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HM Revenue & Customs

[REDACTED]

[REDACTED]

[REDACTED]

and

WMC Global

[REDACTED]

[REDACTED]

[REDACTED]

AGREEMENT relating to Phishing Kit Collection

Commercial Directorate Ref: SR1189427139

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Form of Agreement

This Agreement is made between the Commissioners for Her Majesty’s Revenue and Customs (the “**Authority**”) of [REDACTED] and WMC Global (the “**Supplier**”) [REDACTED]
[REDACTED]

This Agreement is effective from and including [31 March 2023] (“**Effective Date**”) and shall expire on [30 March 2024] (“**Expiry Date**”).

It is agreed that:

This Form of Agreement together with the Terms and Conditions and Schedules are the documents that form the Agreement.

The Agreement effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior negotiations, representations or understandings whether written or oral.

Signed for and on behalf of:

	The Commissioners for HM Revenue & Customs:		WMC Global
Signature:	[REDACTED]		
Name:			
Capacity:			
Date:			
Address:			
Telephone:			
email:			

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HMRC Standard Short Form Model Contract v1.0

Terms and Conditions

1 Interpretation

1.1 In this Agreement, unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

- “Agreement”** the contract between (i) the Authority acting as part of the Crown and (ii) the Supplier;
- “Authority”** has the meaning given in the Form of Agreement;
- “Authority Data”**
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
 - (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.
- “BPSS”** the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
- “Central Government Body”** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
 - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
 - (c) Non-Ministerial Department; or
 - (d) Executive Agency;
- “Charges”** the charges for the Services as specified in Paragraph A5 of Schedule 1 (Service Order);
- “Confidential Information”** all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Default”** any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:
- (a) in the case of the Authority, of its employees, servants, agents; or
 - (b) in the case of the Supplier, of its sub-contractors or any Supplier Personnel,

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HMRC Standard Short Form Model Contract v1.0

in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

“Effective Date”	has the meaning given in the Form of Agreement;
“Expiry Date”	has the meaning given in the Form of Agreement;
“FOIA”	the Freedom of Information Act 2000;
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679);
“Information”	has the meaning given under section 84 of the FOIA;
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Key Personnel”	any Supplier Personnel specified as such in Paragraph 4 (Contract Management Roles and Dispute Escalation Points) of Schedule 3 (Contract Management Plan and Management Information) or otherwise notified as such by the Authority to the Supplier in writing;
“Occasion of Tax Non-Compliance”	<p>(a) any Tax return of the Supplier and/or its subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>(iii) a Relevant Tax Authority successfully challenging the Supplier or relevant sub-contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;</p> <p>(iv) the failure of an avoidance scheme which the Supplier or relevant sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>(b) the Tax affairs of the Supplier or any of its sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;</p>

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HMRC Standard Short Form Model Contract v1.0

(c) For these purposes :

- (i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and
- (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a sub-contractor until an appeal against such challenge is no longer possible.

“Party”	the Supplier or the Authority (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	has the meaning given in the GDPR;
“Purchase Order Number”	the Authority’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax;
“Services”	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
“Services Start Date”	the services start date set out in Paragraph A4 of Schedule 1 (Service Order);
“Specification”	the specification for the Services (including as to quantity, description and quality) as specified in Paragraph A6 of Schedule 1 (Service Order);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Supplier”	has the meaning given in the Form of Agreement;
“Tax”	<p>means:</p> <ul style="list-style-type: none"> (a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or

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HMRC Standard Short Form Model Contract v1.0

municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and

(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Term” the period from the Effective Date to the Expiry Date as such period may be extended in accordance with Clause 5.2 or terminated in accordance with the terms and conditions of the Agreement;

“VAT” value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

1.3 In the event of any conflict between the terms of Schedule 1 (Service Order) and any other term of this Agreement, the terms of Schedule 1 shall prevail.

2 Supply of Services

2.1 In consideration of the Authority’s agreement to pay the Charges, the Supplier shall supply the Services to the Authority from the Services Start Date until the end of the Term subject to and in accordance with the terms and conditions of the Agreement.

2.2 In supplying the Services, the Supplier shall:

- 2.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority’s instructions;
- 2.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
- 2.2.3 use Supplier Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
- 2.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- 2.2.5 comply with all applicable Laws; and
- 2.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

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HMRC Standard Short Form Model Contract v1.0

- 2.3 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Agreement or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

3 Supply of Goods

- 3.1 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:
- 3.1.1 the relevant Goods and their prices shall be as set out in Schedule 1 (Service Order);
 - 3.1.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - 3.1.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - 3.1.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - 3.1.5 without prejudice to any other rights or remedies of the Authority the risk and title in the Goods shall pass to the Authority at the time of delivery or such earlier time as required at the Authority's sole discretion.

4 Warranties

- 4.1 The Supplier represents and warrants that:
- 4.1.1 in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
 - 4.1.2 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Subcontractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
 - 4.1.3 no profit warnings, proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 4.2 If at any time a Party becomes aware that a representation or warranty given by it under Clause 4.1.1 or 4.1.2 has been breached, is untrue, or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

5 Term

- 5.1 The Agreement shall take effect on the Effective Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with Clause 5.2 or terminated in accordance with the terms and conditions of the Agreement.
- 5.2 The Authority may extend the Agreement for a period of up to 12 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

OFFICIAL - SENSITIVE - COMMERCIAL
HMRC Standard Short Form Model Contract v1.0

6 Charges, Payment and Recovery of Sums Due

- 6.1 The Charges for the Services shall be as set out in Schedule 1 (Service Order) and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice the Authority as specified in the Agreement. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice ("**Supporting Documentation**"), including the relevant Purchase Order Number (and CD Reference) and a breakdown of the Services supplied in the invoice period.
- 6.3 To facilitate payment, the Supplier shall use an electronic transaction system chosen by the Authority and shall:
- 6.3.1 register for the electronic transaction system in accordance with the instructions of the Authority;
 - 6.3.2 allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;
 - 6.3.3 designate a Supplier representative as the first point of contact with the Authority for system issues; and
 - 6.3.4 provide such data to the Authority as the Authority reasonably deems necessary for the operation of the system including, but not limited to, electronic catalogue information.
- 6.4 The Authority has implemented its electronic transaction system (myBUY). Each invoice and any Supporting Documentation required to be submitted in accordance with this Clause 6 shall be submitted by the Supplier, as directed by the Authority from time to time via myBUY
- 6.5 The Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
- 6.5.1 the Supplier does so at its own risk; and
 - 6.5.2 the Authority shall not be obliged to pay the Charges without a valid Purchase Order Number having been provided to the Supplier.
- 6.6 The Authority shall regard an invoice as valid only if it complies with the provisions of this Clause 6. The Authority shall promptly return any non-compliant invoice to the Supplier and the Supplier shall promptly issue a replacement, compliant invoice.
- 6.7 In consideration of the supply of the Services by the Supplier, the Authority shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number.
- 6.8 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with Clause 20.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Clause 23.
- 6.9 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of

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HMRC Standard Short Form Model Contract v1.0

any such amount in whole or in part.

Expenses

- 6.11 Where the Authority expressly agrees in writing, the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.
- 6.12 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

Promoting Tax Compliance

- 6.13 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 6.14 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.
- 6.15 The Supplier shall provide to the Customer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor or sub-contractor.
- 6.16 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.
- 6.17 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:
- 6.17.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 6.17.2 promptly provide to the Authority:
 - (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 6.18 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 6.18 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 6.19 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 6.20 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 6.14 to 6.19 (inclusive) then this shall allow the Authority to terminate the Agreement pursuant to Clause 20.2.1.
- 6.21 The Authority may internally share any information which it receives under Clauses 6.15 to 6.17 (inclusive) and 6.19.

Income Tax and National Insurance Contributions

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HMRC Standard Short Form Model Contract v1.0

- 6.22 Where the Supplier or any Supplier Personnel are liable to Tax in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- 6.22.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
 - 6.22.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
 - 6.22.3 provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 6.22.1 or why Clause 6.22.1 does not apply to the Supplier (including such specific information as the Authority may request),
- and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 6.22 then this shall allow the Authority to terminate the Agreement pursuant to Clause 20.2.1.
- 6.23 The Authority may internally share any information which it receives under Clause 6.22.3.

7 Premises and equipment

- 7.1 If agreed between the Parties, and subject always to Clause 8, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Supplier or the Supplier Personnel shall be at the Supplier's risk.
- 7.2 If the Supplier supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Authority's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Supplier or any Supplier Personnel, other than fair wear and tear.
- 7.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 7.4 The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Supplier shall, and shall procure that all Supplier Personnel shall, comply with all the Authority's security requirements.
- 7.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 7.6 Without prejudice to Clause 2.2.6, any equipment provided by the Authority for the purposes of the Agreement shall remain the property of the Authority and shall be used by the Supplier and the Supplier Personnel only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
- 7.7 The Supplier shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Supplier Personnel. Equipment supplied by the Authority shall be deemed to be in a good

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HMRC Standard Short Form Model Contract v1.0

condition when received by the Supplier or relevant Supplier Personnel unless the Authority is notified otherwise in writing within 5 Working Days.

8 Supplier Personnel and Key Personnel

8.1 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- 8.1.1 refuse admission to the relevant person(s) to the Authority's premises;
- 8.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
- 8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,

and the Supplier shall comply with any such notice.

8.2 The Supplier shall:

- 8.2.1 ensure that all Supplier Personnel are vetted in accordance with good industry practice, BPSS and any security requirements set out in Schedule 1 (Service Order);
- 8.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information, including the capacities in which they are concerned with the Agreement) of all persons who may require admission to the Authority's premises in connection with the Agreement; and
- 8.2.3 procure that all Supplier Personnel comply with any rules, regulations and requirements reasonably specified by the Authority.

8.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

8.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The Supplier shall use all reasonable endeavours to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

8.5 Where Supplier Personnel are required to have a pass for admission to the Authority's premises, the Authority's representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.

9 Assignment and sub-contracting

9.1 The Supplier shall not without the prior written consent of the Authority assign, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement.

9.2 The Supplier shall not sub-contract any of its obligations under the Agreement without the prior written consent of the Authority, not to be unreasonably withheld or delayed. At the Authority's discretion, it may require the Supplier to provide information on the sub-contractor's identity, the services it is proposed to it will provide and any further information reasonably required to inform its decision, including a copy of the proposed sub-contract. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own and shall include in each sub-contract provisions which will enable the Supplier to meet its obligations under the Agreement

9.3 The Authority may, in the granting of any consent pursuant to Clause 9.1 or 9.2, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

OFFICIAL - SENSITIVE - COMMERCIAL
HMRC Standard Short Form Model Contract v1.0

- 9.4 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 9.5 Where the Authority has consented to the placing of sub-contracts, the Supplier shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 9.6 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

10 Intellectual Property Rights

- 10.1 All Intellectual Property Rights in any materials provided by the Authority to the Supplier for the purposes of this Agreement shall remain the property of the Authority but the Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 10.2 All Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any Intellectual Property Rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).
- 10.3 The Supplier hereby grants the Authority:
- 10.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Services; and
- 10.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Agreement; and
- (b) any Intellectual Property Rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 10.4 The Supplier shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Supplier Personnel.

11 Remedies in the Event of Inadequate Performance

- 11.1 Where a complaint is received about the standard of service or about the way any Services have been delivered or work has been performed or about the Agreement or procedures used or about any other matter connected with the performance of this Agreement, then the

OFFICIAL - SENSITIVE - COMMERCIAL
HMRC Standard Short Form Model Contract v1.0

Authority's contract manager shall take all reasonable steps to ascertain whether the complaint is valid.

- 11.2 In the event that the Authority considers there has been a breach of this Agreement by the Supplier, or the Supplier's performance of its duties under the Agreement has failed to meet the Authority's requirements, as set out in the Specification or otherwise in the Agreement, without prejudice to any other rights and remedies under the Agreement, the Authority may:
- 11.2.1 make such deduction from the payment to be made to the Supplier as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Supplier shall have either failed to provide or have provided inadequately or which the Supplier is not obliged to provide pursuant to Clause 11.2.2;
 - 11.2.2 without terminating the Agreement, provide or procure the provision of part of the Services (and the Supplier shall not be obliged to provide such Services) until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to perform such part of the Services to the required standard;
 - 11.2.3 without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
 - 11.2.4 terminate, in accordance with Clause 20, the whole of the Agreement.

12 Governance and Records

- 12.1 The Supplier shall:
- 12.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 12.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.
- 12.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Agreement.

13 Confidentiality, Transparency and Publicity

- 13.1 Subject to Clause 13.2, each Party shall:
- 13.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 13.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 13.2 Notwithstanding Clause 13.1, a Party may disclose Confidential Information which it receives from the other Party:
- 13.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 13.2.2 to its auditors or for the purposes of regulatory requirements;
 - 13.2.3 on a confidential basis, to its professional advisers;
 - 13.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the

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Bribery Act 2010;

13.2.5 where the receiving Party is the Supplier, to the Supplier Personnel on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Supplier Personnel to whom it discloses Confidential Information pursuant to this Clause 13.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

13.2.6 where the receiving Party is the Authority:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with Clause 15.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 13.

13.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

13.4 The Supplier shall not, and shall take reasonable steps to ensure that the Supplier Personnel shall not:

13.4.1 make any press announcement or publicise the Agreement or any part of the Agreement in any way; or

13.4.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

except with the prior written consent of the Authority.

13.5 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

13.6 The Parties acknowledge that, except for any information which is Agreement from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives his consent for the Authority to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public. The Authority may consult with the Supplier to inform its

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decision regarding any redactions but the Authority shall have the final decision at its absolute discretion.

- 13.7 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

14 Official Secrets Acts and related Legislation

- 14.1 The Supplier shall comply with, and shall ensure that its Supplier Personnel comply with:

14.1.1 the provisions of the Official Secrets Acts 1911 to 1989;

14.1.2 the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and

14.1.3 Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

- 14.2 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in Clause 14.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

- 14.3 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

- 14.4 In the event that the Supplier or the Supplier Personnel fail to comply with this clause, the Authority reserves the right to terminate the Agreement under Clause 20.2.1 with immediate effect.

15 Freedom of Information

- 15.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

15.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

15.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

15.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

15.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

- 15.2 The Supplier acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining

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HMRC Standard Short Form Model Contract v1.0

consent from the Supplier. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 15.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

16 Authority Data and Security Requirements

- 16.1 When handling Authority data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Authority as notified to the Supplier from time to time, including any requirements set out in Schedule 6 (Security Requirements).
- 16.2 Where the Authority is required to provide by e-mail to the Supplier or Supplier Personnel, any departmental or customer data or any other information with a security marking of "OFFICIAL-SENSITIVE", to enable it to deliver the Services, the Supplier shall not (and shall procure that the Supplier Personnel do not) store that information on its personal computer or any form of removable media.
- 16.3 Any breach of this Clause 16 may result in termination of the Agreement under Clause 20.2.

17 Liability

- 17.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
- 17.2 Subject always to Clauses 17.3 and 17.3.2:
- 17.2.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed 1 million pounds;
- 17.2.2 the aggregate liability of the Supplier in respect of all other Losses howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the greater of £63,187.50 or 125% of the Charges paid or payable to the Supplier; and
- 17.2.3 except in the case of claims arising under Clauses 10.4 and 22.3, and subject to Clause 17.4, in no event shall the Supplier be liable to the Authority for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 17.3 Nothing in the Agreement shall be construed to limit or exclude:
- 17.3.1 either Party's liability for:

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HMRC Standard Short Form Model Contract v1.0

- (a) death or personal injury caused by its negligence or that of the Supplier Personnel;
 - (b) fraud or fraudulent misrepresentation by it or that of the Supplier Personnel; or
 - (c) any other matter which, by law, may not be excluded or limited; or
- 17.3.2 the Supplier's liability under the indemnity in Clause 10.4 (*Intellectual Property Rights*) and 22.3 (*Prevention of Fraud and Corruption*); or
- 17.3.3 the Supplier's liability for any regulatory losses, fines and/or expenses incurred by the Authority and any further costs incurred by the Authority in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach.
- 17.4 Notwithstanding Clause 17.2.3 but subject to Clause 17.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non exhaustive list of direct and recoverable Losses:
- 17.4.1 the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;
 - 17.4.2 notwithstanding Clauses 17.4.3 and 17.4.8, any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
 - 17.4.3 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 17.4.4 any wasted expenditure or charges;
 - 17.4.5 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
 - 17.4.6 any compensation or interest paid to a third party by the Authority;
 - 17.4.7 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
 - 17.4.8 without prejudice to Clause 16 (Authority Data and Security Requirements), any losses associated with corruption, loss or degradation to Authority Data.

18 Insurance

- 18.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Agreement, including in respect of death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier and shall be maintained for the Term.
- 18.2 The Supplier shall hold employer's liability insurance to a minimum of £5,000,000 in respect of Supplier Personnel in accordance with any legal requirement from time to time in force.
- 18.3 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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HMRC Standard Short Form Model Contract v1.0

- 18.4 The Supplier shall hold and maintain professional indemnity insurance cover and shall ensure that all professional contractors involved in the provision of the project hold and maintain appropriate cover. Such insurance to be held by the Supplier or by any agent or sub-contractor involved in the provision of the project may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit shall in any event be not less than £1,000,000 (one million pounds). Such insurance shall be maintained for a minimum of six years following expiration or earlier termination of this Agreement.

19 Force Majeure

- 19.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

20 Termination

- 20.1 The Authority may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 20.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 20.2.1 (without prejudice to Clause 20.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 20.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 20.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 20.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 20.2.5 breaches any of the provisions of Clauses 8.2, 13, 15, 16 and 21; or
 - 20.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this Clause 20.2.6) in consequence of debt in any jurisdiction.
- 20.3 The Supplier shall notify the Authority as soon as practicable of any change of control as referred to in Clause 20.2.4 or any potential such change of control.
- 20.4 The Supplier may terminate this Agreement by providing at least twenty (20) Working Days' written notice to the Authority if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non- payment from the Supplier.
- 20.5 The Supplier may terminate the Agreement by written notice to the Authority if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non- payment from the Supplier.
- 20.6 if the Authority has not paid any undisputed amounts within 90 days of them falling due. If the

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HMRC Standard Short Form Model Contract v1.0

Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Agreement in writing with immediate effect.

- 20.7 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and Clauses 1, 2.2, 7.1, 7.2, 7.6, 7.7, 8, 10, 12.2, 13, 15, 16, 17, 20.8, 21.5, 22.3, 23 and 24.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 20.8 Upon termination or expiry of the Agreement, the Supplier shall:
- 20.8.1 give all reasonable assistance to the Authority and any incoming supplier of the Services; and
 - 20.8.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

21 Compliance

- 21.1 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Personnel and other persons working on the Authority's premises in the performance of its obligations under the Agreement.
- 21.2 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 21.3 The Supplier shall:
- 21.3.1 comply with all the Authority's health and safety measures while on the Authority's premises; and
 - 21.3.2 notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 21.4 The Supplier shall:
- 21.4.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - 21.4.2 take all reasonable steps to secure the observance of Clause 21.4.1 by all Supplier Personnel.
- 21.5 The Supplier shall supply the Services in accordance with the Authority's environmental policy as provided to the Supplier from time to time.
- 21.6 In performing its obligations under the Agreement, the Supplier shall;
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and
 - (c) notify the Authority as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 21.6(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:

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HMRC Standard Short Form Model Contract v1.0

- (i) remedy the breach; and
- (ii) ensure future compliance with Clause 21.6(a) and (b).

21.7 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 21.6 then this shall allow the Authority to terminate the Agreement pursuant to Clause 20.2.1.

22 Prevention of Fraud and Corruption

- 22.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 22.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier Personnel and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 22.3 If the Supplier or the Supplier Personnel engages in conduct prohibited by Clause 22.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Authority) the Authority may:
- 22.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement; or
 - 22.3.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this Clause.

23 Dispute Resolution

- 23.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to the following sets of representatives consecutively:
- 23.1.1 first to the personnel listed as level 1 escalation point in Paragraph 4 (Contract Management Roles and Dispute Escalation Points) of Schedule 3 (Contract Management Plan and Management Information);
 - 23.1.2 second to the personnel listed as level 2 escalation point in Paragraph 4 of Schedule 3;
 - 23.1.3 thirdly to the personnel listed as level 3 escalation point in Paragraph 4 of Schedule 3;
 - 23.1.4 finally to the Authority's Chief Executive Officer and an appropriately senior representative of the Supplier,
- provided that each set of representatives listed above shall consider the dispute for at least 10 Working Days before escalating the dispute to the next set of representatives listed above if the dispute remains unresolved and the Parties consider the matter sufficiently urgent to escalate.
- 23.2 If the dispute is not resolved by the Parties in accordance with Clause 23.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 23.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either

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HMRC Standard Short Form Model Contract v1.0

Party may exercise any remedy it has under applicable law.

23.4 Notwithstanding Clauses 23.1 to 23.3, either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

23.4.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

23.4.2 where compliance with Clause 23.1 to 23.3 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

24 General

24.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

24.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

24.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

24.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

24.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

24.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

24.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

25 Notices

25.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to Clause 25.3, e-mail to the address of the relevant Party set out in Paragraph 5 (Address for Notices) of Schedule 3 (Contract Management Plan and Management Information), or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

25.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error

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message is received.

- 25.3 Notices under Clauses 19 (Force Majeure) and 20 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Clause 25.1.

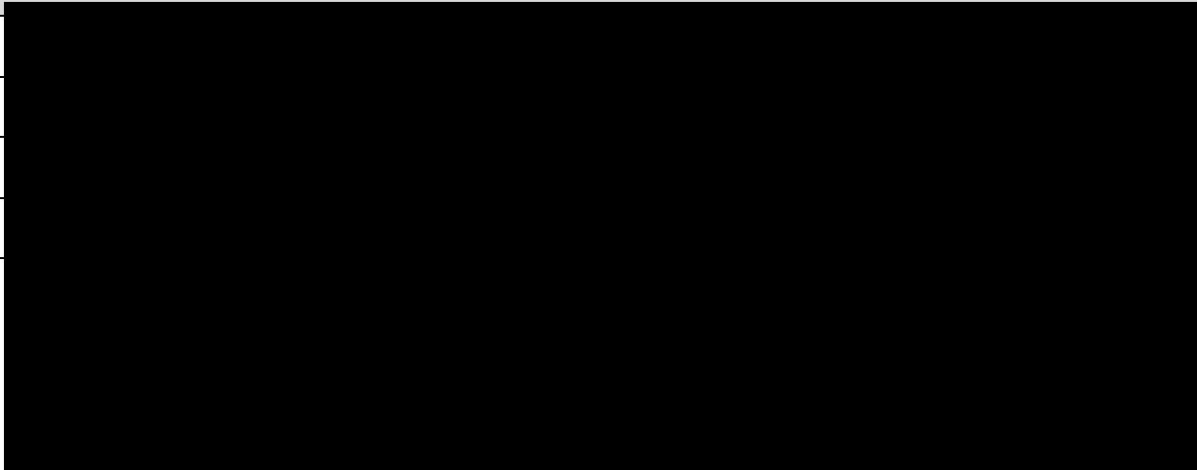
26 Governing Law and Jurisdiction

- 26.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

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A3. Contractual Detail	
Special Terms and Conditions: e.g. overtime, expenses, travel & subsistence, notice period.	<p>The order of precedence under this Contract, shall be as follows:</p> <div><div>1)</div><div>the terms and conditions in this HMRC Standard Short Form Model Contract v1.0 in their entirety, including Schedules 1 – 8,</div></div> <div><div>2)</div><div>the Master Services Agreement embedded at Schedule 9.</div></div>

A5.	Commercial Detail
	
<div> <div> Grand Total (£) </div> <div> exclusive of VAT: </div> </div>	
	£50,550

25
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A6.	Specification
	<p>The section below should be used to provide clear details relating to the requirements for delivery of the project/assignment. It should include, where appropriate, milestones / key deliverables with dates, and proposals for skills transfer.</p>
	<p>The Supplier shall provide the Services described below in accordance with the Service definitions provided by the Supplier in [name of WMC Global document defining the service] : This could be the slides or something HMRC get from the supplier</p> <p>One-time Setup Fee</p> <p>KIT APIs – Basic Plan</p> <p>URL Submission API</p> <p>Consulting – 12 hours</p>

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Schedule 2 Service levels and KPIs

1 SERVICE LEVELS AND KPI'S

1.1 The service levels and KPI's are as follows:

Service Title	Supplier Key Tasks	Required Supplier Response Time	Performance Target	Actual Target

1.2 [The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable service levels and KPIs at a level of detail sufficient to verify compliance with the service levels and KPIs.]

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Schedule 3 Contract Management Plan and Management Information

1 MANAGEMENT OF THE SERVICES

- 1.1 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
- 1.2 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement and the Supplier shall develop, operate, maintain and (as appropriate) amend processes for the identification and management of risks and issues.
- 1.3 The Supplier shall provide to the Authority's representatives access to all relevant documentation and/or any part of the Supplier's (or its sub-contractor's) premises as may be reasonably requested by the Authority's representatives, including for the purpose of commercial assurance, risk assessment, security assurance, familiarisation on procedures, audit of the Supplier's compliance with this Agreement and/or site audits. Full details of the Authority's requirement and timescales for the provision of management information reports are set out in Paragraph 3.
- 1.4 The Authority reserves the right to attend meetings between the Supplier and any subcontractors it utilises to provide the service to ensure proper oversight, management, delivery and performance of the Services and the Supplier shall procure that the Authority has access to such meetings.

2 EFFICIENCY SAVINGS

- 2.1 As part of routine contract management activities the Supplier will be required to work with the Authority to realise any possible efficiency savings during the Term. Possible efficiency savings will be reviewed during review meetings pursuant to Paragraph 3 and any savings realised annually will be distributed between the Supplier and the Authority as agreed in advance.

3 REVIEWS

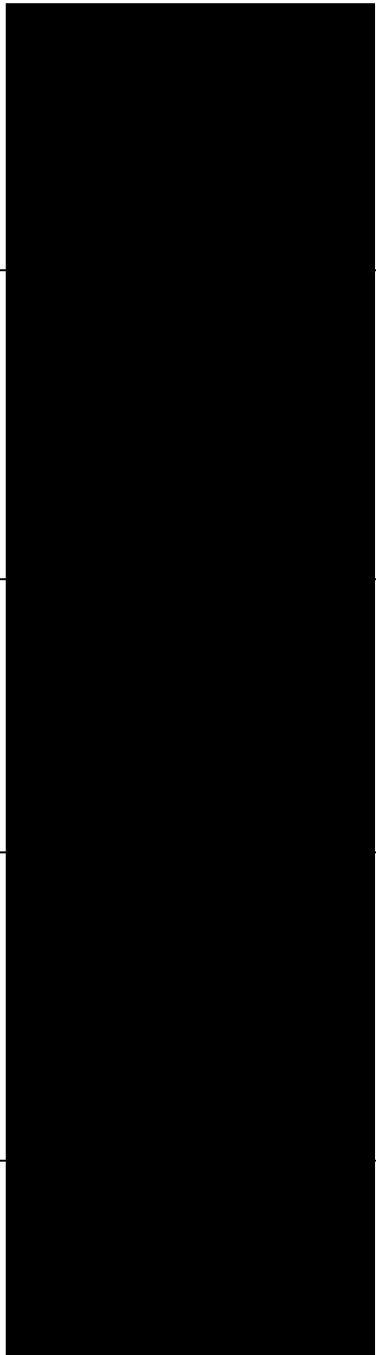
- 3.1 The Parties shall attend annual performance review meetings, on a date to be agreed between the Parties or, in the absence of such agreement, within 30 Working Days of each anniversary of the Effective Date, to consider the progress of the Agreement, discuss the management information reports and to review any operational issues that have arisen in the preceding review meetings on the following basis.
- 3.2 The Parties shall agree the format of the review meetings (for example, face to face or telephone conference) in advance.
- 3.3 The Supplier must provide the Authority with the most up to date management information relating to the period under review at least 5 Working Days before any review meeting.
- 3.4 Each Party shall procure that those of its contract management team representatives whose attendance is reasonably required to achieve the aims and objectives of the meeting, and any other persons considered by the Authority to be necessary for the review, make all reasonable efforts to attend review meetings.
- 3.5 In respect of the period under review, the Authority will take into account any matters it considers necessary, including:
 - 3.5.1 the Supplier's performance in respect of the service levels and KPI's as detailed at Schedule 2 (including any relevant service level trends analysis and whether the service levels reflect improvements in the Services over the Term and any efficiency gains made by the Supplier);
 - 3.5.2 consideration of any changes which may need to be made to the Services; and
 - 3.5.3 a review of future requirements in relation to the Services.

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- 3.6 The Authority shall prepare a report containing its findings from the annual review and discuss with the Supplier how any proposed changes to the Agreement and/or to the Services shall be addressed. Any Contract Changes to be implemented in accordance with this Paragraph shall be implemented in accordance with Schedule 4 (Change Control Procedure).

4 CONTRACT MANAGEMENT ROLES AND DISPUTE ESCALATION POINTS

- 4.1 The Parties shall assign personnel with the appropriate skills and experience to perform the roles and responsibilities listed in the table below.

Role	Key Personnel	Responsibilities	Contact Name, Title & Contact Details	
			Authority	Supplier
Senior Responsible Owner	No	Overall responsibility for delivery of the Agreement. Level 3 escalation point		
Commercial Director	No	Overall responsibility for the commercial integrity of the Agreement. Level 2 escalation point		
Commercial Lead	No	Responsible for overseeing the contract review process. Level 1 escalation point		
Commercial Manager	Yes	Responsible for monitoring the performance of the Agreement and managing the change control process.		
Contract Manager	Yes	Responsible for the day-to-day management of the Agreement.		

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- 4.2 Subject to Clause 8.3 and 8.4 (Supplier Personnel and Key Personnel), in the event that the Supplier wishes to replace any of its representatives in the roles listed in Paragraph 4.1, the Supplier shall notify the Authority in writing of the proposed change for the Authority’s agreement (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority representative has at all times a counterpart representative of equivalent seniority and expertise.
- 4.3 The Authority may, by written notice to the Supplier, revoke or amend the authority of any of its representatives in the roles listed in Paragraph 4.1 or appoint a new representative into the role.

5 ADDRESS FOR NOTICES

- 5.1 The address for notices of the Parties are:

Authority	Supplier
<div></div>	

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Schedule 4 Change Control Procedure

1 CHANGE CONTROL PROCEDURE

- 1.1 Either Party may propose a change to this Agreement ("**Contract Change**") in accordance with the procedure for changing the Agreement set out in this Schedule ("**Change Control Procedure**").
- 1.2 If either Party wishes to propose a Contract Change it shall submit to the other Party a written request substantially in the form set out in Annex 1 detailing the proposed Contract Change ("**Change Request**") specifying, in as much detail as is reasonably practicable, the nature of the proposed Contract Change. As soon as reasonably practicable but in any event within ten (10) Working Days of receipt or issue of a Change Request (as the case may be) the Supplier shall submit to the Authority a written assessment of the Change Request ("**Impact Assessment**").
- 1.3 Each Impact Assessment shall be completed in good faith and shall include the following information (except where such information is not relevant to the proposed Contract Change):
 - 1.3.1 details of the proposed Contract Change including the reason for the Contract Change;
 - 1.3.2 details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under this Agreement;
 - 1.3.3 any variations to the terms of this Agreement that will be required as a result of that impact, including proposed changes to the service levels or KPIs or any timetable previously agreed by the Parties;
 - 1.3.4 details of the cost of implementing the proposed Contract Change;
 - 1.3.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 1.3.6 a timetable and high level plan for the mobilisation of the proposed Contract Change;
 - 1.3.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;
 - 1.3.8 an assessment of the possible risks of introducing the proposed Contract Change; and
 - 1.3.9 such other information as the Authority may reasonably request in (or in response to) the Change Request
- 1.4 Within fifteen (15) Working Days of receipt of the Impact Assessment, the Authority shall evaluate the Change Request and Impact Assessment and shall notify the Supplier whether it approves or rejects the proposed Contract Change or whether it requires the Supplier to make any changes to the Impact Assessment. If the Authority requires the Supplier to make such changes, the Supplier shall make such modifications within five (5) Working Days of request.
- 1.5 If the Authority notifies the Supplier that it accepts the proposed Contract Change, then the Supplier shall prepare two (2) copies of a change authorisation note substantially in the form set out in Annex 2 ("**Change Authorisation Note**") which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier.
- 1.6 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 1.5, then:
 - 1.6.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and

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- 1.6.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change shall be without prejudice to each Party's other rights under this Agreement.

2 SUPPLIER'S RIGHT OF REJECTION

- 2.1 The Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 2.2.

- 2.2 Following an Impact Assessment, if:

- 2.2.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

(a) materially and adversely affect the risks to the health and safety of any person; and/or

(b) require the Services to be performed in a way that infringes any Law; and/or

- 2.2.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 1.2.

3 FAST TRACK CHANGES

- 3.1 The parties acknowledge to ensure operational efficiency that there may be circumstances where it is desirable to expedite the processes set out above.

- 3.2 If :

- 3.2.1 the total number of Contract Changes in relation to which the expedited procedure in this Paragraph 3 ("**Fast-track Change Procedure**") has been applied does not exceed four (4) in any twelve (12) month period; and

- 3.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term does not exceed £5,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the parties shall confirm to each other in writing that they shall use the process set out in paragraphs 1 and 2 above but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

- 3.3 The Parties may agree in writing to revise the parameters set out in Paragraph 3.2 from time to time or that the Fast-track Change Procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

4 OPERATIONAL CHANGE PROCEDURE

- 4.1 Any change in the Supplier's operational procedures which the Parties agree in all respects, when implemented:

4.1.1 will not affect the Charges and will not result in any other costs to the Authority;

4.1.2 may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;

4.1.3 will not adversely affect the interfaces or interoperability of the Services with any of the

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Authority's IT infrastructure; and

4.1.4 will not require a change to this Agreement,

(an “**Operational Change**”) shall be processed in accordance with this Paragraph 4.

4.2 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

4.2.1 have an impact on the business of the Authority;

4.2.2 require a change to this Agreement;

4.2.3 have a direct impact on use of the Services; or

4.2.4 involve the Authority in paying any additional Charges or other costs.

4.3 The Authority may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier’s contract manager (whose details are set out in Paragraph 4 of Schedule 3).

4.4 The RFOC shall include the following details:

4.4.1 the proposed Operational Change; and

4.4.2 the timescale for completion of the Operational Change.

4.5 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

4.6 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

5 IMPLEMENTATION OF CONTRACT CHANGES

5.1 The Parties shall meet as required and on request by either Party to discuss the order in which agreed Contract Changes are implemented and to monitor the implementation of such Contract Changes.

6 CHARGES FOR CONTRACT CHANGES

6.1 Each Party will be responsible for any costs they incur as a result of preparing a Change Request or Impact Assessment.

6.2 Both Parties must take all reasonable steps to avoid or minimise additional Charges arising from the implementation of any Contract Change, including where possible using resources already deployed in providing the Services at no additional cost. If additional resources or costs will be required then the Parties must calculate the cost of the Contract Change in accordance with Schedule 1, Paragraph A5.

7 INDEXATION

7.1 For the avoidance of doubt, the Supplier may not vary Charges to take account of Indexation at any time.

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ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE (e.g. FAST TRACK):
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE AGREEMENT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

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ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
REASON FOR THE CHANGE:		
DETAILED DESCRIPTION OF CONTRACT CHANGE (GIVING FULL DETAILS, INCLUDING ANY SPECIFICATIONS); AND WORDING OF RELATED CHANGES TO THE AGREEMENT:		
COST OF THE CHANGE:		
TIMETABLE:		
IMPACT ON THE AGREEMENT:		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

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Schedule 5: Exit Management Plan

1 EXIT MANAGEMENT

- 1.1 The Supplier shall be required to perform the Services until the end of the Term, including during any notice period given if the Agreement terminates under Clause 20.
- 1.2 On reasonable notice at any point(s) during the Term, the Supplier shall provide to the Authority such assistance and information as the Authority may reasonably require to assist the Authority and/or its replacement supplier with the orderly transition of the Services from the Supplier to the replacement supplier (or the Authority, as applicable):
- 1.3 No later than 10 Working Days before the Agreement terminates, the Supplier shall provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority).
- 1.4 Upon termination (or earlier if this does not adversely affect the Supplier's performance of the Services and its compliance with the other provisions of this Schedule), the Supplier shall immediately:
 - 1.4.1 cease to use the Authority Data;
 - 1.4.2 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Term all Authority Data and promptly certify to the Authority that it has completed such deletion. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws; and
 - 1.4.3 vacate any Authority premises.

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Schedule 6 Security Management

1 DEFINITIONS

The following definitions apply in this Schedule:

“Malicious Software” any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Software” any software which is proprietary to the Supplier or to a third party (or an affiliate of the Supplier) or any open source software which, in any case, is or will be used by the Supplier for the purposes of providing the Services.

2 AUTHORITY DATA

- 2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 2.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 2.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified by the Authority.
- 2.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any sub-contractor.
- 2.5 The Supplier shall perform and maintain secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the security requirements in this Agreement and any business continuity and disaster recovery plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at no additional cost to the Authority, and that the data contained in the back-ups are available at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 2.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the security requirements in this Agreement.
- 2.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
 - 2.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in any business continuity and disaster capability plan and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - 2.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in

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accordance with the requirements specified in any business continuity and disaster capability plan.

- 2.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

3 SECURITY REQUIREMENTS

- 3.1 The Supplier shall comply with the security management plan set out at Annex 1 ("**Security Management Plan**") and the security policy identified as such within the Security Management Plan ("**Security Policy**").
- 3.2 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 3.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request (as defined in Schedule 4). In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure in Schedule 4.
- 3.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to the Change Control Procedure in Schedule 4 the Supplier shall continue to perform the Services in accordance with its existing obligations.

4 MALICIOUS SOFTWARE

- 4.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 4.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 4.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 4.2 shall be borne by the Parties as follows:
- 4.3.1 by the Supplier where the Malicious Software originates from the Software or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
- 4.3.2 otherwise by the Authority.

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ANNEX 1: SECURITY MANAGEMENT PLAN



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Security Plan Questi

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Schedule 7 Data Protection

1 DATA PROTECTION

The following definitions apply in this Schedule:

“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Controller”, “Processor”, “Data Subject”, “Personal Data Breach”, “Data Protection Officer”	take the meaning given in the GDPR;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“DPA 2018”	Data Protection Act 2018;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Clause 16 (Authority Data and Security Requirements and Schedule 1 (Service Order));
“Sub-processor”	any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

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- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Processor is authorised to do is listed in Annex 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 1.4.1 process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 1.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 1.4.3 ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 1);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Paragraph 1;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

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- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 1.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 1.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 1.5 Subject to Paragraph 1.6, the Processor shall notify the Controller immediately if it:
 - 1.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 1.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under Paragraph 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 1.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 1.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 1.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 1.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate

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its compliance with this Paragraph 1. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- 1.8.1 the Controller determines that the processing is not occasional;
 - 1.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 1.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 1.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 1.11.2 obtain the written consent of the Controller;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Paragraph 1 such that they apply to the Sub-processor; and
 - 1.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this Paragraph 1 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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ANNEX 1 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:
[REDACTED]
2. The contact details of the Processor's Data Protection Officer are: [REDACTED]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	[REDACTED] [REDACTED]
Duration of the processing	[REDACTED] [REDACTED]
Nature and purposes of the processing	[REDACTED] [REDACTED]
Type of Personal Data being Processed	[REDACTED] [REDACTED] [REDACTED]
Categories of Data Subject	[REDACTED]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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**HM Revenue
& Customs**

**Schedule 8
AUTHORITY'S MANDATORY TERMS**

- A.** For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B.** The Agreement incorporates the Authority's mandatory terms set out in this Schedule 8.
- C.** In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 8 will supersede any other terms in the Agreement.
- D.** For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority's mandatory terms in this Schedule 8 are the definitions set out at Clause 1 of this Schedule 8.

1. Definitions

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Authority Data"	<p>(b) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p style="padding-left: 40px;">(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p style="padding-left: 40px;">(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(c) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;</p>
"Charges"	the charges for the Services as specified in Schedule 1: Service Order.
"Connected Company"	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
"Control"	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller", "Processor",	take the meaning given in the UK GDPR;

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“Data Subject”, “Data Protection Legislation”	<p>(a) "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and;</p> <p>(b) all applicable Law about the processing of personal data and privacy;</p>
“Key Subcontractor”	<p>any Subcontractor:</p> <p>(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</p> <p>(b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;</p>
“Law”	<p>any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;</p>
“Personal Data” “Purchase Order Number” “Services”	<p>has the meaning given in the UK GDPR;</p> <p>the Authority’s unique number relating to the supply of the Services;</p> <p>the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;</p>
“Subcontract”	<p>any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;</p>
“Subcontractor”	<p>any third party with whom:</p> <p>(a) the Supplier enters into a Subcontract; or</p> <p>(b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;</p>
“Supplier Personnel”	<p>all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;</p>
“Supporting Documentation” “Tax”	<p>sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;</p> <p>(d) all forms of tax whether direct or indirect;</p> <p>(e) national insurance contributions in the United Kingdom and</p>

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similar contributions or obligations in any other jurisdiction;

- (f) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (g) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax Non-Compliance”

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

“UK GDPR”

the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

“VAT”

value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

- 2.1** The Supplier shall invoice the Authority as specified in Clause 6 of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

2.1.2 the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

- 2.2** Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system.

- 2.3** If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

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3. Warranties

- 3.1** The Supplier represents and warrants that:
- 3.1.1** in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
 - 3.1.2** it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
 - 3.1.3** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.
- 3.2** If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 3.3** In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 4.4.2** promptly provide to the Authority:
 - (a)** details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b)** such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5** The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

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- 4.6** Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7** If the Supplier:
- 4.7.1** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
 - 4.7.2** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
 - 4.7.3** fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

- 4.8** The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

- 5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall

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HMRC Standard Short Form Model Contract v1.0

procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.

- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and off-shoring

- 6.1** The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:

- 6.1.1** not process or permit to be processed Personal Data outside of the United Kingdom unless the prior explicit written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a)** the Supplier or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;
 - (b)** the Data Subject has enforceable rights and effective legal remedies;
 - (c)** the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Supplier when it is the Controller in meeting its obligations); and
 - (d)** the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- 6.2** Failure by the Supplier to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

- 7.1** The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier

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HMRC Standard Short Form Model Contract v1.0

Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

- 7.4** The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.5** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

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Annex 1
Excerpt from HMRC's "Test for Tax Non-Compliance"

Condition one (An in-scope entity or person)

1. There is a person or entity which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*¹;
 - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
 - a. Fraudulent evasion²;
 - b. Conduct caught by the General Anti-Abuse Rule³;
 - c. Conduct caught by the Halifax Abuse principle⁴;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
 - e. Conduct caught by a recognised 'anti-avoidance rule'⁶ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
 - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁷;

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

⁶ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁷ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

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- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

1. In respect of (a), either X:
 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁸; or,
 2. Has been charged with an offence of fraudulent evasion.
2. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
3. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
4. In respect of (f) this condition is satisfied without any further steps being taken.
5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

- (a) For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

⁸ The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

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Annex 2 Form
CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: [for Supplier to insert Contract reference number and contract date]
(‘the Agreement’)

DECLARATION:

I solemnly declare that:

- 1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
- 2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED:
FULL NAME:
POSITION:
COMPANY:
DATE OF SIGNATURE:

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Schedule 9 Master Services Agreement

THIS MASTER SERVICES AGREEMENT ("**Agreement**") is made the on the 6th day of March, 2023

BETWEEN

- (1) **WMC GLOBAL LIMITED** [REDACTED]
[REDACTED]
("**WMC**")
- (2) **Her Majesty's Revenue and Customs (HMRC)** [REDACTED]
[REDACTED]
("**Customer**")

(each a **Party** and together the **Parties**).

BACKGROUND

- (A) WMC owns or is licensed to use and sub-license (as contemplated by this agreement) the copyright and any database rights in the Data Feed.
- (B) WMC has agreed to provide the Services on the terms set out in this agreement.
- (C) As part of the Services, WMC has agreed to license to the Customer the use of all copyright and database rights in the Data Feed for a specific business purpose on the terms set out in this Agreement.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement and in any other agreement between the parties.

Affiliate	in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Charges	the charges specified in Schedule 3.
Commencement	the date of this Agreement.
Date	
Confidential	all confidential information (however recorded or preserved) disclosed by a party

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Information	or its Representatives to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.
Customer System	any information technology system or systems owned or operated by the Customer from which Data is received in accordance with this agreement.
Customer User	any employee of the Customer authorised by the Customer to access and use the Services (wholly or in part), using their own unique identifier provided by WMC.
Customer User Restrictions	the obligations set out in Schedule 4.
Data Feed	data provided through WMC's proprietary phishing intelligence, threat detection, and attack monitoring tools specified in Exhibit A to this Agreement and associated API or other technical specifications, including all related content (including URLs, IP address, location information), technical information, files, documentation, specifications, and other materials, whether in whole or in part, including any and all modifications, derivative works and copies of the foregoing, regardless of the form of media in or which they may exist.
Data Feed Services	
Derived Data	<p>any Data (wholly or in part) Manipulated to such a degree that it:</p> <p>(a) cannot be identified as originating or deriving directly from the Data or the Services and cannot be reverse-engineered such that it can be so identified; and</p> <p>(b) is not capable of use substantially as a substitute for the Data or the Services.</p>
Data Protection Laws	means 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

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regulations made thereunder); and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003 No. 2426) (as amended); and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); Direct Marketing Laws, other civil, criminal and common law relating to the protection of personal data, and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a Party.

Distribute

to make Data accessible (including the provision of access through a database or other application populated with the Data, reselling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means.

Initial Period

a period of 12 months commencing on the Commencement Date.

**Intellectual
Property Rights**

all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Licence

the licence granted in clause 2.

Manipulate

to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part).

Manipulated Data

any Data which has been Manipulated. Manipulated Data includes any Derived Data.

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Permitted Use	internal business use only (which shall not include the use of the Data, Manipulated Data or the Materials by, or for the benefit of, any person other than an employee of the Customer [save that such restrictions shall not apply to the use or Distribution of any Derived Data]).
Representatives	in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.
Renewal Period	each successive 12-month period after the Initial Period for which this agreement is renewed.
Security Feature	any security feature including any key, PIN, password, token or smartcard.
Software	any software provided by WMC to enable the Services to be used including any Releases.
Statement of Work	a statement detailing specific WMC Services to be carried out by WMC including the Charges payable and delivery dates to be achieved.
Term	the Initial Period and any Renewal Periods.
UK GDPR	has the meaning given in section 3(10) of the Data Protection Act 2018.
WMC Services	the professional and consulting services to be supplied by WMC under this Agreement as described in Schedule 2.

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

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- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes email.
- 1.11 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any words following the terms **including**, **include**, **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.

2. Scope

During the Term WMC shall supply the Services to the Customer and the Customer shall pay the Charges and use the Services.

3. Grant of Licence

- 3.1 **Grant of License.** WMC hereby grants, subject always to the Customer complying with Customer User Restrictions, and Customer hereby accepts, a non-transferable, non-exclusive, revocable licence to use the Data Feed for the Customer's internal use, subject to the conditions and for the period specified in this Agreement.
- 3.2 **Permitted Uses.** The Data Feed is for Customer's internal use only, and Customer may query the Data Feed as needed during the Term to identify potential threats to Customer. Except as otherwise expressly permitted in this Agreement, by written permission of WMC or as required by applicable law or law enforcement request, Customer will not, on its own or through any parent, subsidiary, Affiliate, agent or other third party:
 - 3.2.1 sell, resell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, the Data Feed or any information from the Data Feed to a third party;
 - 3.2.2 decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Data Feed, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the algorithm or source code of the Data Feed or encourage others to do so;
 - 3.2.3 allow access to or permit use of the Data Feed by any users other than authorized users;

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- 3.2.4 create, develop, license, acquire, use, or deploy any third-party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Data Feed, any licensing terms provided by WMC *via* notification, or the terms of this Agreement;
- 3.2.5 modify or create derivative works based upon the Data Feed;
- 3.2.6 attempt to integrate the Data Feed into Customer's or a third party's product or service;
- 3.2.7 disclose the results generated by the Data Feed to any third party without WMC's prior written approval, provided that Customer may disclose compromised URLs that are imitating the Customer's brand, but not the identity of WMC or any other information about the Data Feed, for the limited purpose of taking appropriate responsive action to the URL; or
- 3.2.8 change any proprietary rights notices which appear in relation to the Data Feed.
- 3.3 WMC may change at any time, with as much prior notice to the Customer as is reasonably practicable:
 - 3.3.1 the content, format or nature of the Data Feed; and
 - 3.3.2 the means of access to the Data Feed.
- 3.4 WMC will use its best endeavours to ensure the continuity of the Data Feed at all times in accordance with any relevant policies agreed in advance between the parties in relation to business continuity and disaster recovery with a view to ensuring the continuity and availability of the Data Feed, and any of the Customer's services which [redistribute,] rely on, or utilise the Data Feed.
- 3.5 **Charges** . WMC's Charges for access to the Data Feed ("**WMC Data Fees**") are set out of this Agreement and shall be due and payable in full to WMC annually in advance.
- 3.6 Time shall be of the essence regarding the Customer's obligations to make payments in accordance with this clause 3.5 and such obligations are material obligations for the purpose of clause 9.1.2.
- 3.7 WMC may charge interest at an annual rate of 4% above the base rate of [WMC's UK BANK], calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by WMC of the full amount, whether before or after judgment.
- 3.8 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 3.9 Subject to clause 3.10, WMC may, at any time after the first anniversary of the Commencement Date, by giving 90 days' prior written notice, vary the Charges or the basis on which they are calculated.

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- 3.10 The Charges in respect of the Data Feed may not be reviewed more than once in each 12-month period commencing on the Commencement Date or any anniversary of that date.
- 3.11 The Customer may terminate the relevant Data Feed from the date on which any variation under clause 3.9 is intended to take effect, provided that the Customer gives WMC written notice of termination of that Service within 60 days of the date of WMC's notice, in the following circumstances:
- 3.11.1 where the variation results in an increase in the Charges greater than that of the Retail Price Index (All Items) calculated by the Office for National Statistics for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect under this clause 3.9 (in the case of the second or any subsequent increase) up to the date of the notice of variation, plus 5%; and
 - 3.11.2 the Customer can show that the variation in question will result in a material reduction in the rights granted under clause 3.1 in respect of the Services or the relevant Service,
- in which case, the Customer shall be entitled to a refund of any Charges already paid for the Services or that Service (as the case may be) in respect of any period following termination under this clause.
- 3.12 WMC will invoice Customer initially on the Commencement Date and annually on the Renewal Date. Customer will pay the WMC Data Fees within thirty (30) days of the Commencement Date or any Renewal Date.

4. Professional and Consulting Services

- 4.1 **Scope of Services.** WMC agrees to perform the professional and consulting services ("**WMC Services**") specified in Schedule 9b of this Agreement or as requested from time to time as requested in writing by Customer during the Term of this Agreement in which case a Statement of Work will be entered into by the Parties. In the event of any discrepancy between the terms of this Agreement and a Statement of Work, the terms of the Statement of Work shall prevail.
- 4.2 **Term of Services.** Customer's written request or order shall state the start and end date of the WMC Services.
- 4.3 **Charges and Payment.** WMC's Charges for the WMC Services ("**WMC Services Fees**") are set out in Schedule 1, paragraph A5 of this Agreement. Customer will pay all charges in advance. Payment will be due and payable no later than thirty (30) days from the date of the receipt of WMC's invoice.

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5. Intellectual property rights Ownership

- 5.1 Notwithstanding anything to the contrary, except for the limited license rights expressly provided in this Agreement, the Customer acknowledges that:
- 5.1.1 WMC (or its licensors) owns and will retain all Intellectual Property Rights, title and interest in and to the Data Feed and all copies, modifications and derivative works;
 - 5.1.2 It shall have no rights in or to the Data Feed other than the right to use it in accordance with the express terms of this Agreement;
 - 5.1.3 WMC or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Data Feed; and
 - 5.1.4 any good will generated through the Customer's use of the WMC GLOBAL trade marks shall belong to WMC.
- 5.2 The Customer shall not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify these Trademarks in any way. We will enforce our intellectual property rights to the fullest extent of the law, including the seeking of criminal prosecution, if necessary.
- 5.3 The Customer assigns to WMC, and shall assign to it, with full title guarantee all Intellectual Property Rights in any [development of the Materials and in any] Manipulated Data it may create, by way of future assignment.
- 5.4 The Customer shall co-operate with WMC to protect the goodwill and reputation of the Services and, without limitation, shall comply with paragraph 1.2 of Schedule 4.
- 5.5 Any display of the Services by the Customer shall credit, wherever technically and commercially feasible, WMC, any licensor of WMC or any other source of the Data specified by WMC as the source of the Data Feed.

[Intellectual Property Infringement]

6. Data Protection

- 6.1 **Compliance with Law.** Customer shall use the Data Feed in accordance with applicable law, including the Data Protection Laws. Customer shall further commit not to act in a manner that causes WMC to breach the Data Protection Laws.
- 6.2 **Definition of Personal Data.** "Personal Data" or any similar terminology (e.g., personal information, personally identifiable information) shall be interpreted consistent with applicable Privacy Laws, and includes Sensitive Personal Data. "Sensitive Personal Data" means information relating to an identified or identifiable individual that reveals the individual's name, postal address, telephone number, fax number, email address, age, gender, racial or ethnic origin, religious

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or philosophical beliefs, union membership, sexual orientation, precise geolocation information, financial information (including bank account numbers, payment card information, personal identification numbers, or information regulated under the Gramm-Leach-Bliley Act (GLBA)), health information (including any health insurance information or information regulated under the Health Insurance Portability and Accountability Act (HIPAA)), government identifier (including driver's license number, passport number, national ID number, or social security number), medical information, biometric or genetic information, information regarding a minor under the age of eighteen, or account log-in credentials.

- 6.3 The parties acknowledge that each party (the "Disclosing Party") may, in connection with this Agreement, disclose Personal Data to the other (the "Receiving Party"), and that the Disclosing Party and the Receiving Party will each act as independent controllers in respect of the copies of these Personal Data that they hold from time to time and any Personal Data that they generate on the basis of those Personal Data.
- 6.4 All Parties shall:
- 6.4.1 co-operate to ensure that the formatting of the Personal Data is compatible and consistent and that appropriate procedures are in place to ensure the effective and prompt response to a Data Breach or to a Data Subject Request.
 - 6.4.2 maintain effective procedures to ensure the accuracy of the Personal Data at every stage of processing;
 - 6.4.3 apply consistent retention and deletion policies applicable to the Personal Data.
 - 6.4.4 apply the Data Protection Principles to their respective processing of the Personal Data;
 - 6.4.5 not sell the Personal Data to any third party.
- 6.5 **Permitted Purposes.** Customer's processing of Personal Data is strictly limited to the purposes specified in this Agreement, including clause 3.2 (Permitted Uses) of this Agreement (the "Permitted Purposes"). Notwithstanding any other provision in this Agreement, Customer acknowledges and agrees that Customer will not use the Personal Data of an individual (the "**Data Subject**"): (a) in an unlawful, abusive, or unethical manner, (b) to access accounts or restricted data files belonging to the Data Subject, (c) to contact the Data Subject except as necessary for fraud prevention purposes, or (f) to build, augment, clean, or correct a profile about the Data Subject.
- 6.6 **Use Restrictions.** Customer agrees, understands, and certifies that it will not: (a) reveal or sell to any third party Personal Data derived or obtained from the Data Feed or otherwise made available to Customer by WMC ("**WMC Personal Data**"), (b) retain or use WMC Personal Data for any purpose except for the Permitted Purposes, or (c) disclose or make Personal Data accessible to any third parties or sub-contractors except for the Permitted Purposes. The term "sell" shall be construed in accordance with the Data Protection Laws.

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- 6.7 **Retention.** Customer agrees to retain Personal Data only for as long as necessary for the Permitted Purposes. Upon WMC's written request or following termination of this Agreement, Customer will return any Personal Data in Customer's possession, custody, or control and certify in writing that such return has occurred.
- 6.8 **Supervision.** Customer shall exercise the necessary and appropriate supervision over its employees, contractors, and other personnel who have access to the Personal Data to maintain the appropriate privacy, confidentiality, and security of the Personal Data in accordance with the Permitted purposes described in this Agreement.

7. Access to the Data Feed

- 7.1 WMC will provide Customer with access credentials for access to the Data Feed by authorized users. WMC does not guarantee the privacy or security of any information transmitted to, or from, Customer.
- 7.2 Customer is solely responsible for controlling access to the Data Feed, including employing appropriate methods to minimize the risks of unauthorized access to the Data Feed using Customer's access credentials.
- 7.3 If the Customer becomes aware of any misuse of the Data Feed, or any security breach in connection with this Agreement that could compromise the security or integrity of the Data Feed or otherwise adversely affect WMC or if the Customer learns or suspects that any Security Feature has been compromised, revealed to or obtained by any unauthorised person:
- 7.3.1 the Customer shall, at the Customer's expense, promptly notify WMC and fully co-operate with WMC to remedy the issue as soon as reasonably practicable; and
- 7.3.2 WMC may suspect the Customer's rights under this agreement until the misuse or security breach or unauthorised disclosure or compromise of the Security Features is remedied.
- 7.4 The Customer agrees to co-operate with WMC's reasonable security investigations.

8. Confidentiality

- 8.1 **Scope of Confidential Information.** Confidential Information means all information that a party ("**Receiving Party**") knows or should reasonably know based on the circumstances of disclosure is confidential to the other party ("**Disclosing Party**"), whether provided directly or indirectly from the Receiving Party in writing, verbally, by electronic or other data transmission or in any other form or media, that is currently existing or subsequently created during the term of

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the relationship between the Parties, that the Receiving Party and/or any of its affiliates owns or controls, that is not generally publicly available, whether of a technical, business or other nature, including but not limited to: (a) financial information, including pricing; (b) technical information, including research, development, specifications, procedures, algorithms, data, designs, and know-how; (c) business information, including operations, objectives, management, assets, results, planning, marketing, timing, strategic partners, customers and products) that is disclosed by the Disclosing Party to the Receiving Party or that is otherwise learned by the Receiving Party, in either case in the course of the discussions or business dealings with the Disclosing Party, or the Disclosing Party's customers or business partners, that are the subject of this Agreement, and which has been identified as being confidential or which the Receiving Party knows or has reason to know by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential. For the avoidance of doubt: WMC's pricing, WMC Data Fees, WMC Services Fees, Intellectual Property, Data Feed content, technical specifications, as well as all other proprietary data relating to the Data Feed or WMC Services hereunder are considered Confidential Information of WMC. Notwithstanding the foregoing, Confidential Information does not include information which (1) at the time of disclosure was or thereafter becomes publicly available without breach of this Agreement; (2) was rightfully known to the Receiving Party prior to its receipt from the Disclosing Party; (3) is rightfully received from a third party that, to the knowledge of the Receiving Party, did not acquire or disclose such information by a wrongful or tortious act; or (4) was developed by the Receiving Party without reference to or use of any Confidential Information of the Disclosing Party.

- 8.2 **Protection of Confidential Information.** Each Party acknowledges that while performing its obligations under this Agreement it may have access to the other Party's Confidential Information. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to anyone other than its employees, parent, subsidiaries, subcontractors, and affiliates and to its legal, technical, and financial consultants on a confidential basis in the ordinary course of its business, who are bound by confidentiality obligations and who need to know same to perform hereunder. Neither Party will use any Confidential Information with respect to which it is the Receiving Party for any purpose other than to carry out the activities contemplated by this Agreement. Each Party agrees to use commercially reasonable and industry standard efforts to protect Confidential Information of the other Party, including to protect against any anticipated threats or hazards to the security and integrity of Confidential Information and the systems used by the Receiving Party, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. Notwithstanding anything to the contrary in this Agreement, Customer will not disclose any WMC Confidential Information, including WMC's Intellectual Property to a Competitor. A "**Competitor**" means any individual or entity that provides or creates or otherwise commercially exploits or makes available: (i) products or services that compete with WMC's Data Feed, WMC Services, or other phishing monitoring services; (ii) risk based assessments, including without limitation, credit reporting agencies and due diligence verifiers; or (iii) for diversified entities, any business unit that creates or provides any of the items or activities set forth in (i) or (ii).

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- 8.3 **Return of Confidential Information.** Upon request and within thirty (30) days of such request, of the Disclosing Party, the Receiving Party will return to the other, destroy, or permanently erase, at the Disclosing Party's option, all materials, in any medium, which contain or reveal all or any part of any Confidential Information of the Disclosing Party. Upon request of the Disclosing Party, the Receiving Party will have an officer certify that the Disclosing Party's Confidential Information has been destroyed or returned.
- 8.4 **No Reproduction.** Confidential Information will not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information will remain the property of Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party. The Receiving Party will not modify, reverse engineer, decompile, create other works from, or disassemble any Confidential Information without the prior written consent of Disclosing Party. The Receiving Party may not use any Confidential Information in any manner that is or would be competitive against the Disclosing Party.
- 8.5 **Notification.** The Receiving Party will promptly notify the Disclosing Party in writing in the event of any actual or suspected unauthorized use or disclosure of any Confidential Information of the Disclosing Party, and the Parties will reasonably cooperate in good faith at the Receiving Party's expense and cost to remedy such occurrence.
- 8.6 **Injunctive Relief.** The Receiving Party acknowledges that any breach of any provision of this Section by the Receiving Party may cause immediate and irreparable injury to the Disclosing Party for which money damages would be an insufficient remedy, and in the event of a breach, the Disclosing Party will be entitled to seek injunctive relief and other legal or equitable remedies to enforce the provisions of this Section.
- 8.7 **Exception for Legal Process.** If the Receiving Party becomes legally obligated to disclose Confidential Information of the Disclosing Party by valid administrative or judicial process (including subpoena), applicable law, or any governmental or regulatory entity with jurisdiction over it or the Disclosing Party, including any court of competent jurisdiction, the Receiving Party will (if not prohibited by applicable law or the terms of the legal request) give the Disclosing Party prompt written notice. The Receiving Party will disclose only such information as it reasonably deems is legally required and, at the Receiving Party's expense and cost, will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

9. Term and termination

This Agreement shall commence on the Commencement Date. Unless terminated in accordance with this Agreement this Agreement shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period.

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The Agreement may be terminated by either Party not later than thirty (30) days before the end of the Initial Period or the relevant Renewal Period by written notice to the other Party, to terminate this Agreement at the end of the Initial Period or the relevant Renewal Period as the case may be.

If there are outstanding orders for WMC Services at the time of such termination, this Agreement shall continue in full force and effect until the end date of such outstanding orders.

Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- 9.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
- 9.1.2 the other party commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 9.1.3 the other party:
 - 9.1.3.1 suspends, or threatens to suspend, payment of its debts;
 - 9.1.3.2 is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 9.1.3.3 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 9.1.3.4 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - 9.1.3.5 (being a partnership) has any partner to whom any of clause 9.1.3.1 apply;
- 9.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 9.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 9.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, partnership or limited liability partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

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- 9.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 9.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 9.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 9.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within [14] days;
 - 9.1.11 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.3 (inclusive);
 - 9.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]
 - 9.1.13 [the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or]
 - 9.1.14 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 9.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 9.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 9.3 On any termination of this agreement for any reason or expiry of the Term:
- 9.3.1 each party shall as soon as reasonably practicable return, delete or destroy (as directed in writing by the other party) all data, information, software, and other materials provided to it by the other party in connection with this agreement including all materials containing or based on the other party's Confidential Information , except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause **Error! Reference source not found.**; and

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Customer will certify to WMC in writing that all Data Feed documentation, files, or other access credentials are no longer in use by or on behalf of Customer, and have been either returned to WMC or destroyed.

10. Equitable Relief

Customer agrees that its breach of this Agreement may cause irreparable damage to WMC for which recovery of damages would be inadequate, and that WMC will be entitled to obtain timely injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

11. Limitation of Liability

- 11.1 In no event shall WMC be liable in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise for any claim by the Customer or based upon a third party claim relating to this Agreement, for:
 - 11.1.1 any incidental, consequential, special, indirect, exemplary, or punitive damages; or
 - 11.1.2 any damages arising out of or in connection with any malfunctions, delays, loss of data, lost profits, lost savings, interruption of service, loss of business or anticipatory profits, even if WMC has been advised of the possibility of such damages.
- 11.2 WMC's aggregate and cumulative liability arising out of or relating to this Agreement, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise will be limited to direct financial loss and will not exceed the sum of the WMC Data Fees and WMC Services Fees paid by Customer to WMC within the prior 12 months (in GBP).
- 11.3 The allocations of liability in this section represent the agreed and bargained for understanding of the parties, and the compensation of WMC for the Data Feed and WMC Services provided hereunder reflects such allocations. The foregoing limitations, exclusions, and disclaimers are in allocation of the risk between the Parties and will apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.

12. Indemnification

As a condition of the Customer's use of the license to the Data Feed, the Customer agrees to indemnify, defend, and hold harmless WMC, its officers, directors, employees, agents, licensors and suppliers from and against any and all losses, expenses, damages and costs, including reasonable legal fees, resulting from the Customer's use of the Data Feed, including any claims alleging facts that if true would constitute a violation of this Agreement, including clause 6 (Data Protection) or any activity related to the Customer's account (including negligent or wrongful conduct) by any person accessing the Data Feed using the Customer's account.

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13. Warranty Disclaimer

- 13.1 **Customer.** Customer warrants that Customer has not made and will not make, use or sell for any purpose any product, service, or other item using, incorporating or derived from the Data Feed or any Confidential Information.
- 13.2 **WMC.** WMC provide the Data Feed and WMC Services using a commercially reasonable level of care, but there are certain things cannot be guaranteed.
- 13.3 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 13.4 Without limiting the effect of clause 13.3, WMC does not warrant that:
- 13.4.1 the supply of the Data Feed will be free from interruption;
 - 13.4.2 the Data Feed will run on the Customer System;
 - 13.4.3 the Data Feed is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
 - 13.4.4 the Data Feed has been tested for use by the Customer or any third party or that the Data Feed will be suitable for or be capable of being used by the Customer or any third party.

OTHER THAN EXPRESSLY SET OUT IN THESE TERMS, WMC DOES NOT MAKE ANY SPECIFIC PROMISES ABOUT THE DATA FEED OR WMC SERVICES. FOR EXAMPLE, WE DO NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT OR THE SPECIFIC FUNCTIONS OF THE DATA FEED, OR ITS RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WMC DOES NOT WARRANT THAT ITS PROVISION OF WMC SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION. WE PROVIDE THE DATA FEED AND WMC SERVICES "AS IS." SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES.

14. Force Majeure

WMC will have no liability whatsoever for delays or interruptions in delivery or accessibility of the Data Feed or the WMC Services, interruptions or service or other breach of these terms due to fire, explosion, lightening, power surge or failure, water, acts of God, war, civil disturbance, terrorism, acts or omissions or communications carriers, or other causes beyond WMC's reasonable control.

15. No Export

- 15.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software,

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HMRC Standard Short Form Model Contract v1.0

incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

15.2 Each party undertakes:

- 15.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it which substantially replicates the one set out in clause 15.1; and
- 15.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

16. Notices

All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic mail. Notices will be sent to the addresses set forth in the parties section of this Agreement or such other address as either Party may specify in writing.

17. Governing Law

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

18. Jurisdiction

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

19. Waiver and Severability

No waiver of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party. In the event any provision of this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, the remaining provisions will remain in full force and effect and this Agreement will be interpreted and construed as if such provision had never been contained therein. If any provision of this Agreement will, for any reason, be determined by a court of competent jurisdiction to be excessively broad or unreasonable as to scope or subject, such provision will be enforced to the extent necessary to be reasonable under the circumstances.

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and consistent with applicable law while reflecting as closely as possible the intent of the parties as expressed herein.

20. General.

- 20.1 **Entire Agreement.** This Agreement, including the Exhibits, and all documents expressly referred to in this Agreement, constitute the Parties' complete agreement with respect to the subject matter of this Agreement and supersedes all prior proposals, understandings, and agreements whether oral or written, between the parties.
- 20.2 There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the Parties related to the subject matter hereto other than as expressly set forth herein.
- 20.3 **Variation.** Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by an authorised representative of both Parties ("**Amendment**").

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Schedule 9a

Data Feed Services

Access to the Kit Intelligence Tracker includes:

- Customer access via one API Key
- The search API provides the ability to search for associations between files and WMC Global identified phishing kits based on file content and metadata.

Access to the URL Submission API includes:

- Customer access via one API Key.
- The submission API provides the ability to submit URLs to WMC's anti-phishing platform for analysis.
- The submission API classifies phishing and collects both phishing kits and victim credentials (where available)

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Schedule 9b

WMC Professional and Consulting Services

Consulting Services

- Customer has purchased 12 hours available per year.
- Additional blocks of 10 hours can be purchased as needed at £400 per hour.
- Customer can use hours for WMC to investigate an issue or question associated with WMC's Data Feeds, or any items that fall outside the purview of specific services, such as phishing, voice phishing (vishing), SMS phishing (smishing), compromised credentials, phishing kits, or assistance with telcos and other existing partners.
- Customer will follow Consulting Hours Request Process to request use of hours.

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Schedule 9c Customer User Restrictions

Part 1

Customer User Restrictions

1. CUSTOMER USER RESTRICTIONS

- 1.1 The Customer shall:
 - 1.1.1 limit access to the Services to the Customer Users;
 - 1.1.2 only make copies of the Data and the Materials to the extent reasonably necessary for the following purposes: back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing;
 - 1.1.3 not use the Services for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
 - 1.1.4 not extract, reutilise, use, exploit, Distribute, disseminate, copy or store the Data, or the Materials for any purpose not expressly permitted by this agreement;
 - 1.1.5 not copy, modify, decompile, reverse engineer or create derivative works from the Software, except to the extent permitted by any applicable law; and
 - 1.1.6 not do anything which may damage the reputation of WMC, the Data or the Services, including by way of using the Data (wholly or in part) in any manner which is pornographic, racist or that incites religious hatred or violence.
- 1.2 The Customer shall use WMC's trade marks and logos in the following manner:
 - 1.2.1 [USE OF SUPPLIER'S TRADE MARKS IN GENERAL]
 - 1.2.2 [USE OF SUPPLIER'S TRADE MARKS AND LOGOS IN ADVERTISING, PACKAGING AND WEBSITES]
 - 1.2.3 [ATTRIBUTION STATEMENTS]