



## **MASTER SERVICES AGREEMENT**

Reference [MSA Reference Number]

**[CUSTOMER NAME]**

**AND**

**CENTERPRISE INTERNATIONAL LIMITED**

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this agreement is made on the Effective Date

**BETWEEN:**

- (1) **[Customer Name]** (company number **[n]**) whose registered office is at **[n]** (Customer); and
- (2) **CENTERPRISE INTERNATIONAL LIMITED** (company number 01738519) whose registered office is at Hampshire International Business Park, Lime Tree Way, Chineham, Basingstoke, Hampshire RG24 8GQ (CI).

**BACKGROUND**

- (A) Centerprise International Limited (CI) is a supplier of systems and information technology services.
- (B) The Customer wishes to obtain the Services (as defined below) from CI on the terms and conditions set out in this Agreement (as defined below).

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1 In this Agreement the following words and expressions (unless the context otherwise requires) have the following meanings:

|                           |                                                                                                                                                                                                                                                                                                                                                                                                          |
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| Affiliate                 | Any company, partnership or other entity which directly or indirectly controls, is controlled by or is under common control with either Party from time to time including as a Subsidiary or Holding Company or Subsidiary of such Holding Company (as such expressions are defined by Section 1159 of the Companies Act 2006 as from time to time amended, or their equivalent in other jurisdictions). |
| Agreement                 | This Master Services Agreement between the Parties.                                                                                                                                                                                                                                                                                                                                                      |
| Annual Service Charge     | CI's annual fee for its Services.                                                                                                                                                                                                                                                                                                                                                                        |
| Authorised Representative | A Representative of the Customer as identified in the Service Contract who is authorised by the Customer to make Service Requests, raise Incidents or request variations to the Service Contract.                                                                                                                                                                                                        |
| Authorised Signatory      | An officer or other legal representative of a Party who has signed this Agreement for and on behalf of that Party and who is thereby represented to the other Party as being vested with full authority to deal with the other Party for all purposes connected with this Agreement.                                                                                                                     |
| Business Day              | Any day between the hours of 09.00 and 17.00 on which clearing banks in the United Kingdom are open for a full                                                                                                                                                                                                                                                                                           |

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|                          | range of domestic banking transactions, other than Saturdays, Sundays and any English public holidays.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Charges                  | The cumulative Annual Service Charges and other fees as shown in the Service Contract which are payable by the Customer to CI for Services. Charges include any expenses not shown as Expenses in the Service Contract.                                                                                                                                                                                                                                                                                                                                                                                                     |
| Customer                 | The company or individual Party who has contracted with CI in this Agreement. The term "Customer" includes, where the context so admits, all employees, officers, representatives, agents, consultants, other appointees and professional advisers of the Customer.                                                                                                                                                                                                                                                                                                                                                         |
| Customer Equipment       | Any Equipment owned and/or licensed by the Customer and under the Customer's control.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Commencement Date        | The date on which the Services and billing commence as set out in the Service Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Confidential Information | Any technical, commercial, financial or other information and/or material in any form (including oral, documentary, magnetic, electronic, graphic or digital) relating to the business, affairs, finances, systems, processes and/or methods of operation of either Party which is disclosed by one Party to the other in connection with the negotiation, performance, termination or expiry of this Agreement, provided that such information and/or material is either clearly marked or identified as being confidential at the time of disclosure or is otherwise from its content obviously of a confidential nature. |
| Control                  | The power, direct or indirect, to direct or cause the direction of the management and policies of an entity whether by contract, ownership of shares, membership of the board of directors, agreement or otherwise and, in any event and without limitation, any entity owning more than 50% of the voting securities of another entity will be deemed to control that other entity. The terms "controlling" and "controlled" have corresponding meanings.                                                                                                                                                                  |
| Data                     | Customer-owned information and data, including Personal Data about a Customer, employee, supplier, policyholder, agent, representative or any other identifiable individual having dealings with the Customer (processed into documents, reports, spreadsheets, tables, presentations, databases or otherwise, attributable or non-attributable,                                                                                                                                                                                                                                                                            |

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|                             | and including personal data as defined by applicable Data Protection Legislation.                                                                                                                                                                                                                                                                            |
| Data Controller             | Has the meaning given by Data Protection Legislation.                                                                                                                                                                                                                                                                                                        |
| Data Processor              | Has the meaning given by Data Protection Legislation.                                                                                                                                                                                                                                                                                                        |
| Data Protection Legislation | i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy.                                                                                                                                         |
| Default                     | A material or persistent breach (being 3 non-material breaches in a period of 3 months) of any term or condition in this Agreement which remains unremedied (if capable of remedy) 30 days after Notice has been given to the Party in breach specifying the nature of the breach and the requirements for remedy.                                           |
| Deliverables                | Equipment to be made available and Services to be supplied by CI in connection with its performance of this Agreement, as specified in the Service Contract.                                                                                                                                                                                                 |
| Delivery/Service Location   | Location designated by the Customer where CI is required to deliver the Services as set out in the Service Contract.                                                                                                                                                                                                                                         |
| Delivery Time               | Where expressly stated or otherwise confirmed in writing by CI, the time contracted for delivery of Deliverables to a Delivery/Service Location.                                                                                                                                                                                                             |
| Demand                      | Any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty or proceeding.                                                                                                                                                                                                            |
| Disaster                    | Any unplanned event or circumstance which causes the complete or partial loss or non-availability of the Customer's systems or the Services or which prevents or materially and adversely affects the Customer's normal business operations.                                                                                                                 |
| Effective Date              | The date this Agreement is signed.                                                                                                                                                                                                                                                                                                                           |
| Equipment                   | All computers, devices, servers, workstations, terminals, or any other peripheral hardware, Media, and all Software used on such hardware, as specified in the Service Contract. This may be owned and/or licensed by: the Customer (i.e. Customer Equipment); or alternatively CI and used for the supply or operation of the Services under this Agreement |

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|               | (in which case it will be of equivalent or greater specification to that specified in the Service Contract).                                                                                                                                                                                                                                                                                                                  |
| Expenses      | Disbursements which the Customer has agreed in the Service Contract to pay in addition to Charges in respect of travel, subsistence, accommodation and any other extraneous items referred to within this Agreement.                                                                                                                                                                                                          |
| Fault         | A failure to provide the Services in accordance with the terms of this Agreement under normal operating conditions and circumstances. A Fault will not be deemed to have occurred if it has been caused by the Customer's negligence, abuse, misapplication or misuse, or by reason of Force Majeure.                                                                                                                         |
| Force Majeure | Circumstances arising beyond the reasonable control of a Party which cause delays in or failures of performance (except in respect of payment of monies already due) and include war, terrorism, fire, flood, storm, lightning, explosion, act of God, act of government or regulatory authority, civil commotion, failure of the Internet, or inability to obtain services or products from essential third-party suppliers. |
| Group         | In relation to a Party, a subsidiary or holding company of that Party or any other subsidiary of that holding company and the terms "subsidiary" and "holding company" have the meaning given to them in sections 1159 of the Companies Act 2006, or its equivalent in other jurisdictions.                                                                                                                                   |
| IPR           | All intellectual and industrial property rights (whether registered, subject to pending applications or unregistered), including patents, design rights, copyrights, database rights, trade secrets, know-how, trade and service marks, names, logos, internet domain names and any other similar protected rights in any country of the world.                                                                               |
| Media         | Computer input materials and Data, including magnetic tapes and disks.                                                                                                                                                                                                                                                                                                                                                        |
| Minimum Term  | Has the meaning given in clause 11.                                                                                                                                                                                                                                                                                                                                                                                           |
| Notice        | A formal notice, on headed paper, in writing signed by an Authorised Signatory and delivered by one Party to the other in connection with any Default or the exercise of any contractual right relating to this Agreement or for the purpose of any other official communication affecting this Agreement. Routine operational communications to and                                                                          |

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|                         | from the Account Manager are not Notices.                                                                                                                                                                                                                                                                                                                                                                                |
| Order Form              | A form detailing the Goods or Services requested by the Customer to be provided by CI under this agreement.                                                                                                                                                                                                                                                                                                              |
| Party/Parties           | CI and/or the Customer as the context requires or implies.                                                                                                                                                                                                                                                                                                                                                               |
| Personal Data           | Has the meaning given by Data Protection Legislation.                                                                                                                                                                                                                                                                                                                                                                    |
| Personnel               | Any employee, associate, agent or subcontractor of a Party who is engaged in connection with the Services and is under the management and responsibility of that Party.                                                                                                                                                                                                                                                  |
| Price List              | CI's published price list which sets out CI's Charges and Rates for its standard Services as the same may be amended from time to time in accordance with clause 45.                                                                                                                                                                                                                                                     |
| Recipient               | Either Party when receiving Confidential Information from the other Party.                                                                                                                                                                                                                                                                                                                                               |
| Regulatory Requirements | All applicable statutory and other rules, regulations, instruments and provisions in legal force from time to time, including the rules, codes of conduct, codes of practice and accreditation terms stipulated by any relevant regulatory authority (such as the Financial Conduct Authority in the United Kingdom) to which the Parties may be or become subject in connection with the performance of this Agreement. |
| Representative          | A director, officer, employee, consultant or agent of a Party.                                                                                                                                                                                                                                                                                                                                                           |
| Service Contract        | A contract for the supply of Services which is entered into by the Parties as described in clause 12.                                                                                                                                                                                                                                                                                                                    |
| Service Level Agreement | Where applicable, the service level agreement contained, or referred to unambiguously, in the Service Contract and defining the availability and performance elements of stipulated Services and the related monitoring and measurement and where relevant credit entitlements for performance shortfalls in relation to such Services.                                                                                  |
| Services                | The services to be provided pursuant to a Service Contract and detailed on the Order Form.                                                                                                                                                                                                                                                                                                                               |
| Service Term            | The term of the Service Contract as described on the Order Form.                                                                                                                                                                                                                                                                                                                                                         |
| Software                | The software content of Equipment or Customer Equipment, owned or licensed by CI (in the case of the Equipment) and                                                                                                                                                                                                                                                                                                      |

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                      | the Customer (in the case of the Customer Equipment) and, in the case of licensed software, the scope of such license(s) permitting use of the software as necessary for the provision or performance of the Services.                                                                                                                                                                                                                               |
| Special Conditions   | Any terms or conditions which amend or are additional to the terms and conditions in this Agreement and which are contained, or referred to unambiguously, in the Service Contract signed by Authorised Signatories of both Parties.                                                                                                                                                                                                                 |
| Subcontractor        | A company or other entity to whom CI may subcontract some or all of the provision of the Services pursuant to clause 105, provided always that CI will remain legally and contractually responsible at all times for all aspects of the performance of CI's obligations in this Agreement, and further provided that any Subcontractor is contractually obligated to adhere to the Confidentiality and Data Protection provisions of this Agreement. |
| Term                 | The operative period of this Agreement, as referred to in clause 9.                                                                                                                                                                                                                                                                                                                                                                                  |
| Terminating Party    | A Party who serves a Notice of termination of this Agreement or of the Service Contract on the other Party.                                                                                                                                                                                                                                                                                                                                          |
| Termination Date     | The date of which termination of this Agreement or the Service Contract takes effect in accordance with this Agreement.                                                                                                                                                                                                                                                                                                                              |
| TUPE                 | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).                                                                                                                                                                                                                                                                                                                                                              |
| Warranty of Software | A warranty by CI or, in the case of Customer Equipment, by the Customer that all Software included within the Equipment is legally and currently licensed to CI or the Customer as the case may be, for purposes which include within the scope of the Software's authorised use the provision and receipt of the Services.                                                                                                                          |
| Year                 | The period of 12 calendar months commencing on the Effective Date or the Commencement Date (as the context so requires) and each consecutive 12-month period throughout the Term.                                                                                                                                                                                                                                                                    |

- 2     **Headings.** The headings set out in this Agreement are for ease of reference only and will not affect the interpretation of this Agreement.



- 3 **Interpretation.** Unless the context otherwise requires all references to a particular clause or sub-clause will be a reference to that clause in this Agreement.
- 4 **Service Contract.** The Service Contract(s) sets out the details of specific Services which CI has undertaken to supply, including applicable descriptions of such Services.
- 5 By signing a Service Contract, the Authorised Signatories are deemed to have read and familiarised themselves with the contents of this Agreement and to have verified and agreed that the Service Contract they have signed is accurate and complete.
- 6 **Contractual Conflicts.** In the event of any conflict, the order of priority and precedence is the terms and conditions of this Agreement, the Service(s) Contract Order Form and then the Service Contract.
- 7 **Gender and Singular/Plural.** Where the context so admits, words importing the masculine gender include the feminine and vice versa, words in the singular include the plural, and words denoting persons will include any individual, partnership, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.
- 8 **Statutory References.** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 9 Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.
- 10 TERM
- 11 This Agreement shall commence on the Effective Date and shall remain in force unless and until terminated in accordance with clause 93.
- 12 The Services detailed in the Service Contract and Order Form shall commence from the Commencement Date(s) stated therein and subject to the provisions for early termination in clause 19, shall remain in force for the minimum period(s) of subscription for such Services as set out in the Service Contract Order Form (Minimum Term), and will continue thereafter for successive periods of 1 year for such Services (or parts of Services) unless and until terminated by either party giving to the other not less than 3 months' written notice of termination, expiring no earlier than the last day of the Minimum Term.
- 13 SERVICE CONTRACTS
- 14 The Customer shall upon making a request for Services disclose in writing to CI any employee or worker, together with such other details or information as CI may reasonably request, who may transfer to CI by virtue of TUPE as a result of CI performing the Services requested. The Customer undertakes to fully indemnify and hold CI harmless against any Demand (including legal and other professional fees and expenses) which CI may suffer, sustain, incur, pay or be put to arising from or in connection with the Customer failing to comply with this clause or any employee or worker which has not been disclosed in accordance with this clause transferring to CI by virtue of TUPE, including without limitation any losses suffered or incurred by CI arising out of or in connection with the termination of such person.

- 15 On receipt of a request for Services from the Customer, CI will prepare a Service Contract, which may include provisions relating to TUPE, and issue it to the Customer for approval.
- 16 Once a Service Contract and Order Form has been agreed by both Parties and signed by their Authorised Signatories, the Service Contract will be deemed to constitute a separate contract to which the terms and conditions of this Agreement apply to the exclusion of all other terms and conditions.
- 17 No addition to, nor any variation of, a Service Contract or a Service Contract Addendum shall be binding on the Parties unless in accordance with clause 29.
- 18 RELATIONSHIP OF THE PARTIES AND RELATIONSHIP MANAGEMENT
- 19 **Non-Exclusive.** This Agreement is non-exclusive between the Parties and entry into it by each Party does not preclude or prevent that Party from entering into similar agreements with other parties, provided always that any such other agreements do not constitute a breach or have the effect of breaching in any way any of the terms and conditions in this Agreement.
- 20 **No Authorisation.** Neither Party is authorised to hold itself out as the agent, partner or representative of the other Party, nor to enter into any binding commitment on behalf of the other Party, nor to make any representations or statements about the other Party without the other Party's prior express authority.
- 21 **Use of Trademarks and Logos.** Except to the limited extent permitted to CI as set out in clause 80, neither Party is authorised to use the other Party's trademarks or logos for any purpose unless an application has first been made to, and in its sole discretion approved by, the other Party on such terms as that Party may determine.
- 22 SERVICES
- 23 CI will supply the Services, and each Party will perform its obligations, in accordance with the Service Contract and Order Form relating to those Services.
- 24 CI shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies such default and to rely on it to relieve CI from the performance of any of its obligations to the extent that the default prevents or delays such performance;
- 25 CI shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CI's failure or delay to perform any of its obligations as set out in this clause **Error! Reference source not found.**; and
- 25.1.1 the Customer shall reimburse CI on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer's default.
- 25.1.2 CIL shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from CIL's failure or delay to perform any of its obligations as set out in this clause 5.3; and
- 25.1.3 the Client shall reimburse CIL on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.
- 26 CI PERSONNEL

- 27 **Continuity.** CI will use its reasonable endeavours to ensure the continuity of CI Personnel assigned to perform the Services.
- 28 **Employees and Subcontractors.** No CI Personnel will be deemed at any time to be employees of the Customer.
- 29 **Health and Safety.** CI will use all reasonable endeavours to ensure that all CI Personnel visiting Customer sites observe and comply with the Customer's reasonable rules and regulations, including health and safety and security procedures as applicable to the Services, provided that such rules and regulations have been communicated to CI.
- 30 **CHANGES TO SERVICES**
- 31 Either Party may initiate a request to vary the Service Contract by issuing a request to the other Party using the Service Contract Variation Form.
- 32 **Process.** On receipt of a request from the Customer for a change to the Services, CI will prepare a Service Contract Addendum and issue it to the Customer for approval.
- 33 **RIGHTS OF ACCESS AND AUDIT**
- 34 **Customer Right to Audit.** Not more than once annually during this Agreement the Customer will be entitled to undertake an audit of CI's performance of its obligations under this Agreement, and/or in respect of Regulatory Requirements, and thereafter until all of CI's rights, obligations and duties have come to an end under this Agreement or under Regulatory Requirements. CI will use its reasonable endeavours to arrange for representatives of the Customer to have access to any of its relevant locations (but not secure off-site facilities operated by other parties) by appointment during normal working hours within 5 Business Days' Notice for this purpose. CI will co-operate fully with any such audit and supply such relevant information, data and records as may be reasonably requested by the Customer. Subject to the same being treated as Confidential Information by the Customer, the Customer will be reasonably entitled to make copies or take extracts of such information, data and records at no charge to the Customer. If the Customer has reasonable grounds for so requesting, additional audits may be carried out at the expense of the Customer, subject always to the availability of CI resources reasonably required for such audit.
- 35 **Manager Availability.** During the course of any audit carried out by the Customer, CI will make available one or more of its managers or senior personnel with the appropriate level of expertise and authority to answer any enquiries of the Customer.
- 36 **Requests for Information.** CI will comply promptly with any reasonable request by the Customer for information (which will include documents whether stored electronically or otherwise) relating to the performance of CI's duties and obligations under this Agreement.
- 37 **Co-operation.** CI will co-operate with the Customer and reasonably assist it in its dealings with regulatory authorities and applications for authorisation or other permits which are relevant to obligations under this Agreement. CI reserves the right to recover reasonable costs and expenses incurred as part of this activity.
- 38 **PRICES AND PAYMENT**
- 39 **Prices.** The price for the Services will be set out in the Service Contract and will be based on the Price List.

- 40 **Invoicing.** CI will invoice the Customer from time to time at the invoice address stated in the Service Contract (or to such other address as may be notified to CI by the Customer) for the Charges then due. Invoices will be sent electronically (or by mail on request) to the Customer's Accounts Payable address as advised from time to time.
- 41 **VAT.** The Charges are exclusive of Value Added Tax and any other sales or value added taxes which CI may be required to pay. These will be added at the prevailing rates at the time of invoicing.
- 42 **Misreported Faults.** In the event that a reported Fault cannot be demonstrated or found or if the cause of a Fault is determined to be for any reason other than an Equipment or Service failure, CI reserves the right to charge at the timed Rate and for all Expenses incurred in responding to and investigating such misreported Fault.
- 43 **Due Payment Dates.** Charges are payable annually in advance as stipulated in the Service Contract. All other invoices will become due 30 days from the date of the invoice. All payments will be made in UK pounds sterling unless otherwise agreed in advance. If all or part of a specific invoice is disputed the Customer will notify CI, before the due date, of any amount it proposes to withhold from payment and its reasons for doing so. Set-offs against other invoices are not permitted.
- 44 **Method of Payment.** All payments by the Customer will be made by BACS or similar automated bank to bank payment service (e.g. SWIFT) to CI's nominated bank account unless otherwise agreed between the Parties.
- 45 **Late Payment.** Failure to make any payment by the due date will entitle CI to suspend some or all of the Services in its sole discretion and/or to withhold Services or Deliverables until such time as the due payment is received. CI will be entitled to levy a charge for the resumption of Services. CI will also have the right to charge the Customer interest on overdue invoices at the rate of 3% per annum above the Bank of England's base rate calculated from the date the payment becomes due until the date of actual payment whether before or after judgment.
- 46 **Price List Changes.** CI may amend its Price List from time to time, in which event the Customer will be given a minimum 30 days' Notice. In the case of Annual Service Charges, a Price List change will not take effect until the commencement of the following Year.
- 47 **EXPENSES**
- 48 **Non-Chargeable.** General day-to-day operational expenses of CI are inclusive within Charges.
- 49 **Chargeable.** Expenses reasonably and necessarily incurred by CI in the performance of Services and/or at the specific request of the Customer are chargeable. In the case of hotels, subsistence, rail and air fares Expenses are charged at cost. In the case of car mileages by CI Personnel travelling to and from a Delivery/Service Location or Protected site to perform Services a mileage rate is charged which is equivalent to the then current applicable HMRC Approved Mileage Rates.
- 50 **Overnight Charges.** When an CI specialist attends a Customer site to perform specific Services and his task is unfinished at the end of the Business Day, requiring him to return the next following day, and the Customer site is more than 50 miles from a CI site, CI may authorise its specialist to incur up to three star level hotel and reasonable subsistence costs. All such costs will be included in Chargeable Expenses.
- 51 **Remote Access.** Where the performance of Services requires remote access to the Customer's Equipment and such access is unavailable, if CI incurs additional time costs in consequence these

may be applied at the applicable Rate and will constitute Expenses.

52      **WARRANTIES AND EXCLUSIONS**

53      **Agreement Warranty.** Each Party warrants to the other that it has not relied upon, nor been induced to enter into this Agreement by, any representation not recorded in this Agreement.

54      To the extent permitted by applicable law, and save as expressly provided in this Agreement, CI disclaims all other warranties and conditions in relation to the Services, including implied warranties of quality, satisfactory performance, non-infringement, merchantability, or fitness for particular purpose.

55      **IPR and Authorisations.** CI warrants that it is either the sole and exclusive owner or an authorised licensee or user of all IPR in the Software or used in connection with the Services (including any databases, images, 'applets', graphics and text incorporated into them), and reserves all its rights in relation to such IPR. CI warrants that it will keep in force any relevant licenses, approvals, authorisations and consents which may be reasonably necessary in connection with the provision of Services.

56      **Service Standards.** CI warrants that it will provide and perform the Services using suitably qualified personnel and in accordance with the terms of the Service Level Agreement contained or referred to in the Service Contract.

57      **Data Protection.** The Parties warrant each to the other that in connection with the performance of their obligations in this Agreement, they will comply with all applicable Data Protection Legislation.

58      **Viruses.** CI warrants that it operates and regularly reviews and updates anti-virus programmes when performing Services and CI further warrants that it will use all reasonable commercial endeavours to maintain the Services free of bugs and viruses and that it will not knowingly introduce any virus onto Equipment, but the Services cannot be warranted unconditionally to be virus-free and the Customer is strongly recommended to operate and maintain its own effective anti-virus programmes.

59      **Use of Services.** CI does not provide or offer any warranties or guarantees concerning the suitability of particular Services for the Customer's business. The Customer is solely responsible for the decision to select particular Services for its own business purposes.

60      **Equipment.** CI does not warrant that the operation of Software will be uninterrupted and error-free, or that any defects will be correctable or corrected. However, if Equipment performance is unsatisfactory and cannot be remedied within a reasonable time CI will use all reasonable endeavours to secure the replacement of the Equipment as necessary to enable the proper performance of the affected Services.

61      **Legal Permissions.** Each Party represents and warrants to the other Party that it has obtained, where required by law or regulatory authority, all registrations, permits, licences and approvals necessary for it to perform its obligations in this Agreement, or alternatively, that it is exempt from obtaining them. Each Party further warrants and undertakes to the other that in performing its obligations under the terms of this Agreement it will comply with all applicable laws and regulations.

62      **LIMITATION OF LIABILITY AND INDEMNITIES**

63      Neither Party seeks to limit or exclude its liability for injury or death caused by its negligence, or the negligence of its Representatives in connection with the performance of this Agreement, or for loss

caused by any fraud (including fraudulent misrepresentation) of that Party or its Representatives, or for any other liability that cannot be limited or excluded by law.

64 **Tangible Property.** CI will indemnify the Customer for direct damage to tangible property caused by the negligence of its Representatives in connection with the performance of this Agreement. CI's total liability under this clause 63 is limited to one million pounds (£1,000,000) for any one event or series of connected events.

65 **Delay.** While CI will use all reasonable commercial efforts to meet estimated scheduled Delivery Time, the Customer's sole remedy for unreasonable delay in deliverables is the right to treat such unreasonable delay as a Default and to claim reimbursement of any Charges already paid in respect of such deliverables. The Customer acknowledges the electronic nature of some of the Services and the inherent risk that communications by electronic means may not reach their intended destination or may do so much later than intended for reasons beyond CI's reasonable control.

66 **Other Exclusions.** In no event will CI be liable to the Customer for:

66.1.1 loss of revenue;

66.1.2 loss of profits;

66.1.3 loss or business or opportunity;

66.1.4 loss of anticipated savings;

66.1.5 loss of or corruption to data or information;

66.1.6 damage to goodwill or reputation; or

66.1.7 any special, indirect or consequential loss or damage whatsoever, whether or not CI has been advised of their possibility.

67 **Maximum Liability.** Except as provided in clauses 62 and 63 above, and subject to clause 65, CI's aggregate liability to the Customer for any cause whatsoever in connection with this Agreement and every Service Contract, (whether in the form of the additional cost of remedial services or otherwise will be for direct costs and damages only, and will be limited to a maximum as follows:

67.1.1 where the event is covered by CI's insurance policies, the amount which CI actually recovers from its insurers under those policies, to a maximum of one million pounds, (£1,000,000); and

67.1.2 in all other cases, an aggregate sum equivalent to the Charges paid to CI in the period of one year up to the date of claim, plus damages limited to 25%, of the same amount for any additional costs reasonably necessarily and identifiably incurred by the Customer in obtaining alternative services.

68 **General.** The limitations of liability set out in this section B will apply whether the cause of action is under statute, in contract, tort (including negligence), or any other form of action. CI's Representatives, Subcontractors and suppliers will have the benefit of the limits and exclusions of liability set out in this clause 67.1.2 for the purposes of any application of the Contracts (Rights of Third Parties) Act 1999.

69 **Customer Indemnity.** The Customer indemnifies and will defend CI, its Representatives and Subcontractors in respect of any claims by third parties which are occasioned by any failure of the Customer to perform its obligations under this Agreement, or which arise from any compliance by CI with mandatory instructions of the Customer or its Authorised Signatories. If CI suffers any loss,

damage or expense as a result of any unauthorised access to, or use or misuse of, the Services by any employee, agent or subcontractor of the Customer, or as a result of any unauthorised access to, or use or misuse of the Services by any third party if such access, use or misuse was permitted or facilitated by such employee, agent or subcontractor, the Customer will fully indemnify CI in respect of such loss, damage or expense.

## 70 INSURANCES

71 **Minimum Cover.** CI will maintain for the duration of this Agreement appropriate insurance policies with one or more reputable insurance companies to cover, as far as commercially reasonable and available, its potential liabilities under this Agreement, and as a minimum such cover will include:

71.1.1 employer's liability insurance for an amount of not less than £25,000,000 per occurrence or series of occurrences arising from one event and which complies with all relevant legislation;

71.1.2 public and general third party insurance in respect of its liabilities under this Agreement with a combined bodily injury and property damage limit of not less than £10,000,000 per occurrence or series of occurrences arising from one event;

71.1.3 professional indemnity insurance for an amount sufficient to cover its potential liability to the Customer under this Agreement and in any event, of not less than £10,000,000 per individual claim or series of claims arising from one event.

## 72 DATA PROTECTION/PRIVACY

73 Customer **Warranty.** The Customer warrants to CI that it is the Data Controller of all Personal Data made available to CI in the course of CI's performance of any Services and the Customer is in full compliance with the Data Protection Legislation in relation to such Personal Data.

74 **Data Processing.** Where in the course of providing the Services CI has access to the Customer's Personal Data, CI shall ensure that it complies with all applicable Data Protection Legislation and the Parties shall comply with the data processing terms set out the Data Protection Agreement as defined in the Service Contract.

75 **Indemnities.** In the event that either Party (Defending Party) is subjected to or threatened with prosecution or litigation as a result of misuse of any Personal Data by the other Party, that other Party will fully indemnify the Defending Party from and against all costs, charges, damages, expenses and other financial liabilities arising from such misuse of Personal Data.

## 76 CONFIDENTIALITY

77 **Confidential Information.** All Confidential Information made available by one Party to the other Party in connection with the performance of this Agreement will be treated as confidential by the Recipient, who will use at least the same degree of care as it reasonably takes or ought to take in the safeguarding of its own confidential information. Each Party will use all reasonable endeavours to ensure that the other Party's Confidential Information is not disclosed, reproduced or copied, including in the case of CI its specifications or other information relating to any of the Services which may be provided to the Customer or which are left by CI on any Delivery/Service Location, provided that such information is not already in the public domain and does not subsequently become publicly available through the default of the Recipient.

78 **Additional Confidentiality Obligations.** Where the Customer requires CI and/or CI Personnel to give or sign any specific undertakings of confidentiality or non-disclosure beyond the general



undertakings contained in this clause 75, it will notify CI with its reasons for the requirement. The Customer agrees that no such additional undertakings will have any effect unless and until they are contained in a written document approved and signed by an Authorised Signatory of CI.

79 **Duration.** Each Party will take all reasonable steps to ensure that its Representatives are bound by these obligations of confidentiality, which will survive termination of this Agreement for a period of 3 years.

80 **Return of Confidential Information.** Upon termination of this Agreement each Recipient will return to the other Party or will destroy on the instructions of the other Party then certifying the same, all Confidential Information of the other Party not previously returned.

81 PUBLICITY

82 **Requirement for Authorisation.** The Customer authorises CI (having been granted in writing) the use of the Customer's name and logo solely for the purpose of inclusion of the existence and value of this Agreement in Customer lists used by CI in its marketing presentations. Subject to this limited authorisation by the Customer, neither Party will publicise any part of this Agreement, or disclose to any third party any work done or details of any Services provided under this Agreement, whether in print, electronic media or web-based presentation or any similar or related marketing or publicity material, without the express prior consent of the other Party, such consent not to be unreasonably withheld or delayed.

83 IPR AND INDEMNIFICATION

84 **No Assignment.** For the avoidance of doubt nothing in this Agreement assigns, transfers or licenses to the Customer any IPR owned by CI or any third party.

85 **Software Licenses.** The Customer warrants to CI that its Software license(s) entitle it to grant CI the use of Customer or Customer-licensed third party Software or materials to the limited extent necessary to enable CI to perform its obligations in connection with provision of the Services.

86 **Third Party IPR Infringement.** CI will indemnify the Customer in respect of any final judgment or award of a court of competent jurisdiction or settlement resulting from any third party claim or suit alleging that receipt of any of the Services by the Customer, infringes any third party IPR and CI agrees to be responsible for any reasonable costs (including legal fees) involved and to pay any damages and costs finally awarded against the Customer in any such claim, provided that the Customer:

86.1.1 promptly notifies CI in writing of any such claim or suit;

86.1.2 makes no admissions or settlements without CI's prior written consent;

86.1.3 allows CI complete control over any negotiations or litigation and/or the defence or settlement of the claim or suit; and

86.1.4 gives CI all information and assistance as CI may reasonably require at CI's expense.

87 **Injunctions.** If an injunction is ordered affecting CI's right to supply all or any part of the Services by reason of infringement of any third party IPR or if, in CI's opinion, the continuation of any of the Services is likely to become the subject of a claim for such infringement, CI at its option and expense may:



- 87.1.1 obtain for the Customer the right to continue to receive the Services; or
- 87.1.2 replace or procure the modification of the Services so that there is no longer any infringement; or
- 87.1.3 if neither of the above options is possible on reasonable commercial terms or at all, refund an amount equal to the sum paid by the Customer for the unused part of the affected Services.

88 **Further Use.** CI will be entitled to decline to continue to offer Services which are the subject of an alleged infringement, and if this results in suspension of the Services, the Customer may terminate this Agreement in accordance with clause 19.

89 **Exclusion.** CI will not bear any liability arising from supplying the Customer with any specifically requested information, data, service or applications assistance outside the scope of this Agreement;

90 In no circumstances will CI be liable for any costs or expenses incurred by the Customer without CI's written authorisation, provided always that CI responds reasonably and promptly to requests for such authorisation. The foregoing states the Customer's exclusive remedy in respect of any third party intellectual property right infringement as a result of provision of the Services.

#### 91 COMPLIANCE

92 CI shall comply with all applicable laws, Regulatory Requirements, guidelines or industry codes which may apply from time to time to the performance of its obligations under this Agreement, including those relating to:

93 health and safety and environmental protection; and anti-bribery/anti-corruption and anti-slavery/human trafficking. CI shall have in place and, at all times during the Term, maintain policies and procedures to ensure compliance with the Bribery Act 2010 and the Modern Slavery Act 2015, and shall provide copies of these to the Customer on request.

#### 94 TERMINATION

95 **Without Cause.** A Terminating Party may terminate this Agreement or the Service Contract in accordance with clause 9.

96 **With Cause.** If either Party is in Default of this Agreement or the Service Contract then, without prejudice to any other rights or remedies available to it, the other Party will have the right to terminate this Agreement in whole or, at its option, the relevant Service Contract forthwith by Notice.

97 **Insolvency.** Either Party will have the right to terminate this Agreement forthwith by Notice if:

- 97.1.1 an order is made or a resolution is passed for the liquidation, winding up or dissolution of the other Party (otherwise than for the purpose of reconstruction or amalgamation);
- 97.1.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other Party;
- 97.1.3 the other Party makes any voluntary (or similar) arrangement with its creditors;
- 97.1.4 an administrator is appointed over the other Party;
- 97.1.5 the other Party otherwise becomes subject to the insolvency laws in any jurisdiction; or

97.1.6 the other Party ceases, or threatens to cease, to carry on business.

98 **Cessation of Use.** On termination of all or part of this Agreement for any reason, each Party must promptly return to the other Party (certifying that fact to the other Party when it has done so), all (or all applicable if terminated in part) Confidential Information, Equipment and other materials, (including file notes, records, memoranda and other documents used in the performance of the Services) which are the property of the other Party.

99 **Termination Without Prejudice to Rights.** Any termination of all or part of this Agreement under this clause 19 will be without prejudice to any other rights or remedies of the Parties under this Agreement or at law and will not affect any accrued rights or liabilities of either Party at the date of termination.

100 **Outstanding Charges.** On termination of this Agreement, or any part of the Services, any Charges remaining unpaid in respect of any of the Services (or any of the terminated Services as the case may be) will become immediately due and payable.

101 **Termination Charges.** Termination charges relating to the termination of any Service without notice will be set out in the relevant Service Contract.

102 EMPLOYMENT OF PERSONNEL

103 **Non-Solicitation.** Throughout the Term of this Agreement (including any renewal or extension period) and for a period of 6 months from its termination (for whatever reason) each Party agrees and undertakes with the other Party that it will not, unless it has the express written consent of the other Party, directly or indirectly solicit, entice or approach with a view to employing any person employed by or acting on behalf of the other Party who has worked for the other Party for a continuous period of 6 months or more in the preceding 12 months and who was assigned to perform Services or to monitor Deliverables as the case may be. In the event that a Party employs such a person in breach of this condition, it recognises that the other Party will suffer substantial costs and damage because of disruption to its business and the high cost of recruiting and training a replacement and will therefore pay to the other Party by way of liquidated damages and not as a penalty a sum equal to 50% of the basic annual salary of the person concerned.

104 ASSIGNMENT AND SUB-CONTRACTING

105 **Assignment.** This Agreement is not transferable or assignable by either Party without the prior written consent of the other Party.

106 **Subcontracting.** Subject to its continuing responsibility to be bound by its obligations in this Agreement, when it considers it necessary or desirable CI reserves the right to sub-contract the performance of some or all of the Services to appropriately qualified Subcontractors under equivalent terms and conditions for such Services to those in this Agreement. However, CI undertakes to consult with the Customer prior to exercising this right and to take reasonable account of any objections raised by the Customer.

107 FORCE MAJEURE

108 **Notification.** Within 3 Business Days of CI becoming aware of a Force Majeure event it will notify the Customer and, if and to the extent reasonably possible, advise its proposed actions to remedy or relieve the prevention or delay of any Services.

109 **Resumption of Performance.** CI will resume the performance of its obligations under this

Agreement following the cessation of any event of Force Majeure as soon as reasonably possible. Neither Party will be liable to the other for any breach of this Agreement or for any failure to perform any of the Services as a result of any event of Force Majeure.

- 110 **Alternative Solution.** If an event of Force Majeure continues for 10 or more successive Business Days and prevents or materially impairs the provision of any Services CI will use its reasonable endeavours to procure an alternative method and/or solution to ensure such Services are delivered.
- 111 **Termination.** Subject to clause 108 if an event of Force Majeure continues beyond 30 days either Party may terminate this Agreement or the Service Contract as the case may be by giving 14 days' Notice to the other Party.
- 112 NOTICES
- 113 **Notices.** All Notices and other communications in connection with this Agreement must be in writing and addressed to the most recent address or email address notified to the sending Party. The Notice or other communication will be deemed to have been duly given:
- 113.1.1 at the date and time shown on a signed delivery receipt, if delivered by courier or other messenger during normal business hours of the receiving Party;
  - 113.1.2 on the next Business Day following mailing, if mailed by ordinary mail, first class postage pre-paid; or
  - 113.1.3 subject to clause 113.1.3, at the date and time sent if sent by email provided that a valid electronic delivery receipt is generated by 17:00 hours (local time of the recipient) on the same Business Day (or otherwise on the next following Business Day).
- 114 **Email.** The Parties agree that Notices and other communications will not be sent by email for reasons of security unless the email communications between both Parties are secured using a level of encryption in line with current UK National Cyber Security Centre guidelines.
- 115 GENERAL
- 116 **Rights of Third Parties.** Except where stated otherwise in this Agreement, a person who is not a Party has no right to benefit under, or to enforce any term of, this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 117 **Entire Agreement.** This Agreement, the Service Contract, the Service Contract Addenda and any documents referred to unambiguously therein:
- 117.1.1 contain all of the terms and conditions agreed with between the Parties for the supply of Services by CI to the Customer;
  - 117.1.2 comprise the only and entire agreement between the Parties in relation to their subject matter of the Service Contract and any Service Contract Addenda thereto; and
  - 117.1.3 supersede any previous agreements for these purposes, whether written or oral.
- 118 **No Variation.** This Agreement may not be varied or amended, by the implied authority of Representatives of the Parties or otherwise, except by agreement between the Parties as evidenced by the signatures of their respective Authorised Signatories on or after the Effective Date.
- 119 **No waiver.** No failure, delay, relaxation or indulgence on the part of either Party in the exercising of

any power or right conferred upon that Party in this Agreement, will operate as a waiver of such power or right, or of any other power or right under this Agreement, on any subsequent occasion.

- 120 **Illegal, Invalid or Unenforceable Terms.** If the whole or any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason:

120.1.1 in the case of the illegality, invalidity or unenforceability of the whole of this Agreement it will terminate in relation to the jurisdiction in question; or

120.1.2 in the case of the illegality, invalidity or unenforceability of part of this Agreement, that part will be severed from this Agreement in the jurisdiction in question and that illegality, invalidity or unenforceability will not in any way whatsoever prejudice or affect the remaining parts of this Agreement which will continue in full force and effect.

- 121 LAW AND JURISDICTION

- 122 **Governing Law.** This Agreement will be governed and construed in accordance with the laws of England and Wales.

- 123 **Jurisdiction.** Each Party hereby irrevocably agrees that the courts of England and Wales will have non-exclusive jurisdiction to resolve any claim of whatever nature arising out of or relating to this Agreement or its breach, except that CI will have the right to sue for breach of its IPR in any country where it appears that an infringement might be taking place.

- 124 DISPUTE RESOLUTION

- 125 **Escalation.** In the event of any dispute between the Parties arising out of or relating to this Agreement, Representatives of the Parties from a level of management who have authority to settle the dispute will within 14 days of receipt of a Notice from either Party to the other meet in an effort to resolve the dispute. Unless concluded with a written legally binding agreement, all negotiations connected with any dispute will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

- 126 **Mediation.** If any dispute cannot be resolved at a meeting as described in clause 123 or within 7 days from its conclusion the Parties will refer the dispute to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure which is deemed incorporated in this Agreement and:

126.1.1 the number of mediators will be one;

126.1.2 if the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act the mediator will be a person appointed by the CEDR who has extensive experience of disputes relating to information technology contractual and/or technical matters;

126.1.3 the place of mediation will be London unless the Parties agree otherwise;

126.1.4 the language to be used in the mediation will be English;

126.1.5 if the Parties reach agreement on the resolution of the dispute or difference during the mediation, such agreement will be reduced to writing and once it is signed by the Authorised Signatories will be binding on the parties;

126.1.6 unless concluded with a written legally binding agreement, the mediation will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings; and

126.1.7 the costs of the mediation will be borne by the Parties equally unless they agree otherwise.

127 **Expert Determination.** In the event of a dispute of a technical nature arising between the Parties they may agree that an independent expert (Expert) is a person appointed in accordance with this clause such dispute in which case the following provisions shall apply:

127.1.1 the parties shall agree on the appointment of the Expert and the terms of his appointment. If the parties are unable to reach agreement within 7 days of one Party making proposals to the other, either Party may request to appoint an Expert of repute and to agree with the Expert the terms of appointment;

127.1.2 the Expert shall prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of 3 months of the matter being referred to the Expert;

127.1.3 the Parties may make submissions to the Expert and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision;

127.1.4 the Expert shall act as an expert and not as an arbitrator and his written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud; and each Party shall bear its own costs in relation to the reference to the Expert.

128 **Overriding Considerations.** Nothing in this clause 123 will restrict or prevent either Party from; (i) applying to the courts for an injunctive or protective remedy pending resolution of any dispute, (ii) bringing proceedings to recover a debt in any country where the defendant has assets, or (iii) bringing proceedings to enforce its IPR in any country where it reasonably believes that a breach of this Agreement or acts or omissions infringing its rights are taking place.

# SCHEDULE 1

## Data Processing Terms

- 1 Where the Customer acts as Data Controller and CI acts as Data Processor, CI undertakes to:
  - 1.1 process the Personal Data only on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by law to which CI. In such a case, CI shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
  - 1.2 ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 1.3 take all measures required pursuant to Article 32 of the GDPR (Security of Processing);
  - 1.4 not engage another processor without prior specific or general written authorisation of the Customer. In the case of general written authorisation, CI shall inform the Customer of any intended changes concerning the addition or replacement of other processors, thereby giving the Customer the opportunity to object to such changes and shall ensure the same data protection obligations as set out in this Agreement or any other contract or between the Customer and CI are imposed on that other processor by way of a contract or other legal act;
  - 1.5 taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights;
  - 1.6 assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to CI;
  - 1.7 at the choice of the Customer, delete or return all the Personal Data to the Customer after the end of the provision of services relating to processing and delete existing copies, save that CI may retain copies of the Personal Data only if CI is required to do so by law;
  - 1.8 make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this Schedule and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer;
  - 1.9 immediately inform the Customer if, in its opinion, an instruction infringes the Data Protection Legislation.

- 2 Unless otherwise detailed in a Service Contract, the details of the processing are as follows:

|                                   |  |
|-----------------------------------|--|
| Subject matter of the processing: |  |
| Duration of the processing:       |  |
| Nature of the processing:         |  |
| Purpose of the processing;        |  |
| Type of Personal Data:            |  |
| Categories of data subjects:      |  |

**SIGNED** by [**CUSTOMER**] acting by a director

**SIGNED** by **CENTERPRISE INTERNATIONAL LIMITED** acting by a director