

MASTER SERVICES AGREEMENT (the “Agreement”)

BACKGROUND

- (1) **DIGPACKS LIMITED**, incorporated and registered in England and Wales with company number 12116726, whose registered office is at The Hangar, Tower Suite, Hatfield Business Park, Hatfield, AL10 9AX (“**Supplier**”) is an IT Services provider, and has developed and will provide Software (as defined in Clause 14 below) together with professional and managed services (“**Services**”).
- (2) The “**Client**”, the name of which is set out in the “**Statement of Work**” (the document describing the services proposed in response to a request from the Client to the Supplier, wishes to use the Supplier's Services in its business operations.
- (3) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.
- (4) Multiple Statement of Works may be incorporated under this Agreement.

INTERPRETATION

Clause, and paragraph headings shall not affect the interpretation of this Agreement.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to **writing** or **written** includes e-mail.

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

References to **Clauses** are to the Clauses of this Agreement.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The parties agree, in consideration of the parties' respective obligations under this Agreement, as follows:

1. ORDER OF PRECEDENCE

- 1.1 In the event of any conflict or inconsistency between the Clauses of this Agreement, the Schedules, any variation, a Licence Agreement (as defined below) and the Statement of Work (including any changes to the Statement of Work), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - (a) A “**Variation Agreement**” (a variation agreement which is sent by the Supplier to the Client to vary the terms of this Agreement and when signed forms part of the terms of this Agreement), which looks to vary the terms of this Agreement;

- (b) the Statement of Work;
- (c) a “**Licence Agreement**” (a licence agreement that may have to be entered into by the Supplier and/or the Client in respect of Third Party Services (as defined in Clause 15.1) used, which such terms shall be agreed between the parties);
- (d) the Schedules to this Agreement; and
- (e) the Clauses in this Agreement.

2. SUPPLY OF SERVICES

- 2.1 Commencing on the date the applicable Statement of Work is signed or such date as mutually agreed between the parties (the “**Commencement Date**”), the Supplier shall perform the Services as set out in the Statement of Work in accordance with this Agreement. In supplying the Services, the Supplier agrees that:
- (a) it shall supply the Services to the Client in accordance with the agreed Statement of Work in all material respects;
 - (b) it shall determine where the location of the Services shall be delivered unless agreed to in the relevant Statement of Work;
 - (c) it shall use commercially reasonable endeavours to meet any performance timelines specified under a Statement of Work but any such timelines shall be estimates only and time shall not be of the essence for the performance of the Services;
 - (d) the Services will be provided using reasonable care and skill; and
 - (e) it will comply with all applicable laws, statutes, regulations from time to time in force.
- 2.2 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet Services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.
- 2.3 The Client acknowledges that certain conditions outside of the Supplier’s control may adversely impact the ability of the Supplier to perform functions of the Services. Examples of such conditions include but are not limited to:
- (a) failure of Client hardware, software or operating system;
 - (b) partial or full failure of third-party Services; or
 - (c) network connectivity issues concerning the Supplier’s platform or third party servers.
- 2.4 Either party may request changes to any Statement of Work (in each case, a “**Change Request**”). Any Change Request shall be made in writing (including email) and sent to the Client Representative or Supplier Representative (Representative as defined in Clause 13.4), as appropriate and shall set out the change in sufficient detail so as to enable the other party to make a proper assessment of such change. Any agreed to changes shall continue to be subject to this Agreement.
- 2.5 Neither party shall be required to accept any Change Request made by the other party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

3. CLIENT'S OBLIGATIONS

3.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier with access to appropriate members of the Client's staff and equipment, (including enabling logons and/or passwords) as such access is reasonably requested by the Supplier, in order for the Supplier to perform the Services;
- (c) provide such information, documentation and data as the Supplier may reasonably request in order for the Supplier to perform the Services in a timely manner;
- (d) use the Services only for lawful purposes and in accordance with this Agreement and not store, distribute or transmit any material through the Services that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images; and/or
 - (iv) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
- (e) shall remain responsible for the use of the Services under its control, including any use by third parties that the Client has authorised to use the Services.
- (f) shall not provide the Services to third parties without the prior written consent of the Supplier.
- (g) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
- (h) keep secure from third parties any passwords issued to the Client by the Supplier;
- (i) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
- (j) permit the Supplier to install the current version of software required to provide the Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- (k) maintain and allow the Supplier continuous exclusive global admin access as is necessary and proportionate for the Supplier to carry out the Services specified in the Statement of Work and access is to be granted only for as long as is necessary for the Services to be carried out;
- (l) agree that if, in the course of performing the Services, it is necessary or desirable for the Supplier to access or use any Client owned equipment, Client software or Client data (or which is in the possession of the Client) then it shall where it is able to under the terms of its existing licences grant to Supplier a nonexclusive, royalty free licence, during the term of the Agreement to use the same solely for the purpose of delivering the Services;
- (m) appoint designated primary contacts who manage any escalation and who shall be the key personnel for the Supplier to co-ordinate with. Further the Client warrants that the designated primary contacts shall have sufficient authority to give instructions on behalf of the Client (including but not limited to adding additional Services) which shall be binding upon the Client if such instructions are agreed by the Supplier;
- (n) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite, Operations Management Suite or Microsoft 365) unless there is an existing licence and/ or an existing Digital Partner on record the Supplier may be assigned to the cloud subscription/s as the

Digital Partner of Record and or Claiming Partner of Record) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date. If the Supplier is deploying the Microsoft Cloud service, the Supplier shall be the Digital Partner of Record; and

- (o) in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in this Agreement.

3.2 **Cancellation of professional services.** The Client agrees to adhere to the dates scheduled for provision of professional services by Supplier as stated in the applicable Statement of Work. If the Client wishes to reschedule or cancel the dates for the provision of the professional services, Supplier will use reasonable endeavours to re-assign allocated resources to other clients. If such re-assignment is not possible and the Client has not provided at least ten (10) Business Days (as defined at clause 4.6(a)) or more full working days advance notice, then the Client shall be liable to pay the following cancellation charges in the form of damages ("**Cancellation Charges**") relating to this action, in addition to any specific costs relating to cancelling pre-booked travel arrangements and to unpaid Fees (if any) for any professional services work that has been performed:

- (a) if dates are changed or cancelled between six (6) days and nine (9) Business Days before the scheduled start date Cancellation Charges equivalent to twenty-five percent (25%) of the Fees for the Services to be provided at that time will be payable;
- (b) if dates are changed or cancelled between two (2) days and five (5) Business Days before the scheduled start date Cancellation Charges equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
- (c) if dates are changed or cancelled fewer than two (2) Business Days before the scheduled start date Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable

3.3 If the Supplier considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall be entitled to rely on this as relieving the Supplier's performance under this Agreement if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of it to the Client in writing.

3.4 The Client agrees and acknowledges the terms of the applicable Licence Agreements (which shall be set out in the applicable Statement of Work or as notified by the Supplier to the Client from time to time). For the avoidance of doubt, you shall give express authority to the Supplier to agree and accept any Licence Agreements which need to be accepted in order that the Supplier may fulfil the Services and to provide such Third Party Services and you shall not hold the Supplier liable for any loss or damage caused by accepting such Licence Agreements on behalf of the Client. In the event the applicable Licence Agreements is not applicable to the Services being received or delivered by the Supplier to the Client under this Agreement, such agreements shall not apply.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier warrants that the Services will be performed with reasonable skill and care and that it will be provided in accordance with the Statement of Work and this Agreement.

- 4.2 The warranty in Clause 4.1 shall not apply to the extent that any non-conformance of the Services to the terms of the Statement of Work is caused by use of the Services contrary to the Supplier's instructions.
- 4.3 Subject to Clause 4.2, if the Services do not conform with the warranty in Clause 4.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 4.4 This Agreement shall not prevent either party from entering into similar Agreements with third parties, or from commissioning, engaging, independently developing, using, selling or licensing materials, products or Services that are similar to those provided under this Agreement.
- 4.5 The Supplier shall:
- (a) where applicable, provide support services in accordance with the Statement of Work;
 - (b) maintain a team skilled in the platform and with knowledge of the Software and applicable code developed to provide the Services;
 - (c) undertake regular communication with the Client regarding its service needs;
 - (d) be a bona fide licensed user of all third party software and of the Supplier's software;
 - (e) notify the Client promptly if the Supplier is unable to comply with any of the terms of this Agreement, any Licence Agreement where applicable;
 - (f) use commercially reasonable endeavours to follow the instructions of the Client;
 - (g) provide the Client with all necessary co-operation in relation to this Agreement;
 - (h) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
 - (i) carry out all other Supplier responsibilities set out in this Agreement or in any of the schedules in a timely and efficient manner.
- 4.6 The Supplier shall be under no obligation to provide the following Services to the Client ;
- (a) outside "**Normal Business Hours**" (being 9.00am to 5.00pm local U.K. time on "**Business Day(s)**" (a day other than Saturday, Sunday or public holiday in England when banks are open for business) unless otherwise agreed between the Parties in writing;
 - (b) any Services which are outside the scope of the applicable Statement of Work;
 - (c) training in use of any applicable upgrades unless otherwise agreed to in writing by the Supplier; and
 - (d) support services where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support. For the avoidance of doubt, there shall be no ongoing support services unless specified in the Statement of Work.
 - (e) access to project resources for support services outside the scope of the Statement of work.

5. FEES

- 5.1 It is agreed that:
- (a) the Client shall pay to the Supplier the fees, costs, or other costs in accordance with any agreed Statement of Work (the "**Fees**"). Unless otherwise agreed, the Fees are exclusive of any value added tax and travel related expenses
 - (b) invoices will be raised as set out in the Statement of Work and upon completion of any set milestones;

- (c) all invoices related to Services shall be payable in full and cleared funds within thirty (30) days from date of the invoice unless otherwise set out in the Statement of Work, without deduction or set-off, and time for payment shall be of the essence under this Agreement. When making a payment the client shall quote the relevant reference numbers and the invoice number.
- (d) in the event that the Services are due to commence within thirty (30) days of signing this Agreement, a deposit of twenty five (25)% of the total Fees due under the Statement of Work shall be payable within seven (7) days of the date of the invoice.
- (e) in the event the Client is in breach of its payment obligations, the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either party; and
- (f) the Supplier shall obtain the Client's approval before incurring any other costs in relation to the Services, other than costs that are stated in the applicable Statement of Work which are deemed to have been approved by the Client in advance and any expenses not exceeding £500 (excluding VAT) per day. The Supplier shall provide the Client, at the Client's request, with receipts for all expenses submitted for reimbursement.

5.2 Clause 5.3 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 5 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.

5.3 Where the Services are provided on a time-and-materials basis, the Supplier's rates will be calculated as follows:

- (a) a 'day' will mean a period of seven (7) hours, which shall include any lunch and other breaks. The Supplier shall be entitled to charge an overtime rate as specified in the Statement of Work for time worked outside this seven (7) hour period and/or outside of any Business Days, and where applicable the Client shall be responsible for overnight expenses unless otherwise agreed and set out in the Statement of Work;
- (b) where the Supplier charges are based on an hourly rate, any time spent which is less than one (1) hour shall be charged on a pro-rata basis per thirty (30) minutes; and
- (c) the Supplier shall be entitled to vary the hourly (or) day rates during the existence of these Term without the consent of the Client. Before implementing new hourly (or) day rates the Supplier shall provide them in writing to the Client.

5.4 The Supplier shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Statement of Work, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.

5.5 For the avoidance of doubt, the Supplier may increase any fees related to any Third Party Services (as defined in Clause 15) in line with any increases imposed upon the Supplier by such third parties upon 30 days' notice.

5.6 Subject to Clause 5.5, the Supplier reserves the right, on giving the Client thirty (30) days' notice, to increase the Fees once in any twelve (12) month period. If the Client does not agree with this increase, then they may terminate this Agreement upon 30 days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days of such notification, the Client is deemed to have agreed to the amendment to the Fees.

5.7 Subject to Clause 5.5, the Fees may increase on an annual basis with effect from each anniversary of the date of the Statement of Work in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.

- 5.8 Without prejudice to any other remedy that the Supplier may have, if the Client fails to pay any amount properly due and payable, then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) Business Days of receipt of the corresponding invoice, the Supplier shall have the right to;
- (a) charge interest on the overdue amount at a rate of 4 per cent (4%) per annum above the Bank of England base rate from time to time, accruing on a daily basis from the due date up to the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount;
 - (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
 - (c) not perform any further Services (in whole or in part) through suspension or termination (at the sole discretion of the Supplier) even when the Client has informed the Supplier, or the Supplier is aware that not to perform any further Services (in whole or in part) will cause the Client inconvenience, loss (financial or otherwise) or other damage.
- 5.9 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice. In the event of a Dispute, the Client shall follow the dispute resolution procedure as set out in clause 27.

6. SECURITY

- 6.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Services, the Supplier's system and related networks or resources and any Client data, in accordance with **"Good Industry Practice"** (meaning the standards that fall within those reasonably expected of a skilled and experienced provider). For the avoidance of any doubt, the obligations under this Clause shall not apply to any of the Client's networks which have not been maintained with the latest software or systems.
- 6.2 Each party shall promptly inform the other if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

7. WARRANTIES AND SERVICE LEVELS

- 7.1 Except for any warranties expressly set forth in this Agreement and/or in the Statement of Work, the Services are provided on an "as is" basis, and the Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.
- 7.2 In the event that a defect, fault or impairment in the provision of the service(s) causes a service interruption and the Supplier becomes aware of this either through the Client giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment to the extent it reasonably can.
- 7.3 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Client, (ii) the Client's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Client or (iv) any third party action in response to an act or omission of the Client or any person given access to the service by the Client (including third party hosted software vendors) or (v) the Services and / or Software have been modified by anyone other than the Supplier then the Supplier may recover from the Client all reasonable costs to be incurred by it or on its behalf in

connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.

- 7.4 Unless otherwise agreed, if the Client accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Client's choice, the Client assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.
- 7.5 The Supplier reserves the right to take any action that it perceives necessary to protect the Client's systems even though this may impact on the Client's business activities. The Supplier will make reasonable endeavors to inform the Client by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 7.6 The Supplier shall use such commercially reasonable endeavours to provide the Services in accordance with the **"Services Levels"** (the standards of performance which the Supplier shall reach or provide in performing the Services, as set out in the Statement of Work, as may be amended from time to time by the parties) and the Statement of Work in its entirety.
- 7.7 The Supplier shall not fail to meet any Service Level where failure is as a result of or caused or contributed to by:
- (a) a breach by the Client of any of its obligations contained in the Agreement; or
 - (b) where the service levels set out in the Statement of Work are specific to directly provided Services of Third Party Services (of which such Third Party Services will be governed by their own relevant service levels); or
 - (c) a Force Majeure Event as set out in Clause 23.
- 7.8 The Supplier shall not in any circumstances be liable under its obligations in this Clause 7 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 7.9 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services as set out within the relevant Statement of Work will be uninterrupted or error-free.

8. ACCEPTANCE

- 8.1 The relevant Statement of Work shall specify which **"Deliverables"** (documents, products and materials developed by the Supplier in relation to the Services in any form, each a **"Deliverable"**) that are to be subject to **"Acceptance Testing"** or **"Acceptance Criteria"** (as defined in the relevant Statement of Work) and provide a framework for the nature of the testing that will be required.
- 8.2 In relation to any Acceptance Testing:
- (a) the Client shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Statement of Work, from the Supplier's delivery of each Deliverable under the relevant Statement of Work (**"Acceptance Periods"**) to confirm that such Deliverable conforms to the acceptance criteria as specified or referred to in a Statement of Work or as otherwise agreed between the parties. If the Client determines that a Deliverable does not conform to the acceptance criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier a written list of the non-conformities to the acceptance criteria;
 - (b) Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period if any of the Deliverables do not conform to the acceptance criteria. In the event that Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under this Agreement such Deliverable, shall be deemed accepted as if the Client had issued a written acceptance thereof.

Once the Deliverable has been accepted by the Client and payment has been settled in accordance with Clause 5, the Deliverable shall become the property of the Client. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 8.2(c) below.

- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier, the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. The Supplier agrees not to charge Client, any amounts paid or payable by the Client to the Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.
- (e)

9. TERM AND TERMINATION

- 9.1 This Agreement shall commence on the Commencement Date and each Statement of Work shall commence on the commencement date referred to therein and shall remain in full force for the term specified in the Statement of Work (the "**Initial Term**") or earlier if terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Statement of Work, save where the Statement of Work is for a fixed term, shall continue to automatically renew for additional successive twelve (12) terms (each renewal a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless a party gives written notice to the other party, not later than ninety (90) days before the end of the Initial Term or the relevant Renewal Term, to terminate this Agreement.
- 9.2 Without prejudice to any rights that the parties have accrued under this Agreement, or any of their respective remedies, obligations or liabilities, either party may terminate this Agreement and applicable Statement of Work (which is subject to the event listed below) with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so. For the avoidance of doubt, non-payment or late payment of an invoice shall be deemed a material breach of this Agreement;
 - (b) the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10. CONSEQUENCES OF TERMINATION

If this Agreement terminates in accordance with Clause 9 (and only in such circumstances), then subject to the total Fees incurred, the Client will pay the Supplier, any costs that have been actually and properly incurred by the Supplier including any and all outstanding fees and any termination fees from any Third Party Services (as defined in Clause 15) prior to the date of termination and/or as otherwise specified by

the Supplier to the Client as being payable.

11. LIMITATION OF LIABILITY

11.1 Nothing in this Agreement shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation made by that party on which the other party can be shown to have relied.

11.2 The Supplier's liability for breach of its obligations under Clause 14 (Intellectual Property Rights) and Clause 16 (Client Personal Data) shall be limited to £250,000 in the aggregate.

11.3 Subject to Clause 11.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business or business opportunity;
- (c) loss of agreements or contracts;
- (d) loss of actual or anticipated savings;
- (e) loss of reputation;
- (f) loss of, damage to or corruption of data;
- (g) loss of or damage to goodwill; and
- (h) any indirect or consequential loss.

11.4 Subject to Clauses 11.1, 11.2 and 11.3, the parties' total liability to the other, whether in contract, tort (including negligence), breach of its statutory duty, or otherwise, arising under or in connection with the performance or contemplated performance of the specific Service, shall be limited to one hundred and twenty-five per cent (125%) of the total Fees paid for the related Service under this Agreement during the twelve (12) months preceding the date on which the claim arose.

12. SERVICE REVIEW AND GOVERNANCE

The Client and the Supplier shall have regular meetings to monitor and review the performance of this Agreement.

13. CONFIDENTIALITY

13.1 Each party agrees and undertakes that it will treat all confidential information disclosed to it by the other party in connection with the Services as strictly confidential at all times during the Term of this Agreement and for two (2) years thereafter and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other party, publish or otherwise disclose to any third party any such confidential information except for the purposes intended by the relevant Statement of Work.

13.2 To the extent necessary to implement the provisions of any Services, each party may disclose confidential information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 13.1.

13.3 The obligations of confidentiality set out in this Clause 13 shall not apply to any information or matter

which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving party without use of or reference to the confidential information.

- 13.4 For purposes of this Agreement confidential information shall mean all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "**Representatives**") to the other party and that party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

14. INTELLECTUAL PROPERTY AND LICENCE OF SOFTWARE

- 14.1 Subject to Clause 14.2, where the Supplier agrees in the applicable Statement of Work that it will create bespoke materials or code pursuant to the Services ("**Bespoke IPR**") and such Bespoke IPR is identified as such in the Statement of Work then the Intellectual Property Rights in the Bespoke IPR shall vest automatically in the Client once the Supplier has received payment in full. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 14.2 Notwithstanding Clause 14.1, The Supplier and/or its licensors shall retain exclusive ownership of (i) all of its pre-existing intellectual property ("**Background Materials**"); and (ii) any and all ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are not based on or derived from the Client's confidential information ("**General IP**") together with the Background Materials, (the "**Supplier's Intellectual Property**"). The Supplier grants to the Client a non-exclusive, revocable, worldwide, royalty free and non-transferable license to use the Supplier's Intellectual Property.
- 14.3 In relation to any Supplier Intellectual Property, the Client acknowledges that such Supplier Intellectual Property may only be compatible with the current versions of other software and/or hardware as indicated by the Supplier to the Client and the Supplier provides no guarantee that such Supplier Intellectual Property will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, the Supplier is under no obligation to supply the Client with any updates or add-ons to any Supplier Intellectual Property.
- 14.4 For the purposes of this Agreement, "**Intellectual Property Rights**" shall mean, all patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 14.5 Subject to Clauses 14.6 and 14.7, if any claim is made against the Client for infringement of Intellectual Property Rights arising directly from the use of the Deliverables ("**IPR Claim**"), the Supplier at its own expense shall take control of and conduct any litigation in relation to such IPR Claim and all negotiations for settlement of the IPR Claim shall be dealt with by the Supplier. The Supplier shall be responsible for

any payments in relation to the IPR Claim (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Supplier.

- 14.6 Subject to Clause 14.7, the Client shall only have the rights granted by Clause 14.5 if the Client gives the Supplier the earliest possible notice in writing of any such IPR Claim being made or action threatened or brought against it, and the Client shall make no admission of liability or take any other action in connection with the IPR Claim. The Client shall permit the Supplier to have the conduct of the IPR Claim pursuant to Clause 14.5 and shall (at the Supplier's expense) give all reasonable information, co-operation and assistance to the Supplier (including without limitation lending its name to proceedings) in relation to the conduct of the IPR Claim.
- 14.7 The provisions of Clause 14.5 shall not apply to any infringement caused by the Supplier having followed any specification or instructions given by the Client or use of the Services for a purpose prohibited by the Supplier, or to any infringement which is due to the use of the Services in association or combination with any other software or product (other than any software which is supplied by the Supplier as part of the Services).
- 14.8 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Client is still able to use the Deliverables by either:
- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or
 - (b) procuring a licence or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 14.9 Except to the extent that the Supplier should reasonably have known or advised the Client the foregoing provisions of Clause 14.8, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
- (a) any use by or on behalf of the Client of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
 - (b) any modification carried out on behalf of the Client to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.

LICENCE OF SOFTWARE

"Software" means the Supplier's proprietary software including, for the avoidance of doubt any apps it has or will develop, in machine-readable object code form only as set out in the Statement of Work, including any error corrections, updates, upgrades, modifications and enhancements to it.

- 14.10 In consideration of the Fee paid by the Client to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Client a non-exclusive, revocable, worldwide, non-transferable licence to use the Software at sites as identified within the Statement of Work and for the duration of this Agreement or for the duration set out in the Statement of Work, as applicable.
- 14.11 In relation to scope of use:

- (a) for the purposes of Clause 14.10, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Client's data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client).
 - (b) For the purposes of Clause 14.10, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.
 - (c) the Client may not use the Software other than as specified in Clause 14.10 and Clause 14.11 without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier.
 - (d) except as expressly stated in this Clause 14, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 14.12 The Client may not use any such information provided by the Supplier or obtained by the Client during any such reduction permitted under Clause 14.11(d) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 14.13 The Client shall not:
- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by the Supplier;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance; and
 - (c) deal in any other manner with any or all of its rights and obligations under this Agreement,
- without the prior written consent of the Supplier.
- 14.14 The Client shall:
- (a) ensure that the Software is installed on designated equipment only;
 - (b) keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - (c) notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
 - (d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

- 14.15 The Client shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Client is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.
- 14.16 The Client warrants that it shall not compete with the Software product during the term of this Agreement and for a period of six (6) years thereafter. For the purpose of this clause, 'compete' shall mean making a similar product and / or Software commercially available.

15. THIRD PARTY SERVICES

- 15.1 The Supplier shall (if requested by the Client) procure the third-party licences and or services (together, **"Third Party Services"**) as set out in the applicable Statement of Work. The Supplier expressly excludes any warranty to the Client that the Third Party Services supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement from the point of acquisition of the licence and until the end of the respective licence terms and shall adhere to any End User Licence Agreements and any other agreements sent by such third party in relation to the Third Party Services.
- 15.2 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party.

16. CLIENT PERSONAL DATA

- 16.1 For the purposes of Clauses 16.1 to 16.8, the following definitions shall apply:

"Applicable Data Protection Legislation" means:

- a) To the extent the UK data protection law applies: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- b) To the extent the EU GDPR applies: the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;

"Client Personal Data" means any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Client;

"Applicable Laws" means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable party;

"EU GDPR" means the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law; and

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 16.2 The terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Legislation;
- 16.3 Both parties will comply with all applicable requirements of Applicable Data Protection Legislation. Clause 16.1 to 16.8 are in addition to, and do not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Legislation.
- 16.4 The parties have determined that, for the purposes of Applicable Data Protection Legislation, the Supplier

shall process the personal data set out in the applicable Statement of Work, as a processor on behalf of the Client.

- 16.5 Without prejudice to the generality of Clause 16.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of this agreement.
- 16.6 In relation to the Client Personal Data, the applicable Statement of Work sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 16.7 Without prejudice to the generality of Clause 16.3 the Supplier shall, in relation to Client Personal Data:
- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process that Personal Data for the purpose as set out in the applicable Statement of Work;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
 - (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of this Agreement unless the Supplier is required by Applicable Laws to continue to process that Client Personal Data. For the purposes of this Clause 16.7(f) Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
 - (g) maintain records to demonstrate its compliance with Clauses 16.1 to 16.8 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.
- 16.8 The Client hereby provides its prior, general authorisation for the Supplier to:
- (a) appoint processors to process the Client Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in Clauses 16.1 to 16.8;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Legislation, the Client shall indemnify the Supplier for any

losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.

- (b) transfer Client Personal Data outside of the UK as required to deliver the Services, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Legislation. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

17. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any part of the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18. ASSIGNMENT

The Supplier may assign or otherwise transfer the whole or any part of this Agreement, including any of its rights and obligations under this Agreement, without the prior written consent of the Client.

19. ENTIRE AGREEMENT AND COUNTERPARTS

- 19.1 This Agreement, each Statement of Work (together with any documents referred to therein) and any Variation Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 19.3 No alteration to or variation of this Agreement shall take effect unless and until a Variation Agreement is signed on behalf of each of the parties by a duly authorised representative.

20. SEVERANCE

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

21. THIRD PARTY RIGHTS

No one other than a party to this Agreement shall have any right to enforce any of its terms.

22. NOTICES

- 22.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other

next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business; or shall be sent by electronic mail to the email address set out on the Statement of Work or otherwise notified to either party by the other party in writing,

- 22.2 Any notice or communication shall be deemed to have been received, if: (a) delivered by hand, on signature of a delivery receipt, (b) sent by post, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or (c) sent by electronic mail, on the next Business Day to when it was sent.
- 22.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

23. RELIEF EVENTS

- 23.1 Subject to Clause 11.1, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.
- 23.2 For the purposes of this Clause 23, "**Relief Events**" shall mean the following events:
- (a) any failure by the Client to comply with its obligations under this Agreement;
 - (b) any error or malfunction in the business systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
 - (c) any failure by the Client or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement;
 - (d) incompetence, misuse or other error of a user of the Services or erroneous or incorrectly prepared Client materials;
 - (e) accident, neglect, virus or malware attacks, network down-time, misuse, transportations or moving, excessive fluctuations in mains electrical supply;
 - (f) failure or down-time of any third party services;
 - (g) failure to access or use the Services in accordance with the terms of this Agreement, any documentation or the Supplier's instructions;
 - (h) any change, addition, variation or repair other than those carried out by the Supplier;
 - (i) use of the Services in combination with other systems, software or equipment of the Client (or any third party) not approved by the Supplier;
 - (j) any telecommunications network defect, delay or failure; or
 - (k) any of the causes or events set out in Clause 14.9.

24. FORCE MAJEURE

- 24.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement or any Statement of Work, or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement or any Statement of Work due to a force majeure event. For the purposes of this Agreement, force majeure means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or

accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, pandemics and epidemics, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lockout of the party's own staff shall not entitle them to claim that to be a force majeure event ("**Force Majeure**").

24.2 A party shall only be entitled to claim relief under this Clause if it:

- (a) informs the other party as soon as reasonably possible that an event of Force Majeure has occurred and its expected duration; and
- (b) uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of Force Majeure concerned,

and that if the period of delay or non-performance continues for six months or more, either party may terminate the Agreement by giving fourteen (14) days' written notice to the other party.

25. NON-SOLICITATION

25.1 It is not intended that any staff be transferred from the Supplier to the Client or from the Client to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**"). In the event that the parties agree that TUPE does apply at either entry and/or exit then the provisions as set out at Schedule 2 shall take priority over this Clause 25.1.

25.2 The Client shall not solicit the Supplier's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause "**solicit**" means the soliciting of such person with a view to engaging such person as an employee, director, subcontractor or independent contractor.

25.3 In the event that the Client is in breach of Clause 25.1 above then the Client shall pay to the Supplier by way of liquidated damages an amount equal to thirty percent (30%) of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to the Supplier's ability to seek injunctive relief.

25.4 The parties hereby acknowledge and agree that the formula specified in Clause 25.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

26. ANTI BRIBERY

The parties agree to abide by all applicable laws, regulations and sanctions in respect of anti-bribery and anti-corruption, including the Bribery Act 2010.

27. DISPUTE RESOLUTION

27.1 If a dispute arises under the Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute, within seven (7) Business Days of the Dispute arising to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

27.2 If the parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each party will promptly (but no later than five (5) Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the Agreement ("**Designated Representative**"); and
- (b) notify the other party in writing of the name and contact information of such Designated Representative.

27.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgement to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will use reasonable endeavours to negotiate and mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.

27.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives the Dispute shall be taken to mediation. The mediator is to be agreed between the Parties.

28. GOVERNING LAW AND JURISDICTION

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

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