**MASTER SERVICES AGREEMENT**

**AGREEMENT NUMBER [insert Agreement Number]**

**BETWEEN**

**[CLIENT NAME]**

**AND**

**[SUPPLIER NAME]**

**DISCLAIMER**

**APSCo model agreements are not specifically tailored for any particular sector or provision of services. APSCo members should not merely duplicate the contents, APSCo members should consider its suitability for their business purposes, seeking further legal advice as necessary.**

**The contents of this model agreement are accurate to the best of our knowledge at the time of publication. It should be remembered that the legislation and interpretation of it through the courts changes frequently and we would recommend members regularly review the contracts they use.**

**Whilst this model agreement has been prepared with due care and attention, neither APSCo nor WTT Legal Limited can be responsible or held liable for any losses howsoever arising from its use. APSCo and WTT Legal Limited make no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability or suitability of this model agreement.**

**To the fullest extent permissible by law, APSCo and WTT Legal Limited hereby exclude all liability for any claim, loss, demands or damages of any kind whatsoever arising out of or in connection with the use of this model agreement and/or any information, opinion or advice given and APSCo members will hold APSCo and WTT Legal Limited harmless in respect of such claims.**

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**THIS AGREEMENT is made on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_**

**BETWEEN**

1. **[CLIENT NAME]**, a company incorporated in England and Wales under company registration number [*insert registration number*] and whose registered office is at [*insert registered office address*], (hereinafter referred to as **“Client”**) and;
2. **[SUPPLIER NAME]**, a company incorporated in England and Wales under company registration number [*insert registration number*] and whose registered office is at [*insert registered office address*], (hereinafter referred to as **“Supplier”**)

(each of the Client and the Supplier being a party and together the Client and the Supplier are the parties).

**WHEREAS**

1. The Client conducts the business of [insert description].
2. The Supplier conducts the business of [insert nature of the services to be provided].
3. The parties have agreed that the Supplier shall provide the Services (as defined below) to the Client and its Affiliates.
4. The purpose of this Agreement is to set out the generally applicable terms and conditions for the supply and delivery of such Services to the Client.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

# DEFINITIONS

 **“Acceptance”** means the written acknowledgement by the Client, or the deemed acceptance of the Client as set out in Clause 3.3, that the Works, Milestones, Services or Deliverables meet the agreed Acceptance Criteria and **“Accepted”** and **“Accept”** shall be construed accordingly;

 **“Acceptance Criteria”** means the criteria set out in a SOW which must be met in order for Acceptance to be achieved;

 **“Affiliates”** means in relation to the Client or the Supplier, any company, partnership or other entity which from time to time controls, is controlled by or is under the common control of the Client or the Supplier or any of them, and “control” means the beneficial ownership of more than 50% of the issued share capital or the legal power to direct or cause the direction of the general management of the company, partnership or other entity in question;

**“Agreement”** means these terms and conditions, the Schedules, SOW and attachments hereto as amended by agreement of both parties from time to time in writing;

**“Applicable Law”** means the laws of England and Wales, any other laws, and any policies, guidelines or industry codes made by any regulatory body having jurisdiction over a party or any of that party’s assets which apply to the performance of the Services or to which either party is subject;

**“Authorised Representative”** means any person whom a party designates to enter into agreements or to give or receive instructions on behalf of the party;

**“Bribery Laws”** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

**“Business Day”** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

**“Change**” means any change to this Agreement including to any of the Services;

**“Change Control Procedure”** means the process by which a Change is agreed as set out in Attachment 1 of Schedule 1;

**“Change of Control”** means where there is a change in the beneficial ownership representing 50 percent or more of the issued share capital of the company or other entity;

**“Client Dependencies”** means the Client responsibilities as described in a SOW;

**“Client Group”** means the Client, its Affiliates and any other entity which are part of the corporate group of the Client;

**“Client Intellectual Property”** means all Intellectual Property either proprietary to the Client or its Affiliates which the Client or its Affiliates is licensed to use by third parties and which is required for use in connection with the Services;

**“Client Site”** means any premises of the Client Group and of any third party involved in the Services which it is necessary or desirable for the Supplier to have access to for the performance of the Services, including at the commencement of the Services, the premises of the Client Group;

**“Confidential Information”** means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Agreement;

**“Contract Year”** means a period of twelve (12) months commencing on the Effective Date and/or each anniversary of the Effective Date;

**“Contractor”** means an intermediary that meets the conditions of liability under the Off Payroll Working Rules and their representatives or substitutes assigned by the Supplier to perform the Services;

**“Data Protection Laws”** means, as binding on either party or the Services:

1. the UK General Data Protection Regulation (EU 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018 (“UK GDPR”);
2. the Data Protection Act 2018;
3. any laws which implement or supplement any such laws; and
4. any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of this Agreement);

**“Defect”** means a defect, fault, error, malfunction, flaw or deficiency in a Deliverable to an extent that the Acceptance Criteria cannot be met and that has a demonstrable and materially adverse effect on the appearance, operation or functionality of the Deliverable or Work Product as a whole, providing that such defect, error, malfunction, flaw or deficiency is not directly or indirectly caused by, or arising as a result of:

1. inaccuracies or errors in any materials, documents, software or other assets of the Client provided to or accessible by the Supplier in the performance of the Services;
2. the Client’s failure to provide suitable equipment (where agreed between the parties) or the required access to the Client Site;
3. the Client’s wilful damage or negligence, or any act or omission of the Client, its Affiliates and their employees, officers, suppliers and/or or sub-contractors in breach of this Agreement;
4. the Client’s use of the Deliverable or Work Product in a manner that is inconsistent: (i) with the intended purpose or use, or (ii) with any instructions or documents issued to the Client by the Supplier;
5. the Client’s failure to follow the Supplier’s oral or written instructions as to the storage, commissioning, installation or maintenance of the Deliverable or Work Product or (if there are none) good trade practice;
6. the modification or alteration of any part of the Deliverable or Work Product after Acceptance by any party other than the Supplier;
7. failures, degradations, or fluctuations in electrical, connectivity, network, or telecommunications equipment or lines, or similar circumstances beyond the Supplier’s control;
8. any incompatibility between the Deliverable or Work Product and any other installation, product, plant, equipment, system, application, programme or software, except where the Supplier has an expressly stated obligation in the SOW to make the Deliverable or Work Product compatible with such other installation, product, plant, equipment, system, application, program or software; or
9. fair wear and tear;

**“Deliverables”** means the deliverables described in a SOW;

**“Dispute Resolution Procedure”** means the process set out in Clause 25;

**“Effective Date”** means [insert date];

**“Fees”** means the charges payable to the Supplier for the Services as described in a SOW, as amended from time to time;

**“Force Majeure Event”** means an event beyond the reasonable control of the relevant party including but not limited to: any act of God, flood, earthquake, windstorm, other natural disaster or extreme adverse weather conditions, war, threat of or preparation for war, armed conflict, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom, epidemic and/or pandemic, fire, explosion, malicious or accidental damage, interruption or failure of utility service (including but not limited to electric power, gas or water), collapse of building structures, failure of plant, machinery, computers, vehicles or critical suppliers, any law or any action taken by a government or public authority (including without limitation imposing an export or import restriction, quota or prohibition), or any other event that is beyond the reasonable control of the party in question;

 **“Good Industry Practice”** means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;

**“Insolvency Event”** means circumstances when either:

1. a receiver is appointed for either party or its property;
2. either party makes a general assignment for the benefit of its creditors;
3. either party commences or has commenced against it, bankruptcy proceedings and such proceedings are not dismissed within 90 days; or
4. either party is liquidating, dissolving or ceasing to conduct business;

**“Intellectual Property”** means all intellectual property and other rights of any kind now or hereafter existing including without limitation: service marks, registered designs, applications, trademarks, patent, trade secrets, copyrights, design and invention rights;

**“Know-How”** means such experience or technique which are not Intellectual Property or Software and which are used or acquired either in the performance of this Agreement or acquired prior to or outside this Agreement;

**"Loss”** means any loss, damage, liability, demand, claim, proceedings, judgement, settlement, fine, interest, penalty, award, order, cost and/or expense (including reasonable management time, legal disbursements and costs of investigation), litigation, settlement, judgement, and other professional costs and expenses; and **“Losses”** shall be construed accordingly;

**“Milestone”** means an objective or goal set forth in a SOW which triggers a payment of Fees;

**"Non-Outsourced Services”** means Services that are not Outsourced Services and, for the avoidance of doubt, includes Services provided by the Supplier under a SOW where payment is made on a time and materials basis;

“**Off Payroll Working Rules**” means Chapter 10 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 and The Social Security Contributions (Intermediaries) Regulations 2000;

**"Outsourced Services”** means where the nature of the Services is such that the Supplier is providing an outsourced, outcomes-based service to the Client (and not, for the avoidance of doubt, a labour-based service). Whether the Services are Outsourced Services or not shall depend on the nature and circumstances of the Services themselves and shall be determined by the parties on a case-by-case basis, but Services where the Supplier:

1. is the party for whom a Contractor performs the work or services (that make up part of the Services);
2. is the party who is most akin to the employer of the individual supplying services through a Contractor;
3. is the party who is responsible for the engagement and management of the Contractor and any applicable oversight of the services performed by a Contractor; and
4. is the party who is responsible for a Contractor’s acts, omissions and performance

are more likely to be determined by the parties to be Outsourced Services;

**“Purchase Order”** means the purchase order issued by the Client setting out the Services provided by the Supplier;

**“Service(s)”** means the service as described in a SOW to be provided by the Supplier to the Client;

**“Small Company”** means a person, firm, undertaking or corporate body which is classed as small as defined in Sections 60A to 60G of Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003;

**“Software”** means computer programs, user manuals, specifications and other associated documentation;

**“SOW Effective Date”** means the effective date of a particular SOW, as detailed in that SOW;

**“SOW Exclusivity Period”** means, in respect of the Services provided under a particular SOW, the exclusivity period referred to in that SOW;

**“Specification”** means the description of the Services as set out in the SOW;

**“Statement of Work” (“SOW”)** means the Specification, scope, objective, Milestones, outputs and/or Deliverables, timeframe and other aspects of the Work to be performed by the Supplier for the Client as set out in the format described in Schedule 1 or other format as agreed between the parties from time to time;

**“Status Determination Statement**” means a valid status determination statement as defined under section 61NA of Chapter 10 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003;

**“Sub-contractor”** means a sub-contractor of the Supplier (or of a sub-contractor), including a Contractor, utilised to perform some or all of the Supplier’s obligations under this Agreement;

**“Supplier Intellectual Property”** means all Intellectual Property, Software and Know-How, either proprietary to the Supplier or any of its Affiliates or which the Supplier or any of its Affiliates is licensed to use by third parties, and which is used by the Supplier in connection with the provision of the Services;

**“Supplier Personnel”** means the person(s), employee(s) or Sub-contractor(s) assigned by the Supplier to perform the Services from time to time and **“Personnel”** shall have the same meaning;

**“Term”** means the duration of this Agreement, including the Initial Term and the Extended Term, if any;

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or where applicable other equivalent local regulations as may be amended from time to time;

**“Work”** means the Work Product and Services specified in a SOW; and

**“Work Product”** means the Deliverables and their associated Intellectual Property rights created, delivered or developed by the Supplier or Supplier Personnel as set forth in a SOW.

1.1 In this Agreement:

1. a person includes a reference to a body corporate or partnership;
2. the words “includes” or “including” will be construed without limitation to the generality of the proceeding words;
3. a reference to a gender includes each other gender;
4. words in the singular include the plural and vice versa;
5. references to statutory provisions shall be construed as references to those provisions as respectively replaced, amended, or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification), consequential amendments and any subordinate legislation made under such provisions;
6. any indemnities given under this Agreement are subject to the indemnified party using such reasonable endeavours as are appropriate to mitigate any Losses which are the subject matter of any such indemnities; and
7. either party will not unreasonably withhold or delay any consent or approval requested by the other party under this Agreement.

1.2 The headings in this Agreement do not affect its interpretation.

1.3 If there is a conflict between or among the Agreement and documents attached to and incorporated by reference, the conflict shall be resolved as follows, solely to the extent of that inconsistency:

 1.3.1 A conflict between the terms of the Agreement and those set forth in an exhibit or hyperlink will be resolved in favour of the Agreement;

 1.3.2 A conflict between the terms of the Agreement and those set forth in a SOW will be resolved in favour of the SOW;

 1.3.3 A conflict between the terms of an exhibit or hyperlink and those set forth in a SOW will be resolved in favour of the SOW; and

 1.3.4 Any terms contained in a Purchase Order acknowledgement or invoice will be of no effect, even if such acknowledgement or invoice provides the Supplier’s acceptance of the Purchase Order is conditioned upon the Client’s agreement to the proposed terms contained in such acknowledgment or invoice.

# TERM

2.1 Unless terminated under the provisions of Clause 15, the term of this Agreement is [ X months/years] **(“the Initial Term”)** from the Effective Date.

2.2 This Agreement shall be automatically renewed for an additional [one (1) year] term (**“the Extended Term”**) unless [ninety (90) days] prior to the end of the Initial Term or then-current Extended Term one party gives notice to the other party of its election not to renew the Agreement.

2.3 Notwithstanding the foregoing, the Agreement will remain in effect with respect to any SOW already issued prior to expiration of the Term until such SOW is either terminated or the Services are completed.

2.4 [include the following clause if this is to be an exclusive arrangement or delete] The Supplier shall be the exclusive supplier to the Client of the [Services] OR [*list category or description of the services*]OR [during any SOW Exclusivity Period described in a SOW]. The Client shall not purchase, directly or indirectly, any services which are the same as or similar to the [Services] OR [any Services of the type described in this Clause 2.4] from any other person or company during the Term. Nothing in this Agreement shall restrict the Supplier from supplying any services which are the same as or similar to the Services to other clients or customers.

# ENGAGEMENT AND ACCEPTANCE

3.1 Statement of Work

The parties may agree one or more SOWs in the format as set out in Schedule 1. The Supplier will perform the Services and provide the Work as set out in each SOW in accordance with the Specifications and requirements set out in each SOW. A SOW is only valid if it is signed by the Client and the Supplier [and the Client has issued a Purchase Order number covering the Work in the SOW to the Supplier]. The Supplier may, prior to signing a SOW, accept or reject a request from the Client to provide Services at its discretion. If the Supplier is unable to accept a request from the Client to provide Services it shall notify the Client as soon as reasonably practicable.

3.2 Performance

The Supplier will supply the Services as set out in the SOW with all reasonable skill and care and in accordance with Good Industry Practice. The parties agree that time is not of the essence in the performance of the Services unless specifically agreed in the SOW. The Supplier will use its reasonable endeavours to meet any timetable agreed for performance of the Services. For the avoidance of doubt, the Supplier will not be liable for any failure to provide the Services or delay caused by a Force Majeure Event, or the Client’s failure to comply with the Client’s obligations as described in Clause 10.

 3.3 Acceptance

3.3.1 The Client will confirm Acceptance of the Deliverables set out in the SOW within [ten (10) Business Days] **(“Time for Acceptance”)** of receiving notice from the Supplier that the Deliverables are ready for testing or inspection, unless specified otherwise in a SOW.

3.3.2 If the Client rejects any non-conforming Deliverables due to the existence of Defects, it must provide notice to the Supplier so that the Supplier may re-perform the Deliverables within a reasonable time period as agreed between the parties. The Client’s notice shall provide a description of the Defects in a manner reasonably sufficient to allow the Supplier to identify and remedy such Defects.

3.3.3 If the Client fails to give such written notice within the Time for Acceptance or puts the Work Product to commercially productive use in a live environment, the Deliverables shall be deemed to be Accepted and the Supplier may invoice for any payments made conditional upon achieving such Acceptance. [Such deemed Acceptance shall be without prejudice to the Client’s rights in respect of any Defects identified as set out in this Clause 3.3.3 later discovered in the relevant Work Product which could not reasonably have been discovered by the Client, had its anticipated review of the relevant Work Product been undertaken].

3.3.4 The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with the Acceptance Criteria provided that the Client serves a written notice on the Supplier not later than [five (5) Business Days] from performance in the case of Defects discoverable by a physical inspection, or within a [reasonable period of time from performance] in the case of latent Defects and such notice specifies the nature and extent of the Defects, and the Client gives the Supplier a reasonable opportunity to examine the claim that a Defect exists.

3.3.5 Where the Deliverables include a non-conformity that does not constitute a Defect, the parties shall agree in good faith a suitable time period and Fees chargeable by the Supplier to remedy the non-conformity.

3.3.6 Acceptance Criteria shall be agreed by the parties and described in each SOW.

3.4 Client Dependencies

3.4.1 If the Client identifies a Defect in the Work Product and the Defect was caused or contributed to by the Client’s actions or omissions, including a failure of the Client to comply with any Client Dependencies, the Client shall pay the Supplier its reasonable and demonstrable costs arising from any work reasonably required for the Supplier to determine that the failure was caused by the Client and, if requested, to rectify the impact of such failure, in accordance with the applicable Fees. Provided always that the Supplier notifies the Client of any such failure, any deadlines for resubmitting Work shall be extended for a period of time equal to the period of any delay caused by the Client.

# OFF PAYROLL WORKING

4.1 The parties acknowledge that, for the purposes of the Off Payroll Working Rules, the Supplier may provide Outsourced Services or Non-Outsourced Services under this Agreement. The parties shall agree between them the nature and status of the Services and confirm the position in each SOW. In the event that the SOW does not include this information, the parties shall assume the SOW relates to Non-Outsourced Services.

4.2 Each party shall comply (to the extent that it is required by Applicable Law, and/or that it is able to depending on the acts and omissions of the other party) with its respective obligations (if any) under the Off Payroll Working Rules, depending on the nature of the Services, and specifically whether they are Outsourced Services or Non-Outsourced Services.

4.3 For Non-Outsourced Services:

4.3.1 the Client shall be deemed to be the ‘client’ (as defined in the Off Payroll Working Rules);

4.3.2 the Supplier shall notify the Client of any Contractor and its representatives it intends to engage to deliver any part of the Services; and

4.3.3 the Client shall complete a status assessment and issue a Status Determination Statement for any representative of the Contractor the Supplier may engage to deliver part of the Services unless it is exempt from applying the Off Payroll Working Rules by virtue of being a Small Company or based wholly outside the United Kingdom.

4.4 For Outsourced Services:

4.4.1 the Supplier shall be deemed to be the ‘client’ (as defined in the Off Payroll Working Rules);

4.4.2 the Supplier shall complete a status assessment and issue a Status Determination Statement for any representative of the Contractor it may engage to deliver any part of the Services unless it is exempt from applying the Off Payroll Working Rules by virtue of being a Small Company; and

4.4.3 the Client shall have no obligation to complete a status assessment and issue a Status Determination Statement for any representative of the Contractor, since this obligation rests solely with the Supplier.

4.5 For Outsourced Services:

4.5.1 The Supplier is not obliged to provide a named individual in respect of the performance of any aspect of the Services, nor shall the Client have any right to specify or request specific Supplier Personnel to deliver the Services. The Supplier has sole, unfettered discretion to utilise any Supplier Personnel to deliver all or any part of the Services (including changing any Supplier Personnel at any time without prior notice to the Client), save that the Supplier shall ensure that any Supplier Personnel utilised hold the necessary level(s) of skill, experience and expertise to deliver the relevant part of the Services; and

4.5.2 In the event that Supplier Personnel are specifically named in a SOW, the Client acknowledges that Clause 4.5.1 still applies, and any Supplier Personnel of comparable skill, expertise and expertise to the named individual may be utilised by the Supplier to deliver all or any part of the Services.

4.6 The parties acknowledge that the Supplier shall manage and deliver the Services in accordance with the timescales and Milestones as described in the SOW and subject to Acceptance Criteria as described in each SOW and reporting criteria as agreed between the parties, and the Client shall have no managerial or supervisory role over the Supplier or the Supplier Personnel.

4.7 The Client warrants that it shall not, and its employees, officers, sub-contractors, agents, representatives or advisers shall not, through its or their actions or omissions, whether wilfully, negligently or otherwise, engage with the Supplier or any Supplier Personnel in such a way that could change the parties’ stated responsibilities under the Off Payroll Working Rules under this Clause 4.

4.8 Subject to Clauses 13.3, 13.4, 13.5 and 13.6, the Client shall indemnify the Supplier against any Losses incurred by the Supplier as a result of the breach of the Client’s obligations under Clause 4.3.3 or in connection with HMRC or any court or tribunal, determining that the Client has for any reason provided an incorrect Status Determination Statement in relation to any Contractors engaged by the Supplier for Non-Outsourced Services, and/or any breach by the Client of its obligations under this Clause 4.

# FEES and PAYMENT

5.1 Fees

 The Client shall pay the Fees described in a SOW to the Supplier in respect of the Services. All Supplier Fees are net Fees and exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes **(“VAT”),** which is payable by the Client at the rate and in the manner from time to time prescribed by law. Unless otherwise agreed between the parties, the Supplier shall be responsible for all other taxes which are incurred as a result of this Agreement and the Services being provided.

5.2 Invoicing

5.2.1 In consideration of the performance of the Services by the Supplier, the Supplier shall be entitled to invoice the Client the Fees due for each of the Services.

5.2.2 Each invoice issued by the Supplier shall include those details as are reasonably specified by the Client as necessary to satisfy the Client’s internal accounting and charge-back requirements.

5.2.3 If the Client acting in good faith considers any invoice to be incorrect or not due the Client shall notify the Supplier within [seven (7) Business Days] of receipt of the relevant invoice and state the reasons therefore (provided that the Client will not withhold or delay payment of any part of an invoice which is undisputed). If the Supplier accepts that the invoice is incorrect or not due, the Supplier shall issue a revised invoice and the Client shall settle such invoice immediately or in accordance with the payment terms set out below in Clause 5.3.

5.2.4 If an invoice remains disputed after [thirty (30) Business Days] of receipt of the relevant invoice both parties shall follow the Dispute Resolution Procedure in accordance with the provisions of Schedule 2.

5.3 Payment

5.3.1 Subject to Clause 5.2.3 and 5.2.4 the Client shall pay the Supplier’s Fees within [thirty (30) days] of receipt of the invoice (the **“Due Date”**).

5.3.2 The Client’s failure to pay any undisputed invoice for a period of more than [thirty (30) days] past the Due Date shall be considered a material breach by the Client and entitle the Supplier to terminate the Agreement in accordance with Clause 15.

5.4 Retail Prices Index

5.4.1 All Fees are fixed for the first Contract Year. Thereafter, subject to a Change agreed by the parties pursuant to the Change Control Procedure, the Supplier may increase the Fees on an annual basis upon written notice to the Client in line with the percentage change in the Retail Prices Index All Items during the preceding Contract Year or, if lower, by [insert]%.

5.5 Set Off

5.5.1 Each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

5.6 Late Payment

5.6.1 Should any payment not be made by the Due Date, the Supplier shall be entitled to charge the Client interest at [4%] above the Bank of England base rate on any balance outstanding from time to time until payment is made in full (including interest) except no interest shall be charged on payments reasonably disputed and withheld unless it is subsequently determined that the amount withheld is validly due. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount.

# NO EMPLOYEE RELATIONSHIP OR PARTNERSHIP

6.1 No Employee Relationship

6.1.1 The Supplier is solely responsible for all payments to the Supplier Personnel and other similar obligations with respect to the performance of all the Work and receipt of Fees under this Agreement. The Supplier and the Supplier Personnel will not be entitled to any of the benefits the Client may make available to its employees and the Supplier is solely responsible for all taxes and withholdings, severance and redundancy pay, benefits and other similar obligations whether statutory or otherwise, with respect to the performance of all its work and receipt of Fees under this Agreement. To the extent that such claim arises solely out of the acts, omissions or negligence of the Supplier, the Supplier shall indemnify the Client from all claims made by any person or entity in respect of its breach of its obligations as set out in this Clause 6.1.

6.2 Independent Contractors

6.2.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party’s behalf.

6.3 Transfer Regulations

6.3.1 The parties agree and confirm that the provision of the Services by the Supplier to the Client under the terms of this Agreement is not intended to constitute a service provision change as defined in regulation 3(1)(b) of the Transfer Regulations and therefore, neither the employment or engagement of the Supplier or any Supplier Personnel is intended to transfer under those provisions.

6.3.2 Notwithstanding the parties’ belief that a relevant transfer as defined under the Transfer Regulations will not apply:

6.3.2.1 should the Transfer Regulations apply to the commencement of the Services, the provisions of Schedule 3 Part 1 shall apply; and

6.3.2.2 should the Transfer Regulations apply to the cessation of the Services on expiry, termination or partial termination of this Agreement, the provisions of Schedule 3, Part 2 shall apply on expiry, termination or partial termination of this Agreement.

# INTELLECTUAL PROPERTY

7.1 The parties agree that any Intellectual Property rights belonging to a party prior to entering into this Agreement or any SOW **(“Pre-Existing IPR”)** remains vested in the party who owns it.

7.2 All Intellectual Property produced or developed by the Supplier in delivering the Services including the Work Product, methodologies, tools, documents and other materials **(“New Intellectual Property”)** will be vested in and remain the property of the Client, and, to the extent it is not already the property of the Client, is hereby assigned by way of present and future assignment to the Client, with full title guarantee.

7.3 Client hereby grants the Supplier and Supplier Personnel the non-exclusive right to use, and to permit its Affiliates and Sub-contractors to use, Client Pre-Existing IPR and New Intellectual Property free of charge to the extent reasonably required for the purpose of this Agreement and the provision of the Services.

7.4 All Supplier Intellectual Property, whether or not used in connection with this Agreement, will remain the property of the Supplier or its Affiliates.

7.5 The Supplier hereby grants the Client and its Affiliates a licence to use the Supplier Intellectual Property free of charge to the extent reasonably required solely for the purpose of this Agreement and the provision and receipt of the Services.

7.6 The Client hereby indemnifies the Supplier against Losses incurred by the Supplier as a result of any action, demand or claim by a third party infringement of any Intellectual Property made as a result of or in connection with the use by the Supplier or the Supplier Personnel, in accordance with the licence granted under this Agreement of any Client Intellectual Property licensed by the Client to the Supplier or the Supplier Personnel in connection with this Agreement **(“IPR Claim”),** provided that the Client shall have no such liability if the Supplier:

7.6.1 does not notify the Client in writing setting out full details of any IPR Claim of which it has received notice promptly;

7.6.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Client;

7.6.3 does not let the Client at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

7.6.4 does not take all reasonable steps to minimise the Losses that may be incurred by it or by any third party as a result of the IPR Claim (provided any costs associated with the same are paid in advance by the Client); and

7.6.5 does not, at the Client’s request, provide the Client with all reasonable assistance in relation to the IPR Claim (at the Supplier’s expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Supplier.

7.7 The Supplier hereby indemnifies the Client from and against any Losses incurred by it as a result of any action, demand or claim that the Supplier Intellectual Property infringes the Intellectual Property rights of any third party provided that the Supplier shall have no such liability if the Client:

7.7.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has received notice as soon as is reasonably possible;

7.7.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;

7.7.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

7.7.4 does not take all reasonable steps to minimise the Losses that may be incurred by it or by any third party as a result of the IPR Claim (provided any costs associated with the same are paid for in advance by the Supplier); and

7.7.5 does not, at the Supplier’s request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Client’s expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Client.

7.8 If any IPR Claim is made or is reasonably likely to be made in accordance with Clause 7.7, the Supplier may at its option:

7.8.1 procure for the Client the right to continue receiving the benefit of the relevant Services; or

7.8.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.

7.9 The indemnities provided in Clauses 7.6 and 7.7 shall not apply to the extent that they arise as a result of breach of this Agreement by the party which would otherwise have been entitled to the indemnity or modification of the relevant Intellectual Property by or on behalf of such party except with the prior written consent of the other party.

# CONFIDENTIALITY AND PUBLICITY

8.1 The receiving party shall only disclose Confidential Information to its employees and contractors who have a need to access such Confidential Information solely for the purpose of fulfilling their obligations under this Agreement and have been advised of the obligations of confidentiality and are under obligations substantially similar to those set out in this Clause 8.

8.2 The receiving party shall not disclose to any other person, firm or entity, other than those described in Clause 8.1, any Confidential Information without the disclosing party’s express written consent.

8.3 Each party shall exercise at least the same level of care to protect the other’s Confidential Information as it exercises to protect its own Confidential Information but in no event less than reasonable care except to the extent of Applicable Law or where professional standards require a higher requirement.

8.4 The receiving party shall deliver to the disclosing party all Confidential Information of the disclosing party and all copies thereof when the disclosing party requests the same.

8.5 The obligations of the receiving party concerning confidentiality hereunder shall terminate [three (3) years] following receipt of the Confidential Information except to the extent a longer period is required either by Applicable Law or under this Agreement.

8.6 Neither party shall make any public announcement or disclose any information regarding the Agreement, except to the extent required by law or regulatory authority, without the written consent of the other party. The Client agrees that the Supplier may use the Client’s logo and a brief description of the Services on the Supplier’s website and/or marketing materials.

8.7 The terms and conditions and existence of this Agreement and SOW or Purchase Order shall be considered Confidential Information for the purposes of this Clause 8 and shall only be disclosed in accordance with the provisions of Clause 8.1.

8.8 The provisions of this Clause 8 shall not apply to the extent that such information is:

8.8.1 already known to or in possession of the receiving party prior to its disclosure without an obligation of confidentiality upon the receiving party or such information is not acquired by the receiving party as a result of a breach of an obligation of confidentiality by the receiving party;

8.8.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;

8.8.3 rightfully received from a third party without obligation of confidentiality;

8.8.4 independently developed by the receiving party without breach of this Agreement or access to the applicable Confidential Information of the other party; or

8.8.5 required to be disclosed by Applicable Law (provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any such disclosure).

# OBLIGATIONS OF SUPPLIER

9.1 The Supplier shall, during the term in this Agreement:

9.1.1 ensure that the Supplier and Supplier Personnel comply with all relevant Client policies and regulations applicable to suppliers to which have been provided to the Supplier in advance of the Services;

9.1.2 use qualified Personnel necessary and appropriate for the timely and satisfactory completion of the Work;

9.1.3 allocate sufficient resources to perform the Services in accordance with any dates specified for performance, as amended from time to time by agreement between the parties via the Change Control Procedure or otherwise, if no dates are specified, as soon as possible but in any event within a reasonable time and in accordance with the provisions of this Agreement;

9.1.4 ensure that any employee, Supplier Personnel or Sub-contractor of the Supplier has the legal right to work in the country where the Services are to be performed;

9.1.5 so far as known to the Supplier or could be reasonably expected to be known to the Supplier, notify the Client of any issue or event likely to cause a material delay in the delivery of any Work or that is likely to adversely affect the Supplier’s ability to meet any obligations under this Agreement; and

* + 1. ensure that any of the Supplier Personnel who are engaged in the performance of any Services shall, if required by the Client, attend such meetings at the Client Site or elsewhere as may be reasonably required by the Client.

# OBLIGATIONS OF CLIENT

10.1 The Client shall:

10.1.1 perform its obligations in accordance with the terms of this Agreement;

10.1.2 pay the Fees for the Services and the Milestone payments in accordance with the terms of the SOW;

10.1.3 provide any Client Dependencies as listed in the SOW;

10.1.4 provide the Supplier and the Supplier Personnel reasonable access to the Client Site, facilities and premises where the Services are to be performed, including but not limited to, access to computers, hardware, data, and information;

10.1.5 co-operate with and provide assistance to the Supplier and Supplier Personnel as reasonably necessary to provide the Services;

10.1.6 remain responsible for all data, hardware, equipment and applications in its control;

10.1.7 comply with any additional obligations as specified in each SOW;

10.1.8 inform the Supplier in a timely manner of any matters (including health and safety or security requirements) which may affect the provision of the Services or the performance of any SOW;

10.1.9 ensure that all tools, equipment or materials provided to the Supplier or Supplier Personnel are suitable and in good working order; and

10.1.10 remain responsible for obtaining all licences, approvals and permits necessary for the Supplier to perform the Services whilst on the Client Site.

# WARRANTIES AND REPRESENTATIONS

11.1 Each party warrants and represents:

11.1.1 it has the full capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;

11.1.2 this Agreement is executed by a duly Authorised Representative of that party;

11.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party’s knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

11.1.4 it will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Laws.

11.2 The Supplier expressly does not warrant that the Client’s use of the Services and /or Deliverables will be uninterrupted or error-free. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to merchantability, satisfactory quality or fitness for a particular purpose. It is the responsibility of the Client to ensure that the Services and/or Deliverables meet its requirements, and the Supplier shall not be held liable for any failure of the Services and/or Deliverables to provide any facility or function not expressly stated in the relevant SOW. No oral or written information or advice given by the Supplier shall create a warranty or representation or in any way increase the scope of the above warranties.

# ASSIGNMENT AND SUB-CONTRACTING

12.1 Neither party may assign any of its rights or obligations under this Agreement without the express written consent of the other party.

12.2 The Supplier may sub-contract any part of the Services provided that the Supplier shall remain liable for the performance of all the sub-contracted obligations and shall make all payments to its Sub-contractors.

12.3 The Supplier indemnifies the Client for all Losses subject to the limitations set out in Clause 13, incurred by the Client caused by the acts, omissions or negligence of its Sub-contractors or the Supplier’s failure to pay a Sub-contractor.

# INDEMNIFICATION AND LIMIT OF LIABILITY

13.1 Subject to Clauses 13.3, 13.4, 13.5 and 13.6, the Client shall indemnify the Supplier against any Losses incurred by the Supplier as a result of or in connection with the Client breaching, or failing during the Term of this Agreement to comply with. any Applicable Laws. For the avoidance of doubt, the indemnity in this Clause 13.1 shall not apply to the extent that such Losses result from, or are caused or materially contributed to by, the acts, omissions or negligence of the Supplier.

13.2 The Client shall be responsible for the accuracy, completeness and propriety of information concerning its products, services and organisation that the Client provides to the Supplier in connection with the Services. Accordingly, the Client shall indemnify the Supplier against any and all Losses incurred by the Supplier, or arising out of or in connection with:

13.2.1 use of the Client’s services or products;

13.2.2 use of information or materials provided to the Supplier; or

13.2.3 compliance with the Client policies and regulations which conflict with the Supplier’s own policies.

13.3 Neither party shall be liable whether in contract, tort (including negligence) or otherwise for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising or any loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings or wasted management or staff time, even if that party has been advised of the possibility.

13.4 Neither party limits or excludes liability to the other for death or personal injury caused by its negligent acts or omission or any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; any claims relating to corrupt gifts or fraudulent misrepresentation or deceit; or any other liability that may not be limited or excluded by law.

13.5 Subject to Clauses 5.1, 13.3, 13.4 and 13.6, the total liability of each party to the other howsoever arising, including all indemnities, arising under or in connection with the Agreement and/or any SOW, and whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall be limited in the aggregate on a per annum basis to the higher of (a) [£1,000,000 (one million pounds sterling)] or (b) [150%] of the Fees paid or due and payable by the Client to the Supplier in the last full Contract Year of this Agreement prior to the cause of action giving rise to the relevant claim or series of connected claims.

13.6 For the avoidance of doubt, the limit of liability set out in Clause 13.5 shall not apply to the Client’s obligation to pay the Fees due for Services performed under the Agreement.

# INSURANCE

14.1 The Supplier shall at all times during the Term of this Agreement, procure and maintain in effect those insurance policies and minimum levels of coverage as designated in Clause 14.2 below, and any other insurance required by law in any country or territory where the Supplier provides Services under this Agreement.

14.2 The Supplier shall maintain Employer’s Liability insurance as required by Applicable Law, and in no event, less than the amount required by Applicable Law. The Supplier shall maintain Public Liability insurance for a limit of not less than [£ million] and Professional Indemnity insurance for a limit of not less than [£ million] in the aggregate.

14.3 When requested by the Client, the Supplier shall provide evidence of insurance as specified in Clause 14.2 above.

14.4 The Supplier shall ensure that Sub-contractors shall provide and maintain appropriate insurances and the Supplier shall obtain evidence of same.

# TERMINATION

15.1 Either party may terminate this Agreement and all SOWs thereunder for cause immediately upon the occurrence of and in accordance with an Insolvency Event.

15.2 The Supplier may terminate this Agreement and any SOW for cause immediately upon the occurrence of a Change of Control.

15.3 Either party may terminate this Agreement, any SOW, or both, upon written notice to the other for any material breach not remedied within [thirty (30) days] of receipt of notice of the breach. The Client shall be liable to pay for such Work as has been undertaken by the Supplier at the time of the termination of this Agreement or SOW. The Supplier shall not have further service delivery obligation to the Client under any terminated SOW if the Supplier terminates the SOW under the provisions of this Clause 15.3.

15.4 Either party may terminate an individual SOW upon giving the other party the amount of written notice as set out in the SOW.

15.5 On termination of this Agreement, or upon termination or expiry of any SOW the Client shall immediately pay to the Supplier all of the Supplier’s outstanding unpaid invoices (and interest where applicable) and, in respect of work in progress and/or Services performed but for which no invoice has been submitted, the Supplier may submit an invoice in accordance with Clause 5 and the Client shall be liable for payment of such invoices.

15.6 Termination of the Agreement (howsoever arising) shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

15.7 Other than as set out in the Agreement, neither party shall have any further obligation to the other under the Agreement or any SOW after its termination. Any provision in this Agreement or any SOW which by its intent or terms is meant to survive termination will do so.

15.8 Upon expiration or termination of this Agreement or any SOW the parties will, upon request of the other party, destroy or promptly return all material containing any Pre-Existing IPR, Confidential Information or proprietary information pertaining to the other party.

# AUDIT

16.1 The Supplier shall maintain accurate and complete documents relating to the Services and the performance of the Supplier’s obligations under this Agreement, during the Term and for a period of [one (1) year] after termination of this Agreement. Upon the provision of at least [fourteen (14)] Business Days’ notice, the Supplier shall permit reasonable access during normal business hours to the Client for the purpose of inspection, auditing and copying records relating to this Agreement and the Services. The Supplier shall provide the Client and the Client’s duly authorised personnel with all reasonable co-operation, and assistance in respect of the above.

# DATA PROTECTION

17.1 The parties agree that the provisions of Schedule 4 shall apply with respect to the data protection obligations of the parties under this Agreement.

17.2 Subject to Clause 13.3, 13.4, 13.5 and 13.6, each party will indemnify the other in respect of all Losses which the other may incur arising out of any breach of the parties’ obligations as set out in Schedule 4.

# NON-SOLICITATION

18.1 Subject to Clause 18.2, neither party will, during the Term and for a period of [twelve (12) months] after its termination, solicit for employment or engagement, directly or indirectly, or actually employ or engage, any employee, person, or sub-contractor engaged by the other party who has worked in relation to the performance of that party’s obligations under this Agreement during the previous [six (6) months] preceding such action, except as required by law or expressly permitted by this Agreement.

18.2 Either party may employ or engage an employee, person or sub-contractor of the other party who has replied to an unsolicited general advertisement.

18.3 Where a party is in breach of Clause 18.1, it shall pay the other party liquidated damages equivalent to [30%] of the most recent basic annual salary or income net paid by the other party to that employee, person or sub-contractor. Both parties agree that such liquidated damages represent a genuine pre estimate of loss.

# SEVERABILITY

19.1 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Agreement shall not be affected.

19.2 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

# NOTICES

20.1 Any notice given by a party under this Agreement shall:

20.1.1 be in writing and in English;

20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

20.1.3 be sent to the relevant party at the address set out in the Agreement.

20.2 Notices may be given, and are deemed received:

20.2.1 by hand: on receipt of a signature at the time of delivery;

20.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting or;

 20.2.3 [by email provided confirmation is sent by first class post: on receipt of a delivery OR read receipt email from the correct address OR [A notice given under this Agreement is not validly served if sent by email.]]

20.3 Any change to the contact details of a party as set out in the Agreement shall be notified to the other party in accordance with Clause 20.2 and shall be effective on the date specified in the notice as being the date of such change or if no date is so specified, [five (5) Business Days] after the notice is deemed to be received.

20.4 The provisions of this Clause 20 do not apply to notices given in legal proceedings or arbitration.

# ANTI-BRIBERY

21.1 For the purposes of this Clause 21 the expressions ‘adequate procedures’ and ‘associated with’ shall be construed in accordance with the Bribery Laws.

21.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate policies and procedures to prevent bribery and use all reasonable endeavours to ensure that all of that party’s personnel and all of that party’s sub-contractors involved in performing the Agreement so comply.

21.3 Without limitation to Clause 21.2, neither party shall make or receive any bribe (as defined in the Bribery Laws) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

21.4 Each party shall immediately notify the other as soon as it becomes aware of a breach, or possible breach, of any of the requirements in this Clause 21.

# WAIVER

22.1 If either party, at its option, does not require strict performance of any requirement or obligation under this Agreement, this shall not be construed as a waiver of any future omission or breach, or any other provision of this Agreement.

# FORCE MAJEURE

23.1 Neither party shall be liable to the others for delays or failures in performance resulting from causes beyond the reasonable control of that party, including any Force Majeure Event. In such circumstances, the affected party shall give notice to the other party as soon as reasonably possible after commencement of the Force Majeure Event and shall be entitled to a reasonable extension of time for performing the affected obligations. If the period of delay or non-performance continues for more than [fourteen (14) days], then either party may terminate this Agreement upon notice to the other party. The affected party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement.

# CONTRACT (RIGHTS OF THIRD PARTIES) ACT

24.1 No provision of these Terms will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 **(“the Act”).** This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act.

# DISPUTE RESOLUTION

25.1 Any dispute which may arise concerning this Agreement or arising in connection with this Agreement, shall be dealt with under the procedure outlined in Schedule 2 attached hereto.

# MODERN SLAVERY

26.1 Both parties shall comply with the provisions of the Modern Slavery Act 2015.

# CRIMINAL FINANCES ACT

27.1 Each party shall not, and shall procure that its employees, agents, sub-contractors and contractors shall not, engage in any activity, practice or conduct which would constitute an offence and/or contravention of the Criminal Finances Act 2017.

# GOVERNING LAW AND JURISDICTION

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

28.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement, its subject matter or formation (including non-contractual disputes or claims).

# ENTIRE AGREEMENT

29.1 This Agreement is the entire agreement between the parties relating to the subject matter hereof and this Agreement supersedes all prior or contemporaneous oral or written prior agreements regarding such subject matter. There are no agreements, representations, warranties expressed or implied or conditions that are not specified herein.

**IN WITNESS OF WHICH** the duly Authorised Representatives of the parties have signed this Agreement on the date indicated below.

**SIGNED BY SUPPLIER**

**NAME:**

**TITLE:**

**DATE:**

**SIGNED BY CLIENT**

**NAME:**

**TITLE:**

**DATE:**

## SCHEDULE 1 - TEMPLATE STATEMENT OF WORK

|  |  |
| --- | --- |
| **Title** |  |
| **Reference Number** |  |
| **Agreement Number** |  |

***This Statement of Work (“SOW”) describes the Services to be provided by the Supplier and Work to be delivered to the Client under the Master Services Agreement (“Agreement”). The Terms of this SOW are limited to the scope of the SOW and shall not be applicable to other SOWs which may be executed and attached to the Agreement. This SOW is incorporated into and governed by the terms of the Agreement. In the event of any conflict, the SOW will prevail, solely to the extent of that inconsistency.***

***[No work specified on the SOW shall commence until a valid Purchase Order is duly issued by the Client.]***

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| **Service Overview** |

|  |
| --- |
| **Scope Of Work | Specification** |
| **Type Of Services:** |
| **[insert Service]** | **Outsourced Services / Non-Outsourced Services (delete as appropriate)** |
| **[insert Service]** | **Outsourced Services / Non-Outsourced Services (delete as appropriate)** |
| **[insert Service]** | **Outsourced Services / Non-Outsourced Services (delete as appropriate)** |
| **Summary of activities covered by this SOW:** |
| **Service Areas** | **Summary of Activities** | **SOW Exclusivity Period** |
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| **Scope Exclusions (i.e. for the avoidance of doubt)** |
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| **Service Description** |

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| --- | --- |
| **SOW Effective Date** |  |
| **SOW Expiry Date** |  |
| **Approach** |
|  |
| **Detailed Scope** |
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| **Deliverables** |

**Acceptance of Deliverables and Milestones shall be the successful completion of deliverables/milestones in accordance with the description from this SOW with clear supporting articles documented. The terms of acceptance are more fully documented in the Agreement between the parties.**

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| --- | --- | --- | --- |
| **Deliverable Title** | **Activity Input To Deliverable** | **Acceptance Criteria** | **Delivery Frequency / Date\*** |
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**\* For the avoidance of doubt, all dates in the plan are estimates based on knowledge at the time the plan is produced and subject to change based on dependencies not under the Supplier’s control. All other non-Supplier activities and dates in that plan are included for guidance only.**

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| **Milestones** |

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| --- | --- | --- | --- |
| **Milestone Title** | **Milestone Description** | **Due Date** | **Amount Payable Upon Completion & Acceptance** |
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| **Implementation Plan** |

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| **Implementation Plan** |  |
| **Implementation Requirements** |  |

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| **Stakeholders** |

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| **Client Primary Contact For Services** |  |
| **Supplier Primary Contact For Services** |  |

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| **Resources to be provided by the Supplier** |

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| **Supplier Intellectual Property** |  |
| **Third Party Assets/Property** |  |
| **Key Supplier Personnel** |  |
| **Other Supplier Resources** |  |
| **Reporting Requirements** |  |

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| **Resources to be provided by the Client** |

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| **Client Intellectual Property** |  |

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| **Confidential Information** |

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| --- | --- |
| **Description of Supplier’s Confidential Information** |  |
| **Description of Client’s Confidential Information** |  |

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| **Premises where Services are performed** |

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| --- | --- |
| **Client Site** |  |
| **Alternative Premises** |  |
| **Equipment Required** |  |

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| **Definitions** |

**Define any unique language used within this SOW:**

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| **Responsibilities and Dependencies** |

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| **Supplier Responsibilities** |
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| **Client Responsibilities** |
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| **Client Dependencies** |
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| **Third Party Dependencies** |
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| **Acceptance Criteria** |

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| **Fees** |

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| --- | --- |
| **Maximum amount payable (if fixed price)****OR****Estimated Annual / Monthly Fees** |  |
| **Pre-Agreed Expenses (if any)** |  |
| **Equipment costs (if any)** |  |
| **ASSUMPTIONS USED TO CALCULATE FEES** |
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| **Special Terms** |

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| **Termination Notice** |
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| **Other Terms** |
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| **Authorisation** |

**IN WITNESS WHEREOF,** the parties hereto have caused this SOW to be executed by their duly Authorised Representatives.

**SIGNED BY SUPPLIER**

**NAME:**

**TITLE:**

**DATE:**

**SIGNED BY CLIENT**

**NAME:**

**TITLE:**

**DATE:**

## ATTACHMENT 1 TO SOW - CHANGE CONTROL PROCEDURE

It may become necessary to amend this SOW for reasons including, but not limited to, the Client requiring a Change to the scope of Work.

A change request **(“Change Request”)** may be initiated by either party for any material changes to the SOW. If it is necessary to change the Work contemplated by the SOW, the following procedure will be followed:

1. The Client or the Supplier will prepare a Change Request in the form attached hereto as Attachment 2 describing the nature of the Change, and the effect of the Change on the scope of Work which may include Changes to the project schedule, Services or Work Product.

2. The parties will evaluate the Change Request and negotiate in good faith the Changes and the additional Fees, if any, required to implement the Change Request. Once the parties agree to the Change Request, the appropriate authorised Personnel will sign the Change Request.

3. The parties will conclude negotiations on the Change Request and amend the SOW within [thirty (30) days] of the date of the Change Request.

4. Upon execution of the Change Request, the Change Request will be incorporated into, and made part of this SOW.

5. If there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail, solely to the extent of the inconsistency.

## ATTACHMENT 2 TO SOW – CHANGE REQUEST DOCUMENT

In respect to the section titled Change Management Procedures of the Statement of Work (SOW) referenced as [insert reference number] between [Client name] **(“Client”**) and [Supplier name] (**“Supplier”**), both parties hereby certify by the signature of an Authorised Representative, that this Change Request will amend and be fully incorporated into the SOW.

**Scope of Change Request:**

**[insert]**

**Changes to SOW:**

**[insert]**

**Impact (cost, schedule):**

**[insert]**

**Purchase Order Issuance (if applicable):**

**[insert]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Change Request to be executed by their duly Authorised Representatives.

**SIGNED BY SUPPLIER**

**NAME:**

**TITLE:**

**DATE:**

**SIGNED BY CLIENT**

**NAME:**

**TITLE:**

**DATE:**

## SCHEDULE 2 - DISPUTE RESOLUTION PROCEDURE

1. Any issue or disagreement which may arise concerning the construction, meaning or effect of this Agreement or arising in connection with this Agreement will be referred to the parties’ representatives as indicated below for discussion and resolution at or by the next review meeting, or at an earlier date if requested by either party.

Name (Supplier)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Client)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. If the matter remains unresolved and is having a material effect on the Services, the parties will use reasonable endeavours to reduce the elapsed time in reaching a resolution of the dispute.
2. If the dispute has not been resolved at management level as outlined above, either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral advisor or mediator before going to litigation.
3. If the parties enter into structured negotiations with a mediator or neutral advisor and fail to reach a resolution within fifteen (15) Business Days, the parties may refer any dispute or difference to litigation but the parties agree that before resorting to litigation, structured negotiations will have taken place in accordance with the procedure outlined in this Schedule 2.
4. Nothing shall prevent either party from instituting proceedings at any time before the courts to protect that party’s Intellectual Property rights, Know-How or Confidential Information.
5. Notwithstanding the existence of any dispute under this Agreement, each party will continue to perform its obligations in accordance with this Agreement.

## SCHEDULE 3 - TRANSFER REGULATIONS

**PART 1**

S3.1.1 Where the Services are transferred from the Client and/or Incumbent Supplier and the Transfer Regulations apply, the following terms and conditions and definitions apply (in addition to the definitions within the Agreement):

**“Employees”** mean those employees whose contract of employment transfer to the Supplier from the Client or Incumbent Supplier as at the Transfer Date;

**“Employee Liability Information”** means in respect of each of the Employees:

1. the identity and age of the Employee;
2. those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
3. information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
4. information about any court or tribunal case, claim or action either brought by the Employee against the Client within the previous two years or where the Client has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Client; and
5. information about any collective agreement which will have effect after the [Transfer Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations;

**“Incumbent Supplier”** means any supplier providing services to the Client before the Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of such sub-contractor);

**“Transfer Date”** means the date on which the Employees transfer to the Supplier; and

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.1.2 The Client and the Supplier believe that, pursuant to the Transfer Regulations, as at the Transfer Date the Supplier will become the employer of the Employees.

S3.1.3 The Client represents, warrants and undertakes on its behalf [and on behalf of any Incumbent Supplier] to the Supplier that:

(a) no persons are employed or engaged in the provision of the Services other than the Employees;

(b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Schedule 3;

(c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable) are set out in Schedule 3;

(d) there is not in existence any contract of employment with any Employee (or any contract for services with any individual who would be considered an Employee for the purposes of this Schedule 3) which cannot be terminated by three (3) months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

(e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Client has:

(i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives (where such regulations or directives continue to have legal force and effect in the United Kingdom and/or have been incorporated into national law within the United Kingdom) and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

(ii) maintained adequate and suitable records regarding the service of each of its employees;

(iii) calculated and paid all holiday pay for periods of holiday taken under Regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;

(iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and

(v) complied with all relevant orders and awards made under any statute affecting their conditions of service;

(f) the Client has not been involved in any industrial or trade disputes in the last [three (3)] years and to the best of the Client's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of the Supplier is likely to lead to any industrial dispute;

(g) there is not outstanding any agreement or arrangement to which the Client is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;

(h) the Client has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;

(i) the Client has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;

(j) [there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;]

(k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance [and pension contributions]) are in arrears or unpaid;

(l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Client or the Supplier arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;

(m) the Client has provided the Employee Liability Information to the Supplier regarding each of the Employees;

(n) the Employee Liability Information contains information as at a specified date not more than fourteen (14) days before the date on which the information was provided to the Supplier;

(o) the Client has notified the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided;[ and]

(p) the Employee Liability Information was provided not less than 28 days before the Transfer Date [OR ; and]

(q) [the Client has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992, if required.]

S3.1.4 The Client shall on its behalf and/or on behalf of any Incumbent Supplier indemnify the Supplier in full and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred by the Supplier in relation to the Client’s acts and omissions relating to the Employees occurring on or after the Transfer Date and/or for any claims in respect of emoluments and outgoings (including wages, bonus, tax, pension contributions and otherwise) accrued and payable after the Transfer Date.

S3.1.5 The Client shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) the termination by the Client of the employment of any of the Employees;

(b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Transfer Regulations (or in the event that it is found that the Transfer Regulations do not apply, would have been deemed to have been done by the Supplier had the Transfer Regulations actually applied); and

(c) any claim made at any time by any employee of the Client other than the Employees who claim to have become an employee of or have rights against the Supplier by virtue of the Transfer Regulations (“**Claims**”) provided that such costs, claims, expenses and liabilities are not incurred as a result of any act or omission of the Supplier.

S3.1.6 The Client shall procure on its behalf and on behalf of any Incumbent Supplier that their employees, sub-contractors, agents and successors in title shall promptly:

(a) take such action in connection with the Claims as the Supplier shall from time to time reasonably request;

(b) provide free of charge all such assistance and information as the Supplier may reasonably request relating to the Claims to enable the Claims to be pursued;

(c) subject to any restriction imposed by law, provide the Supplier, its legal and other advisers with access to all documents, records or other information held by the Client relating to the Claims;

(d) provide the Supplier and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Supplier with the preparation of its cases in relation to the Claims;

(e) permit and require such employees as the Supplier and/or its professional advisers may reasonably request to meet with the Client and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Supplier and/or its legal or other professional advisers may reasonably require;

(f) provide such other assistance as the Supplier may reasonably request in order to ensure the due and timely prosecution of the Claims;

(g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Supplier and obtaining its agreement to any approval of the request; and

(h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Supplier’s consent to such waiver, such consent not to be unreasonably withheld.

S3.1.7 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Client up to and including the Transfer Date and by the Supplier with effect from the Transfer Date.

S3.1.8 The Supplier shall indemnify the Client in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Client including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) any failure by the Supplier to comply with its obligations pursuant to the Transfer Regulations; and

(b) anything done or omitted to be done by the Supplier in respect of any of the Employees whether before or after the Transfer Date, provided that such acts and omissions by the Supplier do not occur as result of any act or omission of the Client in relation to its own obligations under the Transfer Regulations.

S3.1.9 During the term of this Agreement, the Supplier shall provide to the Client any information the Client may reasonably require relating to any individual employed, assigned or engaged in providing the Services under this Agreement (subject to applicable Data Protection Laws).

S3.1.10 If the Transfer Regulations applies to transfer the employment of any person employed by the Client or any Incumbent Supplier to the Supplier, then if the Supplier shall serve a notice terminating the employment of such person within [six (6) months] after the date of such transfer, the Client shall indemnify the Supplier (for itself and any Incumbent Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Supplier is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

**SCHEDULE 3 – TRANSFER REGULATIONS**

**PART 2**

S3.2.1 Where some or all the Services are transferred to the Client and/or Replacement Supplier on cessation of the Services and the Transfer Regulations apply, the following terms and conditions and definitions apply (in addition to the definitions within the Agreement):

“**Replacement Supplier”** means another party chosen by the Client to take over the provision of all or part of the Services;

**“Returning Employees”** means those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date;

**“Subsequent Transfer Date”** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and the Client and/or a Replacement Supplier (as the case may be); and

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.2.1 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services are subsequently provided by the Client and/or a Replacement Supplier, there may be a relevant transfer of the Returning Employees to the Client and/or the Replacement Supplier for the purposes of the Transfer Regulations. If there is such a transfer, the employment of the Returning Employees shall transfer to the Client and/or the Replacement Supplier in accordance with the Transfer Regulations with effect from the Subsequent Transfer Date.

S3.2.2 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Transfer Regulations, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the Replacement Supplier.

S3.2.3 The Supplier shall not later than [six (6) months] prior to the cessation of all or part of the Services, or termination or expiry of theAgreement to the extent lawfully permitted provide the Client with the following details:

(a) a list of those personnel engaged in the Services (“**Potential Returning Employees**”);

(b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;

(c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;

(d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;

(e) any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;

(f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and

(g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to the Transfer Regulations.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by the Client.

S3.2.6 The Supplier shall indemnify the Client (both for itself and a Replacement Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a Replacement Supplier in connection with or as a result of:

(a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee, whether in contract, tort, under statute, pursuant to European law (to the extent that such law has continuing legal effect in the United Kingdom) or otherwise, arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;

(b) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of the Transfer Regulations, or any award of compensation under regulation 15 of the Transfer Regulations, save where such failure arises from the failure of the Client and/or Replacement Supplier to comply with its or their duties under regulation 13 of the Transfer Regulations; and

(c) any claim by any person who transfers or alleges that they have transferred to the Client or the Replacement Supplier but whose name is not included in the list of Returning Employees.

S3.2.7 If the Transfer Regulations applies to transfer the employment of any person employed by the Supplier to the Client or any Replacement Supplier then if the Client or such Replacement Supplier shall serve a notice terminating the employment of such person within [six (6) months] after the date of such transfer, the Supplier shall indemnify the Client (for itself and any Replacement Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Client is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

## SCHEDULE 4 – DATA PROTECTION

 PART A

Data Processing Obligations

S4.1. Definitions

S4.1.1 In addition to terms defined in the Agreement, in this Schedule the terms **“Controller”,** **“Data Subject”, “International Organisation”, “Personal Data Breach”, “Processor”,** and **“Processing”** shall have the meaning given in applicable Data Protection Laws from time to time, (and related expressions, including “**process**”, “**processed**” and “**processes**” shall be construed accordingly);

**“Protected Data”** means Personal Data received from or on behalf of the Client, or otherwise obtained by the RPO Provider (or anyone acting on its behalf) in connection with the performance of the RPO Provider’s obligations under this Agreement;

**“Sub-Processor”** means any party engaged by the Processor (or by any other Sub-Processor) for carrying out any Processing activities in respect of the Protected Data on behalf of the Controller; and

**“Data Protection Supervisory Authority”** means the UK’s Information Commissioner’s Office or applicable statutory body in any other jurisdiction in which the Services are performed;

S4.1.2 [For the purposes of Processing Protected Data pursuant to this Agreement, the parties agree that the Client is the Controller and that the Supplier is the Processor]

S4.2. Controller’s obligations

S4.2.1 The Controller warrants, represents and undertakes that at all times:

S4.2.1.1 the Processing of all Protected Data (if processed in accordance with this Agreement) shall comply in all respects with Data Protection Laws, including in terms of its collection, use and storage;

S4.2.1.2 fair Processing and all other appropriate notices have been provided to the Data Subjects of the Protected Data (and all necessary consents from such Data Subjects obtained and at all times maintained) to the extent required by Data Protection Laws in connection with all Processing activities in respect of the Protected Data which may be undertaken by the Processor and its Sub-Processors in accordance with this Agreement;

S4.2.1.3 the Protected Data is complete, accurate and up to date;

S4.2.1.4 except to the extent resulting from transfers to international recipients made by the Processor or any Sub-Processor, the Protected Data is not subject to the laws of any jurisdiction outside of the United Kingdom;

S4.2.1.5 it shall establish and maintain adequate security measures to safeguard the Protected Data in its possession or control (including from unauthorised or unlawful destruction, corruption, processing or disclosure);

S4.2.1.6 it shall maintain complete and accurate backups of all Protected Data provided to the Processor (or anyone acting on its behalf) so as to be able to immediately recover and reconstitute such Protected Data in the event of loss, damage or corruption of such Protected Data by the Processor or any other person;

S4.2.1.7 all instructions given by it to the Processor in respect of Personal Data shall at all times be in accordance with Data Protection Laws;

S4.2.1.8 it will ensure that it has all necessary appropriate consents and/or notices in place to enable lawful transfer of Protected Data to the Processor (and its Sub-Processors) for the duration of this Agreement, and that it has a valid legal basis for the Processing of Protected Data in order that the Processor may lawfully process the Protected Data in accordance with this Agreement on the Processor’s behalf;

S4.2.1.9 the Processing (including transfer to the Processor) of Protected Data for the purposes of this Agreement does not violate any laws or rights of any third party, including without limitation any Intellectual Property rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies; and

S4.2.1.10 it shall not unreasonably withhold, delay or condition its agreement to any Change requested by the Processor in order to ensure the Services and the Processor (and each Sub-Processor) can comply with Data Protection Laws.

**S4.3. Processor’s obligations**

S4.3.1 Insofar as the Processor processes Protected Data on behalf of the Controller, the Processor shall:

S4.3.1.1 Process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement;

S4.3.1.2 unless required to do otherwise by Applicable Law, Process in accordance with Part B of this Schedule (and shall ensure Processor Personnel only Process) the Protected Data except to the extent that alternative Processing instructions are agreed between the parties in writing or otherwise required by Applicable Law;

S4.3.1.3 taking into account the nature of the Processing, provide reasonable assistance to the Controller to enable the Controller to respond to requests from a Data Subjects seeking to exercise their rights under Data Protection Laws. In the event that such request is made directly to the Processor, the Processor shall promptly inform the Controller of the same;

S4.3.1.4 to the extent required by Data Protection Laws, taking into account the nature of the Processing and the information available to the Processor, provide the Controller with commercially reasonable assistance with data protection impact assessments (as such term is defined in Data Protection Laws) or prior consultations with any Data Protection Supervisory Authority that the Controller is required to carry out under Data Protection Laws;

S4.3.1.5 record and promptly (and in any event within [five (5) Business Days] of receipt) refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Controller which relate (or which may relate) to any Protected Data. The Processor will not respond to any requests or communications without the Controller’s express written approval and strictly in accordance with the Controller’s instructions unless and to the extent required by law;

S4.3.1.6 promptly (and in any event within [forty eight (48) hours]) notify the Controller if it (or any of its Sub-Processors or the Processor Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach (howsoever caused) in respect of any Protected Data; and

S4.3.1.7 provide, at the Controller’s cost, all reasonable assistance and information as the Controller requires to report the circumstances referred to in paragraph S4.3.1.6 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

S4.4. Security

S4.4.1 The Processor shall implement and maintain the technical and organisational measures set out in Part C of this Schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

S4.5. Sub-processing and personnel

S4.5.1 The Processor shall:

S4.5.1.1 not permit any Processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Controller;

S4.5.1.2 prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Protected Data, ensure each Sub-Processor is appointed under a binding written contract containing materially the same obligations as under this Schedule (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) and ensure each such Sub-Processor complies with all such obligations;

S4.5.1.3 remain liable to the Controller under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

S4.5.1.4 ensure that all persons authorised by the Processor or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

S4.6. List of authorised Sub-Processors

S4.6.1 The Controller authorises the appointment of the Sub-Processors listed below:

|  |  |
| --- | --- |
| **Sub-Processor** | **Processing this Sub-Processor is authorised to undertake** |
| [Insert legal name of Sub-Processor 1], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |
| [Insert legal name of Sub-Processor 2], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |
| [Insert legal name of Sub-Processor 3], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |

S4.7. Further Sub-Processors

S4.7.1 The Controller shall reply to any communication from the Processor requesting any further prior specific authorisation of a Sub-Processor pursuant to paragraph S4.5.1.1 of this Part A promptly and in any event within [ten (10) Business Days] of request from time to time. The Controller shall not unreasonably withhold, delay or condition any such authorisation.

S4.8. International transfers

S4.8.1 The Processor shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Controller except where required by Applicable Law.

S4.9. Audits

S4.9.1 The Processor shall, in accordance with Data Protection Laws, make available to the Controller on request such information that is in its possession or control as is necessary to demonstrate the Processor’s compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of UK GDPR, and allow for and contribute to audits, including inspections, by the Controller for this purpose (subject to a maximum of [one (1)] audit request in any 12 month period under this paragraph S4.9.1). [To the extent consistent with the forgoing, the Processor shall, however, be entitled to withhold [insert, eg information where it is commercially sensitive or confidential to it or its other Controllers]].

S4.10. Return of Protected Data

S4.10.1 At the Controller’s cost, expense and option, upon the termination of the Services relating to the Processing of Protected Data (the **“Processing End Date”**), the Processor shall either return all of the Protected Data to the Controller or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires the Processor to store such Protected Data. To the extent the Controller has not notified the Processor within [*insert period*] of the Processing End Date that it requires the return of any Protected Data the Processor is irrevocably authorised to securely dispose of the Protected Data at the Controller’s cost and expense.

S4.10.2 [On request from the Controller the Processor shall confirm in writing whether or not it has complied with its obligations to dispose of the Protected Data under paragraph S10.1 of this Part A.]

S4.11. Survival

S4.11.1 This Schedule shall survive termination or expiry of this Agreement:

S4.11.1.1 indefinitely in the case of paragraph S4.10 of this Part A; and

S4.11.1.2 in the case of all other paragraphs and provisions of this Schedule, until the later of the termination or expiry of this Agreement or return or secure deletion or disposal of the last of the Protected Data in the Processor’s (or any of its Sub-Processor’s) possession or control in accordance with this Agreement.

**SCHEDULE 4- DATA PROTECTION**

**PART B**

**Data processing details**

S4.12 Processing of the Protected Data by the Processor under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Schedule 4 Part B:

 Subject-matter of Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Duration of the Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Nature and purpose of the Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Type of Personal Data:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Categories of Data Subjects:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Specific Processing instructions:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

**SCHEDULE 4- DATA PROTECTION**

**PART C**

**Minimum Technical and Organisational Security Measures**

S4.13 Without prejudice to its other obligations, the Processor shall implement and maintain at least the following technical and organisational security measures to protect the Protected Data:

1. [*Insert security measures to protect Protected Data as appropriate*]
2. [*Insert security measures to protect Protected Data as appropriate*]
3. [*Insert security measures to protect Protected Data as appropriate*]

S4.14 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the Processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Processor shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of UK GDPR.

S4.15 Without prejudice to its other obligations, the Processor shall:

1. [*insert relevant specific security measures as appropriate*]
2. [*insert relevant specific security measures as appropriate*]
3. [*insert relevant specific security measures as appropriate*]