

Dated: XX MONTH 2022

1) ZALARIS UK LIMITED

2) []

SERVICES AGREEMENT

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THIS AGREEMENT IS MADE ON THE DAY OF 2022
BETWEEN

- (1) **ZALARIS UK LIMITED** incorporated and registered in England and Wales with company number 03538201 whose registered office is at Building 5 The Heights, Wellington Way, Weybridge, KT13 0NY (the "**Supplier**"); and
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Customer**").

RECITALS

- (A) The Supplier is in the business of providing IT consulting and support services.
- (B) The Customer agrees to obtain, and the Supplier agrees to provide the Services on the terms set out in this Agreement.

IT IS HEREBY AGREED

1. Interpretation

The following definitions and rules of interpretation apply to this Agreement.

1.1 Definitions:

"Agreement"	means this agreement between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Change Order"	has the meaning given in clause 8.1..
"Charges"	means the charges payable by the Customer for the supply of the Services in accordance with clause 6.
"Commencement Date"	means has the meaning given in clause 2.2.
"Conditions"	means the terms and conditions of this Agreement, as amended from time to time in accordance with clause 18.
"Contract"	means the Agreement together with the agreed Services Schedules.
"Control"	means has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
"Customer"	means the person or firm who purchases Services from the Supplier.
"Customer Default"	means has the meaning set out in clause 5.2.
"Deliverables"	means the deliverables set out in the Service Schedules, which are produced by the Supplier for the Customer.
"Intellectual Property Rights"	means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade-marks and service marks,

business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Order"	means the Customer's order for Services confirmed in the Customer's signed Service Schedules, which shall include any Service Terms and or Specification.
"Performance Location"	means the location or locations where the Services will be delivered and carried out by the Supplier, as specified by the Customer and confirmed in the Service.
"Services"	means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Schedules, together with the Service Terms and or the Specification.
"Service Schedules"	means the schedule agreed between the Supplier and the Customer and accepted by the Supplier, which shall be specific to a particular Order or group of Orders for Services and setting out the Service Specification and any Service Terms, and any other ancillary documents to this Agreement, Service Schedules shall be dealt with in accordance with clause 2 of this Agreement.
"Service Specification"	means the description or specification of the Services provided in the Service Schedules, together with any Service Terms.
"Service Terms"	means any additional terms relating to the specific Services as set out in the Service Schedules, including but not limited to, Service components, the Deliverables, charges and costs of Services, additional charges, performance dates, support hours and responsible individuals.
"Supplier"	means ZALARIS UK Limited, of Building 5 The Heights, Wellington Way, Weybridge, KT13 0NY, registered in England and Wales with company number 03538201.
"Supplier Materials"	means has the meaning set out in clause 5.1.9.

1.2 Interpretation:

- 1.2.1 Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:
 - 1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and
 - 1.2.1.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes fax and email.

2. Basis of Agreement

- 2.1 Each Order constitutes an offer by the Customer to purchase Services in accordance with and on the basis of this Agreement and any Service Terms, Specifications or other additional information relating to the Services, as specified in the Service Schedules.
- 2.2 Each Order shall only be deemed to be accepted by the Supplier on the Supplier issuing the Customer with its signed counterpart of this Agreement and the relevant Service Schedule.
- 2.3 On the date which the confirmation of the Suppliers acceptance is given, the contract for the supply of the Services shall come into existence ("**Commencement Date**"). The Commencement Date shall not indicate the start date for the provision of the Services and shall only relate to the commencement of the contractual relationship between the Customer and Supplier.
- 2.4 Any descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.5 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 Any quotation or estimate given by the Supplier shall not constitute an offer and is only valid for a period of 20Business Days from its date of issue.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification and any Service Terms, in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Service Schedules, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification and Service Terms, if such amendment is necessary to comply with any applicable law or regulatory requirement, or if

the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The Supplier shall nominate a project manager in connection with the Services ("**Project Manager**"), who shall be responsible for liaising with the Customer as to the status and progress of the Services and to address any issues which arise in connection with the Services.
- 3.6 The Supplier shall use reasonable endeavours ensure that its personnel observe and comply with all safety and security procedures in force at the Performance Location and with all reasonable directions from the Customer's personnel
- 3.7 The Customer shall be deemed to have accepted the completion of the Services, upon receipt of confirmation of the same provided by the Project Coordinator. The signing off of any of the Services including but not limited to a task, deliverable, resource or the signing of a time sheet by the Project Coordinator shall be acceptance by the Customer, which will not be unreasonably withheld or delayed.

4. Services Schedules

- 4.1 Subject to approval of any Services Schedules in writing by the Supplier, from time to time, the Services Schedules shall be deemed to have been incorporated as terms of this Agreement and shall be governed by and be subject to the terms of this Agreement.
- 4.2 The Customer acknowledges and accepts that all and any liabilities, responsibilities, obligations, indemnities and undertakings of any kind which arise under the Services Schedules and or any Services Terms, shall be of the essence for the Contract and any breach of the same by either party shall be deemed to be breach of the Contract

5. Customer's Obligations

- 5.1 The Customer shall:
 - 5.1.1 ensure that the terms of the Order, including information it provides in the Specification and any Service Terms, are complete and accurate;
 - 5.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 5.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - 5.1.4 permit the Supplier access to the Customer's hardware and software systems as may be reasonably required by the Supplier in the provision of the Services;
 - 5.1.5 provide a safe, suitable and secure working environment for the Supplier's personnel at the Performance Location and shall communicate any health and safety or security policies to the Supplier, prior to the Commencement Date. The

Customer shall further cooperate with any requests from the Supplier to enable the Supplier to comply with applicable health and safety legislation.

- 5.1.6 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 5.1.7 prepare the Performance Location for the for the supply of the Services, including the provision of sufficient workstations as may be required by the Supplier;
 - 5.1.8 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 5.1.9 keep any and all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 5.1.10 nominate a project coordinator of sufficient experience and ability, to liaise with the Supplier's Project Manager (see clause 3.5) as the primary point of contact thought the provision of the Services ("**Project Coordinator**"). The Project Coordinator shall give all instructions to the Supplier and be responsible for ensuring the Customer's compliance with this clause 4 and in so far as possible, the Agreement and the Service Schedules, as case may be.
 - 5.1.11 comply with any Service Terms, as set out in the Service Schedules.
- 5.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 5.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 5.2.2 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to charge the Customer all and any fees set out in the Service Schedules.
 - 5.2.3 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay performing any of its obligations as set out in this clause 5.2; and
 - 5.2.4 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6. Charges

6.1 Calculation of Charges

- 6.1.1 The Charges for the Services shall be calculated on a time and or materials basis at the Supplier's standard fee rates, as may be set out in the Service Schedules.
- 6.1.2 The Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Service Schedules.
- 6.1.3 The minimum level of Charges payable shall be 4 hours, which shall be equivalent to half a day of work carried out by the Supplier.

6.2 Working Hours and Overtime

- 6.2.1 The Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.30 am to 5.30 pm worked on Business Days, and each individual may have specific fee rates as may be set out in the Service Schedules;
- 6.2.2 The Supplier shall be entitled to charge an overtime rate of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 6.1.2, and such charges shall be set out in the Service Schedules.

6.3 Expenses

- 6.3.1 The Supplier shall be entitled to charge the Customer for any expenses incurred by the individuals whom the Supplier engages in connection with the Services, whether or not such expenses are calculated in full in the Service Schedules ("**Expenses**").
- 6.3.2 The Expenses referred to at clause 6.3.1 shall include but not be limited to, the cost of any materials, travelling expenses, hotel costs, subsistence and any associated expenses related to attendance of and delivery of the Services at the Performance Location, and for the cost of services provided by third parties as required by the Supplier for the performance of the Services, and for the cost of any materials.
- 6.3.3 The charge of the Expenses to the Customer shall be subject to the production of a valid receipt and or voucher in respect of such Expenses, to the Customer.

6.4 Charges Increase

- 6.4.1 The Supplier reserves the right to increase any of the Charges on an annual basis with effect from each anniversary of the Commencement Date. Any increase will be as specified in an amended Service Schedule.

6.5 New Services

- 6.5.1 If during the course of the Contract, the Customer requires the Supplier to perform services which were not part of the original Services as set out in the Service Schedules ("**New Services**"), then the Supplier shall apply all necessary Charges on a time and materials basis at the Supplier's standard fee rates to the New Services, unless and until such time as a new Agreement and or Services Schedule is agreed between the parties in respect of the New Services.

7. Payment

- 7.1 The Supplier shall invoice the Customer in accordance with the payment terms and the billing points set out in the Service Schedules (the "**Billing Point**").
- 7.2 The Customer shall pay each invoice submitted by the Supplier within 30 days after the Billing Point, unless specified otherwise within in the Service Schedules, or otherwise in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer ("**Payment Dates**"),
- 7.3 The Customer shall pay each invoice submitted by the Supplier before or on the Payment Dates, in full and in cleared funds to a bank account nominated in writing by the Supplier, as may be confirmed in the Service Schedules.
- 7.4 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.5 The Customer shall notify the Supplier in writing within 2 Business Days of receipt of an invoice issued by the Supplier, which the Customer reasonably believes to be incorrect or invalid. Such notification shall only serve to trigger a reasonable period for the parties to resolve the Customer's query of the invoice. Such notification shall not vitiate the Customer's obligations to pay for the Services in full and shall not precluded any remedies available to the Supplier under this Agreement and or the Service Schedules.
- 7.6 If the Customer fails to make any payment due to the Supplier under the Agreement or Service Schedules by the relevant due date, then, without limiting the Supplier's remedies under clause 12:
- 7.6.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.4 will accrue each day at 4% a year above the Barclays Bank plc base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.6.2 The Supplier may suspend provision of either part or the whole of the Services provided the Supplier shall give the Customer notice not less than 2 Business Days prior to the suspension.
- 7.7 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.8 Time for payment of any sums due from the Customer to the Supplier, shall be of the essence of the Contract.

8. Change Control

- 8.1 Either party may propose changes to the scope or execution of the Services (“**Change Order**”), but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- 8.1.1 the Services;
 - 8.1.2 the Supplier's Charges;
 - 8.1.3 any timetable of the Services; and
 - 8.1.4 any of the terms of this Agreement, or terms of the Service Schedules (including Service Terms)
- 8.2 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.
- 8.3 If the Customer wishes to make a change to the Services:
- 8.3.1 it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - 8.3.2 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3.1, provide a draft Change Order to the Customer.
- 8.4 If the parties:
- 8.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement and / or the Service Schedule (as the case may be); or
 - 8.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 29 (Multi-tiered dispute resolution procedure).
- 8.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 6 on a time and materials basis at the Supplier's daily rates specified in the Service Schedule.

9. Intellectual Property Rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business only.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the

Supplier for the term of the Agreement for the purpose of providing the Services to the Customer.

10. Data Protection

10.1 The following definitions apply in this clause 10:

10.1.1 **"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures"**: as defined in the Data Protection Legislation.

10.1.2 **"Data Protection Legislation"**: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

10.1.3 **Domestic Law**: the law of the United Kingdom or a part of the United Kingdom.

10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller, and the Supplier is the Processor.

10.4 Without prejudice to the generality of clause 10.2 the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

10.5.1 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;

10.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data,

- ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 10.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 10.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 10.5.4.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- 10.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 10.5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 10.5.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 10.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 10.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 10.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 10.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10.
- 10.6 The Customer consents to the Supplier appointing a third-party processor of Personal Data under the Contract at any time. The Supplier confirms that it has or (as the case may be) will at such time as is appropriate have entered with the third-party processor into a written agreement substantially incorporating terms which are substantially similar to those set out in this clause 10 and in either case which continues to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.6.
- 11. Limitation of Liability: The Customer's Attention Is Particularly Drawn to this Clause.**
- 11.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding the value of cover available under the Supplier's insurance policies

from time to time in place, per claim, as set out in clause 11.6. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3 Neither party may benefit from the limitations and exclusions set out in this clause 11 in respect of any liability arising from its deliberate default.
- 11.4 Nothing in this clause 11 shall limit the Customer's payment obligations under this Agreement.
- 11.5 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
 - 11.5.1 death or personal injury caused by negligence;
 - 11.5.2 fraud or fraudulent misrepresentation; and
 - 11.5.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.6 Subject to clause 11.3 (no limitations in respect of deliberate default) and clause 11.5 (liabilities which cannot legally be limited), the Supplier's total liability to the Customer:
 - 11.6.1 for damage to equipment, property or software at the Performance Location caused by the negligence of the Supplier's employees and agents in connection with this agreement shall not exceed £5,000,000.00 for any one event or series of connected events
 - 11.6.2 for negligence of the Supplier's employees or agents responsible for delivering the Services, which causes damage to the business operations (but excluding those losses contained in clause 11.9) or systems of the Customer, the sum of £5,000,000.00 for any one event or series of connected events;
 - 11.6.3 for loss arising from the Supplier's failure to comply with its obligations under clause 10 (Data Protection) or in respect of a breach of Data Protection Legislation generally, shall not exceed £5,000,000.00 for any one event or series of connected events; and
 - 11.6.4 for all other loss or damage which does not fall within subclauses 11.6.1, 11.6.2 and 11.6.3 shall not exceed the total charges payable within the contract year when the event occurs.
 - 11.6.5 for the purposes of clause 11.6.4:
 - 11.6.5.1 **"total charges"** shall mean all sums paid by the Customer and all sums payable under the Contract in respect of the services actually supplied by the Supplier, whether or not invoiced to the Customer;
 - 11.6.5.2 **"contract year"** shall mean a 12-month period commencing with the Commencement Date or any anniversary of it

- 11.7 Subject to clause 11.3 (no limitations in respect of deliberate default), clause 11.4 (liability under the Agreement) and clause 11.5 (liabilities which cannot legally be limited), the Customer's total liability to the Supplier:
- 11.7.1 for damage to the Supplier's equipment, property or software caused by the negligence of the Customer or its employees and agents in connection with this agreement shall not exceed £5,000,000.00 for any one event or series of connected events;
 - 11.7.2 for loss arising from the Customer's failure to comply with its data processing obligations under clause 10 (Data Protection) or in respect of a breach of Data Protection Legislation generally, shall not exceed £5,000,000.00; and
 - 11.7.3 for all other loss or damage which does not fall within subclauses 11.7.1 or 11.7.2, shall not exceed the total charges payable within the contract year when the event occurs.
 - 11.7.4 for the purposes of clause 11.7.3:
 - 11.7.4.1 **"total charges"** shall mean all sums paid by the Customer and all sums payable under the Contract in respect of the services actually supplied by the Supplier, whether or not invoiced to the Customer;
 - 11.7.4.2 **"contract year"** shall mean a 12-month period commencing with the Commencement Date or any anniversary of it.
- 11.8 The caps on the Customer's liabilities shall not be reduced by any amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 11.9 Subject to clause 11.3 (No limitations in respect of deliberate default), clause 11.4 (No limitation on the customer's payment obligations), clause 10.5 (liability under the Agreement) and clause 11.5 (Liabilities which cannot legally be limited), this clause 11.9 specifies the types of losses that are excluded:
- 11.9.1 loss of profits;
 - 11.9.2 loss of sales or business;
 - 11.9.3 loss of agreements or contracts;
 - 11.9.4 loss of anticipated savings;
 - 11.9.5 loss of use or corruption of software, data or information;
 - 11.9.6 loss of or damage to goodwill; and
 - 11.9.7 indirect or consequential loss.
- 11.10 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3 (Supply of Services). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.11 Unless the Customer notifies the Supplier that it intends to make a claim in respect of a individual event within the notice period, the Supplier shall have no liability for that particular event. The notice period for an event shall start on the day on which the Customer became

aware or ought to have reasonably become aware of it having grounds to make a claim in respect of the event and shall expire 60 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in sufficient detail to enable to Supplier to consider the matter in full.

11.12 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Termination of this Agreement under this clause 12, shall be in addition to any specific term, renewal, or termination provisions agreed between the parties in the Service Schedule. In the event of conflict between such provision of the Service Schedules and this Agreement, then the terms of this clause 12 shall prevail.

12.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party 30 days written notice.

12.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

12.3.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

12.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

12.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:

12.4.1 the Customer fails to pay any amount due under the Agreement on the due date for payment; or

12.4.2 there is a change of control of the Customer.

12.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Agreement either in part or as a whole, or any other Agreement between the Customer and the Supplier if:

- 12.5.1 the Customer fails to pay any amount due under the Agreement on the due date for payment as specified in the Service Schedules;
- 12.5.2 the Customer fails to pay any amount due under any other Agreement for Services which the Customer has with the Supplier.
- 12.5.3 the Customer becomes subject to any of the events listed in clause 12.3.3 or clause 12.3.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- 12.5.4 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.3.2.

13. Consequences of Termination

- 13.1 On termination or expiry of the Contract:
 - 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 13.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

14. Restrictive Covenants

- 14.1 Unless the Customer has obtained the prior written consent of the Supplier, the Customer shall not during the term of the Contract, or any time during the course of receiving any Services from the Supplier, nor for a period of 12 months thereafter:
 - 14.1.1 act in any way as to compete with Zalaris in the provision of services to third parties, which could reasonably be determined to be of the same type, style or standard to those Services provided by the Supplier under this Agreement and the Service Schedules;
 - 14.1.2 offer employment or engagement to any of the Supplier's personnel (including employees or subcontractors) who were responsible for or involved in providing the Customer with the Services.

- 14.2 Any consent given by the Supplier under clause 14.1, shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's personnel (including employees or subcontractors) or, 20% of the annual remuneration to be paid to that personnel member by the Customer under a new contract of employment, whichever is the higher.

15. Confidentiality

- 15.1 For the purposes of this clause 15 "**Confidential Information**" means all information (whether commercial, financial, technical or otherwise) relating to the disclosing party, its sub-contractors, other customers and suppliers, disclosed to or otherwise obtained by the recipient party under or in connection with the Project and this Agreement and which is designated as being confidential or which is by its nature is clearly confidential.
- 15.2 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.3.
- 15.3 Each party may disclose the other party's confidential information:
- 15.3.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
 - 15.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 15.5 Nothing in this Agreement will prevent the Supplier at any time from using for any purpose it thinks fit any know-how or experience including programming tools, skill and techniques, gained or arising from the performance of the Services, subject always to complying with the obligations in this clause 15 in respect of the Confidential Information of the Customer.

16. Force Majeure

- 16.1 For the purposes of this clause 16 "**Force Majeure Event**" means any circumstance not within a party's reasonable control.
- 16.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.

16.3 The time for performance of such obligations by the Affected Party shall be extended by a period of no more than 90 days ("**Extended Performance Period**").

16.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for longer than the Extended Performance Period, the party not affected by the Force Majeure Event may terminate this Agreement by giving 30 days written notice to the Affected Party.

17. Publicity

17.1 The Customer agrees to feature on the Supplier's list of references, provided that the Supplier ensures it uses the correct logo type approved by the Customer.

17.2 The Customer agrees to the Supplier issuing a press release announcing the Agreement, after the Customer's prior approval.

17.3 Both Parties will at all times give support to and enhance the other party image in any exposure to third parties regarding the Services.

18. Assignment and Other Dealings

18.1 This Agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

18.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

19. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Waiver

20.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21. Rights and Remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. Severance

- 22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 22.2 If any provision or part-provision of this Agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. Entire Agreement

- 23.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

24. No Partnership or Agency

- 24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. Anti-bribery

- 25.1 The Supplier shall comply with all applicable laws, statutes, regulation relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**").
- 25.2 The Supplier shall have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements.

26. Third Party Rights

- 26.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 26.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

27. Notices

- 27.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 27.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 27.1.2 sent by fax to its main fax number or if sent by email, to the address specified in the Service Schedules.
- 27.2 Any notice shall be deemed to have been received:
- 27.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 27.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - 27.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 27.3 Any notice given under this clause 27 should be addressed to a director of the Supplier.
- 27.4 This clause 27 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 27.5 A notice given under this agreement is not valid if sent by email.

28. Dispute Resolution Procedure

- 28.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 28.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Project Manager of the Supplier (as set out in the Service Schedule) and Project Manager of the Customer (or appropriate liaison of the Customer, as set out in the Service Schedule) shall attempt in good faith to resolve the Dispute;
 - 28.1.2 if the parties referred to in clause 28.1.1 are for any reason unable to resolve the Dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Supplier and the Managing Director (or other appropriate senior manager) of the Customer who shall attempt in good faith to resolve it;
 - 28.1.3 if those parties referred to in clause 28.1.2 are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days

of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR notice**") to the other party to the Dispute, referring the dispute to mediation; and

28.1.4 if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and

28.1.5 unless otherwise agreed between the parties, the mediation will start not later than 60 days after the date of the ADR notice.

28.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

28.3 If for any reason the Dispute is not resolved within 10 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 31 (Jurisdiction).

29. Agreement Survives Completion

29.1 All and any provisions contained in this Agreement (other than any obligations that have already been fully performed and discharged by the parties) remains in full force after Completion.

30. Governing Law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed by

for and on behalf of

ZALARIS UK LIMITED

.....

Title: Director

Signed by

for and on behalf of

[NAME OF CUSTOMER]

By an individual who is duly
authorised to execute this
agreement

.....

Title: [TITLE OF SIGNATORY]