

1 Master Services Agreement

- 1.1 References in this Agreement to clauses or schedules are to clauses of, or schedules to, this Agreement. References in a Service Contract to annexes shall be to the annexes of such Service Contract.
- 1.2 In this Agreement and each Service Contract, unless the context otherwise requires:
 - 1.2.1 words in the singular include the plural and vice versa, and words in one gender include any other gender;
 - 1.2.2 a reference to:
 - 1.2.2.1 any Party includes its successors in title and permitted assigns;
 - 1.2.2.2 a "person" includes any individual, firm, corporation wherever incorporated, trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association (whether incorporated or not), or any other entity, or any governmental body or subdivision, agency, or authority;
 - 1.2.2.3 "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms; and
 - 1.2.2.4 "in writing" includes communications via electronic mail, but excludes faxes.
- 1.3 The headings in this Agreement are for convenience only and shall not be used in interpreting the Agreement.
- 1.4 Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.5 If there is any ambiguity or inconsistency between the terms of any Service Contract and this Agreement, the following order of precedence shall prevail:
 - 1.5.1 the applicable Service Contract;
 - 1.5.2 this Agreement.
- 1.6 Definitions are set out at **clause 32**.

2 Appointment and duration

- 2.1 The Client appoints the Service Provider to provide the Services as set out in each Service Contract, during the Agreement Term, under the terms and conditions of this Agreement.
- 2.2 This Agreement shall commence on the Commencement Date and shall continue for a period of three (3) years, after which it shall continue on a rolling annual basis until and unless terminated by either Party giving the other a minimum of three (3) months' written notice.
- 2.3 Each Service Contract shall commence on the Services Commencement Date and, subject to the provisions of this Agreement and any such Service Contract, shall continue for the Service Contract Term.
- 2.4 Unless agreed otherwise by the Parties, each Service Contract shall be agreed in the following manner:
 - 2.4.1 the Client shall request the Service Provider to prepare a draft Service Contract for the Services required by the Client;
 - 2.4.2 within a reasonable period from the Client's request, the Service Provider shall notify the Client of any additional information it reasonably requires in order to prepare the Service Contract;
 - 2.4.3 within 30 Business Days of receipt of the required information from the Client, or if no additional information is required, within 30 Business Days of receiving the Client's request, the Service Provider shall provide the Client with the draft Service Contract as requested; and
 - 2.4.4 the Service Provider and the Client shall review and discuss and, upon mutual agreement, shall each arrange for an authorised representative to sign the Service Contract.
- 2.5 **Clause 2.4** does not affect the validity of any Service Contract which is agreed between the Parties but which is not concluded strictly in accordance with **clauses 2.4.1 - 2.4.4**.
- 2.6 Once a Service Contract has been agreed and signed in accordance with **clause 2.4.4** no amendment shall be made to it except in accordance with **clause 24.4**.
- 2.7 In the event that this Agreement is terminated or expires, all outstanding Service Contracts then in force at the date of such termination or expiry shall continue

in full force and effect for the remainder of the term of such Service Contract and shall continue to be governed by the terms of this Agreement, until and unless such Service Contract expires or is terminated in accordance with its terms.

- 2.8 The termination of any Service Contract shall not affect the continuation of any other Service Contract or this Agreement.
- 2.9 Each Service Contract entered into under this Agreement shall be a separate contract between the Parties.

3 Obligations of the Client

3.1 The Client shall ensure:

- 3.1.1 that all information submitted by it to the Service Provider is complete and accurate;
- 3.1.2 that it has taken, and shall continue to take, all reasonable steps in accordance with Good Industry Practice and in connection with its receipt of Services from the Service Provider, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm or trojan) onto, and prevent any unauthorised access to, any equipment or systems owned, provided or managed by the Service Provider or provided by the Service Provider for the Client's use as part of the Services;
- 3.1.3 that it shall not use or attempt to use the Services for any activity which breaches any Applicable Law or industry standard within the UK or any country the Services are being provided from or to, and shall not distribute, store, or publish any content or material that is restricted, illegal or otherwise unlawful under any such Applicable Law, or which is likely to be offensive or obscene to a reasonable person;
- 3.1.4 that it shall keep any equipment or other property owned or leased by the Service Provider, which is located at the Client's premises, in safe custody at its own risk until returned to the Service Provider and shall not relocate, dispose of or use such property other than in accordance with the Service Provider's instructions or agreement and shall not remove or obscure any tag or identifying mark on such property;
- 3.1.5 that it shall not, without the Service Provider's prior written approval, allow any person other than a Service Provider Representative to modify, repair, maintain or make any addition to any equipment owned, provided or managed by the Service Provider;
- 3.1.6 that it shall comply with, and where required will formally accept, within any timeframes specified by the Service Provider, any standard software licence agreement, end-user licence agreement or any other terms and conditions which may apply to the Client's use of a Third Party Product;
- 3.1.7 that it shall not sell, resell, distribute or lease the Services or any equipment provided by the Service Provider without the Service Provider's prior written approval. With the exception of equipment the Client purchases in accordance with **clause 20.1**, nothing within this Agreement or any Service Contract shall confer on the Client any right, title or interest in respect of such equipment;
- 3.1.8 that it shall cooperate with the Service Provider in order for the Service Provider to fulfil its obligations under this Agreement and each Service Contract, such cooperation to include, without limitation:
 - 3.1.8.1 providing the Service Provider, its Personnel, agents and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Service Provider to carry out its obligations under the Agreement or the applicable Service Contract;
 - 3.1.8.2 providing the Service Provider with such information and materials as the Service Provider may reasonably require;
 - 3.1.8.3 adequately preparing its premises for the supply of the Services, including for the delivery of any equipment or other property owned or leased by the Service Provider and agreed to be provided as part of the Services;

3.1.8.4 obtaining and maintaining all necessary licences, permissions and consents which may be required for receipt of the Services before any start or delivery date agreed with the Service Provider.

3.1.9 that it shall comply with all health and safety-related Applicable Law and shall take all reasonable precautions to ensure that any of its premises which the Service Provider Personnel may attend are operated in a safe manner, and that it shall maintain adequate public liability insurance with a reputable insurer;

3.1.10 that it shall comply with the Service Provider's Acceptable Use Policy. If the Client breaches such policy, the Service Provider reserves the right, without liability to the Client, to disable the Client's access to the Services and/or charge additional fees to cover any reasonable costs incurred by the Service Provider in remedying such breach;

3.1.11 that it has the full capacity and authority and all necessary consents to enter into this Agreement and the applicable Service Contract and that the Agreement and the applicable Service Contract is executed by a duly authorised representative of the Client.

4 Obligations of the Service Provider

4.1 The Service Provider shall use its best endeavours to:

4.1.1 provide the Services and Deliverables in accordance with the applicable Service Contract; and

4.1.2 provide the Services to meet any applicable Service Levels and KPIs set out in the applicable Service Contract.

4.2 The Service Provider shall not be responsible for any failure to meet any Service Levels or KPIs, nor for the failure to deliver any Services, to the extent that such failure is caused by:

4.2.1 planned maintenance carried out by either Party, provided that such planned maintenance by the Service Provider is notified to the Client reasonably in advance, or is otherwise specified within the applicable Service Contract;

4.2.2 the Client: (i) failing to comply with any obligation set out in this Agreement or applicable Service Contract; (ii) restricting access to or making changes to its infrastructure; or (iii) a failure of equipment or utilities supplied or controlled by the Client;

4.2.3 a failure by the Client to fully assist the Service Provider in fault correction, including preventing or delaying access to premises or where a designated contact is unavailable or cannot be reached using the agreed contact details;

4.2.4 the Client failing to meet any of the Dependencies or Assumptions set out in a Service Contract, or such Dependencies or Assumptions becoming otherwise untrue or invalid;

4.2.5 any other circumstances which are beyond the Service Provider's reasonable control, including (i) the acts or omissions of a third party, where such third party is not a subcontractor of the Service Provider under this Agreement; or (ii) an Event of Force Majeure.

4.3 If the Service Provider fails to provide the Services in accordance with the requirements of this Agreement or the applicable Service Contract, the Service Provider shall, within 10 Business Days of notice of such failure by the Client:

4.3.1 perform a root-cause analysis to identify the cause of such failure;

4.3.2 provide a plan for correcting such failure within a period as would be expected in accordance with Good Industry Practice;

4.3.3 provide the Client with reasonable evidence that such failure shall not recur; and

4.3.4 provide the Client with a written report outlining the cause of the failure, the corrective procedure, and shall use its reasonable endeavours to rectify the failure within a reasonable timeframe.

5 Warranty and Undertaking

5.1 The Service Provider warrants and undertakes that:

5.1.1 the Services will be performed in accordance with Good Industry Practice by Personnel of appropriate skill and experience, acting with due diligence, and in accordance with the Service Provider's obligations under

this Agreement and the applicable Service Contract; and

- 5.1.2 it has the full capacity and authority and all necessary consents to enter into this Agreement and the applicable Service Contract and that the Agreement is executed by a duly authorised representative of the Service Provider.
- 5.2 Unless otherwise expressly stated in the applicable Service Contract, time shall not be of the essence with respect to the Service Providers' obligations and any dates in connection with the delivery of the Services (as contained within this Agreement or the applicable Service Contract), and such timings and dates shall be construed as estimates only.
- 5.3 The Client acknowledges and agrees that the Services may involve complex IT solutions and cannot be guaranteed to operate uninterrupted or error-free. No warranty shall be implied that the Services shall operate uninterrupted or error-free or be fit to operate in conjunction with any hardware items or software products other than as may be expressly and specifically agreed for specific hardware items and software products under an applicable Service Contract. Except as set out in this Agreement or the applicable Service Contract, all warranties, representations, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise in respect of the Services are excluded to the fullest extent permitted by law.
- 5.4 The Client acknowledges and agrees that to the extent a Service Contract specifies the provision of cloud software, the Service Provider may:
 - 5.4.1 (i) contract for such cloud software and, unless the Service Provider is providing the support services itself, support services on the Client's behalf. In such cases, the Client shall be bound by all the terms and conditions of the third-party provider that relate to such cloud software and support services; and
 - 5.4.2 facilitate the Client's use of such software and support services; however the third-party provider of the cloud software and support services is the actual provider of such software and support services and owns and operates the equipment and

technology used to deliver that software and support services. The Service Provider shall not be liable for, nor provide any guarantee or warranty with respect to, any third-party provider, cloud software, support services, or any other third-party products or services, including Third Party Products.

- 5.5 The Client acknowledges and agrees to sign such separate agreements of the third-party provider of cloud software and support services as may be required, including any end-user licence agreements. The Client shall indemnify and hold harmless the Service Provider and each member of its Group from and against all third-party claims arising from or in connection with:
 - 5.5.1 any failure by the Client to accept, perform or comply with any software agreement, end-user licence agreement or other third-party provider terms and conditions; and
 - 5.5.2 the Client's use of the cloud software and support services.
- 5.6 The Client acknowledges and agrees that to the extent it has ordered goods or software which are not comprised of the Service Provider's Managed Services or aaS Services then the provision of such goods or software will be governed by the Service Provider's Terms and Conditions of Sale available at: <https://www.creative-itc.com/terms-conditions>.

6 Default by the Client

- 6.1 In the event that the Client fails to meet any of the Dependencies specified in a Service Contract, the Service Provider shall notify the Client of such failure, along with the Services and/or Milestones affected by such failure, as appropriate.
- 6.2 If the Service Provider would have met the relevant Milestones or Service Levels, or would have provided the Services or Deliverables in accordance with the Service Contract and this Agreement, but failed to do so as a result of the Client failing to meet a Dependency, the Service Provider shall have the relief set out in **clause 6.3**.
- 6.3 Provided that the Service Provider has given the Client notice in accordance with **clause 6.1**, then:
 - 6.3.1 the relevant Milestone Dates will be extended by a period of time equal to the time between the notice in 6.1 having been received by the Client and

the relevant Dependency subsequently being met;

- 6.3.2 for the period of time equal to the time that the Client failed to meet the relevant Dependency and such Dependency subsequently being met, the Service Provider shall not be in default of this Agreement or the relevant Service Contract, nor will it be liable for any failure to meet Milestones or Service Levels, or for any failure to provide the Services or Deliverables.

7 Confidentiality

- 7.1 Either Party may disclose Confidential Information to the other under this Agreement and any Service Contract. The Party receiving an item of Confidential Information (the “**Recipient**”) shall treat as strictly confidential all Confidential Information and may use the Confidential Information only for the performance of its obligations and the exercise of its rights under this Agreement and the applicable Service Contract.
- 7.2 The Recipient may disclose such part of the Confidential Information as is required by a court of competent jurisdiction, any regulatory, judicial, governmental or similar body, any taxation authority of competent jurisdiction in the exercise of its powers or the rules of any listing authority or stock exchange on which its shares are listed or traded, provided that the Recipient shall, as far as it is able to do so, provide the party disclosing an item of Confidential Information (the “**Disclosing Party**”) with immediate written notice of any request for disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy.
- 7.3 Subject to the provisions of this Agreement, the Recipient may disclose the Confidential Information to those of its and its affiliates’ employees, agents, permitted sub-contractors, consultants, service providers, auditors and professional advisers that have a need to know the Confidential Information for the purposes of this Agreement. The Recipient shall take all reasonable measures available to it, and in any event not less than those used to protect its own Confidential Information, including ensuring that suitable obligations of confidentiality are put in place with the Recipient’s employees, professional advisors, contractors, agents or auditors, or in the case of the Service Provider, any permitted sub-contractors, who are permitted access to the Confidential Information.
- 7.4 Upon expiration or termination of this Agreement, whichever is the sooner, the Recipient shall, if requested by the Disclosing Party, within fifteen (15) days:
- 7.4.1 return or destroy, at the Disclosing Party’s direction, all Confidential Information then in its or its Personnel’s possession or control, including whole or partial copies thereof in any media, all notes, memoranda and other materials containing Confidential Information, to the Disclosing Party; and
- 7.4.2 provide written certification to the Disclosing Party confirming that all Confidential Information in the possession or control of the Recipient or its Personnel, which has not been returned, has been securely destroyed.
- 7.5 Notwithstanding **clause 7.4**, the Recipient is released from its obligation to return or destroy all Confidential Information to the extent that it is obliged to store or retain the respective information due to legal or accounting requirements. The Recipient is permitted to store a reasonable number of copies of the respective information for archival purposes in accordance with Applicable Law. In addition, the Recipient will not be required to delete Confidential Information:
- 7.5.1 residing on its backup tapes or its servers if permanent deletion would be infeasible; or
- 7.5.2 if under a reasonable document retention program.
- 7.6 Promptly on the Disclosing Party’s request, the Recipient shall, and shall procure each of its Personnel shall, do all things and execute all further documents necessary to give full effect to this **clause 7**.
- 7.7 All rights, title and interest in the Confidential Information shall remain the property of the Disclosing Party. Subject to **clause 8** (IPR Ownership and Licence), the Recipient acknowledges that it shall not acquire any right, title to, interest in or licence in respect of any part of the Confidential Information.
- 7.8 The Recipient’s obligation to maintain the confidentiality of Confidential Information and the restrictions on such Recipient’s use of the Confidential Information, as

provided in this **clause 7**, shall survive the termination of this Agreement.

8 IPR Ownership and Licence

8.1 The Parties acknowledge that:

8.1.1 the Service Provider is the owner or licensed user of the Service Provider IPR, and that except as specified within this **clause 8**, nothing in this Agreement or any Service Contract shall confer on the Client any right, title or interest in the Service Provider IPR; and

8.1.2 the Client is the owner or licensed user of the Client IPR, and that except as expressly specified in this **clause 8**, nothing in this Agreement or any Service Contract shall confer on the Service Provider or its Personnel any right, title or interest in the Client IPR.

8.2 Subject to the Client obtaining all necessary consents from third party licensors, the Client hereby grants to the Service Provider a non-exclusive, sub-licensable, revocable, royalty-free, worldwide licence for the applicable Service Contract Term to use such of the Client IPR and Project IPR, for the purposes of and to the extent necessary to perform its obligations under this Agreement and the applicable Service Contract.

8.3 The Client shall own all IPR in the Project IPR, unless agreed otherwise in a Service Contract. The Service Provider hereby assigns absolutely (and shall procure that all Personnel assign absolutely) to the Client by way of present assignment of existing and all future property, rights, title and interest, all IPR in the Project IPR.

8.4 Subject to clause 8.5 which shall apply in respect of any Software (other than Specifically Written Software) that is licensed by the Service Provider to the Client under a Service Contract, the Service Provider agrees to, and shall grant to the Client, a non-exclusive, non-transferable, revocable, royalty-free licence to use the Service Provider IPR during the applicable Service Contract Term for the sole purpose of receiving the Services pursuant to the relevant Service Contract.

8.5 Where the Service Provider is supplying Software (other than Specifically Written Software) to the Client as part of the provision of the Services, title to and the IPR in such Software shall all times and for all purposes vest and remain vested in the third party software owner. The Client is

licensed to use such Software in accordance with the EULA applicable to such Software.

8.6 Except as expressly permitted by law or the terms of the applicable EULA, the Client must not seek to reverse engineer any Software (other than Specifically Written Software), nor create any software intended to replicate the facilities and functionality of the Software (other than Specifically Written Software).

8.7 The Client warrants that the Service Provider's compliance with any instructions given in relation to the Service Provider's use of any Client IPR shall not cause the Service Provider to infringe the rights of any third party.

9 Client Data and Data Protection

9.1 The Service Provider shall, where agreed with the Client in a Service Contract, provide disaster recovery and backup and restore services as part or all the Services, which may form part of a Client's wider business continuity and recovery strategy. The Service Provider, however, shall not provide general business continuity planning and execution services.

9.2 Business continuity planning, and the execution and testing of such plans, is the responsibility of the Client, and the Client acknowledges that the Service Provider's backup and restore services are not a complete substitute for such arrangements. The Service Provider shall have no liability for any failure of business continuity or for any loss or disruption arising from the Client's failure to implement adequate business continuity measures, nor for any computer system backup or failure to provide any computer system backup (unless backup, disaster recovery or restore services are provided under the applicable Service Contract).

9.3 If backup, disaster recovery or restore services are provided under the applicable Service Contract, the Service Provider will perform such backup, disaster recovery or restore services as are set out in such Service Contract and in accordance with Good Industry Practice. The Client acknowledges, however, that the Service Provider shall not at any time be held liable or responsible for developing, evaluating or testing the Client's wider business continuity or disaster recovery arrangements, and can only provide such backup, disaster recovery or restore services as form part of the contracted

Managed Services or aaS Service, and the selection and testing of appropriate backup and recovery solutions and strategies is therefore the Client's responsibility.

- 9.4 The Service Provider shall not be responsible for verifying the accuracy, completeness or integrity of the Client Data, and can only back up the Client Data as of its then-current state. The Service Provider will not be liable if any Client Data backed up or restored by the Service Provider is inaccurate or incomplete.

10 Protection of Client Personal Data

- 10.1 Each Party shall comply with its obligations under Data Protection Legislation in relation to all Client Personal Data that is Processed under or in connection with this Agreement.
- 10.2 It is the factual circumstances that dictates the role of the Parties in respect of Data Protection Legislation. The Parties anticipate the Client shall be the Controller and the Service Provider shall be the Processor in relation to any Client Personal Data that is Processed in connection with this Agreement, and **clauses 10.3 to 10.12** shall apply. The applicable Service Contract shall set out the subject matter, nature and purpose of Processing by the Service Provider, the duration of the Processing and the types of Personal Data and categories of Data Subject related to the Processing
- 10.3 Without prejudice to the generality of **clause 10.1**, the Client will ensure that it is legally entitled to transfer the Client Personal Data to the Service Provider so that the Service Provider may lawfully Process it in accordance with this Agreement and the applicable Service Contract. The Client shall also be responsible for the provision of privacy notices to Data Subjects, and shall comply with all other obligations imposed on a Controller under the Data Protection Legislation.
- 10.4 Without prejudice to the generality of **clause 10.1**, the Service Provider shall only undertake Processing of Client Personal Data on the documented and lawful written instructions of the Client (which shall include the terms of this Agreement and the applicable Service Contract), unless required to do so by Applicable Law. Where such requirement is placed on the Service Provider, it shall inform the Client of that

legal requirement before Processing, unless Applicable Law prohibits such information on important ground of public interest.

- 10.5 The Service Provider shall inform the Client if in its reasonable opinion any instruction or direction from the Client would infringe the Data Protection Legislation.
- 10.6 Unless the Client expressly requires otherwise, the Service Provider shall not disclose Client Personal Data to any third parties other than:
- 10.6.1 to its Personnel or sub-processors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out its obligations under this Agreement and/or the applicable Service Contract, provided that disclosure under this clause is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 10**; and
- 10.6.2 to the extent required under a court order or otherwise as required by Applicable Law.
- 10.6.3 The Service Provider shall not transfer any Client Personal Data to any country or territory outside of the UK and/or the European Economic Area unless:
- 10.6.4 the Service Provider ensures a valid transfer mechanism as permitted by Data Protection Legislation is in place; and
- 10.6.5 the Service Provider will provide the Client with prior written notice of such transfer together with details of the mechanism relied on to ensure compliance with restrictions on the transfer of personal data to third countries imposed by the Data Protection Legislation.
- 10.7 The Service Provider shall implement appropriate technical and organisational security measures governing the Processing of all Client Personal Data. These measures shall ensure an appropriate level of security so as to avoid unauthorised or unlawful Processing or accidental loss, destruction or damage of such Client Personal Data, and may include, where appropriate, pseudonymising and encrypting Client Personal Data, ensuring the 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, regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it, and taking reasonable steps to ensure the reliability of Personnel having access to such Client Personal Data, including ensuring that Personnel authorised to Process the Client Personal Data are bound by appropriate provisions of confidentiality or are under an appropriate statutory obligation of confidentiality.

10.8 The Service Provider shall:

- 10.8.1 notify the Client without undue delay in the event of receipt of any Data Subject access request;
- 10.8.2 notify the Client if a Data Subject exercises any of its rights under the Data Protection Legislation and shall provide information and assistance as the Client reasonably requests; and
- 10.8.3 assist the Client, as far as is reasonable and at the Client's cost, in ensuring compliance with the Client's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

10.9 The Service Provider shall, without undue delay, inform the Client in the event of any Personal Data Breach affecting the Client Personal Data. The Service Provider shall provide the Client with reasonable assistance in regard to such Personal Data Breach affecting the Client Personal Data as the Client may reasonably require to meet its obligations under Data Protection Legislation.

10.10 The Client hereby expressly consents to the Service Provider's use of sub-processors as set out in the applicable Service Contract. The Service Provider shall not use or authorise any other sub-processor to Process the Client Personal Data without the Client's prior written consent. In seeking such consent, the Service Provider shall supply to the Client full details of such proposed sub-processor. Where the Service Provider does engage another processor for carrying out specific Processing activities on behalf of the Client in accordance with this **clause 10.10**, substantially the same data protection obligations as set out in this **clause 10** shall be imposed on that other processor by way of a written contract, in particular providing sufficient guarantees to

implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the Data Protection Legislation. Where any such sub-processor fails to fulfil its obligations under the Data Protection Legislation, the Service Provider shall remain fully liable to the Client for the performance of such sub-processor's obligations.

- 10.11 The Service Provider shall keep a record of any Processing of Client Personal Data as reasonably necessary to demonstrate its compliance with this **clause 10**. No more than once per annum, and at the Client's sole cost and expense, the Service Provider shall provide the Client with evidence reasonably demonstrating its compliance with applicable Data Protection Legislation and information security standards, including, where available, relevant certifications such as ISO 27001, CCM, and CE+, and associated audit reports. Such evidence shall be provided remotely and shall not include any physical access to the Service Provider's premises, data centres, or systems by the Client or its representatives.
- 10.12 The Service Provider shall, at the written direction of the Client, delete or return Client Personal Data held by it to the Client on termination of the Agreement or the applicable Service Contract, unless required by Applicable Law to retain such data.

11 Audit

11.1 For the Agreement Term and for a minimum of two (2) years thereafter, or such longer period required by Applicable Law, the Service Provider shall maintain all records and accounts and other documentation relating to this Agreement and the provision of the Services, with the exception of Client Personal Data, which shall be retained in accordance with clause 10.

11.2 Not more than once per calendar year, except where required to fulfil a legally enforceable request by a governmental authority, the Service Provider shall grant to the Client, its auditors or authorised agents, rights of access on 10 Business Days' prior notice, to the Service Provider's premises, materials, resources and Personnel, for the purpose of:

- 11.2.1 verifying the accuracy of the Service Charges; or
- 11.2.2 verifying that the Service Contract and Agreement is being performed in

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accordance with its terms, during the Agreement Term.

- 11.3 The Service Provider shall be permitted at any time, on giving at least five (5) Business Days' notice, to monitor or inspect:
- 11.3.1 any equipment involved in the provision of Services, whether such equipment is provided by the Service Provider or is Client equipment; and
- 11.3.2 the Client's IT environment, manually or by way of automated scanning, and the Client shall allow the Service Provider access to its systems, premises, Personnel and relevant records in each case as may be reasonably required.
- 11.4 The Parties shall bear their own costs and expenses in connection with any audit under **clause 11.2** or **11.3**.
- 11.5 For the avoidance of doubt, clauses 11.1 to 11.4 do not apply to audits or reviews relating to data protection, privacy, or information security compliance, which are governed exclusively by clause 10.11.

12 Security and Information Security

- 12.1 The Service Provider shall ensure that it has in place and is operating in accordance with reasonable information security procedures, which in no event shall be less protective than as would be expected from Good Industry Practice.
- 12.2 The Service Provider shall maintain and enforce safety and security systems and procedures at the Premises to prevent unauthorised access to any and all networks or resources that process or contain the Client's information.
- 12.3 The Service Provider shall establish and maintain reasonable safeguards against the destruction, loss or alteration of any Client Data in the possession of the Service Provider.

13 Payment

- 13.1 In consideration of the provision of the Services, the Client shall pay to the Service Provider the Service Charges in accordance with the payment schedule set out in the applicable Service Contract.
- 13.2 Where the Service Charges are calculated on a time and materials basis, the Service Provider's daily fee rates for each individual person as set out in Service Contract are

calculated on the basis of an eight-hour day worked.

- 13.3 Where the Service Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in the applicable Service Contract.
- 13.4 If the Service Charges are based on the achievement of Milestones, those Milestones, the relevant Milestone Dates, and the criteria for achieving them, will be set out in the applicable Service Contract.
- 13.5 The Service Provider shall be entitled to charge for expenses reasonably incurred in the provision of the Services, provided these are agreed in advance with the Client (unless agreed otherwise in the relevant Service Contract).
- 13.6 The Client shall pay to the Service Provider the total undisputed amount of each invoice in Pounds Sterling to an account nominated in writing by the Service Provider within thirty (30) days from the date of the Service Provider's invoice, unless agreed otherwise in the relevant Service Contract.
- 13.7 In the event that the Client reasonably disputes any invoice, or any portion of an invoice, the Client shall pay any undisputed amounts in accordance with this **clause 13** and notify the Service Provider as soon as reasonably practicable in writing of the reasons for withholding the disputed amount. Both Parties agree to engage in good faith negotiations to resolve any such disputes promptly. In the event that the Service Provider provides evidence that reasonably demonstrates the correctness of the disputed invoice amount, such invoice amount shall be deemed undisputed and the Client shall pay this amount within seven (7) days of receiving such evidence. Failure by the Client to make such payment may result in the imposition of late fees and termination of Services as outlined in **clauses 13.8** and **18.2** of this Agreement.
- 13.8 If any amounts payable under this Agreement by the Client are not paid when due (a **Default**) then, except when withheld in accordance with **clause 13.7**, and without prejudice to the Service Provider's other rights under this Agreement, the Client shall pay interest on the overdue amount from the due date until payment is made in full at four (4) per cent per annum over the Bank of England's base lending rate from time to time.

- 13.9 In circumstances where the client is in Default as described in **clause 13.8**, the Service Provider reserves the right to cease the provision of services governed by the relevant Service Contract which the Default relates to for a period of time ending upon the date such overdue amount is made good including the payment of any interest payable pursuant to this Agreement's terms.
- 13.10 The Service Charges are stated exclusive of value added tax, any similar sales tax and any tax that replaces such sales taxes. The Client shall be responsible for and liable for any and all taxes which apply to the delivery of Services.
- 13.11 The Client is not entitled to set off, withhold, or reduce any amounts owed by the Service Provider to the Client against any amounts owed by the Client to the Service Provider, whether in relation to this Agreement, the applicable Service Contract or any other agreement in place between the Parties.
- 13.12 The Service Charges for any Consultancy Services are fixed for a period of one (1) year from the date agreed with the Client, and unless agreed otherwise in a Service Contract, day rates shall be subject to change if such resource is not used within this period.
- 13.13 In the event that a currency of payment other than Pounds Sterling is agreed by the Parties within a Service Contract, the Service Provider reserves the right to adjust the Service Charges at each invoice date (each a "**Calculation Date**") to reflect changes in the currency exchange rate between the Pound Sterling and the agreed currency, during the Service Contract Term. The exchange rate between the currencies will initially be set to the rate as specified within the applicable Service Contract (the "**Initial Exchange Rate**") or as otherwise determined by the Service Provider. If the exchange rate on each Calculation Date, as determined by the Service Provider's banking provider, varies by more than two (2%) percent, or such other percentage as agreed within the applicable Service Contract, from the Initial Exchange Rate, and where this variation would reduce the Pound Sterling value receivable by the Service Provider (should the applicable currency of payment be exchanged for Pound Sterling at the spot rate on the Calculation Date), then the Service Charges may be adjusted to account for such reduction in the Pounds Sterling value (the "**Adjusted Service Charges**"), such Adjusted Service Charges to be effective on such Calculation Date in respect of that Calculation Date's invoices.
- 13.14 The Service Provider shall be entitled to increase the Service Charges:
- 13.14.1 on an annual basis in line with any increase in the UK Consumer Price Index (CPI); and
- 13.14.2 at any time during the Service Contract Term to reflect any increase in costs imposed by third-party licensors or suppliers which are relevant to the provision of the Services. Any such increase shall be proportionate to the increase imposed by such third-party licensor or supplier; and
- 13.14.3 at any time over the Service Contract Term in the event the Service Provider suffers cost inflation in providing the Services as a direct result of complying with changes to Applicable Law in the UK and/or any country where the Services are being provided.
- 13.15 If any such event under **clause 13.14** occurs, the Service Provider shall be entitled to increase the Service Charges on at least thirty (30) days' written notice to the Client, to reflect such increase to the Service Provider's costs, provided that the Service Provider shall use its reasonable endeavours to mitigate any such costs.
- 14 Non-solicitation**
- 14.1 The Client shall not, for the Agreement Term and for a period of one (1) year from the date of expiry or termination of this Agreement, except with the prior written consent of the Service Provider, directly or indirectly solicit or entice away, or attempt to solicit or entice away, any Service Provider Personnel who is employed or engaged in the Services, provided that this clause shall not apply to Personnel who respond of their own volition to a genuine public recruitment campaign.
- 14.2 In the event that the Client breaches **clause 14.1**, the Client shall pay liquidated damages to the Service Provider at a rate of 50% of such Personnel's annual salary or service charges as they were whilst under the employment or engagement of the Service Provider.
- 14.3 The Parties agree that the liquidated damages payable by the Client under **clause 14.2** are considered by the Parties to be reasonable and proportionate to protect the Service Provider's legitimate interests in relation to the Client's solicitation of its Personnel.
- 15 Changes to the Services**

- 15.1 The Service Provider reserves the right to make changes to this Agreement, any Service Contract and any Services, including the underlying technologies and/or infrastructure, provided that such changes do not materially decrease the Deliverables, functionality, or performance of the Services. The Service Provider also reserves the right to make changes to this Agreement, any Services Contract and any Services where changes are limited to those which are necessary to comply with any Applicable Law, regulatory or safety requirement, whether in the UK or in any country the Services are being provided, and the Service Provider shall notify the Client in any such event as soon as reasonably practical on becoming aware that any such change is planned.
- 15.2 Other than as set out in **clause 15.1** and **13.14**, and as otherwise expressly agreed by the Parties, any changes to this Agreement, any Service Contract and any Services requested by either Party shall require mutual agreement. Such changes shall only take effect when a formal variation is agreed upon and signed by an authorised signatory of each Party.

16 Limitation of Liability

- 16.1 Subject to **clause 16.5**, the Service Provider shall not be liable to the Client under this Agreement or any Service Contract, under any theory of liability, including contract, negligence, breach of statutory duty, misrepresentation, restitution or otherwise, and whether such liability is direct, indirect, special, consequential or otherwise for any:
- 16.1.1 damage caused by errors or omissions in any information, instructions or scripts provided to the Service Provider by the Client;
- 16.1.2 delay or failure of performance of this Agreement and/or applicable Service Contract by the Service Provider to the extent that such delay or failure is caused by any act or omission by the Client or failure by the Client to perform any obligation under this Agreement and/or applicable Service Contract;
- 16.1.3 loss of, damage to or corruption to the Client Data;
- 16.1.4 loss of profits;
- 16.1.5 loss of future business;
- 16.1.6 loss of goodwill or similar losses;
- 16.1.7 loss of opportunity;
- 16.1.8 loss of anticipated savings; or
- 16.1.9 indirect, consequential or special losses, costs, damages and charges of any sort whatsoever.
- 16.2 Except as expressly stated otherwise in any Service Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law.
- 16.3 Subject to **clause 16.5**, the Service Provider shall not be liable to the Client for a claim under or in connection with this Agreement or any Service Contract unless such claim is notified to the Service Provider within twelve (12) months of the date that the circumstances giving rise to the claim were reasonably discoverable to the Client.
- 16.4 Subject to the provisions of **clauses 16.1, 16.3** and **16.5**, the Service Provider's total aggregate liability in contract, tort, including negligence or breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with this Agreement and each Service Contract shall be limited to the lower of 125% of the Service Charges paid to the Service Provider in the year preceding any such claim, or £500,000.
- 16.5 Nothing in this Agreement or any Service Contract shall limit a Party's liability for:
- 16.5.1 death or personal injury caused by its negligence;
- 16.5.2 fraud, including fraudulent misrepresentation; or
- 16.5.3 any other form of liability which cannot lawfully be limited or excluded.
- 16.6 This **clause 16** shall survive the termination or expiry of this Agreement.

17 Subcontracting

- 17.1 Notwithstanding the sub-contracting of any of its obligations, the Service Provider shall be, and shall remain responsible and liable for, all its obligations pursuant to this Agreement and for any acts and omissions of its sub-contractors.

18 Term and Termination

- 18.1 Either Party may, by notice in writing to the other, immediately terminate this Agreement or a Service Contract, if the other Party:

- 18.1.1 commits a material breach of this Agreement or the applicable Service Contract that is not capable of remedy;
 - 18.1.2 commits a material breach of this Agreement or the applicable Service Contract which is capable of remedy but which is not remedied within sixty (60) days of the receipt of a notice from the non-breaching party identifying the breach and requiring its remedy; or
 - 18.1.3 has a receiver or administrative receiver appointed over it or any part of its undertaking or assets, or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect, or if the other Party becomes subject to an administration order or seeks to enter, or does enter into any voluntary arrangement with its creditors, or ceases or threatens to cease to carry on business.
- 18.2 Without limiting its other rights or remedies, the Service Provider may terminate this Agreement and/or any Service Contract with immediate effect by giving written notice to the Client if (i) the Client fails to pay any amount due under a Service Contract or Order on the due date for payment three (3) or more times over the course of any one (1) year period; or (ii) the Service Provider becomes aware that a Client Change of Control is anticipated, in contemplation or has occurred, and where the Service Provider has not given its prior written consent to such Change of Control (such consent not to be unreasonably withheld or delayed).
- 18.3 The Parties agree that the Service Provider's failure to meet any Service Levels or KPIs under a Service Contract shall not constitute a material breach of this Agreement or any Service Contract. The remedies for failure to meet Service Levels or KPIs shall be set out within the applicable Service Contract.

19 Consequences of Termination

- 19.1 Termination or expiry of this Agreement or any Service Contract shall be without prejudice to any rights and remedies of the Service Provider and the Client accrued before such termination or expiration and nothing in this Agreement nor any Service Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

- 19.2 The Service Provider shall, promptly and fully, answer all reasonable questions in respect of the Services which may be asked by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or any Future Service Provider (or potential Future Service Provider) to conduct due diligence. The Service Provider shall also cooperate with, and provide reasonable assistance to, the Client and any Future Service Provider for a reasonable period after termination on a chargeable basis in order to achieve an effective transition of the Services. Such charges shall be at the Service Provider's standard rates.
- 19.3 On the Client's request, and with the exception of any data that the Service Provider is required to retain by Applicable Law, or any Client Personal Data which shall be governed by **clause 10.12**, the Service Provider shall return or destroy all data records, documentation, information, materials, hardware and other property relating to or which is relevant to the provision of the Services ("**Client Property**") in its possession or under its control, provided that in the event of termination due to an Event of Force Majeure under **clause 23.3**, the Service Provider shall only be liable for the return of Client Property that it is reasonably able to return to the Client in such circumstances.
- 19.4 On termination of this Agreement or a Service Contract, the Service Provider shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Client shall pay these invoices within the payment terms specified within the applicable Service Contract and in accordance with the terms of this Agreement.
- 19.5 On termination or expiry of this Agreement or a Service Contract for any reason, except in the event of the Client's termination under **clauses 18.1.1** or **18.1.2**, in addition to the Client's obligations under **clause 19.4**, the Client shall pay to the Service Provider any Committed Costs (provided the Service Provider has taken reasonable steps to mitigate any such costs).

20 Consequences of termination of a Managed Service

- 20.1 If, prior to the end of the Minimum Service Term, either Party terminates a Managed Service or aaS Service, or any other

Services, which includes the provision by the Service Provider of equipment to be used solely for the Client, then in addition to the Service Provider's other rights and remedies within this Agreement, and unless agreed otherwise within a Service Contract:

- 20.1.1 if such equipment is owned by the Service Provider, the Client shall purchase the equipment for its Fair Market Value; or
- 20.1.2 if such equipment is leased by the Service Provider, the Client shall, at the Service Provider's discretion, either pay the Outstanding Lease Costs for such equipment as at the date of termination or purchase the equipment for its Fair Market Value.
- 20.2 The sums due pursuant to **clause 20.1** shall, at the Service Provider's discretion, either be payable in a lump sum due within thirty (30) days from the date of the Service Provider's invoice, or be payable in equal monthly instalments over the remaining unexpired term of the Minimum Service Term from the date of termination, in which case the Service Provider shall provide monthly invoices, and the Client shall pay each within thirty (30) days of the date of the Service Provider's invoice.
- 20.3 The Service Provider shall comply with all obligations it owes to the Lessor of the equipment, including payment of the sums due from time to time under the lease during the Minimum Service Term. The Client shall be permitted to make use of the equipment during the Minimum Service Term as set out in the applicable Service Contract but thereafter, unless the Client purchases the equipment in accordance with **clause 20.1**, the Service Provider shall be entitled to retake, sell or otherwise deal with and/or dispose of all or any part of the said equipment.

21 Consequences of termination of Consultancy Services

- 21.1 In the event that the Client, having agreed a time for delivery of Consultancy Services, cancels or materially amends a booking for Consultancy Services, whether temporarily or indefinitely, then, without prejudice to any other rights and remedies of the Service Provider under this Agreement or any Service Contract, the following cancellation charges shall apply:
 - 21.1.1 cancellation within 24 hours of the agreed date for work commencing,

100% of the agreed Service Charges for such Consultancy Services;

- 21.1.2 cancellation between 24 and 96 hours of the agreed date for work commencing, 75% of the agreed Service Charges for such Consultancy Services;
- 21.1.3 cancellation exceeding 96 hours of the agreed date for work commencing, 50% of the agreed Service Charges for such Consultancy Services;
- 21.2 in addition to the cancellation charges in **clause 21.1**, the Client shall be liable for all charges reasonably incurred by the Service Provider in fulfilling the booking up until the date of receipt of the amendment or cancellation.

22 Assignment

- 22.1 This Agreement shall be binding on and inure for the benefit of the successors in title of the Parties.
- 22.2 The Service Provider may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and any Service Contract and may subcontract or delegate in any manner any or all of its obligations under the Agreement and/or any Service Contract to any third party.
- 22.3 The Client shall not, without the prior written consent of the Service Provider (not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Agreement or any Service Contract.

23 Force Majeure

- 23.1 Neither Party shall be in breach of this Agreement or any Service Contract or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement or any Service Contract, to the extent that such delay or non-performance is due to any cause beyond its reasonable control and which could not reasonably have been foreseen. This includes strikes, lock-outs or other industrial disputes, (whether involving the workforce of the Service Provider or any other party), failure of a utility service or transport network, acts of God, pandemics, epidemics, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or other similar events; or default of suppliers or

subcontractors (each an "Event of Force Majeure").

- 23.2 The Party affected by any Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of the Event of Force Majeure and shall immediately give the other Party written notification of the nature and extent of the Event of Force Majeure. The Parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 23.3 If either Party is affected by an Event of Force Majeure which materially affects the provision of Services and is unable to cure the effect of the Event of Force Majeure within sixty (60) days, the other Party may terminate this Agreement and the applicable Service Contract immediately on written notice.
- 23.4 Notwithstanding any other provision of this **clause 23**, nothing shall prevent or suspend the Client's liability for payment of the price, fees and other charges due hereunder.

24 General

- 24.1 This Agreement and each Service Contract sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and the relevant Service Contract, and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 The Parties acknowledge that they have entered into this Agreement and each Service Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and Service Contract, as applicable, and, save as expressly set out in this Agreement, the Service Provider shall not have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently. The Service Provider shall not be liable for any recommendations, advice or guidance given, unless such statements are expressly included within the applicable Service Contract.
- 24.3 If any provision of this Agreement or any Service Contract is found by a court or

competent authority to be invalid, unlawful, or unenforceable in any jurisdiction, that provision shall be severed from this Agreement or the Service Contract, as applicable and shall not form part of it. Such invalidity, unlawfulness, or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement or the Service Contract, as applicable, nor shall it affect the validity, lawfulness, or enforceability of that provision in any other jurisdiction.

- 24.4 Except as permitted under **clause 15** or **clause 13.14**, no variation of this Agreement or any Service Contract shall be effective unless it is in writing and signed by or on behalf of an authorised signatory of each of the Parties.
- 24.5 The rights, powers and remedies conferred on any Party by this Agreement and each Service Contract, and remedies available to any Party are cumulative, and may be exercised without prejudice to any other rights or remedies provided in this Agreement or any Service Contract, and are additional to any right, power or remedy which it may have under Applicable Law or otherwise.
- 24.6 Either Party may, in whole or in part, release, compound, compromise, waive, or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement or any Service Contract by the other Party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed. No release, compound, compromise, waiver, or postponement of any liability owed to a Party or right granted in this Agreement or any Service Contract shall be effective unless it is in writing and signed by or on behalf of the Party granting such release, compound, compromise, waiver, or postponement.
- 24.7 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any Party shall constitute a waiver by that Party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or any Service Contract, or otherwise.
- 24.8 Unless expressly provided in this Agreement or any Service Contract, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third

Parties) Act 1999 by any person who is not a Party to it. If a person who is not a party to this Agreement or a Service Contract is stated to have the right to enforce any of its terms, the Parties may rescind or vary this Agreement or Service Contract, as applicable, without the consent of that person.

- 24.9 Each Party undertakes to promptly do all things and execute all further documents necessary to give full effect to this Agreement and each Service Contract, including executing and procuring any and all consents necessary to give full effect to **clause 5.4**.

- 24.10 Nothing contained in this Agreement or any Service Contract shall constitute or be deemed to constitute a partnership and the Parties shall not be, or be construed to be, the agent of the other Party for any purpose or to have any authority to bind or incur any liability on behalf of any of the other Party, save as otherwise expressly provided in this Agreement or a Service Contract.

- 24.11 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, provided that all the counterparts shall together constitute the one agreement.

25 Notices

- 25.1 Any notice to be given by a Party under this Agreement or any Service Contract shall be:
- 25.1.1 in writing;
 - 25.1.2 signed by or on behalf of the Party giving it, unless given by email;
 - 25.1.3 addressed to the Client Representative or the Service Provider Representative, as the case may be;
 - 25.1.4 unless given by email, delivered to the other Party personally or be left at or sent by prepaid first-class post, prepaid recorded delivery to the address of the Party as set out in the applicable Service Contract.
- 25.2 Except as referred to in **clause 25.1.3** and **25.1.4**, a notice shall be deemed to have been served at the time of delivery.
- 25.3 If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at the opening of business on the next Business Day of the country of receipt.
- 25.4 Notices given by email shall be deemed served one (1) Business Day after

transmission. Notices given by post in accordance with **clause 25.1.4** shall be deemed served one (1) Business Day after being sent.

- 25.5 A Party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

26 Governing Law and Jurisdiction

- 26.1 This Agreement and each Service Contract, 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 laws of England and Wales.
- 26.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement and each Service Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation.

27 Anti-Bribery and Modern Slavery

- 27.1 Both Parties shall comply with all Applicable Laws relating to anti-bribery and anti-corruption, including the Bribery Act 2010.
- 27.2 Both Parties shall comply with the Modern Slavery Act 2015 and take all reasonable steps to ensure that modern slavery or human trafficking is not present in their supply chains. This includes using reasonable endeavours to assess the practices of their suppliers and subcontractors to ensure compliance with applicable modern slavery laws.

28 Dispute Resolution

- 28.1 Any dispute or difference between the Parties relating to this Agreement and each Service Contract shall be dealt with as follows:
- 28.1.1 the dispute shall first be referred to the Service Provider Representative and the Client's Representative who shall use all reasonable endeavours to resolve such matter as soon as reasonably practicable;
 - 28.1.2 if the Service Provider Representative and the Client's Representative are unable or unwilling to resolve the

matter between themselves, either of them may request a meeting of the Managing Director (or other appropriately senior director) of the Service Provider and a senior representative of the Client nominated by the Client's Representative to be convened at the earliest practicable time; and

28.1.3 if the matter is not resolved by agreement between the Parties within thirty (30) days after such meeting, the Parties may by agreement seek to settle the dispute by non-binding mediation with an accredited alternative dispute resolution practitioner, the cost of which shall be borne by both Parties equally.

28.2 Nothing in this **clause 28** shall have the effect of excluding either Party's right at any time to take up their remedies under the law of England and Wales.

29 Insurance

29.1 The Service Provider will at its cost maintain in force throughout the Agreement Term insurance to cover the following:

29.1.1 Professional Indemnity Insurance for the minimum amount of £5.0 million per claim;

29.1.2 Public Liability Insurance for the minimum amount of £5.0 million for any one period; and

29.1.3 Employers' Liability Insurance for the minimum amount of £10.0 million per claim,

29.2 and shall provide the Client with copies of evidence that such insurance is in place if so requested.

30 TUPE

30.1 It is the belief of the Parties that this Agreement and any Service Contract, the arrangements envisaged under each of the aforementioned, the commencement of the Services, and each and any Exit Event do not and will not constitute a relevant transfer for the purposes of the Regulations.

30.2 If any contract of employment or engagement (or any part thereof) or any liability regarding the employment or engagement of any person (including any termination thereof) transfers or is alleged to have transferred to the Service Provider or any contractor pursuant to the Regulations in connection with the

commencement of this Agreement and/or any Service Contract or the Services (or any part of them) (**Transferring Employee**), the Client shall indemnify and hold harmless the Service Provider against all Losses incurred in connection with the employment or engagement of each Transferring Employee, the termination of such employment or engagement, and/or any breach or alleged breach of the Regulations.

31 Leased Equipment and trade-in equipment

31.1 The Client acknowledges that the legal ownership of equipment provided or used by the Service Provider in the provision of the Managed Services or aaS Services may rest with, or be transferred to, a Lessor, or that the equipment may be pledged to a Lessor as a security for the payment of all sums that the Service Provider owes to, or may at any time owe to the Lessor, arising from rental or financial lease agreements or for whatever reason. The Lessor will not become a party to the Agreement. All rights and obligations under the Agreement will remain between the Service Provider and the Client.

31.2 In the event that a Service Contract sets out that equipment is to be purchased by the Service Provider from the Client, the Service Provider shall inspect such equipment within a reasonable period from collection or delivery to ensure it is fit for purpose and conforms in all material respects with the agreed specifications, and the Client shall facilitate such inspection. The Service Provider shall not be obliged to pay or give credit for any equipment being purchased from the Client until the equipment is accepted by the Service Provider.

32 Definitions

32.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

32.1.1 "**Acceptable Use Policy**" means the Service Provider's policy governing use of the Services, as available on request.

32.1.2 "**Agreement**" means the terms and conditions of this Master Services Agreement;

32.1.3 "**Agreement Term**" means the duration of this Agreement, as defined in **clause 2.2**;

32.1.4 "**aaS Services**" means the Service Provider's "as a service" services, including disaster recovery as a service,

back-up as a service, monitoring as a service, compute as a service, desktop as a service, storage as a service, virtual desktop infrastructure as a service and any other “as a service” offering that the Service Provider may provide under a Service Contract, including any subscription-based or usage-based service model where the Service Provider makes available software applications, platforms, infrastructure, or other technology solutions to the Client over a network (including the internet).

32.1.5 “**Applicable Law**” means:

(i) any applicable statute, regulation, or other law or byelaw, or any rule, code, judgment, decision or direction having the force of law;

(ii) any guidelines or other requirements of relevant regulatory authorities which have the force of law, together with any industry codes of practice,

in the United Kingdom or any other country where the Services are being provided, or any relevant part thereof, including any EU legislation (including any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area) which is retained in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018) as modified by domestic law from time to time.

32.1.6 “**Assumptions**” means any of the assumptions which may be set out in a Service Contract.

32.1.7 “**Business Day**” means a day (other than a Saturday or Sunday) on which clearing banks are open for business in London;

32.1.8 “**Change of Control**” means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a Party with, by or into another corporation, entity or person; or any change in the direct or indirect ownership of more than fifty percent (50%) of the voting capital stock of a Party in one or more related transactions;

32.1.9 “**Committed Costs**” means all and any of the following, whether incurred or to be incurred, at any time, in connection with the provision of the Services:

(i) any committed costs not yet paid;

(ii) any sunk costs already spent;

(iii) any other irrecoverable costs incurred in providing the Services, including, in the event a Service Contract is terminated before the Services Commencement Date, any costs, including costs of resource, at a day rate as reasonably determined by the Service Provider, spent on the pre-sales process, the proposal stage, workshops or other project setup costs; or, as payable to third parties for terminating contracts with such third parties, provided such costs can be evidenced on reasonable request;

32.1.10 “**Confidential Information**” means any information, communications or data, in any form, (whether oral, written, graphic, electromagnetic), including all plans, proposals, forecasts, technical, methodologies, know-how, information about technological or organisational systems, customers, personnel, business activities, databases, the terms and conditions of this Agreement and any Service Contract, and any other information which could reasonably be considered as confidential by its very nature, whether or not any such confidential information is specifically marked confidential, but excluding any information, which:

(i) was already known to the Recipient at the time of its disclosure to the Recipient and is not subject to confidentiality restrictions;

(ii) which is in the public domain at the date of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Recipient (but only after it becomes part of the public domain);

(iii) which, following its disclosure by the Disclosing Party to the Recipient, is subsequently received by the Recipient from a third party without any obligation of confidence, where the Recipient had no reason to believe that the third party was not lawfully in possession of such information and free from any obligation of confidence;

(iv) is independently developed by the Recipient without any reference to Confidential Information of the

Disclosing Party, as evidenced by the records of the Recipient;

- 32.1.11 **"Consultancy Services"** means any professional services performed by the Service Provider's Personnel for the Client;
- 32.1.12 **"Client"** means the customer identified as such on page 1 of this Agreement.
- 32.1.13 **"Client IPR"** means the IPR owned or licensed by the Client independently of this Agreement and any IPR provided by, for or on behalf of the Client or any member of the Client's Group to the Service Provider in connection with the performance or receipt of the Services;
- 32.1.14 **"Client Data"** means any data provided by the Client to the Service Provider under this Agreement, which may include Client Personal Data;
- 32.1.15 **"Client Personal Data"** means the Personal Data in respect of which the Client is the sole Controller and that which is Processed by the Service Provider for the purpose of providing the Services;
- 32.1.16 **"Client Representative"** means the person designated as the "Client Contact" on page 1 of this Agreement or such other person as may from time to time be appointed by the Client and notified to the Service Provider;
- 32.1.17 **"Data Protection Legislation"** means all applicable data protection or privacy laws, including the General Data Protection Regulation 2016/679 ("GDPR"), the retained EU law version of the GDPR (the **"UK GDPR"**), the UK Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 as amended, any applicable EU Member State data protection and privacy law or implementation, the Swiss Federal Data Protection Act of 25 September 2020, and **"Controller"** **"Data Subject"** **"Personal Data"** **"Personal Data Breach"** **"Processor"**, **"Processing"** (and **"Process"** and **"Processed"** shall be construed accordingly) shall have the corresponding meaning sets out in the Data Protection Legislation;
- 32.1.18 **"Deliverables"** means a work product, professional service, outcome or related material or item that is to be achieved or delivered to the Client by the Service Provider as part of the

Services and as may be agreed within a Service Contract;

- 32.1.19 **"Dependency"** means any of the dependencies which may be set out in a Service Contract, and **"Dependencies"** shall be interpreted accordingly;
- 32.1.20 **"Exit Event"** means the expiry or termination of a Service Contract (or any part of it) or a Service Transfer;
- 32.1.21 **"Fair Market Value"** means, if calculated during the Minimum Service Term: the price at which the Service Provider determines, acting reasonably, that it would have sold the equipment for if it had been sold on the date it was initially deployed, plus associated maintenance and support services, less depreciation on a straight-line basis over a period equal to the Minimum Service Term from the Service Commencement Date (if deployed on or before the Service Commencement Date) or the date of deployment (if deployed after the Service Commencement Date); or if calculated at or after the end of the Minimum Service Term: the Service Provider's assessment, acting reasonably, of the value of the equipment in an open market sale, assuming, whether in practice true or not, that the equipment is in a reasonable condition for its age and usage and that the unexpired term of any third party warranty or support existing in respect of the equipment can be transferred to the purchaser; together in each case with all costs and expenses which the Service Provider would reasonably incur in order to effect a transfer of title of the equipment to the Client;
- 32.1.22 **"Future Service Provider"** means any service provider(s) that the Client appoints on the expiry or termination of this Agreement or any Service Contract for any reason to provide any service that replace any of the Services;
- 32.1.23 **"Good Industry Practice"** means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care diligence, prudence and foresight and using the practices, processes, procedures and guidelines which would reasonably and ordinarily be

expected from an organisation of a similar size engaged in the same type of such activity or requirement within the United Kingdom;

32.1.24 "**Group**" means in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

32.1.25 "**Group Company**" means in relation to a company, any member of its Group.

32.1.26 "**IPR**" means all intellectual property rights, wherever in the world, howsoever arising and in whatever media, whether or not registered, including copyright, patents, trademarks, service marks, trade names, rights in databases, trade secrets, utility models, semi-conductor rights, know-how, registered design, and all rights in the nature of unfair competition rights or rights to sue for passing off and any applications for protection or registration of these rights and all renewals and extensions thereof throughout the world;

32.1.27 "**KPIs**" means any key performance indicators specified in the Service Contract;

32.1.28 "**Lessor**" a third party who provides equipment to the Service Provider for use in the Managed Services, aaS Services or any other services;

32.1.29 "**Losses**" means all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

32.1.30 "**Managed Service**" a service comprising the Service Provider's management of information technology assets by the Service Provider on behalf of the Client, whether or not such services are expressly referred to as managed services in the applicable Service Contract, and including any ongoing oversight, management, operation, support, and maintenance services performed by or on behalf of the Service Provider with respect to the

Client's information technology systems, networks, hardware, or software environments.

32.1.31 "**Minimum Service Term**" the minimum period of delivery of the Managed Services, aaS Services or other services, as set out in the applicable Service Contract;

32.1.32 "**Milestone**" means an activity, process, service, deliverable, outcome or any part of the Services described in a Service Contract as a milestone, if applicable;

32.1.33 "**Milestone Date**" means the date set out in a Service Contract against a Milestone for that Milestone to be met (if any);

32.1.34 "**Order**" means the Client's order for the supply of hardware or software or Services (if such order is not set out within a Service Contract), as set out in the Client's purchase order form, or the Client's written acceptance of the Service Provider's quotation, or overleaf, as the case may be;

32.1.35 "**Outstanding Lease Costs**" means the total remaining liability from time to time of the Service Provider to a Lessor under the terms of a lease by the Service Provider of any equipment used in a Managed Service, aaS Service or other service;

32.1.36 "**Party**" means either the Service Provider or the Client and "Parties" shall mean both of them;

32.1.37 "**Personnel**" means officers, directors, employees, workers and agents, including any persons hired as consultants or contract staff, of either Party;

32.1.38 "**Project IPR**" means:

32.1.38.1 all IPR in any Specifically Written Software;

32.1.38.2 all IPR in any Deliverables that have been identified in the Service Contract as being developed exclusively for the Client; and

32.1.38.3 any other IPR that the Parties agree in a Service Contract that it will be owned by the Client;

32.1.39 "**Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as

amended from time to time, any legislation enacted to give effect to Council Directive 23/2001 (as such directive is amended, consolidated or replaced from time to time) and/or any equivalent or similar legislation regarding the transfer of personnel;

32.1.40 "**Service Charges**" means the amount payable to the Service Provider by the Client in consideration of the performance of the Services, calculated in accordance with the applicable Service Contract or, if no Service Contract was used, the applicable Order;

32.1.41 "**Service Contract**" means an agreement entered into by the Parties under this Agreement containing a description of the services to be provided;

32.1.42 "**Service Contract Term**" means the period as stated in each Service Contract during which the Service Provider is to provide the corresponding Services to the Client (together with any agreed extension rights);

32.1.43 "**Service Levels**" or "**Service Level Agreements/SLAs**" means the service levels specified in the applicable Service Contract;

32.1.44 "**Service Provider**" means Creative Network Consulting Limited;

32.1.45 "**Service Provider IPR**" means the IPR which is owned by, developed by or licensed to the Service Provider and provided by the Service Provider to the Client under a Service Contract, but excluding the Project IPR;

32.1.46 "**Service Provider Representative**" means the person designated as the "**Service Provider Contact**" on page 1 of this Agreement, or such other person as may from time to time be appointed by the Service Provider;

32.1.47 "**Services**" means the services to be supplied by the Service Provider pursuant to this Agreement, more particularly described in each applicable Service Contract;

32.1.48 "**Services Commencement Date**" means the date as specified in each Service Contract upon which the Service Provider first starts to perform the Services (or part thereof) under such Service Contract;

32.1.49 "**Service Transfer**" means any transfer of the Services (or any part of them), for whatever reason, from the Service Provider or any contractor to the Client, any other member of the Client Group, or any third party;

32.1.50 "**Software**" means software provided by the Supplier;

32.1.51 "**Specifically Written Software**" means any Software identified as "Specifically Written software" in the relevant Service Contract that is developed by the Service Provider specifically for the Client under a Service Contract, but which excludes any of the Service Provider's pre-existing software or any software the IPR in which is owned by a third party, including any modifications, enhancements, or customisations to each such Service Provider or third party software;

32.1.52 "**Third Party Product**" means hardware or software provided by the Service Provider, but which is not manufactured or developed by the Service Provider;

32.1.53 "**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and succeeded from time to time.

