Order Number			

Kainos Details	
Kainos Name	Choose an item.
Registered Office Address	Choose an item.
Kainos Contact, Number & Email	XXX XXX XXX
Kimble Code	PIDXXXXXX v0.1

Term						
Commencement Date	Day		Month		Year	
End Date	Day		Month		Year	

Subscription
1. Kainos is a reseller of Microsoft software, products and online services, accessible via the Azure platform, a list of which can be found here: https://docs.microsoft.com/en-gb/azure/cloud-solution-provider/overview/azure-csp-available-services (the "Azure Subscription(s)"). 2. Kainos is a Cloud Solution Provider ("CSP") and a member of the Microsoft Partner Network. 3. Customer will purchase its Azure Subscriptions through Kainos and Kainos will act as a CSP for the Customer.

Charges												
1. Azure pricing is set by Microsoft and is subject to change by Microsoft from time to time. 2. The current Azure Subscription list price can be found here: https://azure.microsoft.com/en-gb/pricing/calculator/ 3. Under this Order Form, the Customer may purchase the Azure Subscription "Consumption Offering" which calculates monthly charges based on the Customer's actual usage of the Azure Subscription, plus VAT and expenses (if any). 4. [Kainos will apply a discount to the Consumption Offering monthly charges during the Term, as set out in the Table below:]												
<table> <tr> <th>Consumption Offering (monthly charges)</th> <th>Discount (%)</th> </tr> <tr> <td>[Less than £5,000]</td> <td>[%]</td> </tr> <tr> <td>[£5,000 to £10,000]</td> <td>[%]</td> </tr> <tr> <td>[£10,001 to £50,000]</td> <td>[%]</td> </tr> <tr> <td>[£50,001 to £100,000]</td> <td>[%]</td> </tr> <tr> <td>[More than £100,000]</td> <td>[%]</td> </tr> </table>	Consumption Offering (monthly charges)	Discount (%)	[Less than £5,000]	[%]	[£5,000 to £10,000]	[%]	[£10,001 to £50,000]	[%]	[£50,001 to £100,000]	[%]	[More than £100,000]	[%]
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[£10,001 to £50,000]	[%]											
[£50,001 to £100,000]	[%]											
[More than £100,000]	[%]											
5. [Discounts to the Consumption Offering (monthly charges) will be applied to each monthly invoice.] 6. [The estimated total cost for the Customer's Azure consumption for the Term, after discount has been applied is £[X] (the estimate is based on [X] months x £[X]). The Customer will be billed for actual consumption (after discount)]. 7. Invoicing is monthly in arrears, payment terms are thirty (30) days from the date of invoice. 8. [Any discounts applied will be removed where the invoice in which the discount appears is overdue and the full amount will become payable.] 9. The currency applicable to this Order Form is GBP Sterling.												

Commercials

1. Resale of the Azure Subscription is governed by this Order Form read in conjunction with these [Kainos Microsoft Azure Subscription Terms and Conditions](#) (the "**Agreement**"). The Agreement is between Kainos and the Customer.
2. The Customer's right to use, and its use of, the Azure Subscription is governed by the [Microsoft Customer Agreement](#) (the "**Microsoft Customer Agreement**"). The Microsoft Customer Agreement is between the Customer and Microsoft Operations Ireland Limited.
3. To place an order, Customers should sign and return a completed Order Form to Kainos (with a physical or electronic purchase order, if applicable) before the Commencement Date.
4. The Agreement and the Microsoft Customer Agreement are contracted on signature of this Order Form by the Customer and Kainos.
5. This Microsoft Azure Subscription Order Form is entirely distinct and separate from the existing agreements between Customer and Kainos ("**Existing Agreement(s)**"). The Azure Subscription and the Existing Agreement(s) will be governed by their respective terms and conditions.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos Microsoft Azure Subscription Terms and Conditions

KAINOS | MICROSOFT AZURE SUBSCRIPTION TERMS AND CONDITIONS

DEFINITIONS

Agreement means the Order Form read in conjunction with these Terms and Conditions.

Charges means Kainos' then current time and materials rate card.

Confidential Information means information which may reasonably be regarded as confidential information and which relates to the business affairs, products, services, marketing strategy, developments, trade secrets, know-how, personnel, customers and suppliers, data (including all data subject to the data protection legislation or materials, unpatented designs, drawings, software specifications, processes, testing procedures, security systems, text, diagrams, images or sounds of the same, in whatever form and however embodied or carried including in any electronic tangible or intangible medium which are supplied or in respect of which access is granted by the disclosing Party to the receiving Party in connection with the Agreement or otherwise, whether directly or indirectly.

Customer Data has the meaning assigned to it in the Microsoft Customer Agreement.

Initial Term means the period of twelve (12) months from and including the Commencement Date stated in the Order Form.

IPR means intellectual property and includes without limitation, patents, trademarks, service marks, registered designs, applications for any of those rights, trade and business names (including internet domain names and e-mail address names), unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions; and rights of the same or similar effect or nature, in each case, in any jurisdiction.

Order Form means the document by which the Customer places an order to purchase an Azure Subscription from Kainos.

Party (and collectively the "**Parties**") means the individual Kainos entity and Customer entity as specified in the Order Form.

SLA means the service level agreement commitments Microsoft makes to its Customers regarding delivery and/or performance of the applicable Azure Subscription.

Azure Subscription means a right to the Microsoft online services for the Term.

Term means the duration of the Azure Subscription as specified in the Order Form.

1. The Agreement authorises Kainos to procure the Azure Subscription for the Customer from Microsoft.
2. Save as expressly set out in the Agreement, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the provision and/or the results of the Azure Subscription are excluded by Microsoft and the Parties to the fullest extent permitted by law.

LIABILITY

3. Unless applicable law requires otherwise, the only remedy that either Party will have for anything related to this Agreement is to obtain direct damages from the liable Party up to the amount actually paid by Customer to Kainos during the twelve (12) month period immediately preceding the claim.

4. To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of:

- (i) profits (actual or anticipated)
- (ii) revenue;
- (iii) business;
- (iv) goodwill;
- (v) business opportunities;

(vi) potential savings whether or not the loss or losses arising out in each of the foregoing categories (i) to (vi) are direct, indirect, consequential in nature and whether or not the other Party was informed, was aware or should have been aware of the possibility of such loss arising.

5. Customer will indemnify Kainos under this Agreement for any Customer breaches of the Microsoft Customer Agreement which attract liability for Kainos.

6. No limitation of liability shall apply where death or personal injury is caused by either Party's negligence or the negligence of its employees, servants or agents.

7. The limitations of liability set out in this Agreement do not apply to claims for non-payment, fraud, defence of infringement claims and the Customer's violation of Microsoft's intellectual property rights. Each Party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other's Party or its' agents caused or contributed to that loss or damage.

MICROSOFT CUSTOMER AGREEMENT

8. It is a condition precedent of Kainos entering into the Agreement that the Customer has entered into the Microsoft Customer Agreement. The Microsoft Customer Agreement is a separate contract between the Customer and Microsoft and is binding as between the Customer and Microsoft on signature of the Order Form.

9. The Customer agrees that:

- a. Microsoft may revise and/or update the Microsoft Customer Agreement from time to time during the Term and the Customer is bound by the latest version of the Agreement;

- b. Neither Kainos or the Customer may revise the Microsoft Customer Agreement in any way; and
 - c. Microsoft may accept or reject any proposed Customer at their discretion.
10. Customer acknowledges and accepts that Kainos must promptly disclose to Microsoft any known or suspected violations of the Microsoft Customer Agreement by the Customer.

AZURE SUBSCRIPTION

11. The Azure Subscription is provided on a consumption model (also called Pay-As-You-Go) which means that the Customer will pay Kainos based on their actual usage of the Azure Subscription. It is solely the Customer's responsibility to monitor its usage of the Azure Subscription. Kainos will provide a monthly usage report to the Customer.
12. Customer's rights to the Azure Subscription does not include any license, right, power or authority to cause any part of the Azure Subscription to become subject to the terms of an excluded license. An "excluded license" is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

TERMINATION

13. The Customer cannot cancel or terminate the Agreement (other than by reason of material breach) or transfer the Azure Subscription, during the Initial Term. After the Initial Term, either Party may cancel the Agreement by providing thirty (30) days written notice to the other Party.
14. The Customer's Azure Subscription will endure for the Term set out in the Order Form and will automatically renew on the End Date of the Term for successive twelve (12) month periods unless the Customer provides Kainos with written notice via email to liveops@kainos.com of its intention not to renew at least thirty (30) days before the End Date. The Customer's request will be confirmed by email. If Customer does not receive confirmation from Kainos within two (2) calendar days of request, please contact 02890 571200. Upon renewal of the Customer's Azure Subscription, the Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this Agreement. Pricing for a renewal term will be at Kainos' current price list.
15. Kainos may at its discretion immediately terminate this Agreement if: (i) Microsoft varies and or discontinues the Azure Subscription or component elements of it; (ii) the Customer fails to pay amounts due; or (iii) if the Customer materially breaches any of the terms or conditions of this Agreement.
16. Upon cancellation, termination or expiry of the Azure Subscription: (i) the Customer will have ninety (90) days to migrate any Customer Data to either a new Azure Subscription with Kainos or with Microsoft directly. Any migration assistance requested from Kainos by the Customer will incur additional Charges; (ii) the Customer will be responsible for paying any outstanding monies due to Kainos in accordance with the Agreement; (iii) Customer's entitlement to the Azure Subscription and associated benefits under the Agreement will cease and Customer is solely responsible for the consequences of termination and/or for procuring alternative cloud services from Microsoft or another provider, if required.
17. If either Party materially breaches this Agreement, the other Party may terminate the breached Agreement (in whole or in part, including orders) upon written notice. If the breach is curable within thirty (30) days, then the terminating Party must provide thirty (30) days' notice to the breaching Party and an opportunity to cure the breach.
18. At any time during this Agreement, Microsoft may terminate any Customer's status as a Customer. Microsoft will promptly notify Kainos of the termination of any of its Customers. Following such a notice, Kainos will immediately stop collecting orders under the Azure Subscription from the terminated Customer. Kainos will also stop delivery of any program information and materials to the terminated Customer. Termination will not affect the Customer's obligation to file the next required order or report, if any. If Microsoft terminates a Customer, Customer will not have any claim against Microsoft or Kainos for damages or lost profits resulting from the termination. Kainos will be entitled to invoice the Customer for the Azure Subscription that the Customer ordered before termination.
19. Kainos and/or Microsoft may disable a Customer's Azure Subscription or any part of it for legal or regulatory reasons; and/or Customer's breach of this Agreement and/or the Microsoft Customer Agreement. Depending on the component element of the Azure Subscription being disabled, Customer may have limited or no access to the Azure Subscription. Neither Kainos or Microsoft will be liable in any manner whatsoever to Customer arising out of disablement of the Customer's Azure Subscription. Kainos will notify the Customer of a disablement as soon as reasonably practicable.
20. The Agreement may be terminated with immediate effect, without penalty, by either Party serving on the other a written notice to terminate if the other: presents a petition or have a petition presented by a creditor for its winding up (which shall not be dismissed, adjourned or otherwise rendered ineffective), or shall convene a meeting to pass a resolution for voluntary winding up, or is subject to a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors (other than for the purposes of a bona fide reconstruction or amalgamation) or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a trustee, receiver, administrative receiver or

similar officer appointed in respect of all or any of its undertakings or assets, or shall be deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall cease to carry on business as a going concern.

21. Termination, cancellation or expiration of the Agreement shall not affect the accrued rights or liabilities of either Party.

PAYMENT

22. If any sum payable to Kainos under this Agreement is in arrears for more than thirty (30) days after the due date, Kainos reserves the right, without prejudice to any other right or remedy, to:

- a. charge interest on such overdue sum, on a daily basis in accordance with the Late Payment of Commercial Debts Regulations 2013; and/or
- b. suspend the provision of the Azure Subscription on prior written notice to the Customer.

23. The Customer may not withhold payment or offset monies due to Kainos.

24. The right to levy interest and/or suspend Azure Subscription under clause 22 shall not apply to overdue sums which are in dispute provided that where the dispute is resolved in Kainos' favour, Kainos may retrospectively apply interest and/or suspend Azure Subscription until payment is received in full. If Customer disputes an invoice it shall do so within seven (7) calendar days of receipt of the invoice.

GENERAL

25. Each Party shall and shall procure that persons associated with it or other persons who are performing in connection with the Agreement shall: (a) comply with all applicable laws, statutes, regulations and codes relating to any applicable anti-bribery and anti-corruption laws, and (b) not engage in any activity, practice or conduct which would constitute an offence under the any applicable anti-bribery and anti-corruption laws.

26. Neither Party shall be liable to the other for any delay or failure to perform arising from a Force Majeure event.

27. The Parties warrant that they will duly observe and comply with all of their respective obligations under the applicable data protection legislation when carrying out obligations or exercising rights under the Agreement.

28. No variation of the Agreement will be effective unless evidenced in writing and signed by both Parties. The Agreement supersedes all prior or contemporaneous oral or written statements, proposals, communications and representations with regard to the subject matter of The Agreement. For the avoidance of doubt, the terms on either Party's purchase orders, invoices or other business forms will not supplement or alter the Agreement and are not binding on the other Party as a variation to the Agreement whether or not they pre-date or post-date the Agreement unless they are expressly incorporated into a formal written agreement signed by both Parties which specifically states the Parties' intention to vary the Agreement. Nothing in the Agreement will operate to vary or invalidate any other contracts in existence between the Parties which will operate independently of the Agreement under the terms and conditions agreed.

29. The IPR (if any) in any third party or Kainos proprietary or commercial software remains vested in Kainos and/or such third party software vendors; the IPR in pre-existing Kainos components, tools and implementation techniques vest in and will remain vested in Kainos.

30. For a period of two (2) years from the Commencement Date, the Parties shall not disclose or use any Confidential Information (except for the legitimate performance of the Azure Subscription) without the prior express written consent of the other Party. This clause 30 shall not apply to: (i) Any information in the public domain other than in breach of the Agreement; (ii) Information already in the lawful possession of the receiving Party before its receipt from the disclosing Party; (iii) Information obtained from a third party who is free to and legally entitled to divulge it; (iv) Disclosure of information which is required by law; and (v) information developed or created by one Party independently of the other.

31. The Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under The Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that either Party may assign the Agreement without such consent in connection with a merger, demerger, corporate reorganisation or asset sale. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

32. Each Party reserves all rights which are not expressly granted under the Agreement. No person who is not a party to the Agreement shall acquire rights under it or be entitled to benefit from any of its terms even if that person has relied on such term or has indicated its assent to any such item.

33. Microsoft may send direct communications to the Customer related to the terms of the Microsoft Customer Agreement or the operation or delivery of the Azure Subscription. The Customer must provide Kainos with accurate contact information for the administrator of each Customer domain and consents to this information being passed onto Microsoft for these purposes.

34. The Azure Subscription, Microsoft products, software, services and technology are subject to U.S. export jurisdiction. All Parties must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments. For additional information related to Microsoft compliance with export rules, see www.microsoft.com/exporting.

35. If Kainos and Microsoft discontinue doing business with each other, the Customer will need to choose a replacement for Kainos, or purchase an Azure Subscription directly from Microsoft. In such circumstances, Kainos

will not be liable in any manner whatsoever to Customer.

36. Any dispute arising out of or in connection with the Agreement will in the first instance be referred to the Project Managers for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Head of Delivery level, who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Managing Director level who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.

37. Nothing in the Agreement shall make Kainos an employee of the Customer and the relationship between Customer and Kainos shall be one of principal and independent contractor.

38. The Agreement is governed by the laws of England and the Parties submit to the non-exclusive jurisdiction of the Courts of England.

KAINOS RESPONSIBILITIES

39. Microsoft makes certain service level commitments to Customers in the SLA. If Customer makes a claim on the SLA, Kainos must escalate the claim to Microsoft for review. Microsoft will review the claim according to the standard SLA review process. Microsoft will then apply any credit due on Kainos' next billing reconciliation report. Kainos will then credit the Customer that submitted the SLA claim at least the amount Microsoft has paid Kainos for the SLA credit. Customer is eligible for credits not to exceed the total monthly Azure Subscription estimated retail price ("ERP"). Microsoft reserves the right to audit outages per Azure Subscription or per service basis at any time.

40. Kainos will perform certain functions associated with the purchase, activation, support and management of Customer's Azure Subscription.

41. Kainos will provide support services with regard to the Azure Subscription on a continuous basis and will be the point of contact for Customer for all operational or technical support questions related to the Azure Subscription. Support services will comprise of: account set-up; sign up; accounts and billing; "how to" articles and FAQs; service and software updates; software configuration; performance issues within Kainos' span of control; client connectivity and client desktop; and service availability issues within Kainos' span of control.

42. If the Customer requires assistance under this Agreement it should contact Kainos via the Kainos Incident Management System ("KIM"). KIM can be accessed using the following hyperlink: <https://support.kainos.com>; by telephoning Kainos' Live Operations team on telephone number 02890 571200; or by emailing support@kainos.com.

43. If Kainos receives a request for Customer Data either directly from a law enforcement agency or as redirected to Kainos by Microsoft, then Kainos shall redirect the law enforcement agency to request that data directly from Customer.

CUSTOMER RESPONSIBILITIES

44. To the extent required by law, Customer shall have the relevant consents from individual users to facilitate the processing of their data by Microsoft in the event that Microsoft is required to disclose it to law enforcement or other governmental authorities.

NOTICES

45. All notices and requests required or permitted under this Agreement shall be in writing. Any notice or request provided for by this Agreement shall be given either by personal delivery or recorded delivery. Notice or request shall be

deemed to be effective: (a) when it is given, in the case of notice or request by personal delivery; (b) on receipt, in the case of certified mail.

46. Either Party must send notices to the other Party's Registered Office Address, as specified in the Order Form.

Kainos AWS Services

Order Form (Public Sector)

Status
Security
Version No.

Definitive
Confidential
4.0

KAINOS | AWS SERVICES ORDER FORM (PUBLIC SECTOR)

Customer Details	
Customer Name	
Registered Office Address	
Customer Contact, Number & Email	
Invoice Contact, Number & Email	
Purchase Order Number	

Kainos Details	
Kainos Name	Choose an item.
Registered Office Address	Choose an item.
Kainos Contact, Number & Email	
Kimble Code	PIDXXXXXX v0.1

Term					
Commencement Date	Day		Month		Year
End Date	Day		Month		Year

Services
1. Kainos is a reseller of Amazon Web Services, Inc. and affiliates ("AWS") services, a list of which can be found here: Authorized Services List (the "AWS Services"). 2. Kainos is an AWS Solution Provider ("Solution Provider") and a member of the AWS Partner Network. 3. Customer will purchase its AWS Services through Kainos and Kainos will act as a Solution Provider for the Customer.

Charges
1. AWS Services pricing is set by AWS and is subject to change by AWS from time to time. 2. The current AWS Services Pricing can be found here: AWS Pricing Calculator 3. Under this Order Form, Customer may avail of the AWS Services. Monthly charges are based on the Customer's actual usage of the AWS Services, plus VAT and expenses (if any). 4. Invoicing is monthly in arrears, payment terms are thirty (30) calendar days from the date of invoice. 5. The currency applicable to this Order Form is GBP Sterling. AWS will bill in USD and Kainos will use the exchange rate of USD to GBP on the date it receives the invoice from AWS.

Commercials
1. Resale of the AWS Services are governed by this Order Form read in conjunction with these Kainos AWS Services Terms and Conditions (the "Agreement"), located at AWS Services Terms and Conditions. 2. The Customer's access to, and its use of, the AWS Services is governed by the Public Sector Access Policy, (the "AWS Access Policy") located at AWS Public Sector Access Policy as updated by AWS from time to time. 3. To place an order, Customers should sign and return a completed Order Form to Kainos (with a physical or electronic purchase order, if applicable) before the Commencement Date.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos AWS Services Terms and Conditions (Public Sector)

KAINOS | AWS SERVICES TERMS AND CONDITIONS (PUBLIC SECTOR)

DEFINITIONS

Agreement means the Order Form read in conjunction with these Terms and Conditions.

Charges means Kainos' then current time and materials rate card.

Confidential Information means information which may reasonably be regarded as confidential information and which relates to the business affairs, products, services, marketing strategy, developments, trade secrets, know-how, personnel, customers and suppliers, data (including all data subject to the data protection legislation or materials, unpatented designs, drawings, software specifications, processes, testing procedures, security systems, text, diagrams, images or sounds of the same, in whatever form and however embodied or carried including in any electronic tangible or intangible medium which are supplied or in respect of which access is granted by the disclosing Party to the receiving Party in connection with the Agreement or otherwise, whether directly or indirectly.

Customer Data means all data that is provided to AWS by the Customer through use of AWS Services.

Initial Term means, unless otherwise stated in the Order Form, the period of twelve (12) months from and including the Commencement Date stated in the Order Form.

IPR means intellectual property and includes without limitation, patents, trademarks, service marks, registered designs, applications for any of those rights, trade and business names (including internet domain names and e-mail address names), unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions; and rights of the same or similar effect or nature, in each case, in any jurisdiction.

Order Form means the document by which the Customer places an order to purchase AWS Services from Kainos.

Party (and collectively the "**Parties**") means the individual Kainos entity and Customer entity as specified in the Order Form.

AWS Services means a right to the AWS Services for the Term.

Term means the duration of the AWS Services as specified in the Order Form.

1. The Agreement authorises Kainos to procure the AWS Services for the Customer from AWS. Kainos is not an agent or representative of AWS.
2. Save as expressly set out in the Agreement, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the provision and/or the results of the AWS Services are excluded by AWS and the Parties to the fullest extent permitted by law.

LIABILITY

3. Unless applicable law requires otherwise, the only remedy that either Party will have for anything related to this Agreement is to obtain direct damages from the liable Party up to the amount actually paid by Customer to Kainos during the twelve (12) month period immediately preceding the claim.
4. To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of:
 - i. profits (actual or anticipated);
 - ii. revenue;
 - iii. business;
 - iv. goodwill;
 - v. business opportunities;
 - vi. potential savings whether or not the loss or losses arising out in each of the foregoing categories (i) to (vi) are direct, indirect, consequential in nature and whether or not the other Party was informed, was aware or should have been aware of the possibility of such loss arising.
5. Customer will indemnify Kainos under this Agreement for any Customer breaches of the AWS Access Policy which attract liability for Kainos.
6. No limitation of liability shall apply where death or personal injury is caused by either Party's negligence or the negligence of its employees, servants or agents.
7. The limitations of liability set out in this Agreement do not apply to claims for non-payment, fraud, defence of infringement claims and the Customer's violation of AWS's intellectual property rights. Each Party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other's Party or its' agents caused or contributed to that loss or damage.
8. Kainos is not liable for the operation or use of the AWS Services.

AWS ACCESS POLICY

9. The AWS Access Policy is part of this Agreement.
10. The Customer acknowledges and agrees that in respect of the AWS Services procured under this Agreement that Kainos is passing through the benefits and burdens of the AWS Services contracted and does not warrant or provide any indemnity in respect of the AWS Services. The Customer's use of the AWS Services shall be governed by the AWS Access Policy. It is the Customer's responsibility to satisfy itself with these terms and to comply with same.
11. The Customer is responsible for properly configuring and using the AWS Services and associated accounts

and agrees to take appropriate action to secure, protect and back-up its information and data to prevent unauthorized access, loss or disclosure.

12. The Customer agrees that:
 - a. AWS may revise and/or update the AWS Access Policy from time to time during the Term and the Customer is bound by the latest version;
 - b. Neither Kainos or the Customer may revise the AWS Access Policy in any way; and
 - c. AWS may accept or reject any proposed Customer at their discretion.
13. Customer acknowledges and accepts that Kainos may promptly disclose to AWS any known or suspected violations of the AWS Access Policy by the Customer.

AWS SERVICES

14. The AWS services are provided on a consumption model (also commonly known as Pay-As-You-Go) which means that the Customer will pay Kainos based on their actual usage of the AWS Services. It is solely the Customer's responsibility to monitor its usage of the AWS Services. Kainos will provide a monthly usage report to the Customer.
15. Customer's rights to the AWS Services does not include any license, right, power or authority to cause any part of the AWS Services to become subject to the terms of an excluded license. An "excluded license" is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

TERMINATION

16. The Customer cannot cancel or terminate the Agreement (other than by reason of material breach) or transfer the AWS Services, during the Initial Term. After the Initial Term, either Party may cancel the Agreement by providing thirty (30) days written notice to the other Party.
17. The Customer's AWS Services will endure for the Term set out in the Order Form and will automatically renew on the End Date of the Term for successive twelve (12) month periods unless the Customer provides Kainos with written notice via email to liveops@kainos.com of its intention not to renew at least thirty (30) days before the End Date. The Customer's request will be confirmed by email. If Customer does not receive confirmation from Kainos within two (2) calendar days of request, please contact 02890 571200. Upon renewal of the Customer's AWS Services, the Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this Agreement. Pricing for a renewal term will be at AWS' current pricing.
18. Kainos may at its discretion immediately terminate this Agreement if: (i) AWS varies and or discontinues the AWS Services or component elements of it; (ii) Kainos is no longer authorised to provide AWS Services as a Solution Provider or a member of the AWS Partner Network (iii) the Customer fails to pay amounts due; or (iv) if the Customer materially breaches any of the terms or conditions of this Agreement or the AWS Access Policy.
19. Upon cancellation, termination or expiry of the AWS Services: (i) the Customer will have ninety (90) days to migrate any Customer Data to either a new AWS Service with Kainos or with AWS directly. Any migration assistance requested from Kainos by the Customer will incur additional Charges; (ii) the Customer will be responsible for paying any outstanding monies due to Kainos in accordance with the Agreement; (iii) Customer's entitlement to the AWS Services and associated benefits under the Agreement will cease and Customer is solely responsible for the consequences of termination and/or for procuring alternative cloud services from AWS or another provider, if required.
20. If either Party materially breaches this Agreement, the other Party may terminate the breached Agreement (in whole or in part, including orders) upon written notice. If the breach is curable within thirty (30) days, then the terminating Party must provide thirty (30) days' notice to the breaching Party and an opportunity to cure the breach.
21. At any time during this Agreement, AWS may terminate any Customer's ability to access and use the AWS Services. AWS may notify Kainos of the termination of any of its Customers. Following such a notice, Kainos will immediately stop collecting orders under the AWS Services from the terminated Customer. Kainos will also stop delivery of any program information and materials to the terminated Customer. Termination will not affect the Customer's obligation to file the next required order or report, if any. If AWS terminates a Customer, Customer will not have any claim against AWS or Kainos for damages or lost profits resulting from the termination. Kainos will be entitled to invoice the Customer for the AWS Services that the Customer ordered before termination.
22. Kainos and/or AWS may disable a Customer's AWS Services or any part of it for legal or regulatory reasons; and/or Customer's breach of this Agreement and/or the AWS Access Policy. Depending on the component element of the AWS Service being disabled, Customer may have limited or no access to the AWS Services. Neither Kainos nor AWS will be liable in any manner whatsoever to Customer arising out of disablement of the Customer's AWS Services. Kainos and/or AWS will notify the Customer of a disablement as soon as reasonably practicable.
23. The Agreement may be terminated with immediate effect, without penalty, by either Party serving on the

other a written notice to terminate if the other: presents a petition or have a petition presented by a creditor for its winding up (which shall not be dismissed, adjourned or otherwise rendered ineffective), or shall convene a meeting to pass a resolution for voluntary winding up, or is subject to a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors (other than for the purposes of a bona fide reconstruction or amalgamation) or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a trustee, receiver, administrative receiver or similar officer appointed in respect of all or any of its undertakings or assets, or shall be deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall cease to carry on business as a going concern.

24. Termination, cancellation or expiration of the Agreement shall not affect the accrued rights or liabilities of either Party.

PAYMENT

25. If any sum payable to Kainos under this Agreement is in arrears for more than thirty (30) days after the due date, Kainos reserves the right, without prejudice to any other right or remedy, to:
- charge interest on such overdue sum, on a daily basis in accordance with the Late Payment of Commercial Debts Regulations 2013; and/or
 - suspend the provision of the AWS Services on prior written notice to the Customer.
26. The Customer may not withhold payment or offset monies due to Kainos.
27. The right to levy interest and/or suspend AWS Services under clause 22 shall not apply to overdue sums which are in dispute provided that where the dispute is resolved in Kainos' favour, Kainos may retrospectively apply interest and/or suspend AWS Services until payment is received in full. If Customer disputes an invoice it shall do so within seven (7) calendar days of receipt of the invoice.
28. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement.

GENERAL

29. Each Party shall and shall procure that persons associated with it or other persons who are performing in connection with the Agreement shall: (a) comply with all applicable laws, statutes, regulations and codes relating to any applicable anti-bribery and anti-corruption laws, and (b) not engage in any activity, practice or conduct which would constitute an offence under the any applicable anti-bribery and anti-corruption laws.
30. Neither Party shall be liable to the other for any delay or failure to perform arising from a Force Majeure event.
31. The Parties warrant that they will duly observe and comply with all of their respective obligations under the applicable data protection legislation when carrying out obligations or exercising rights under the Agreement. If Kainos processes any Personal Data under this agreement, this [Data Processing Annex](#) will apply and this [Data Table](#) will be completed.
32. No variation of the Agreement will be effective unless evidenced in writing and signed by both Parties. The Agreement supersedes all prior or contemporaneous oral or written statements, proposals, communications and representations with regard to the subject matter of The Agreement. For the avoidance of doubt, the terms on either Party's purchase orders, invoices or other business forms will not supplement or alter the Agreement and are not binding on the other Party as a variation to the Agreement whether or not they pre-date or post-date the Agreement unless they are expressly incorporated into a formal written agreement signed by both Parties which specifically states the Parties' intention to vary the Agreement. Nothing in the Agreement will operate to vary or invalidate any other contracts in existence between the Parties which will operate independently of the Agreement under the terms and conditions agreed.
33. The IPR (if any) in any third party or Kainos proprietary or commercial software remains vested in Kainos and/or such third party software vendors; the IPR in pre-existing Kainos components, tools and implementation techniques vest in and will remain vested in Kainos.
34. For a period of two (2) years from the Commencement Date, the Parties shall not disclose or use any Confidential Information (except for the legitimate performance of the AWS Services) without the prior express written consent of the other Party. This clause 30 shall not apply to: (i) Any information in the public domain other than in breach of the Agreement; (ii) Information already in the lawful possession of the receiving Party before its receipt from the disclosing Party; (iii) Information obtained from a third party who is free to and legally entitled to divulge it; (iv) Disclosure of information which is required by law; and (v) information developed or created by one Party independently of the other.
35. The Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under The Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that either Party may assign the Agreement without such consent in connection with a merger, demerger, corporate reorganisation or asset sale. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

36. Each Party reserves all rights which are not expressly granted under the Agreement. No person who is not a party to the Agreement shall acquire rights under it or be entitled to benefit from any of its terms even if that person has relied on such term or has indicated its assent to any such item.
37. AWS may send direct communications to the Customer related to the terms of the AWS Access Policy or the operation or delivery of the AWS Services. The Customer must provide Kainos with accurate contact information (including telephone number and email address) and, if applicable, AWS Services account IDs and consents to this information being passed onto AWS.
38. If Kainos and AWS discontinue doing business with each other, the Customer will need to choose a replacement for AWS, or purchase AWS Services directly from AWS. In such circumstances, Kainos will not be liable in any manner whatsoever to Customer.
39. Any dispute arising out of or in connection with the Agreement will in the first instance be referred to the Project Managers for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Head of Delivery level, who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Managing Director level who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.
40. Nothing in the Agreement shall make Kainos an employee of the Customer and the relationship between Customer and Kainos shall be one of principal and independent contractor.
41. The Agreement is governed by the laws of England and the Parties submit to the non-exclusive jurisdiction of the Courts of England.

KAINOS RESPONSIBILITIES

42. Kainos will perform certain functions associated with the purchase, activation, support and management of Customer's AWS Services.
43. Kainos will provide support services with regard to the AWS Services on a continuous basis and will be the point of contact for Customer for all operational or technical support questions related to the AWS Services. Support services will comprise of: account set-up; sign up; accounts and billing.
44. If the Customer requires assistance under this Agreement it should contact Kainos via the Kainos IT Service Management Tool ("ITSM"). The Customer may also access the ITSM on: +44 (0) 2890 571200; or by emailing support@kainos.com.
45. If Kainos receives a request for Customer Data either directly from a law enforcement agency or as redirected to Kainos by AWS, then Kainos shall redirect the law enforcement agency to request that data directly from Customer.

CUSTOMER RESPONSIBILITIES

46. Customer shall comply with their relevant obligations under data protection laws including providing all necessary information and notices to, and obtain all necessary consents from, any data subjects whose personal data the Customer provides to Kainos and in turn to AWS in respect of this Agreement. To the extent required by law, Customer shall have the relevant consents from individual users to facilitate the processing of their data by AWS in the event that AWS is required to disclose it to law enforcement or other governmental authorities.
47. Customer consents to allow Kainos to transfer personal data to AWS and consents to allow AWS to collect, process, and use personal data for purposes of the AWS Services, the business relationship between AWS and Kainos, or marketing and providing AWS Services to Customer and Kainos.
48. Where Customer uses AWS Service that include one or more third-party solutions, Kainos may disclose to AWS and AWS may disclose to the applicable third-party solution provider information associated with Customer's use of the third-party solution.

NOTICES

49. All notices and requests required or permitted under this Agreement shall be in writing. Any notice or request provided for by this Agreement shall be given either by personal delivery or recorded delivery. Notice or request shall be deemed to be effective: (a) when it is given, in the case of notice or request by personal delivery; (b) on receipt, in the case of certified mail.
50. Either Party must send notices to the other Party's Registered Office Address, as specified in the Order Form.

Supplementary Artificial Intelligence (“AI”) Terms

Status
Security
Version No.

Definitive
Confidential
1.0

Supplementary AI Terms

These supplementary terms apply where any Kainos services or deliverables provided under G-Cloud 15 are supported by, incorporate or rely on artificial intelligence ("**AI Terms**").

1. Use of AI

Kainos services or deliverables may be supported by or include AI (including third-party AI technologies). AI may generate outputs that are probabilistic in nature and may contain inaccuracies or omissions.

Kainos is not liable for the accuracy, completeness, suitability, reliability or fitness-for-purpose of any content, insights, recommendations or other outputs produced by AI or any third-party AI tools used as part of the Kainos offering.

2. Buyer Responsibilities

The Buyer is solely responsible for:

(a) Use of AI and resulting decisions: All decisions, actions, workflows, business processes or outcomes that rely on, incorporate or are informed by AI outputs.

(b) Verification and validation: Reviewing, verifying and validating the accuracy, quality and suitability of all AI outputs before relying on them.

(c) Rights to inputs: Ensuring that it has all rights, consents and lawful bases to use any inputs provided to AI systems (including data, prompts, content and other materials).

(d) Compliance with third-party terms: Ensuring compliance with all applicable third-party licence terms, acceptable-use policies and safety requirements relating to any AI platforms, tools or models used within the services (including any requirements imposed by the relevant AI platform provider).

(e) Legal and governance compliance: Ensuring its use of AI complies with all applicable laws, governance frameworks, internal policies, regulatory requirements and human-oversight obligations.

3. Governance, Assurance and Safeguards

Any governance, assurance, advisory, monitoring or configuration services provided by Kainos in relation to AI are provided as guidance only. Implementation, enforcement and ongoing operation of all controls or safeguards remain the Buyer's responsibility.

AI outputs must not be used by the Buyer for safety-critical, legally determinative, high-risk or consequential decisions without independent human review and appropriate safeguards.

4. Intellectual Property Rights

(a) Supplier Pre-Existing IPR: All Intellectual Property Rights in Kainos' pre-existing materials, including any AI models, algorithms, prompts, templates, scripts, tools, workflows, methods, fine-tuning artefacts, infrastructure configurations or reusable components ("**AI Materials**"), remain vested in Kainos.

(b) Licence to Buyer: To the extent necessary for the Buyer to receive and use the services, Kainos grants a non-exclusive, non-transferable, royalty-free licence to use AI-generated outputs and deliverables created specifically for the Buyer ("**Deliverables**"). This licence does not extend to the underlying AI Materials.

(c) Ownership of Deliverables: Subject to Kainos' rights in its AI Materials, the Buyer shall own the Intellectual Property Rights in the Deliverables produced specifically for the Buyer.

(d) Improvements: Any enhancements, updates, fine-tuning, optimisations or improvements to Kainos' AI Materials arising during the delivery of the services shall remain the property of Kainos.

5. AI-Related Liability

(a) Output limitations: The Buyer acknowledges that AI may produce incomplete, approximate or incorrect outputs. Kainos shall not be liable for the Buyer's use of, reliance on, or decisions made in connection with AI outputs.

(b) Buyer Data: Kainos is not liable for any errors, issues or harms arising from Buyer-provided data, prompts, configurations, training materials or other inputs.

(c) Third-Party AI Tools: Where AI capabilities depend on third-party platforms, models or licences (including Buyer-procured technologies), the Buyer is responsible for obtaining and maintaining all necessary licences and compliance. Kainos shall not be liable for failures, suspensions, outages, limitations or non-performance arising from such third-party services.

(d) Liability Cap Alignment: Any liability associated with the use of AI within the services is subject to the liability caps, exclusions and limitations set out in the applicable Call-Off Contract.

6. Transparency of AI Use

Kainos will, upon reasonable request, provide the Buyer with high-level information regarding AI tools or models used in the delivery of the services, provided that such disclosure does not require disclosure of proprietary models, confidential information or commercially sensitive details.

Kainos – Palantir flow down terms

Status
Security
Version No.

Definitive
Confidential
1.0

KAINOS | PALANTIR FLOW DOWN TERMS (BUYER INSTANCE ONLY)

1.1 The Buyer shall be solely responsible for procuring and maintaining all necessary licences for Palantir, including any associated modules such as the AIP module. The Buyer shall also be responsible for ensuring ongoing compliance with all applicable Palantir licence terms and conditions. Kainos shall not be liable for any failure by the Buyer to obtain or comply with such licences.

1.2 The Buyer will retain overall responsibility for the enterprise support, maintenance and provision of their instance of Palantir Foundry and AIP.

1.3 The Buyer will ensure their Palantir instance is available, accessible, and operational for the duration of the Services.

1.4 Kainos will not provide a Palantir instance.

1.5 The Buyer will be available to facilitate effective planning and decision making. This includes: (i) Access to key business stakeholders to shape functional requirements and design; (ii) Access to technical staff that understand and can affect necessary configuration to allow Kainos' team to deliver technical services on the Buyer's Palantir instance; (iii) Subject matter experts that understand the current data landscape to facilitate the ingestion and modelling of the required data dependencies to deliver the prioritised requirements.

1.6 Where the delivery of Services involves the use of Artificial Intelligence (AI) technologies, including Palantir AIP or other third-party AI tools, Kainos' role is limited to providing advisory support. Kainos makes no warranties or representations as to the accuracy, completeness, or fitness for a particular purpose of any content generated by AI technologies and is not liable for the Buyer's reliance on any output and accepts no liability for the Buyer's reliance on such outputs or for any errors, hallucinations, or unintended consequences arising from their use.