



Terms and conditions

This Master Services Agreement is dated XXXXXXXXXXXXXXXX

Parties

- 01 **esynergy Solutions Limited**, a company incorporated in England (Company number 04235243) and having its registered office at New London House, 6 London Street, London EC3R 7LP ('Supplier'), and
- 02 XXXXXXXXXXXXXXXX Limited (company no. XXXXXXXXXXXXXXXX) a company incorporated under the laws of England and Wales with its registered office at XXXXXXXXXXXXXXXXXXXXXXXX ("the Client")

Background

- 01 The Client wishes to obtain and the Supplier wishes to provide the Services on the terms set out in this agreement and any Statements of Work.
- 02 The Client may procure Services by agreeing a Statement of Work with the Supplier pursuant to clause 3 (Statements of Work).

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity

Applicable laws: all applicable laws, statutes, regulation (and codes) from time to time in force.

Associates: Independently contracted skilled individuals providing their services through a Personal Services Company or an Umbrella Company and engaged by the Supplier to supply the Services to the Client for a specified term under a Statement of Work.

Business Day: a day, other than a Saturday, Sunday or public holidays in England, when banks in London are open for business.

Business Hours: a day, other than a Saturday, Sunday or public holidays in England, when banks in London are open for business.

Change Control Order: has the meaning given in clause 8.1.

Change Control Order Form: the form attached as Schedule 5.

Client's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

Client Materials: all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to the Supplier in connection with the Works, including the items provided pursuant to clause 6.5.

Deliverables: any output of the Works to be provided by the Supplier to the Client as specified in a Statement of Work.

esynergy Accelerators: Refers to a suite of software tools including scripts and applications developed in languages such as JavaScript, Java, Python, and others, used to expedite project delivery. These tools are proprietary to esynergy and maybe enhanced or modified during their use.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Milestone: a period or specific date by which a part or all of the Work is to be completed, as set out in a Statement of Work.

New Client Form: details requested of the Client for purposes of invoicing by the Supplier as outlined in Schedule 1

Off Payroll Working Rules: refers to the reforms to the Off Payroll Working Rules (IR35) that came into effect in the public sector in April 2017 and were extended to the private sector in April 2020.
<https://www.gov.uk/topic/business-tax/ir35>

Rate Card Charges (if used): the standard charges for roles as set out in Schedule 3.

Services: the services as set out in Schedule 1 and any Statement of Work

SoW Charges: the sums payable for the Works as set out in a Statement of Work.

SoW Contingency: a sum, calculated as a percentage of the total SoW Charges (never to exceed 20%), that is accessible through the Change Control Order process in Clause 8 in order to accommodate any changes, additions or increases to the SoW costs, such as; changes to the deliverables or timescales, the requirement for additional resources or Associates, agreed travel, accommodation or other expenses, Associate(s) overtime or On Call working etc).

Statement of Work (SoW): a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance, the payment mechanisms and the related matters listed in the template Statement of Work set out in Schedule 2.

Sprint (if used): a set period of time during which specific tasks will be completed and made ready for review and acceptance. The Supplier's standard Sprint will be 10 business days. This period may be varied to meet the needs of the Works.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (GDPR) ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Unit Rate: the agreed charges for the services performed by a supplied Associate over a period of 8 hours.

VAT: value added tax chargeable at the appropriate rate.

Works: the Services and deliverables which are provided by the Supplier under a Statement of Work.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

- 1.8 This agreement shall be binding on, and inure to the benefit of, the parties to this agreement and their respective representatives, successors and permitted assigns, and references to any party shall include that party's representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written includes email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 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.

2. Commencement and duration of agreement

- 2.1 This agreement shall commence on the date stated above and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until either party gives to the other party 60 days written notice to terminate.
- 2.1 If there are;
- (a) no active Statements of Work at the date notice to terminate is served under clause 2.1, this agreement shall terminate immediately;
 - (b) any active Statements of Work at the date notice to terminate is served under clause 2.1, the Supplier shall continue to provide the Services and the Client shall continue to pay the Charges for the Services under any active Statements of Work until the last day of the notice period, whereupon this agreement and all Statements of Work shall terminate.
- 2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.
- 2.3 The Client may procure the Works by agreeing a Statement of Work with the Supplier pursuant to clause 3 (Statements of Work) and the Services shall commence from the date specified in the relevant Statement of Work.
- 2.3 For the avoidance of doubt, the Client is under no obligation to offer work to the Supplier and the Supplier is under no obligation to accept any work that may be offered. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of or between any performance of the services.

3. Statements of Work (SoW)

- 3.1 Each Statement of Work shall be agreed in the following manner:
- (a) the Client shall ask the Supplier to provide the Works and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Services requested;
 - (b) following receipt of the information requested from the Client the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Client that it declines to provide the requested Services; or
 - (ii) provide the Client with a draft Statement of Work.

(c) if the Supplier provides the Client with a draft Statement of Work pursuant to clause 3.1(b) (ii) the Supplier and the Client shall work together to finalise the details of the Statement of Work; and

(d) both parties shall sign an agreed Statement of Work for the Services .

3.2 Charges for the Works shall be calculated as detailed in the Pricing Table in the Statement of Work.

3.3 The Supplier shall not charge for the preparation of Statements of Work.

3.4 Once a Statement of Work has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 8 (Change Control Order) or clause 20 (Variation).

3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

3.6 For the avoidance of doubt, any Associates supplied in the provision of the Services detailed in a Statement of Work are engaged by the Supplier under contracts for services. Associates are not the employees of the Supplier or the Client and they are under no obligation to accept work offered to them by the Supplier or the Client.

4. Conflicting Terms

4.1 The terms and conditions of the Master Services Agreement shall apply to a Statement of Work, except to the extent they conflict, in which case the terms of the Statement of Work shall control.

5. The Supplier's responsibilities

5.1 The Supplier shall use best endeavours to provide the Works and deliver the Services to the Client in accordance with a Statement of Work.

5.2 The Supplier shall use all reasonable endeavours to meet any performance dates or Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

5.3 The Supplier shall appoint an authorised representative in respect of the Works to be performed under each Statement of Work, such person to be identified as the 'Supplier's SoW Contact' in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Control Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's SoW Contact throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

5.4 The Supplier and its Associate(s) shall endeavour to cooperate with the Client's reasonable requests while performing the Services, but the Client acknowledges that neither the Supplier nor its Associates are under the control or supervision of the Client and the Supplier and Associates are entirely responsible for determining the manner and methods of the performance of the services

5.5 The Supplier shall maintain the right, at its sole discretion, to remove, replace, substitute or reassign an Associate should circumstances require it. Additionally, an Associate shall have the right to nominate a substitute in accordance with the Off Payroll Working (IR35) rules. Should such circumstances arise, the Supplier will notify the Client that an Associate needs to be changed (for whatever reason) and a suitable replacement Associate with the equivalent experience and skill set will be supplied.

5.6 The Supplier shall use reasonable endeavours to procure that its representatives and Associates observe health and safety and security requirements and any on site policies of the Client's (or the Client's end-Client) that have been communicated to it under clause 6.6, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement and only to the extent that such health and safety and security requirements and policies would be applicable to independent Associates.

5.7 The Supplier's Associates will utilise their own equipment and devices in the delivery of the Service to the Client (save where the Client's internal security restrictions would prohibit them from doing so). Any equipment/devices brought onto the Client's premises will be at the Supplier's own risk and the Client will have no liability for any loss of, or damage to, any equipment.

- 5.8 The Supplier shall ensure that all its representatives or Associates engaged to provide the Services:
- (a) have the necessary expertise and experience to carry out the Services;
 - (b) are entitled to work in the UK (or other location made known to Supplier in a Statement of Work);
 - (c) will maintain good standards of professionalism and courtesy when on Client premises or end-Client premises, or when dealing with end-Clients.

6. The Client's responsibilities

- 6.1 The Client shall co-operate with and support the Supplier in all matters relating to the Works in accordance with a Statement of Work.
- 6.2 The Client shall appoint an authorised representative in respect of the Works to be performed under each Statement of Work, such person to be identified as the 'Client's SoW Contact' in the Statement of Work. That person shall have authority to contractually bind the Client on all matters relating to the relevant Works (including by signing Change Control Orders).
- 6.3 The Client shall appoint an authorised representative to be identified as the 'Client's SoW Contact for the Statement of Work. That person shall have authority to contractually bind the Client on all matters relating to the relevant Works (including by signing Change Control Orders).
- 6.4 The Client shall provide, for the Supplier, its agents, Associates, subcontractors and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by the Supplier to carry out the Works, including any such access as is specified in a Statement of Work.
- 6.5 The Client will provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under a Statement of Work or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete in all material respects.
- 6.6 The Client will notify the Supplier of any health and safety and security requirements or and policies that apply at the Client's premises (or the Client's end-Client premises) and supply copies of these policies to the Supplier in accordance with the requirements of Schedule 4.
- 6.7 The Client agrees that where the Services and Works to be performed under a SOW will be provided to the Client's end Client, the Client shall promptly provide the Supplier with any terms, policies or procedures of the end Client to enable the Supplier to review and accept or reject such policies and procedures prior to the commencement of the Services.
- 6.8 The Client shall ensure that any equipment required for the provision of the Works is in good working order and suitable for the purposes for which it is to be used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;
- 6.9 The Client confirms that it will obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, the use of all Client materials and the use of the Client's equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Works are to start.
- 6.10 The Client agrees it will comply with any additional responsibilities of the Client as set out in the relevant Statement of Work.
- 6.11 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client and the Client shall pay any additional costs that may be incurred.

7. Non-solicitation

- 7.1 The Client shall not, without the prior written consent of the Supplier, at any time from the date on which any Works commence to the expiry of twelve (12) months after the completion of such Works, solicit or entice away from the Supplier or employ or engage or attempt to employ or engage any person who is, or has been, engaged as an employee, consultant, Associate the Supplier in the provision of such Works.
- 7.2 Any consent given by the Supplier in accordance with clause 7.1 shall be subject to the Client paying to the Supplier a sum equivalent to thirty percent (30%) of the then current annual remuneration of the Supplier's employee, consultant, Associate or subcontractor or, if higher, thirty percent (30%) of 12 months of remuneration to be paid by the Client to the Supplier for the Services of that employee, consultant, Associate or subcontractor.

8. Change Control Order

- 8.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant Change Control Order has been signed by both parties. A Change Control Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Works;
 - (b) the SoW Charges;
 - (c) the timetable for the Works; and
 - (c) any of the other terms of the relevant Statement of Work.
- 8.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Control Order to the Client for review and agreement.
- 8.3 If the Client wishes to make a change to the Works:
- (a) 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 change; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3(a), provide a draft Change Control Order to the Client.
- 8.4 If the parties:
- (a) agree to a Change Control Order, they shall sign it and that Change Control Order shall amend the relevant Statement of Work; or
 - (b) are unable to agree a Change Control 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).

9. Charges and payment

- 9.1 In consideration of the provision of the Works by the Supplier, the Client shall pay the Charges as set out in the Statement of Work (SoW Charges).
- 9.2 The SoW Charges are calculated on a Unit Rate basis and:
- (a) the Supplier's Unit Rate for each Associate is set out in the Pricing Table in the SoW and calculated on the basis of a standard professional day of 8 hours.
 - (b) the Supplier shall ensure that every Associate with whom it engages on the Works records the time spent on the Works, and the Supplier shall indicate the time spent per Associate in its invoices to the Client.
- 9.3 The Unit Rates exclude the following:
- (a) the cost of business travel, accommodation, subsistence and any other ancillary expenses reasonably incurred by the Associates in connection with the Works; and
 - (b) any additional time worked by an Associate over and above the 8 hour business day; and
 - (b) any On Call / Out of Hours / Weekend working the Client requires; and

- (d) any additional expenses incurred in the supply of the Works that were not known at the time of issuing the SoW but are agreed in writing by the Client and the Supplier during the course of supplying the Works; and
 - (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Statement of Work and approved by the Client in advance from time to time.
- 9.4 Any costs or charges incurred under 9.3 shall be met from the SoW Contingency as set out in the Statement of Work. If the Client has chosen not to include Contingency in the SOW then any Expenses payable by the Client will be invoiced monthly by the Supplier in line with the usual invoicing payment schedule.
- 9.5 The Supplier may increase the Rate Card Charges and any associated SoW Charges on an annual basis with effect from each anniversary of the date of this agreement.
- 9.6 Any increase in the Rate Card Charges shall affect:
- (a) the SoW Charges (to the extent that they are calculated in accordance with the Rate Card Charges) in Statements of Work in force at the date of the next renewal of the Statement or Work; and;
 - (b) the calculation of the SoW Charges for any Statements of Work entered into after the date the increase takes effect.
- 9.7 The Supplier shall invoice the Client for the SoW Charges at the intervals specified in the Statement of Work. If no intervals are specified, the Supplier shall invoice the Client at the end of each month for Works performed during that month.
- 9.8 The Client shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier which is subject to change from time to time.
- 9.9 Where any amount on an invoice is disputed by Client, the Client will notify the Supplier in writing as soon as possible (and within 30 days) of the particulars of the disputed amounts and the Client and the Supplier shall attempt in good faith to resolve the dispute as quickly as possible.
- 9.10 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier any undisputed sum due under this agreement on the due date:
- (a) the Client shall pay interest on the overdue sum from the invoice due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% above the Bank of England's base rate; and
 - (b) if Client fails to make payment within 14 days of a further written demand to do so, the Supplier may suspend part or all of the Works until payment has been made in full.
- 9.11 All sums payable to the Supplier under this agreement:
- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable at the appropriate rate on those sums on delivery of a VAT invoice; and
 - (b) 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).

10. Intellectual property rights

- 10.1 The Client shall have title to and own all Intellectual Property Rights in the Deliverables.
- 10.2 The Supplier hereby assigns and shall procure that the Associate assigns, by way of present assignment of future rights all the Intellectual Property Rights in the Deliverables to the Client
- 10.3 The Client and the Supplier agree that;
- (a) Deliverables that are owned by the Client shall not include any materials containing the Supplier's or Associate's pre-existing Intellectual Property Rights and/or other proprietary rights, including ideas, concepts and/or know-how that existed before the SoW commencement date or were developed, created, acquired or licensed by the Supplier or an Associate after the SoW Commencement Date but outside of this Agreement and independently from the provision of Services (and without exposure to the Client's Confidential Information) under the applicable SOW ("Pre- Existing Materials").

- (b) To the extent that any Deliverable incorporates any Pre-Existing Materials, the Supplier grants and shall procure that any Associate grants to the Client (or the Client's end Client) a perpetual, royalty-free, nonexclusive license to use the Pre-Existing Materials for the Client's (or the Client's end Client's) business purposes.

10.4 In relation to the Client Materials, the Client:

- (a) and its licensors shall retain ownership of all IPRs in the Client Materials; and
- (b) grants to the Supplier and its Associates a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Works to the Client under any Statement of Work.

10.4 the Supplier:

- (a) warrants that the receipt, use and onward supply of the Works and the Deliverables by the Client and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Client (or the Client's end-Client) arising out of or in connection with any claim brought against the Client (or the Client's end-Client) for actual or alleged infringement of a third party's Intellectual Property Rights.
- (c) shall not be in breach of the warranty at clause 10.5(a), and the Client shall have no claim under the indemnity at clause 10.5(b) to the extent the infringement arises from:
 - (i) the use of Client Materials in the development of, or the inclusion of the Client Materials in, the Works or any Deliverable;
 - (ii) any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Client's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Client if it knows or suspects that compliance with such specification or instruction may result in infringement.

10.6 The Client:

- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, Associates, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors, Associates or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Client Materials

10.7 If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under this clause 10, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 10.5(b) or clause 10.6(b) (as applicable) (IPRs Claim);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10.8 esynergy Accelerators

- (a) Notwithstanding the provisions of clauses 10.1 to 10.7, the Client acknowledges that the esynergy Accelerators are proprietary tools of esynergy and are not included in the Deliverables to the Client. The Intellectual Property Rights in the esynergy Accelerators remain vested with esynergy.
- (b) esynergy grants the Client a non-exclusive, non-transferable license to use the esynergy Accelerators solely for the purpose of the project and as specified in the Statement of Work (SoW). This license does not include the right to sublicense, sell, or otherwise distribute the esynergy Accelerators.
- (c) The Client acknowledges that esynergy may use the esynergy Accelerators in engagements with other clients. The Client agrees that such use does not constitute a breach of this Agreement, provided that the confidentiality of the Client's data and proprietary information is maintained.
- (d) Any enhancements or modifications made to the esynergy Accelerators during the project period shall be disclosed to esynergy and, if applicable, to the Client. The ownership of such enhancements or modifications shall be governed by the terms of this Agreement and the specific provisions of the SoW.

11. Compliance with laws and policies

- 11.1 In performing its obligations under this agreement, both parties shall comply with all Applicable Laws.
- 11.2 Changes to the Works required as a result of changes to the Applicable Laws shall be agreed via the Change Control Order process set out in clause 8 (Change Control Orders).
- 11.3 Both parties confirm that they will comply with all provisions of the United Kingdom's Bribery Act 2010 and any other applicable anti-bribery or anti-corruption laws (the "Anti-Corruption Laws") and that it shall not do, nor omit to do, any act that will lead to any representative of the Supplier being in breach of any of the Anti-Corruption Laws.
- 11.4 Both parties further confirm that it has in place and fully complies with its own anti-bribery and corruption policy and procedures, and that such procedures are adequate to ensure that the Client is compliant with the Anti-Corruption Laws.
- 11.5 Both parties confirm that they will comply with all laws and standards of the Modern Slavery Act 2015 and any other applicable anti-slavery or anti-human trafficking laws.
- 11.6 Both parties further confirm that they have suitable policies and processes in place within its businesses and its supply chains to prevent child labour, modern slavery and human trafficking.

12. Data protection

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and the Supplier is the processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, 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);
- (b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained;
- (d) assist the Client, at the Client'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;
- (e) notify the Client without undue delay on becoming aware of a personal data breach;
- (f) at the written request of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data.

13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, Clients, Clients of the Suppliers or the other party, except as permitted by clause 13.2(a).
- 13.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives 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 or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use the 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.

14. Limitation of liability

- 14.1 Each party shall maintain at its own cost insurance policies with a reputable insurance company to cover potential liabilities which it may have to the other party under this agreement or any SoW including: (a) Employers Liability in the amount of at least £10 million, Professional Indemnity in the amount of at least £5 million, Cyber and Data Breach insurance in the amount of at least £5 million; and (b) Public Liability and Product Liability insurance in the amount of at least £5 million. Within seven (7) days of any reasonable request either party shall provide the other with proof that the insurance is in force.
- 14.2 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.3 Nothing in this agreement limits:
 - (a) either party's liability for breach of clauses 12 (Data Protection) or 13 (Confidentiality); Page

(b) either party's liability under the IPR indemnities in clause 10 (Intellectual Property).

14.4 Subject to clause 14.2, each party's total liability to the other party in respect of all breaches of this Agreement occurring within any contract year shall not exceed 100% of the total charges.

14.5 In clause 14.4:

(a) Contract year: A contract year means a 12-month period commencing with the date of this agreement or any anniversary of it;

(b) Total charges: The total charges means all sums paid by the Client and all sums payable under this agreement in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Client; and

(b) Total liability: a party's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.

14.6 This clause 14.6 sets out specific heads of excluded loss.

(a) The following types of loss are wholly excluded;

(i) Loss of revenue.

(ii) Loss of sales or business.

(iii) Loss of agreements or contracts.

(iv) Loss of anticipated savings.

(v) Loss of use or corruption of software, data or information.

(vi) Loss of or damage to goodwill.

(vii) Indirect or consequential loss.

14.7 Unless the Client notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14.8 For the avoidance of doubt, Associates supplied in the provision of the Works are engaged under contracts for services. They are not the employees of the Supplier or the Client

15. Termination

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

(a) the other party commits a material breach of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

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

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(c) to clause 15.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 For the purposes of clause 15.1(a) 'material breach' means a breach (including an anticipatory breach) that has a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.

15.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving notice to the Client if:

- (a) the Client fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (b) there is a change of control of the Client which would have a negative impact on the Supplier's business interests.

15.4 Further to clause 15.3 (b) Should there be a change of control of the Client during the term of this Agreement and the Client and the Supplier agrees to continue the business relationship, the Client confirms that where there are any active Statements of Work at the date the change of control takes effect, the terms and conditions of this Agreement and the terms and conditions of any Statement of Work shall continue unchanged until all active Statements of Work are completed, whereupon the parties may either negotiate new terms and conditions to continue working together or this agreement shall terminate in accordance with clause 2.1,

16. Consequences of termination

16.1 On the date the Agreement terminates (and subject to the provisions of clauses 2 and 15):

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest. And, in respect of Works supplied prior to the termination date but for which no invoice has yet been submitted, the Supplier may submit an invoice to the Client, which shall be payable immediately upon receipt;
- (b) the Supplier shall on request return any of the Client Materials not used up in the provision of the Works; and
- (c) the following clauses shall continue in force: clause 1 (Interpretation), clause 4 (Conflict), clause 7 (Non-solicitation), clause 10 (Intellectual property rights), clause 13 (Confidentiality), clause 14 (Limitation of liability), clause 16 (Consequences of termination), clause 21 (Waiver), clause 23 (Severance), clause 29 (Multi-tiered dispute resolution procedure), clause 30 (Governing law) and clause 31 (Jurisdiction).

16.2 Termination of this 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.

17. Force majeure

- 17.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident; and
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
 - (f) interruption or failure of utility service.
- 17.2 Provided it has complied with clause 17.4, 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. The time for performance of such obligations shall be extended accordingly. Client shall not be required to pay for any Services during any period where a Force Majeure Event prevents the Supplier providing the Services.
- 17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 17.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 weeks' written notice to the Affected Party.

18. Assignment and other dealings

- 18.1 The Client 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, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

19. Publicity

- 19.1 The Client grants the Supplier permission to use the Client's name, logo and a brief overview description of the Services that were provided by the Supplier to the Client for marketing purposes.

20. Variation

- 20.1 Subject to clause 8 (Change Control Orders), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. Waiver

- 21.1 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.
- 21.2 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.

22. Rights and remedies

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

23. Severance

- 23.1 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.
- 23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 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.

24. Entire agreement

- 24.1 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.
- 24.2 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.

25. No partnership or agency

- 25.1 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.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

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.

27. Notices

- 27.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the SoW Contact's email address specified in Statement of Work and to contract admin@esynergy-solutions.co.uk.
- 27.2 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - (a) if delivered by hand, on signature of a delivery receipt; and
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

- (a) if sent by 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 28.2(c), business hours shall mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

27.3 This clause 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.

28. Counterparts

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

29. Multi-tiered dispute resolution procedure

29.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

- (a) 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 Client and the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the Client and the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a Senior Officer or Director of the Client and a Senior Officer or Director of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the Senior Officer or Director of the Client and Senior Officer or Director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 32 which clause shall apply at all times.

29.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England in accordance with clause 31.

30. Governing law

30.1 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.

31. Jurisdiction

31.1 Each party irrevocably agrees that the courts of England 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.

32. Signatures

This agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of the Supplier by:

Signature:

Name:

Title:

Date:

Signed on behalf of the Client by:

Signature:

Name:

Title:

Date:



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Thank you