

**THIS MASTER SERVICES AGREEMENT** is dated [INSERT DATE]

## Parties

- (1) **W3 PARTNERSHIP LIMITED** a company registered in England and Wales (No. 06247417) and whose registered office is 202 Sovereign Court, Witan Gate East, Milton Keynes, MK9 2HP ("**Supplier**"); and
- (2) **[INSERT CUSTOMER NAME]** incorporated and registered in England and Wales with company number **[INSERT COMPANY NUMBER]** whose registered office is at **[INSERT CUSTOMER REGISTERED ADDRESS]** ("**Customer**"),  
(each a "**Party**" and together, the "**Parties**").

## 1. Definitions and Interpretation

### 1.1 Definitions:

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| Agreement                    | This agreement for the provision of the Services (as defined below) including any schedules                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Activation Date              | The date from which the Supplier considers that the Services are ready for activation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Confidential Information     | In relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with this agreement                                                                                                                                                                                                                                                                                                                                                                                                    |
| Contract                     | This MSA and the SoW form the "Contract"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Deliverables                 | All documents, items, plans, products, goods and materials supplied by the Supplier, including any methodologies, ideas, designs, computer programs, data, disks, tapes, and reports, in whatever form, which are developed, created, written, prepared, devised or discovered by the Supplier or its agents, sub-contractors, consultants and employees in relation to the Services                                                                                                                                                                                                                                                                                                                                                     |
| Effective Date               | The date on which the Agreement is signed by all parties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Equipment                    | Any equipment, systems, tools, cabling, items, materials or facilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Fees                         | All of the fees payable to the Supplier by the Customer in respect of the Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Initial Term                 | The initial term of the Contract specified in the SoW measured from the later of the Contract Start Date and the Activation Date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Intellectual Property Rights | Any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of |

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|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              | any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions. |
| Renewal Term | A period of 12 months from the expiry of the Initial Term or the previous term                                                                                                                                                                                                     |
| Service(s)   | Managed Services and Consultancy Services                                                                                                                                                                                                                                          |
| SoW          | Statement of Work                                                                                                                                                                                                                                                                  |
| Working Days | Any day other than a Saturday, Sunday or Public Holiday in England and Wales                                                                                                                                                                                                       |

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this MSA.

1.3 References to a person includes firms, companies, government entities, trusts and partnerships

1.4 Any phrase introduced by the words “including”, “includes”, “in particular” or “for example”, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision

1.6 “writing” or “written” will include fax and e-mail unless otherwise stated

1.7 “including” is understood to mean “including without limitation”

1.8 if there is a conflict between this MSA and a SoW, then the SoW shall prevail.

## **2. Requesting Services**

2.1 In response to a request by the Customer, the Supplier shall prepare and send to the Customer an initial Statement of Work (SoW). If the Customer wishes to contract with the Supplier to either provide the Managed Services or Consultancy Services set out in that initial SoW, it will indicate its acceptance of the initial SoW by signing it and returning a signed copy to the Supplier, whereupon the Contract will come into existence.

2.2 Depending on the nature of the service, the Customer recognises that it may be necessary for the Supplier to perform additional preparatory design or specification work before proceeding with the provisioning and/or “go live”, in which case the Supplier will provide to the Customer upon completion of that additional preparatory work a Supplementary SoW setting out further detail on how the Services will be provided.

The Customer may request reasonable changes to the Supplementary SoW, and the Supplier will use reasonable efforts to accommodate such changes within the scope of the Fees set out in the Initial SoW, failing which the Supplier and the Customer, each acting reasonably, will agree such changes to the Managed Services and the corresponding Fees as may be required to give effect to the Customer's request. The Customer can accept a Supplementary SoW in writing or by email that the Supplier proceed with providing the Services, and in the absence of a written indication to the contrary will be deemed to have accepted a Supplementary SoW 7 days after the Supplier sends it to the Customer. Once accepted, a Supplementary SoW forms part of the SoW (and, therefore, part of the Contract) in respect of the relevant Service(s). This supplementary SoW shall only be deemed to be accepted upon an authorised signature from the Customer.

2.3 Following acceptance of the SoW (including, where applicable, any Supplementary SoW), the Supplier will provide the Customer with a provisional Activation Date for each of the ordered Services. The Supplier will use reasonable efforts to begin delivering the relevant Services by such provisional Activation Date.

### **3. Managed Service Provision**

3.1 Any Service Level Arrangements, Support Arrangements and Managed Service Pricing will be agreed in a supplementary SoW with the Customer, before the Managed Service is Provisioned.

3.2 The Service Level Arrangements shall apply with effect from the start of the first complete month occurring at least 30 days after the Commencement (Activation) Date

3.3 The Customer is responsible for the use to which it puts the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer). In particular, the Customer acknowledges that the Managed Services are not designed to be used in circumstances in which errors or failures in the Managed Services could lead to death, personal injury or severe physical or environmental damage. Therefore, unless expressly agreed otherwise in the SoW, the Customer will not use the Managed Services for such purposes.

3.4 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).

3.5 The Customer shall not provide the Managed Services to third parties.

3.6 The Managed Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Managed Services shall include (without limitation):

- (a) obtaining, or attempting to obtain, the Managed Services by rearranging, tampering with, or making connection with any facilities of the Supplier, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Managed Services;
- (b) attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of the Supplier or of another customer of Supplier; or
- (c) using the Services in such a manner as to interfere unreasonably with the use of the Managed Services by any other user or authorised person.

3.7 The Supplier reserves the right to:

- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
- (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network, provided that this has no adverse effect on the Supplier's obligations under this agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Customer and the parties shall follow the Change Control Procedure.

#### **4. Consultancy Services**

4.1 The Supplier shall provide professional services as agreed between the Supplier and the Customer ("Statement of Work") in addition to and to compliment the Services.

4.2 The Statement of Work shall set out the:

- (a) scope of the professional services to be provided by The Supplier;
- (b) deliverables by the Supplier to the Customer;
- (c) period during which the professional services are to be delivered or the date by which deliverables will be delivered to the Customer;
- (d) specification of the professional services to be delivered;
- (e) conditions upon which professional services will be delivered to the Customer by the Supplier;
- (f) acceptance tests to be carried out (if applicable) in respect of the professional services;
- (g) charges to be paid by the Customer to the Supplier for the supply of services pursuant to the Statement of Work.

4.3 No Statement of Work shall be binding until signed by both the Supplier and the Customer

4.4 The Supplier shall perform the professional services in a professional manner and with due care and skill.

4.5 Each party acknowledges that the scope and specification of the professional services may be subject to change subsequent to the commencement of the Statement of Work. Variation to the Statement of Work shall be agreed between in accordance with the Change Control Procedure.

4.6 The Customer may cancel the Statement of Work by giving notice to The Supplier in writing. The Customer shall be liable to the direct losses of the Supplier in cancelling the SoW, where the Supplier cannot reasonably mitigate the loss, such as transferring its staff to other projects, detailed as follows:

- (a) Greater than 29 days' notice before commencement of the Statement of Work- no charge;
- (b) 14 – 29 days' notice before commencement of the Statement of Work - 50% of charges payable pursuant to the Statement of Work;
- (c) Less than 14 days' notice before commencement of the Statement of Work – 90% of charges payable pursuant to the Statement of Work.

#### **5. Change Control**

5.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

5.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Fees arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of this agreement.

5.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

5.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan and any other relevant terms of this agreement to take account of the change

## **6. Proprietary Rights**

6.1 The Customer acknowledges and agrees that, as between the parties, the Supplier and/or its licensors own all Intellectual Property Rights in all materials connected with the Services and in any material developed or produced in connection with this agreement by the Supplier, its officers, employees, subcontractors or agents. Except as expressly stated herein, this agreement does not grant the Customer any rights to such Intellectual Property Rights.

6.2 The Customer shall own and retain all rights, title and interest in and to the Customer Data. The Supplier shall have no rights to access, use or modify the Customer Data unless it has the prior written consent of the Customer.

## **7. Charges and Payments**

7.1 The Customer shall pay the Fees set out in the SoW for the Supplier's Services.

7.2 Where the services are provided on a time and materials basis:

a. the charges payable for the services shall be calculated in accordance with the Supplier's standard daily fee rates for each individual person and are calculated on the basis of an eight-hour day, worked between 9am and 5pm on Working Days and otherwise by arrangement between the parties

b. The Fees exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or its subcontractors in providing the Services, such rates are set out in Schedule A but may be increased by the Supplier every 12 months following the Activation Date. The Supplier shall obtain the Customer's prior written approval before incurring any such expense, material or service exceeding a total cost of £500 in aggregate per day and shall be payable by the Customer in accordance with Clause 7.5.

c. the Supplier will ensure that every individual whom it engages in relation to the Services completes time sheets

7.3 All amounts and Fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

7.4 The Supplier shall invoice the Customer monthly as of the last day of each month for all Services performed by the Supplier during that month. If any Service Credits are due, then they will be shown as a deduction from the invoice.

7.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds within 30 days of receipt to a bank account nominated in writing by the Supplier (the Due Date).

7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then,

a. the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

b. the Supplier may suspend all Services until payment has been made in full

7.6 All sums payable to the supplier under this Agreement shall become due immediately on its termination, despite any other provision.

7.7 The Supplier and Customer shall pay all amounts due under this Agreement in full without any deduction except as required by law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any amount due, in whole or in part.

## **8. Security**

8.1 The Supplier will operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all Services.

8.2 The Supplier and the Customer will promptly inform the other if it suspects or uncovers any breach of security in respect of the Services, and the Supplier will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

## **9. Customer Obligations**

9.1 To assist the Supplier to fulfil its obligations under the Contract, the Customer will:

9.1.1 provide the Supplier promptly with any information and assistance it may reasonably require from time to time;

9.1.2 afford the Supplier full and safe access to the Customer Site(s) and the Customer Site Equipment during normal working hours;

9.1.3 provide at the relevant Customer Site(s) all suitable computer hardware, software and telecommunications equipment (other than those specified to be provided by the Supplier in the SoW);

9.1.4 shall appoint a Representative ("**Customer Representative**"), who shall have authority to commit the Customer on all matters relating to the relevant Project.

9.1.5 inform the Supplier in writing of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

9.1.6 allow the Supplier to publicise the work the Supplier undertakes under the Contract for the Customer including but not limited to case studies. For the avoidance of doubt, this shall, subject to obtaining the Customer's consent, include use of any and all logos and trademark names;

9.2 If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon the Supplier's ability to deliver the Services, then the Customer will inform the Supplier in writing of such works prior to their commencement.

9.3 In the event that the Customer, or any third party who is not a sub-contractor of the Supplier, omits or commits anything that prevents or delays the Supplier from undertaking or complying with any of its obligations under the Contract, the Supplier shall notify the Customer as soon as possible and the Supplier will have no liability in respect to any delay in the provision of the Service that results from such act or omission.

9.4 The Supplier may charge the Customer for any additional reasonable costs and expenses properly incurred by the Supplier caused by variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this Clause 9.

## **10. Warranties**

10.1 The Supplier warrants that the Services will be performed with all reasonable skill and care and that it will be provided in accordance with the SoW and the terms and conditions of this Agreement.

10.2 The Supplier shall not in any circumstances be liable under the warranties in this Clause 10 if it can demonstrate that any failure of the Services to comply with such warranties was caused or contributed to by any Force Majeure Event.

10.3 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free.

10.4 The Customer hereby warrants that:

10.4.1 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Customer;

10.4.2. it has the authority to grant any rights granted to the Supplier under the Contract;

10.4.3. it will comply with and use the Managed Services in accordance with the Contract and all applicable laws;

10.4.4. it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for the Supplier to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Services to the Customer; and

10.4.5. the Supplier's use of any third-party materials supplied by the Customer in connection with the Contract, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

## **11. IT Partners, EULAs and other Third-Party Agreements**

11.1 The Customer may contract directly with an IT Partner for provision of software or services related to the Services provided by the Supplier. Unless managing such contracts falls within the scope of the Services provided by the Supplier, the Customer will (as against the Supplier) be solely responsible for all matters arising out of such contracts.

11.2 Where the Supplier provides to the Customer access to or use of third-party Software in the course of providing the Managed Services, the Customer agrees to comply with the terms of the relevant end user licence agreements applicable to such Software. Where required by an upstream supplier of such Software, the Customer agrees to provide to such upstream supplier sufficient access to relevant systems and records to allow such upstream supplier to verify compliance with such end user licence agreements.

11.3 The Customer shall license or procure a licence for the use of any software, programs and/or applications used by the Customer and not supplied by the Supplier (including the Customer's Operating Environment). These may or may not be indirectly related to the Services.

## **12. Confidentiality**

12.1 Each party undertakes to the other that, except as provided by clause 12.4 or as authorised in writing by the other, it shall, at all times:

12.1.1. keep confidential all Confidential Information disclosed to it by the other party;

12.1.2. not disclose any such Confidential Information to any other person;

12.1.3. not use any such Confidential Information for any purpose other than as contemplated by the Contract; and

12.1.4. ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of this clause 12.1.

12.2 The Customer acknowledges that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Services.

12.3 The Supplier acknowledges that the Customer's Confidential Information includes the Customer Data.

12.4 Notwithstanding clause 12.1, either party may disclose the Confidential Information of the other to:

12.4.1. any sub-contractor, supplier or professional adviser of that party;

12.4.2. any governmental or other authority or regulatory body; or

12.4.3. any employee or officer of that party, or of any of the aforementioned persons, in each case only to such extent as is necessary for the purposes of performing or enforcing the Contract, or as required by law, and in each case (unless prohibited by applicable law) subject to that party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in clause 12.4.2 above or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

12.5 The provisions of this clause 12 shall continue notwithstanding the termination of the Contract for any reason.

### **13. Non-Solicitation**

13.1 Both parties agree that during the period of the Agreement and for a period of twelve (12) months after its termination or expiry, save for where such action is a result of a bona fide public recruitment process, neither party shall entice or seek to employ or engage directly or indirectly (without the other party's prior written agreement, such consent not to be unreasonably withheld or delayed) or make or seek to make any offer of employment or engagement to any of the other party's officers, employees or workers, including those of any of its sub-contractors who have been involved in the course of the negotiation, conclusion and performance of the Contract;

13.2 If any officer, employee or worker of a party leaves the employment of that party as a result of a breach of this clause 13 and commences employment with, or provides services to, the other party, it shall pay the non-breaching party 50% of the higher of:-

13.2.1. the annual salary (including any benefits-in-kind, bonus payments, commissions and other benefits) of the employee at the date that they ceased to be an employee of the non-breaching party; or

13.2.2. the annual salary of the employee at the time they commence employment by the breaching party.

13.3 Each party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of the non-breaching party's losses.

## **14. Force Majeure**

14.1 Neither the Seller nor the Buyer shall be held liable for failure or delay in the performance of its obligations under this Contract, if such performance is delayed or hindered by the occurrence of an unforeseeable act or event which is beyond the reasonable control of either party ("Force Majeure Events").

14.2 Acts or events constituting Force Majeure Events shall include, but not limited to Act of God, government intervention, directives or policies.

14.3 The party affected by a Force Majeure Event shall notify the other as soon as soon as reasonably practicable after commencement of a Force Majeure Event.

## **15. Liability**

15.1 Except as expressly and specifically provided in the Contract:

15.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and

15.1.2. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

15.2 Nothing in the Contract is intended to or shall be interpreted to exclude or limit the liability of either party for:

15.2.1. the indemnities expressly given in the Contract; or

15.2.2. any liability which cannot lawfully be excluded or limited.

15.3 The Supplier will have no liability to the Customer arising out of or in connection with the Contract for any loss of profits, account of profits, loss of business, loss of revenue, loss or reputation or goodwill, loss of opportunity, loss of data or interference with business (unless and solely to the extent that the Supplier provides backup and restore services as part of the Managed Services), or any indirect or consequential loss of any kind.

15.4 In particular and without prejudice to the provisions of clause 15.3, The Supplier will not be liable for any loss or damage arising to the Customer's systems, data, information, equipment (including the Customer's Operating Environment) or any Intellectual Property Rights if such loss is in any way attributable to any of the following:

15.4.1. any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or (unless and to the extent that backup and restore services are part of the Managed Services) failure to implement back-up procedures;

15.4.2. any failure of any applicable Service Level if in the reasonable opinion of The Supplier (based on its knowledge of the industry) the solution/systems have been tampered with by the Customer or any third party authorised by the Customer with or without The Supplier's knowledge;

15.4.3. any failure of any Customer-managed IT Partner to provide its services in accordance with the relevant agreements;

15.4.4. any Internet failure outside the control of The Supplier; or

15.4.5. any latent defect in any third-party equipment or Software, or failure of such equipment or Software to perform in accordance with the manufacturer's specification.

15.5 Subject to the other provisions of this clause 15, The Supplier's maximum aggregate liability to the Customer arising out of or in connection with the Contract is, in relation to each event and all events preceding that event (taken together), limited to an amount equal to the Fees paid by the Customer to The Supplier in the 12 months preceding such event.

## **16. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 16 shall not affect the validity and enforceability of the rest of the Contract.

## **17. No Partnership or Agency**

17.1 Nothing in the Contract 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, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

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

## **18. Third-Party Rights**

18.1 Nothing in the Contract will confer any rights on any third parties.

## **19. Term, Renewal**

19.1 The Contract will continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless:

19.1.1. either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or the then-current Renewal Term, in which case the Contract will terminate upon the expiry of the Initial Term or then-current Renewal Term, as the case may be; or

19.1.2. otherwise terminated in accordance with its terms.

19.2 The Customer acknowledges that the Fees are subject to variations caused by, among other things, increases in upstream supplier charges and general inflation, and that the Supplier may, therefore, vary the Fees payable by the Customer in respect of Renewal Terms. 45 days before the expiry of the Initial Term and each Renewal Term, the Supplier will notify the Customer of any adjustment in the Fees payable for the subsequent Renewal Term and, unless the Customer terminates the Contract in accordance with clause 19.1.1, such adjusted Fees will apply from the start of such Renewal Term

## **20. Indemnity**

20.1 The Supplier shall indemnify the Customer against any claims by any other person that the provision of the Services to the Customer in accordance with this agreement infringes any Intellectual Property Rights of that other person.

## **21. Suspension**

The Supplier may suspend all or any part of any Service without liability to the Customer if:

- 21.1.1. the Supplier reasonably believes that the Services have, are or will be used in breach of the Contract;
- 21.1.2. the Supplier discovers that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
- 21.1.3. the Customer does not co-operate with The Supplier's investigation of any suspected breach of the Contract;
- 21.1.4. the Supplier reasonably believes that the Customer has permitted the Managed Services to be accessed or manipulated by a third party without its consent;
- 21.1.6. the Supplier reasonably believes that suspension of the Managed Services is necessary to protect the Supplier's System or The Supplier's other customers;
- 21.1.7. any Fee or other amount due under the Contract is overdue or is at risk of non-payment in the opinion of the Supplier; or
- 21.1.8. the Supplier is required to do so by law or a regulatory or government body.

21.2 The Supplier will give the Customer advance notice of a suspension under this clause of at least two (2) Business Days unless The Supplier determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect The Supplier or its other customers from imminent and significant operational, legal, or security risk, or non-payment of its Fees. If the Supplier suspends any Managed Services pursuant to any of clauses 21.1.1, 21.1.3 or 21.1.7, then The Supplier may continue to charge the Customer the Fees for the Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Services.

## **22. Termination**

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

- 22.1.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 22.1.2. the other party commits a material breach of any terms of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 22.1.3. the other party repeatedly breaches the Contract 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 Contract;
- 22.1.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 22.1.5. 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 its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

22.1.6. 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 other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

22.1.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

22.1.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

22.1.9. a person appoints or becomes entitled to appoint a receiver over the assets of the other party;

22.1.10. 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; or

22.1.11. the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

22.2 If clause 22.1 applies then without prejudice to any other right or remedy available to the Supplier it shall be entitled to cancel the supply of Services without any liability to the Customer and any unpaid Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

22.3 On termination or expiry of the Contract:

22.3.1. each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and

22.3.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

22.4 Upon expiration or termination of the Contract, the Customer must discontinue use of the Services and relinquish any use of any assets assigned to the Customer by the Supplier in connection with Services.

## **23. Waiver**

23.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **24. Assignment**

24.1 The Customer shall not, without the prior written consent of the Supplier - such consent not to be unreasonably withheld or delayed - assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24.2 The Customer accepts that the Supplier may, in its sole discretion, sub-contract, outsource or resell all or parts of the delivery of a Service to any of the Suppliers IT Partners, provided that the Supplier remains responsible for any act or omission of its IT Partners and other sub-contractors.

## **25. Third-Party Rights**

25.1 Nothing in the Contract will confer any rights on any third parties

## **26. General**

26.1 This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes all prior discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

26.2 Nothing in this clause shall limit or exclude any liability for fraud.

26.3 No alteration to or variation of the Contract shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative.

26.4 No party may assign, transfer or sub-contract to any third party the benefit and/or burden of the Agreement without the prior written consent (not to be unreasonably withheld) of the other party.

26.5 The Contracts (Rights of Third Parties) Act 1999 does not apply to the Agreement and no third party has any right to enforce or rely on any provision of the Agreement.

26.6 Unless otherwise agreed, no delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

26.7 A provision which by its intent or terms is meant to survive the termination of the Agreement will do so.

26.8 If any court or competent authority finds that any provision (or part) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement will not be affected.

26.9 Unless specifically provided by the parties, nothing in the Agreement will establish any employment relationship, partnership or joint venture between the parties, or mean that one party becomes the agent of the other party, nor does the Agreement authorise any party to enter into any commitments for or on behalf of the other party.

26.10 Any notice (other than in legal proceedings) to be delivered under the Agreement must be in writing (email or letter).

## **27. Governing law and jurisdiction**

27.1 The Contract and all non-contractual obligations arising out of or connected with it will be governed by English law and subject to the exclusive jurisdiction of the English courts.

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

Signed by .....

Printed Name: .....

Position: Director

for and on behalf of **W3 PARTNERSHIP  
LIMITED**

Signed by .....

Printed Name: .....

Position: .....

for and on behalf of **[INSERT  
CUSTOMER NAME]**

## Schedule A - Expenses

| Expense Description | Rate                          |
|---------------------|-------------------------------|
| Rail travel         | Standard class rail fare      |
| Mileage             | 45 pence per mile             |
| Taxi                | Standard fare                 |
| Air travel          | Economy class for all flights |
| Subsistence         | £25 per day                   |
| Hotel               | 4* or equivalent              |