

Order Document

Execution of this Order Document by both parties will create a binding contract for the provision of software and/or services on the terms expressly agreed in writing in this Order Document.

The parties acknowledge that this Order Document incorporates all the terms and conditions contained within the Master Services Agreement V34 September 2022 [here](#) and any relevant scheduled, together with any Service Level Agreements as are specified in this Order Document.

Customer Name	Food Standards Agency
Customer Address	Kings Pool 1-2 Peasholme Green, York, England YO1 7PR
Customer Purchase Order Number*	TBC
Principal Agreement Number	Order 5048 Q-40824
Agreement Date	02 / 11 / 2023
The Service Level Agreements for the relevant software and services identified within this agreement may be found here. The parties agree that the relevant Service Level Agreements shall be incorporated into the agreement upon execution by both parties.	
Data Archiving Solution Outbound Service Level Agreement	✓
Agreement Term	24 months
Customer's Authorised Representative	
Company's Authorised Representative	
Installation Address	MHR Data Centre, Mere Way, Ruddington, Nottingham NG11 6JS
Purpose of Use	For Read Only purposes within the Customer's organisation
Country of Use	United Kingdom
Employee Maximum	1500 Employees
Sales Executive	

*The Customer expressly agrees and acknowledges that it shall not withhold payment of any charges on the grounds that the Customer Purchase Order Number (or reference) provided by the Customer on this Order Document is not correct. Where the Customer requires the Customer Purchase Order Number (or reference) to be altered on the Company's invoice in order for payment to be made, the Customer shall inform the Company immediately.



ANALYTICS PRODUCT

Description	Quantity	Initial Charge	Quarterly Charge
Data Archiving Hosting			
Data Archiving Hosting Service Charge			
Data Archiving Outbound Platform			
Data Archiving Outbound Platform Service Charge			
Data Archiving Outbound Reporting Suite			
Data Archiving Outbound Reporting Suite Service Charge			
Data Archiving Universe			
Data Archiving Universe Service Charge			

The parties acknowledge that all Product modules are intended to be coterminous with the expiry or early termination of the Agreement.

iTrent Universe

Where the Customer wishes to access use or create Business Objects reports utilising the iTrent Universe in connection with any data from the Product, the Customer is required to procure the appropriate Business Objects licences for both developers and consumers. Where the Customer elects to procure this licence from the Company, the relevant details shall be set out in Section 14 (Third Party Product Terms) in the Master Services Agreement.

Payment Terms:

As detailed in Section 7 (Charges) of the Master Services Agreement.

Payment Method:

Initial Charge, by cheque or electronic funds transfer, will be due and payable within 7 days of the Agreement Date.

Quarterly Charge by Direct Debit on the Agreement Date and each succeeding quarter date.

Analytics Third Party Products

Description	Quantity	Initial Charge	Annual Charge
SAP Business Objects: Concurrent User Licence			
SAP Business Objects: Concurrent User Licence Service Charge			
SAP Business Objects: Named User Licence			
SAP Business Objects: Named User Licence Service Charge			



Payment Terms:

As detailed in Section 7 (Charges) of the Master Services Agreement.

Payment Method:

Initial Charge, by cheque or electronic funds transfer, will be due and payable within 7 days of the Agreement Date.

Annual Charge by Direct Debit on the Agreement Date and each anniversary of it.



PROFESSIONAL SERVICES

Time and Materials Implementation

Description of Professional Services	
Ad Hoc Consultancy Services	12 hours consultancy for build and setup of the archive database and testing. 12 hours BusinessObjects Install, Setup and test.

Description	Quantity	Unit Charge	Unit	Total Charge
Analytics Consultant				
Consultant				

Site: Remote

Any onsite Services shall be subject to travel, subsistence and expenses costs. The Customer shall be charged a minimum of 1 hour for all remote consultancy Services. The Customer shall be charged a minimum of 6 hours for all onsite consultancy or training Services.

All hours must be used no later than 6 months post the Agreement Date of this Order Document, after which date any unused hours will be invoiced at the stated rate.

The estimated start date of the consultancy is TBC.

The date provided above is for guidance only. The Company shall be under no obligation to perform the Services on the aforementioned estimated start date.

Unless stated otherwise, the total time stated in this Order Document represents an estimate made in good faith only. The Company makes no warranty or guarantee that any software or services can be delivered successfully within such time and thus the estimate given shall be subject to change.

The Customer shall provide a minimum of 5 working days' advanced notice from the scheduled work assignment date to cancel such work assignments (whether onsite or remote). Failure of the Customer to provide such notice shall result in the Customer being charged at the daily rate detailed above.

Payment Terms:

As detailed in Section 7 (Charges) of the Master Services Agreement

Payment Method:

By cheque or electronic funds transfer within 30 days of the date of invoice.

Processing Instructions

Both parties acknowledge that the Customer is the controller, and the Company is the processor pursuant to Data Protection Legislation. The below represents the core of the Customer's written and documented processing instructions:

Data Controller Instructions - iTrent Hosted	
Subject matter of Processing	The provision of a Host System and Software access to facilitate delivering the HR and/or Payroll Software and Services as outlined in the Agreement.
Purpose and Nature of Processing	<p>The Customer will operate the Software provided in accordance with the Agreement and is responsible for the data held within the Host System.</p> <p>The Company shall process the data submitted to the Software environment to the extent of providing the storage of that data. The Company shall further process said data on the explicit instructions by the Customer to assist in the resolution of issues arising from the operation of the Software.</p> <p>The Company may from time to time have sight of the data contained in the Host System when performing maintenance or upgrades to the Software and/or Host System.</p>
Type of Personal Data	May include, but is not limited to: Names and titles, personal address, date of birth, next of kin details, personal contact details, bank account details, salary, National Insurance Number, health and medical data etc.
Categories of Data Subject	Customer Employees, former employees, retired employees, next of kin, emergency contacts and beneficiaries, Job applicants
Organisations you are instructing us to share information/data with	NOT USED
Sub Processors	NOT USED
Location of Data	
Duration of Processing	The term of the Agreement plus that needed for the return or destruction of the data
Return and Destruction of Data	<p>Upon expiry of the Agreement Term (or early termination however so arising) of the Agreement the Customer shall within 5 working days provide written instruction to the Company in respect of the return and /or deletion of the data. Upon receipt of such instruction that Company shall promptly comply and</p> <ol style="list-style-type: none"> provide a copy of the Customer's data as an Oracle export (unless otherwise agreed as part of the exit process and charges) and then securely delete the Customer instance and the data within it; <p>The Company shall upon completion of the deletion of the data provide a certificate of destruction to the Customer</p> <p>Where a Customer fails to return the instruction within 5 days of the end of the Agreement or collect the data extract after a period of 30 days the Company shall delete the Customer's data.</p> <p>The Customer warrants that it shall not hold the Company liable for any breach of the Data Protection Legislation or any losses incurred through its failure to provide the instruction</p>

Data Controller Instructions - iTrent Hosted**Instructions for the Notification of a Data Incident**

Where the Company identifies that a Data Incident has occurred it shall notify the Customer without undue delay, in the first instance verbally if possible and then subsequently by email.

Such notification to include the following information

- a. the nature of the incident
- b. the categories and approximate number of data subjects affected
- c. categories and approximate number of records concerned
- d. the name and contact details of the DPO at MHR or other contact for the provision of further information as applicable
- e. the likely consequences of the personal data breach as far as this is practicable
- f. the actions taken to address the breach and any mitigations to reduce possible adverse effects.

Where it is not possible to provide all of this information in the first instance then such notifications will be provided in phases.

Data Controller Instructions - Legacy Archive**Subject matter of Processing**

The provision of a Host System and Software access to facilitate the archiving of, and access to data from a previous system used for the management of employees and employee payrolls

Purpose and Nature of Processing

The Customer will operate the Software provided in accordance with the Agreement and is responsible for the data held within the Host System.

The Company shall process the data submitted to the Software environment to the extent of providing the storage of that data. The Company shall further process said data on the explicit instructions of the Customer to produce the necessary reports as required.

The Company may from time to time have sight of the data contained in the Host System when performing maintenance or upgrades to the Software and/or Host System.

Type of Personal Data

May include, but is not limited to: Names and titles, personal address, date of birth, next of kin details, personal contact details, bank account details, salary, National Insurance Number, health and medical data etc.

Categories of Data Subject

Customer Employees, former employees, retired employees, next of kin, emergency contacts and beneficiaries, Job applicants

Organisations you are instructing us to share information/data with

NOT USED

Sub Processors

The following sub processors are used when providing some services for Analytics

- Microsoft (Azure Hosting)
- MHR International UK Ltd (hosting of reports where iTrent is not hosted by MHR)
- IBM (hosting)
- SAP (hosting)

Location of Data

UK & EU Customers' data is stored in UK data centres hosted by MHR or in UK data centres hosted by Microsoft (Azure), IBM hosting EU data centres, SAC hosting, EU data centres

Duration of Processing

The term of the Agreement plus that needed for the return or destruction of the data

Data Controller Instructions - Legacy Archive

Return and Destruction of Data	<p>Upon expiry of the Agreement Term (or early termination however so arising) of the Agreement the Customer shall within 5 working days provide written instruction to the Company in respect of the return and /or deletion of the data. Upon receipt of such instruction that Company shall promptly comply and then</p> <p>a. securely delete the Customer instance and the data within it (People First & Analytics)</p> <p>The Company shall upon completion of the deletion of the data provide a certificate of destruction to the Customer</p> <p>Where a Customer fails to return the instruction within 5 days of the end of the Agreement or collect the data extract after a period of 30 days the Company shall delete the Customer's data. The Customer warrants that it shall not hold the Company liable for any breach of the Data Protection Legislation or any losses incurred through its failure to provide the instruction</p>
Instructions for the Notification of a Data Incident	<p>Where the Company identifies that a Data Incident has occurred it shall notify the Customer without undue delay, in the first instance verbally if possible and then subsequently by email.</p> <p>Such notification to include the following information</p> <p>a. the nature of the incident</p> <p>b. the categories and approximate number of data subjects affected</p> <p>c. categories and approximate number of records concerned</p> <p>d. the name and contact details of the DPO at MHR or other contact for the provision of further information as applicable</p> <p>e. the likely consequences of the personal data breach as far as this is practicable</p> <p>f. the actions taken to address the breach and any mitigations to reduce possible adverse effects.</p> <p>Where it is not possible to provide all of this information in the first instance then such notifications will be provided in phases.</p>

Customer Data Protection Officer Details	
Name	[REDACTED]
Phone Number	
Email Address	[REDACTED]

Notices by email to the Company to [REDACTED] for the attention of the Company Secretary.



Variations to Terms and Conditions

Variation Approval	
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The parties hereby agree that, for the purposes of this Order Document, the terms and conditions contained within the Master Services Agreement are amended as follows:

Master Services Agreement:

At clause 1.2, add the definition of Cloud Provider as follows:

“Cloud Provider” means the organisation designated as such on the relevant Order Document(s) providing, inter alia, hosting services;

At clause 1.2, delete the definition of “Employee” and replace as follows:

“Employee” means:

- a. for any Customer not using the Software for payroll processing: any person in respect of whom any personal or employment records are kept by the Customer (or an Associated Company or Permitted Agent) using the Software, including current or past employees (full or part time); or
- b. for any Customer using the Software for payroll processing: any person in respect of whom any personal or employment records are kept by the Customer (or an Associated Company or Permitted Agent) using the Software, including current or past employees (full or part time) whether deferred or in receipt of payment, but shall not be deemed to include Non-employee Records;

At clause 1.2, delete the definition of Non-employee Records and replace as follows:

“Non-employee Records” means for any Customer using the Software for payroll processing: any person in respect of whom any personal or employment records are kept by the Customer (or an Associated Company or Permitted Agent) who are not paid at all or paid infrequently (three times per year or less) and have limited or no access to the Software.

Delete clause 7.1 and replace as follows:

The Customer shall pay the Charges in accordance with the terms of the Agreement. Where it is stipulated on an Order Document that the Implementation Services are to be conducted on a time and materials basis, the Customer acknowledges and agrees that the Charges are an estimate made in good faith only and that the Company therefore gives no warranty, representation or guarantee that the Software can be installed, implemented and/or maintained within any estimated number of Working Days. Further, the Customer acknowledges that the Company gives no warranty, representation or guarantee that any additional Software and/or Services procured throughout the Agreement Term can be installed, implemented and or maintained within any estimated number of Working Hours.



Agreed and accepted on behalf of MHR INTERNATIONAL UK LIMITED (registered in England and Wales under number 1852206) (the “Company”)	Agreed and accepted on behalf of Food Standards Agency (the “Customer”)
Signature of Authorised Signatory	Signature of Authorised Signatory



Date: 06 / 11 / 2023	Date: 06 / 11 / 2023
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This Master Services Agreement (the “MSA”) is made by and between:

- 1) **MHR INTERNATIONAL UK LIMITED** (the “Company”) whose registered address is at Peterbridge House, The Lakes, Northamptonshire, NN4 7HB, the United Kingdom, registered company number 01852206; and
- 2) **The “Customer”** – whose details are provided on the relevant Order Document.

WHEREAS:

- (a) the Company is a leading provider of HR, Payroll, Finance and Analytics Software and Services; and
- (b) the Customer desires to procure certain Software and Services from the Company as further detailed in the Order Document; and
- (c) both parties hereby agree to do business on the terms and conditions set herein.

1. DEFINITIONS AND INTERPRETATION

1.1 This clause 1 sets out definitions and rules of interpretation for the Agreement.

1.2 Unless the context otherwise requires, the following expressions shall have the following meanings:

“Activity Report” means a document provided by the Company to the Customer that outlines, inter alia, the tasks undertaken and/or completed as part of a scheduled work assignment.

“Agreement” means the entire agreement between the parties, comprising of:

- (a) an Order Document;
- (b) this MSA;
- (c) the Service Level Agreement;
- (d) the Statement of Work; and
- (e) any annexures to them.

“Agreement Date” means the date specified on the relevant Order Document;

“Agreement Term” means the fixed term of the Agreement set out on the relevant Order Document;

“Agreement Year” means the 12 month period from the Agreement Date through to the anniversary thereof, and each subsequent 12 month period thereafter;

“Associated Company” means any holding company of the Customer and any subsidiary of the Customer, in each case carrying on business in the United Kingdom. The Customer may request an additional holding company and or subsidiary be incorporated into this Agreement and the Company shall consider such request in good faith and approve or reject (at the Company’s sole discretion) said request. The terms “holding company” and “subsidiary” shall have the meanings given to them by s.1159 Companies Act 2006;

“Authorised Representative” means, in the case of the Company, the officer specified in the Order Document, or such other officer as may be duly authorised to act on behalf of the Authorised

Representative. In the case of the Customer, Authorised Representative means the officer specified in the Order Document or such other officer who may hold themselves out as authorised to act on behalf of the Authorised Representative. For the avoidance of doubt, where any person employed by the Customer signs a Contract Document, the Company shall regard that person as authorised by the Authorised Representative to do so;

“Change Control Form” means the appropriate and relevant document as determined by the parties which is used to capture, inter alia, a change in the Statement of Work;

“Charges” means the charges payable in respect of, inter alia, particular Software and/or Services, as more particularly set out on the relevant Contract Document;

“Confidential Information” means all information shared by one party with the other including, but not limited to, its business, finances, customers, services, processes, Documentation and products communicated or received in any way whatsoever including, but not limited to, orally, in writing, electronically or obtained through observation. All such information which is designated as confidential or which is otherwise clearly confidential in nature constitutes “Confidential Information”;

“Contract Document” means any of the following: the MSA; a Service Level Agreement; a Statement of Work; a Change Control Form; an Order Document; or any annexures which the parties agree shall form part of this Agreement;

“Controller”, “processor”, “data subject”, “personal data”, and “processing” shall have the meanings given by the Data Protection Legislation in the context of which the term is being applied;

“Country of Use” means the country or countries specified in the relevant Order Document;

“Current Sub-Release” means the most recent mandatory Sub-Release, or a subsequent non-mandatory Sub-Release which the Customer has in fact implemented;

“Customer Host System” means a Host System provided or operated by the Customer, an Associated Company, Permitted Agent or a third party supplier of any of the foregoing;

“Customer Support Contact” means a member of the Customer's personnel who is designated as such;

“Data” means the payroll, personnel, and associated data of the Customer and the Associated Companies;

“Data Incident” means (i) the unlawful or unauthorised processing of personal data; or (ii) the disclosure of or access to personal data in breach of this Agreement (including accidental disclosure of or access to the personal data); or (iii) the temporary or permanent loss or theft of any personal data; or (iv) any other security incident affecting the personal data (including a personal data breach as defined in the Data Protection Legislation) by the Company;

“Data Protection Legislation” means any applicable law relating to the processing and use of personal data as applicable to Customer, the Company and/or the Services, including:

(a) in the United Kingdom:

i. the (UK) General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR) as amended by the Exit Regulations and the Data Protection Act 2018, and/or any corresponding or equivalent national laws

or regulations (Revised UK DP Law) as amended from time to time.

ii. The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the Exit Regulations) as applicable.

iii. the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 2002/58/EC (ePrivacy Directive); and/or

(b) in member states of the European Union: the General Data Protection Regulations (Regulation (EU) 2016/679) (GDPR), the ePrivacy Directive, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and

(c) any judicial interpretation of any of the above;

"Data Subject Request" means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;

"Documentation" means any documentation or other materials made available by the Company to the Customer under the Agreement;

"Employee" means any person in respect of whom any personal or employment records are kept by the Customer (or an Associated Company or Permitted Agent) using the Software, including current or past employees (full or part time), whether deferred or in receipt of payment, but shall not be deemed to include Non-employee Records;

"Expenses" means the Company's reasonable travelling, accommodation (where necessary) and subsistence expenses, incurred in providing any Services at the Customer's Site. Any and all Expenses shall be charged separately and in accordance with the Company's prevailing rates from time to time;

"Fix" means an amendment to the Product which is not classified as a Sub-Release;

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"Good Industry Practice"; means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged (in the United Kingdom) in activities of a similar scope and complexity to those that are subject to the relevant Agreement and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable law and regulatory requirements;

"Host System" means the computer system (including any hardware and software comprised within it) on which Software is installed;

"Implementation Project" has the meaning set out in clause 12.1;

"Implementation Services" means the services detailed as such in the relevant Order Document and or Statement of Work in connection with the installation and implementation of the Software;

"Initial Charge" means the charge so designated in an Order Document;

"Installation Address" means the premises specified in an Order Document where an item of Software is to be installed and operated;

"Intellectual Property Rights" means copyrights, rights in databases, patents, trademarks, business or trade names, domain names, registered designs, utility models, design rights, inventions, trade secrets, Confidential Information, know-how, get-up, and all other intellectual property and neighbouring rights and rights of a similar or corresponding character anywhere in the world (whether or not the same are registered or capable of registration) and all applications and rights to apply for or for the protection of any of the foregoing;

"Interfaces" means, in relation to the Product, the interfaces (whether standard or bespoke) which operate between the Product and any other software application and which will be provided by the Company to the Customer, as such interfaces are listed in the relevant Order Document;

"Legislative Change" means an addition to or change in Government legislation (including Acts of Parliament and Statutory Instruments) in the United Kingdom and Ireland, but excluding (a) any additions or changes to any other form of regulation, any guidance or any scheme rules, and (b) additions or changes falling within clause 11.3;

"Licence" means a licence granted pursuant to clauses 3.1(a) and 10.1 of this Agreement to Use the Product, Documentation and any Software or Specification as detailed in an Order Document;

"Losses" means costs, expenses, liability, injuries, losses, damages, claims, demands and legal costs and judgments;

"Malfunction" means any failure of the Product to operate (in the Company's reasonable opinion) in accordance with the Product Documentation or, in the case of a bespoke Interface, with the Specification for that Interface;

"Managed Services" means the services detailed as such in an Order Document (including any Service Level Agreement referred to in it), including the bureau services, hosting services and outsourced HR services as the case may be;

"Non-employee Records" means any person in respect of whom any personal or employment records are kept by the Customer (or an Associated Company or Permitted Agent) who are not paid at all or paid Infrequently (three times per year or less) and have limited or no access to the Software;

"Normal Working Hours" means between 09.00 and 17.30 on a Working Day;

"Order Document" means the document titled as such and executed by the parties setting out the details of, and terms applicable to the provision and receipt of, particular Software and/or Services;

"Permitted Agent" means an organisation which is authorised by the Company in its sole discretion to have Use of the Software and/or Services (such consent to add additional Permitted Agents throughout the Term not to be unreasonably withheld or delayed and may be subject to additional Initial and Quarterly Rental Charges) and which, for the avoidance of doubt, is not required to be a holding company or subsidiary of the Customer as defined by s.1159 Companies Act 2006 and which may be incorporated in, and/or carry out its business within, a country outside of the United Kingdom. Any such Permitted Agents shall be defined on the relevant Order Document as may be updated from time to time by written agreement of the parties;

"Product" means the Company software, with the Sub-Release number and incorporated modules, all

as specified in the Order Document as being licensed to Customer (and including any Interfaces listed in the Order Document and any Sub-Releases or Fixes which the Customer has elected to adopt from time to time in accordance with the terms of the Agreement);

“Product Documentation” means, in relation to the Product, the operating manuals, user instructions and user guides for the Product;

“Product Support” means the services detailed as such on an Order Document;

“Professional Services” means the services detailed as such in an Order Document, including (inter alia) the Implementation Services, consultancy services and/or training services;

“Professional Services Charges” means the charges so designated in the relevant Order Document;

“Project Manager” means a Representative of a party designated to act as the project manager in respect of particular Professional Services;

“Purpose of Use” means the use for which the Company has licensed the Software and Product Documentation to the Customer as set out in the relevant Order Document;

“Quarterly Managed Services Charge” means any charge so designated in an Order Document (as such may be amended from time to time in accordance with the Agreement);

“Representative” means an officer, employee, sub-contractor or agent of the Company or the Customer or (in the case of the Company) any other person working under the direction of the Company;

“Service Desk” means the facility made available by the Company for the submission to it of Service Requests;

“Service Level Agreement” means the document titled as such and referred to in an Order Document which sets out additional detail regarding the respective obligations of the parties in relation to the Product and/or Services;

“Service Request” means any request by a Customer Support Contact for assistance in operating the Product, including the notification of a Malfunction;

“Services” means any services provided by the Company to the Customer under the Agreement;

“Site” means the Installation Address and any other premises of the Customer at which Services are to be provided;

“Software” means the Product, any Third Party Product or other software made available by the Company to the Customer under the Agreement;

“Specification” means the specification published by the Company from time to time, or developed or agreed by the parties under a particular Agreement, for a particular Software component or functionality, including but not limited to any design documents or User Guides;

“Stage Gate Acceptance Forms” shall be the form provided by the Company to the Customer for review and sign-off pursuant to the stage gate process as further detailed in the Statement of Work;

“Statement of Work” means the document which contains, inter alia, the scope of works to be completed as part of the Implementation Project;

“Sub-Processor” means any processor engaged by the Company (or by any other Sub-Processor) for carrying out any processing activities in respect of the personal data;

“Sub-Release” means, in relation to the Product, a partial re-issue of the Product by the Company from time to time in order to effect legislative upgrades and minor enhancements or corrections to that Product;

“Supervisory Authority” shall mean an independent public authority which is established by a Member State pursuant to Article 51 of the GDPR. This could include, for example, the UK Information Commissioners Office;

“Term” means the period commencing on the Agreement Date and ending on the date of termination of the Agreement (however such termination is effected);

“Third Party Product” means the third party software (if any) specified in an Order Document;

“Third Party Product Maintenance Services” means any maintenance and support services in relation to the Third Party Product which are specified in an Order Document as being provided or procured by the Company;

“Third Party Provider” means the supplier of a particular Third Party Product or Third Party Product Maintenance Service;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any successor legislation;

“Use” means:

- (a) the loading, copying, transmitting, or storing of any Software or Documentation onto a Host System;
- (b) the processing or running of any Software or Documentation on a Host System; and
- (c) the reading and possession of Documentation in conjunction with the uses set out in (a) and (b) above.

“User Guides” means a summary of the features and functionality of the Product and/or particular releases of it, as such is made available and updated from time to time through the Company's customer service cloud;

“Working Day” means any day other than Saturdays, Sundays and English bank and other public holidays;

“Working Hours” means the hours estimated to complete the Professional Services as set out in the Order Document, all of which shall be charged and invoiced in accordance with the terms and conditions of the Agreement. All Working Hours (unless otherwise agreed between the parties) shall be performed within Normal Working Hours.

- 1.3 A reference to a statutory provision includes a reference to that provision as amended, consolidated or re-enacted (whether before or after the date of the Agreement).
- 1.4 Words importing one gender include all genders, words importing the singular include the plural, and (in each case) vice versa.
- 1.5 References to a "person" will be construed so as to include bodies corporate, unincorporated associations

and partnerships.

- 1.6 Unless otherwise stated, references in a Contract Document to clauses and paragraphs are to clauses and paragraphs of that Contract Document.
- 1.7 If there is a conflict between any provisions in the Agreement, then (unless expressly stated to the contrary in such Contract Document) the following order of precedence shall apply: the variation section of the Order Document, the MSA, the Statement of Work, the Service Level Agreement, and the Order Document (including any annexures thereto).
- 1.8 Any headings are for ease of reference only and shall not affect the construction of any provisions of a Contract Document.
- 1.9 The words "include", "includes", "including" and "included" will be construed without limitation.
- 1.10 References to a "party" are to the Customer or Company (as applicable), and references to the "parties" are to both of them.

2. AGREEMENT OVERVIEW

- 2.1 Execution of an Order Document by both parties shall create a binding contract for the provision and Use of the Software and/or Services as outlined within such Order Document and in accordance with clauses 3.1 and 10 herein. Once executed by both parties, the Order Document shall form part of the Agreement and thus shall incorporate all of the terms contained in this MSA.
- 2.2 In the absence of an Order Document, the MSA on its own creates no obligation or right on behalf of either party, except where expressly stated otherwise.
- 2.3 The parties understand and expressly declare that neither party is agent for the other, nor does either party have any authority to make any contract, whether expressly or by implication, in the name of or otherwise binding the other party, without that party's prior written consent for express purposes connected with the performance of the Agreement.
- 2.4 The Customer acknowledges and accepts that the relevant Software and/or Services have not been developed to meet the Customer's individual requirements and it is therefore the responsibility of the Customer to ensure that the Software as described in the Documentation and the Contract Documents (including, inter alia, any Product modules) meet its requirements. By entering into this Agreement, the Customer signifies that it has conducted sufficient due diligence to satisfy itself that the Software meets its requirements.
- 2.5 The Company shall supply the Software and/or Services based upon an assessment made in good faith of the Customer's requirements as expressed in the information supplied by the Customer and which the Customer warrants is, as of the Agreement Date, true and accurate. The Company shall not be liable for any failure to provide or any defect in the relevant Software and/or Services to the extent that such failure or defect is caused by an omission, error, inaccuracy or ambiguity in the expression of the Customer's requirements or in the information provided by the Customer.
- 2.6 All Professional Services are to be performed within Normal Working Hours.

3. THE COMPANY'S OBLIGATIONS

- 3.1 In consideration of the payment by the Customer of the Charges in accordance with the terms of the Agreement and as specified in the Order Document, the Company:
- (a) grants to the Customer a Licence to Use the Product, Documentation and any Software or Specification thereof in accordance with clause 10;
 - (b) shall provide the relevant Product Support throughout the Term;
 - (c) shall permit the Customer (or a third party authorised by it), to carry out audits and inspections of the Company on reasonable notice during Normal Working Hours. The Company may require a third party auditor to enter into a confidentiality agreement before permitting it to carry out an audit. The Company reserves the right to make a reasonable charge for the time of its personnel engaged in assisting with an audit or the completion of a Customer-provided audit questionnaire/report;
 - (d) shall, at the request of the Customer, provide the Customer with a Company-standard Security and Assurance White Paper which shall provide an overview of, inter alia, the practices carried out by the Company; and
 - (e) shall perform the Services as set out in the Order Document in accordance with any relevant Service Level Agreement.

4. THE CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall not, and shall ensure that its Associated Companies shall not (whether by act or omission):
- (a) interfere with the provision of the Services;
 - (b) knowingly or recklessly engage in spamming, mail bombing, spoofing or any other fraudulent, illegal or unauthorised attack or use of any Host System;
 - (c) knowingly or recklessly introduce into or transmit through the Software or any Host System any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design; or
 - (d) knowingly or recklessly store, distribute or transmit through any Host System any material which is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive, facilitates violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities. Notwithstanding the foregoing, this clause 4.1 (d) shall not serve to prevent the Customer from storing such material for the purpose of the Customer's internal HR records.
 - (e) use the Software for any purpose that infringes, misappropriates, or otherwise violates the Intellectual Property Rights of any third party.
- 4.2 The Customer acknowledges that the provision of the Services under the Agreement is dependent on the Customer's co-operation, and timely provision of both accurate information and assistance. Failure of the Customer to fulfil any such obligations in whole or in part or, where appropriate, by the date specified in the Agreement for such fulfilment, and where such Customer failure causes the Company not to fulfil its obligations under the Agreement:
- (a) the Company shall not be liable for any such failure;
 - (b) any date or time period set out in the Agreement for the fulfilment by the Company of any of its

obligations shall be extended by a period of time equal to any delay caused by such Customer failure; and

- (c) where due to such failure additional resources are required in order to complete Services, further Charges may apply in accordance with section 13 (Change Control).

4.3 The Customer shall ensure the administration of the Software is carried out by a trained and competent individual employed by the Customer or that such administration is outsourced to the Company.

5. WARRANTY

5.1 Subject to the other provisions of the Agreement, the Company warrants that the Product and/or Services will be provided:

- (a) in accordance with Good Industry Practice; and
- (b) in compliance with the requirements of any relevant laws.

5.2 The Company further warrants that:

- (a) its title to and property in the Product is free and unencumbered and that it has the right, power and authority to license the same on the terms outlined in the Agreement;
- (b) upon completion of the Implementation Project, when properly used (as indicated in the Product Documentation or other Contract Document), the Product will operate in accordance with the Specification and Product Documentation; and
- (c) the Product shall be protected by up-to-date anti-virus software.

5.3 Without prejudice to the Customer's other rights and/or remedies, if the Company breaches the warranties given in clauses 5.1 and/or 5.2, it shall at its option, and subject to 5.4 and 12.6 at its cost, and as applicable:

- (a) repeat performance of the part of the relevant Services, as appropriate, which are found not to conform to the warranty;
- (b) refund an appropriate proportion of those Charges paid by the Customer which are attributable to the part of the Software and/or Services found not to conform to the warranty;
- (c) provide Product Support to remedy the breach; or
- (d) replace the Software or any part thereof found not to conform to the warranty.

The Customer shall not unreasonably withhold or delay approval of any Change Control Form or variation to this Agreement which is required in order for the Company to provide the applicable remedy in accordance with this clause 5.3.

5.4 The remedies in clause 5.3 are conditional upon:

- (a) the Customer giving written notice to the Company of any alleged breach of such warranty within 30 days of the date when the Customer discovers or ought reasonably to have discovered the alleged breach;
- (b) the Customer affording the Company reasonable opportunity to investigate the breach; and
- (c) the Customer not having committed any breach of its obligations under the Agreement which has led or contributed to the breach of warranty concerned.

Where the Customer fails to adhere to clauses 5.4 (a) to (c), the Company may, at the request of the Customer, provide a remedy in accordance with 5.3. In such circumstances, where the Company provides a remedy, the Customer agrees to pay on demand any additional fees, expenses and costs associated with providing such remedy to the extent that the Company has incurred such as a result of the Customer's failure to adhere to clauses 5.4 (a) to (c).

- 5.5 Other than any express warranties set out in the Agreement, and save to the extent prohibited by law, any representation, statement, condition, term or warranty, express or implied, statutory or otherwise, as to any Software, Services or Documentation is hereby excluded.

6. LIMITATION OF LIABILITY

- 6.1 Nothing in a Contract Document excludes or limits the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) payment of the Charges.
- (d) any liability which cannot be excluded or limited by applicable law.

- 6.2 The total aggregate liability of each party under all Contract Documents in respect of physical damage caused to the other party's tangible property as a result of the other party's acts or omissions shall not exceed £5,000,000 (five million pounds).

- 6.3 Subject to clause 6.1, the Company shall not under any circumstances have any liability for any loss or damage which may be suffered by the Customer (or any other person having the benefit of the Agreement) whether arising in respect of any breach of a Contract Document or any representation or tortious act or omission (including negligence and breach of statutory duty) or otherwise howsoever arising under or in connection with a Contract Document, and which falls within any of the following categories:

- (a) indirect or consequential loss or damage (irrespective of whether the Company was aware of the circumstances giving rise to such loss or damage);
- (b) loss of profits;
- (c) loss of revenue;
- (d) loss of anticipated savings;
- (e) loss of business opportunity;
- (f) loss of goodwill; or
- (g) fines or penalties imposed on the Customer by a Supervisory Authority.

Provided that this clause 6.3 shall not prevent claims for direct financial loss arising out of a breach of the Data Protection Legislation or any other claims for direct financial loss that are not excluded by clauses 6.3(a) to 6.3(g).

Notwithstanding the above, where the Customer receives a fine and/or penalty from the Supervisory Authority and it reasonably believes it has not breached Data Protection Legislation, but rather the fine and/or penalty is as a direct result of a breach of the Agreement or of the Data Protection Legislation by the Company, the Customer may seek to have the fine reallocated to the Company through the Supervisory Authority's defined appeals process. For the avoidance of doubt, nothing in this Agreement seeks to limit the Company's liability for any fines and/or penalties which may be imposed upon it by the Supervisory Authority or relevant tribunal.

- 6.4 Subject always to clause 6.3 and 6.6 and other than the liability referred to in clauses 6.1, 6.2, the total aggregate liability of the Company under or in connection with the Agreement (whether arising in contract, tort (including negligence or breaches of statutory duty by the Company or its Representatives), under any indemnity or otherwise) in an Agreement Year shall not exceed an amount equal to 125% (one hundred and twenty five percent) of the total Charges paid or payable by the Customer under the relevant Agreement during such Agreement Year.
- 6.5 Each party shall at its own cost maintain in force throughout the Term, and not less than six (6) years thereafter, policies of insurance covering the respective liabilities which may be incurred by the other party arising out of the acts or omissions of that party and/or its Representatives in connection with the Agreement.
- 6.6 Subject always to clause 6.3, the total liability of the Company under or in connection with the Agreement in relation to any Third Party Products or Third Party Product Maintenance Services licensed, provided or made available under such Agreement (whether arising in contract, tort including negligence or breaches of statutory duty by the Company or its Representatives, under any indemnity or otherwise) shall not exceed a sum equal to:
- (a) the total amount (if any) actually recovered by the Company from the relevant Third Party Provider in respect of the matters giving rise to such liability;
- divided by:
- (b) the total number of customers of the Company affected who use the relevant Third Party Products or Third Party Product Maintenance Services.

7. CHARGES

- 7.1 The Customer shall pay the Charges in accordance with the terms of the Agreement. The Services as detailed in the Statement of Work shall, subject to the Customer meeting their obligations as set out in the Agreement, be delivered by the Company at a fixed price. Any additional Software and or Services or the performance of any Change Control Request shall be delivered by the Company on a time and materials basis. The Company therefore gives no warranty, representation or guarantee that any additional Software and or Services can be installed, implemented and or maintained within any estimated number of Working Hours. Further, the Customer accepts and agrees that Services which fall outside of the scope of the Statement of Work will be chargeable at the Company's then prevailing rates on a time and materials basis.
- 7.2 All Charges are separate. Where any element of the Charges is disputed, the Customer shall not be entitled to withhold payment of any other elements of the Charges which are not the subject of that dispute.
- 7.3 All sums set out in the Agreement are net and exclusive of any taxes, duties or other additional sums associated with Expenses, Value Added Tax, or any other taxes and/or levies imposed by law that relate to the provision of the Product and/or Services which shall in each case be payable by the Customer.

- 7.4 Following the first anniversary of the Agreement Date, the Company shall be entitled to increase any Charges payable under the Agreement (a "Charge Adjustment") by an amount reasonably determined by the Company. The Customer shall receive no less than ninety [90] days prior written notice of the Charge Adjustment to be imposed in accordance with this clause 7.4.
- 7.5 Save for the Initial Charges (which shall be payable within seven [7] days post full execution of the Order Document) all other Charges shall be due and payable by the Customer within thirty [30] days of receipt of the Company's invoice and by Direct Debit. Where a payment is cancelled by the Customer or is declined by the Customer's bank, the Customer acknowledges that an administrative charge may be applied to replace or reinstate the Direct Debit mandate.
- 7.6 If any sum due from the Customer to the Company is not paid by the Customer by the due date for it and is not subject to a bona fide dispute in accordance with clause 7.2 then the Company may choose (without prejudice to its other rights and remedies) to:
- (a) charge interest on the outstanding sum until payment at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998, in which case the Customer shall pay such interest on demand; and
 - (b) recover from the Customer (as a debt) any reasonably incurred legal fees associated with the Company seeking the Customer's payment of the Charges.
- 7.7 Where the Customer procures additional training and or consultancy Services, and such Services are expressed on the Order Document as on Site, the Customer shall be charged for a minimum of six [6] Working Hours.
- 7.8 Save for where termination is solely due to the material breach of the Company, no refund of Charges shall be due to the Customer for the Company exercising its rights of suspension of the Product and/or Services, or either party exercising their rights of termination.

8. TERM, TERMINATION & SUSPENSION

- 8.1 The Agreement shall commence on the Agreement Date and shall terminate upon the earlier of:
- (a) expiry of the Agreement Term; or
 - (b) early termination of the Agreement in accordance with the terms herein.
- 8.2 The Agreement may be terminated immediately:
- (a) by either party if the other party commits a material breach of the Agreement which (in the case of a breach capable of being remedied) has not been remedied within fifteen [15] Working Days of a written notice from the party not in default requiring the other party to remedy that breach;
 - (b) by the Company if an undisputed amount due under that or any other Agreement is overdue and is not paid within fifteen [15] Working Days of the Company giving written notice to the Customer setting out details of the amount and stating that it is overdue;

- (c) by either party if any of the following events (or any event analogous to any of the following, in a jurisdiction other than England and Wales) occurs in respect of the other party:
 - (i) a proposal is made for a voluntary arrangement or for any other composition, scheme, or arrangement with, or assignment for the benefit of, its creditors;
 - (ii) a shareholders' meeting is convened, or a resolution is passed for its winding up (except for a bona fide reconstruction or amalgamation);
 - (iii) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 Insolvency Act 1986;
 - (iv) a receiver, manager or administrative receiver is appointed over any or all of its undertaking or assets;
 - (v) an administrator is appointed, or an application is made for such an appointment or the making of an administration order;
 - (vi) it becomes insolvent within the meaning of s.123 Insolvency Act 1986;
 - (vii) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (viii) a party issues a section 114 notice pursuant to the Local Government Finance Act 1988.
- (d) by the Company if the Customer breaches clauses 4.1 (b) to (d), 10.8 and/or 10.9.

8.3 Upon termination of the Agreement:

- (a) any Licence granted under the Agreement shall terminate;
- (b) the Company shall fulfil its obligations pursuant to clause 16.16;
- (c) both parties shall fulfil its obligations pursuant to clause 15.7; and
- (d) where applicable, the Customer shall, at the Company's option, either:
 - (i) expeditiously return (or procure the return) to the Company any Product (and all copies thereof) in the Customer's or an Associated Company's or Permitted Agent's possession or control; or
 - (ii) irretrievably erase the Product from all Customer Host Systems and certify in writing to the Company (in such form as the Company may reasonably require) that the Product has been erased.

8.4 Clauses 2 (Agreement Overview), 6 (Limitation of Liability), 7 (Charges), 8 (Term, Termination & Suspension), 9 (Intellectual Property Rights), 15 (Confidentiality), 16 (Data Protection), 17 (Personnel), 18 (Compliance with Contract Documents), 21 (Waiver), 22 (Severability), 23 (Assignment and Third Party Rights), 25 (General, Notices and Communications) and 26 (Law and Dispute Resolution), shall all survive the termination of the Agreement and termination (howsoever arising) shall be without prejudice to the rights of the parties accrued up to such date.

8.5 The Company may (acting reasonably) suspend access to the Product and/or provision of the Services and/or Product Support (as applicable):

- (a) by giving 7 days' prior written notice to the Customer if any sum due from the Customer to the Company is not paid by the Customer by the due date for it and is not subject to a bona fide dispute

in accordance with clause 7.2;

- (b) if Customer's use of the Product disrupts or poses a security risk to the Company's systems;
- (c) if Customer is using (or the Company has reasonable grounds to believe that the Customer is using) the Product for fraudulent or illegal activities; and/or
- (d) if Customer's use of the Product and/or the Company's continued provision of the Services is prohibited by applicable law, or the Company has been instructed or advised by a UK governmental body or authority to suspend the provisions of the Product or Services to the Customer.

8.6 Where the Company has issued a suspension in accordance with clause 8.5, the Company reserves the right to, where access to and use of the Product, Service and/or Product Support (as applicable) is reinstated, apply a charge (a "Reconnection Charge").

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in any Software, Services, Specification and Documentation belong and shall belong to the Company or its licensors, and the Customer shall have no rights in or to them other than the right to Use them in accordance with the terms of the Agreement.

9.2 The Customer hereby grants to the Company, for the Term, a non-exclusive, royalty-free licence to use, operate, copy, and modify the Customer's Intellectual Property Rights for the purpose only of performing the Company's obligations under the Agreement.

9.3 Subject to clauses 9.4 to 9.8, the Company will indemnify the Customer from and against all Losses sustained or incurred by the Customer as a result of any claim made by a third party that the Use of the Product and/or Documentation provided by the Company under the Agreement, or the provision of any Services by the Company under the Agreement, infringes a third party's Intellectual Property Rights (an "IPR Claim").

9.4 The indemnity in clause 9.3 shall not apply in respect of an IPR Claim where the Customer's acts or omissions as outlined in this clause 9.4 (a) through to (e) prevent the Company from being able to exercise any of its options outlined in clause 9.7:

- (a) the IPR Claim is due to the Customer using the Product and/or Documentation other than in accordance with the terms of the Agreement;
- (b) the Customer is in material breach of the Agreement;
- (c) the Customer has failed to notify the Company in writing of the IPR Claim within 15 Working Days of first knowing or being aware of it;
- (d) the Customer has made an admission of liability in respect of the IPR Claim without the prior written consent of the Company; or
- (e) the Customer has prevented the Company (at the Company's expense) from conducting any litigation and negotiations for settlement of the IPR Claim.

9.5 If the Customer's acts or omissions result in the Company being unable to exercise any of its rights pursuant to clause 9.7 then the Customer shall fully indemnify and hold the Company harmless from and against all Losses sustained or incurred by the Company which might have been avoided but for such act or omission.

- 9.6 The Company shall defend or make settlement of any IPR Claims at its own discretion and cost and the Customer shall give such assistance as the Company may reasonably require (such reasonable costs to be borne by the Company) to defend or settle any such IPR Claims.
- 9.7 In relation to any actual or threatened IPR Claim, the Company may at its sole option and expense:
- (a) procure for the Customer the right to continue using the affected part of the Product and Documentation;
 - (b) modify or amend the Product and Documentation provided that any such modification or amendment does not (in the Company's reasonable opinion) materially adversely affect the capability and functionality of the Product and/or the Documentation; or
 - (c) replace the Product and Documentation (in whole or part) with other software of substantially similar capacity, capability and functionality or equivalent documentation, in which case (where practicable) the Customer shall immediately return to the Company the replaced parts of the Product and/or Documentation and all copies of them or, if so requested by the Company, shall irretrievably erase them from all Customer Host Systems and certify in writing to the Company (in such form as the Company may reasonably require) that they have been so destroyed and erased
- Save for any Losses which may be recoverable under the indemnity provide under clause 9.3, the remedies outlined in this clause 9.7 are the Customer's sole and exclusive remedies in relation to an IPR Claim.
- 9.8 The Company will give the Customer advance notification of the option it intends to pursue under clause 9.7. Following performance by the Company of any of the above options, the Company shall not be liable in respect of any continuing Use by the Customer of the infringing part of the Product and/or Documentation.

10. LICENCE RESTRICTIONS

- 10.1 Without prejudice to the rights and restrictions set herein, any Licence granted under this Agreement permits the Customer to Use the Product, Product Documentation and any Software or Specification for processing the Data solely for its own internal business purposes in the Country of Use and for no other purposes whatsoever (but this does not prohibit remote access to the Product from outside the Country of Use). Without limitation, the Customer shall not permit the Use, implementation, configuration or support of the Product or Product Documentation by any third party, agent or subcontractor, nor shall it use the Product or Product Documentation on behalf of or for the benefit of any third party in any way whatsoever, including for the purpose of operating a bureau, rental or facilities management service. Breach of this clause 10.1 shall void the warranties (and remedies thereto) set out in clause 5.
- 10.2 The Licence referred to in clause 10.1 shall commence from the Agreement Date and shall terminate in accordance with the provisions of clause 8.
- 10.3 The Customer may Use the Product to provide payroll and HR services to an Associated Company and/or Permitted Agent for its own internal business purposes and may also permit the Use of the Product by an Associated Company and/or Permitted Agent in connection with those services (subject always to clause 10.6). Such Use by an Associated Company and/or Permitted Agent shall at no time create a direct contractual relationship between the Company and the Customer's Associated Company and/or Permitted Agent, and any requests or communications must in all cases come directly through the Customer.
- 10.4 The Product may contain modules in addition to those indicated in the Order Document as being licensed to the Customer. These additional modules are not covered by the Licence granted under or pursuant to

the Agreement. The Customer shall not access, copy, or otherwise use these additional modules.

- 10.5 The Licence of the Product is limited to its Use in storing and/or processing Data in relation to the number of Employees and/or Non-employee Records stated in the relevant Order Document (the "Employee Maximum"). The Customer shall promptly notify the Company in the event an increase in the Employee Maximum is sought. Such change shall be recorded on the relevant Contract Document. The Customer acknowledges that the commercial offering is based on, inter alia, the Employee Maximum. The Company may at its discretion conduct an annual audit of the Customer's Use of the system and carry out a true-up process.
- 10.6 Where the Customer exceeds the Employee Maximum and fails to notify the Company of the increase in accordance with clause 10.5, then (without prejudice to the Company's other rights and/or remedies) the Company shall be entitled to charge the Customer for the period commencing from the date that the Employee Maximum was exceeded to the date of notification by the Customer or the date the Company discovers that the Employee Maximum has been exceeded (as applicable). The Company shall be entitled to charge the Customer in accordance with this clause 10.6 at the Company's prevailing rate applicable at the time of notification or discovery.
- 10.7 The Customer shall keep exclusive possession of and control over all copies of the Product (including any Product Documentation) delivered to it or made by it and shall effect and maintain adequate security measures to safeguard them from access or use by any unauthorised person. The Customer's Representatives shall not share passwords which are assigned to individual users of the Software. Each user shall keep their password and log in credentials confidential to themselves.
- 10.8 Except as expressly permitted by any applicable legislation, the Customer may not reverse engineer, reverse compile, disassemble, adapt, modify, or correct any errors in the Product or any part of it.
- 10.9 The Customer shall not (whether itself or through any Associated Company, Permitted Agent, agent or third party):
- (a) copy, sell, transfer, lease, license, sublicense or otherwise deal (in whole or in part) with:
 - (i) the Software, Product Documentation, or the Specification;
 - (ii) any variations, modifications, copies, releases, versions, or enhancements thereof; or
 - (iii) any supporting software.
 - (b) have any supporting or other software or program written or developed for it based on any Confidential Information supplied to it by the Company or its Representatives.
- 10.10 Failure of the Customer to adhere to the provisions contained within this section 10 may constitute a breach of section 9 (intellectual property) and/or section 15 (confidentiality).
- 10.11 This section 10 shall not operate to preclude the use by the Customer of independent individual contractors, who are not direct employees of the Customer, to perform project management and business analysis roles as part of the project of implementing the Product, provided that those contractors:
- (a) first sign a confidentiality agreement with the Company in the Company's standard form; and
 - (b) only Use the Product or the Product Documentation for the purposes of the Customer's project management and/or business analysis.

10.12 Where the Customer intends to use an independent contractor, the Customer shall notify the Company in writing. Upon such notification, if the Company (acting reasonably) determines that the contractor is a competitor of the Company, the Company may reject the Customer's use of the contractor and the Customer hereby agrees not to use the rejected contractor in any capacity which relates to the Company's Product and/or Services.

10.13 Where the Customer engages an independent contractor in contravention clause 10.12 for the purposes of, inter alia, providing implementation services, consultancy services, and/or training services in relation to the Product and/or Services the Company reserves the right, without prejudice to the Company's other rights and/or remedies, to apply a charge equal to that which would have been payable by the Customer had such services been provided by the Company. The Customer accepts and agrees that such charges represent a genuine pre-estimate of loss which shall be payable to the Company, upon demand.

10.14 The Customer shall indemnify the Company from and against any Losses incurred in the event that the Customer breaches the licensing terms as set out in clauses 10.1, 10.7 and 10.9.

11. PRODUCT MAINTENANCE

11.1 The Company shall be responsible for installing Sub-Releases and Fixes in accordance with this MSA and the Service Level Agreement.

11.2 The Company shall amend, replace or add to the Product as may be required to give effect to Legislative Changes and shall make reasonable endeavours to make such amendment from the date when the Legislative Change takes effect, but not further or otherwise.

11.3 In providing Product Support, the Company shall not be obliged to take account of any additions or changes to local or national collective bargaining or similar arrangements whether statutory or otherwise or to any extra-statutory concessions, arrangements or scheme rules which are industry-specific or sector-specific and not applicable to employees in general in a particular jurisdiction. The Company may make a separate annual charge for changes to the "Regulatory Returns" module, if included.

11.4 The Customer shall:

- (a) notify each Software fault through the Company as it arises, and supply the Company upon request with a documented example of such fault;
- (b) co-operate fully with the Company in diagnosing any Software fault;
- (c) not request, permit, or authorise anyone other than the Company or the Company's Representatives to provide any support or maintenance services in respect of the Product;

11.5 The Company shall not be obliged to provide support for any part of the Product which has been installed or implemented by a third party without the prior written consent of the Company, nor shall the Customer be entitled to rely on any of the warranties or remedies set forth herein.

12. PROJECT IMPLEMENTATION & PROFESSIONAL SERVICES

12.1 The parties shall work together (both acting reasonably and in good faith) to ensure the successful installation and implementation of the Software for live use (the "Implementation Project") in accordance with the Agreement which includes, but is not limited to, the Statement of Work. Where Professional Services are procured by the Customer on an Order Document (and such Professional Services are described as being provided on a time and materials basis), the Customer agrees to co-operate with the

Company to ensure that the Professional Services can be carried out within a reasonable time period. Where the Customer decides not to implement a particular module or modules it agrees to pay the Professional Services Charges associated with those modules no later than 12 months from the Agreement Date stated on the relevant Order Document to ensure the Company is not unfairly disadvantaged.

12.2 The Company's project manager and the Customer's project manager will work together to manage the Implementation Project in accordance with the Statement of Work. This will include the scheduling of Professional Services for each party's Representatives to deliver the Implementation Project, which will be subject to approval by the Customer's Project Manager (not to be unreasonably withheld or delayed).

12.3 Charges for cancellation or postponements by the Customer of any Professional Services shall be made pursuant to the following calculations. If the Customer cancels or postpones;

- (a) more than 15 Working Days equals no charge;
- (b) fewer than 15 clear Working Days equals 50% of the relevant Charges; or
- (c) fewer than 5 clear Working Days equals 100% of the relevant Charges.

In each case the calculation is made from the scheduled date of such Professional Services. The Customer accepts and agrees that the fees outlined above represent a genuine pre-estimate of loss which shall be payable to the Company, upon demand.

12.4 The Customer's Project Manager will be responsible for managing the Customer's contribution to the Implementation Project. The Customer shall at no cost to the Company:

- (a) provide all the Company's Representatives when at the Customer's Site with such facilities, equipment and media as may be reasonably necessary for the provision of the Professional Services;
- (b) provide appropriately qualified and experienced staff in sufficient numbers to fulfil the Customer's tasks as part of the Implementation Project;
- (c) ensure that its staff co-operate fully with the Company's Representatives;
- (d) promptly provide the Company's Project Manager and the Company's Representatives with such information and documents as they may reasonably request, including making decisions on the Implementation Project without undue delay; and
- (e) ensure that Stage Gate Acceptance Forms are signed off without undue delay.

12.5 Once the Company has completed its performance of any Professional Services the Customer shall (if it so requires) have a period of ten [10] Working Days (an "Acceptance Period") to review and sign-off any Activity Report provided by the Company.

12.6 If the Customer does not raise any objections, issues, or concerns in respect of the performance of the Professional Services during the Acceptance Period, the Customer will:

- (a) be deemed to be satisfied with and otherwise to have accepted such Professional Services; and
- (b) not be entitled to raise them subsequently (or to claim any breach of warranty under clause 5 or otherwise). For the avoidance of doubt, this clause is not intended to prevent the Customer from accessing remedies available under Product Support.

Notwithstanding the foregoing, the Company may, at the request of the Customer, provide a remedy as detailed in clause 5.3 where the Customer has not raised the relevant objections, issues or concerns

within the Acceptance Period. In such circumstances, where the Company provides a remedy, the Customer agrees to pay on demand any additional fees, expenses and costs associated with providing such remedy to the extent that the Company has incurred such.

13. CHANGE CONTROL

- 13.1 During the Implementation Project, either party shall be entitled to request a change to the Services by notifying the other party of such change (a "Change Control Request"). Performance of any Change Control Request may be subject to additional Charges, including (where applicable), an administration charge.
- 13.2 The Change Control Request shall be considered carefully and in good faith. Where the parties agree a particular change, they shall execute a Change Control Form formally recording the terms and details of the change. Until such Change Control Form is validly executed by both parties, the parties' obligations shall remain as set out in the then current versions of the applicable Contract Document.
- 13.3 The details of Product Support and the provisions thereof may be amended at any time by the Company upon ninety [90] days' written notice by the Company to the Customer, provided that such amendment does not materially reduce the level of Product Support provided.
- 13.4 The Customer accepts and agrees that the Services associated with the Implementation Project shall be restricted to those contained within the Statement of Work, or other subsequently agreed Contract Document. Services which are out of scope will be managed in accordance with this section 13 and may be chargeable.

14. THIRD PARTY PRODUCT TERMS

- 14.1 The Customer accepts that Third Party Products are licensed in accordance with the Agreement and the relevant third party terms and conditions as found online by the relevant Third Party Provider.
- 14.2 The licence of the Third Party Product shall commence on delivery of the Third Party Product and shall continue until it terminates in accordance with the Agreement.
- 14.3 The Company licences the Third Party Products to the Customer only for Use in conjunction with the Product licensed by the Company. The Customer shall:
 - (a) only Use the Third Party Products in conjunction with such Product; and
 - (b) in its Use of the Third Party Products, comply with any obligations and restrictions applicable to such Product under the Agreement as if such obligations and restrictions also referred to such Third Party Products.
- 14.4 To the extent it is able to do so, the Company shall pass on to the Customer the benefit of any warranty given by the relevant Third Party Provider in relation to the Third Party Product and Third Party Product Maintenance Services.
- 14.5 The Company shall be entitled to pass on to the Customer by way of an increase in the Third Party Product licence charge or Third Party Product maintenance charge any price or cost increases imposed on the Company by a Third Party Provider. The Company shall provide the Customer with notice in writing of any such increase.
- 14.6 The provision of maintenance and support services by the Company for any Third Party Product is limited to that described in the Order Document and in this clause 14.

- 14.7 Queries and requests for support and maintenance relating to a Third Party Product may where the Company is unable to resolve the issue, be referred to the relevant Third Party Provider. The Company shall keep the matter open until such time as a resolution has been found or the parties agree, acting reasonably and in good faith, that no resolution can be found.
- 14.8 The Customer will indemnify the Company from and against any Losses (including claims from any Third Party Provider) suffered or incurred by the Company in connection with any failure by the Customer to comply with the terms and conditions referred to in clause 14.1.

15. CONFIDENTIALITY

- 15.1 Each party may receive from the other party Confidential Information of the other party and neither party shall use, copy, or disclose any Confidential Information to any third party without the other party's prior written consent.
- 15.2 Nothing in clause 15.1 shall prevent either party from disclosing Confidential Information to such of its Representatives that require access to the Confidential Information in the performance of that party's obligations, provided that such Representatives are contractually bound not to disclose the same. Notwithstanding the foregoing, where the Customer wishes to disclose any of the Company's Confidential Information to a Customer sub-contractor or agent, the Customer shall first notify the Company in writing. Where the Company (acting reasonably) considers such sub-contractor or agent to be a competitor of the Company, the Company may reject the disclosure of such Confidential Information and the Customer hereby agrees not to disclose such Confidential Information.
- 15.3 Without prejudice to clause 15.1, the Software, Services, Documentation, Specification and any information, data, specifications, source or object codes which the Company may from time to time impart to the Customer or its Associated Companies are proprietary and confidential to the Company (or its suppliers or licensors), and the Customer shall keep them confidential in accordance with clause 15.1.
- 15.4 Each party shall indemnify the other from and against any Losses suffered or incurred by the other as a result of a breach by the first party of its obligations under this clause 15.
- 15.5 The restrictions in clause 15.1 and 15.3 shall not apply to:
- (a) items which were already in the possession of the party concerned before disclosure (except as a result of a breach of a Contract Document or any other agreement);
 - (b) items obtained from another source which is free to disclose the same;
 - (c) items which are in the public domain (except as a result of a breach of any Contract Document or any other agreement);
 - (d) the compiling and copying of elements of the Data (which do not, taken together, comprise personal data or allow for the Customer or its employees to be identified) by the Company for the purposes of collating aggregated data or statistics for research purposes; or
 - (e) information disclosed in accordance with clause 15.6.
- 15.6 The following provisions shall apply where the Customer is subject to the provisions of the Freedom of Information Act 2000 ("FOIA"):
- (a) the Company shall provide reasonable assistance to enable the Customer to comply with any request received under the FOIA;

- (b) in the event that any request made under the FOIA relates to the Company, the Product, the Charges, or any other matter which falls under the auspices of the Agreement, the Customer shall consult with the Company prior to disclosure;
- (c) if the Company objects to the disclosure of any information falling within the scope of clause 15.6(b), it shall notify the Customer of its objection within three Working Days of being consulted under clause 15.6(b) setting out in reasonable detail why the Customer should not provide the information requested; and
- (d) in relation to all other information the Customer shall have the discretion to determine the question of disclosure having consulted with the Company in accordance with clause 15.6(c).

15.7 Upon termination of the Agreement, both parties shall, at the request of the other, either return, destroy or delete the other party's Confidential Information and supply written evidence of the same.

16. DATA PROTECTION

16.1 With respect to the parties' rights and obligations under the Agreement, the parties acknowledge that, for the purposes of the Data Protection Legislation, the Company is the processor and the Customer is the controller in respect of any personal data processed by the Company pursuant to the Agreement. The Order Document sets out the scope, nature, and purpose of processing by the Company, the duration of the processing and the types of personal data and categories of data subject.

16.2 Each party shall comply with all applicable requirements of the Data Protection Legislation in respect of personal data. This clause 16 is in addition to, and does not relieve, remove, or replace, a party's obligations under the Data Protection Legislation.

16.3 Without limiting the generality of the foregoing, the Company shall:

- (a) Process the personal data only on behalf of the Customer, only for the purposes of performing the Agreement and only in accordance with the Customer's documented data controller instructions from time to time, unless required to do so by the law, in which case it will inform the Customer of that legal requirement before processing, subject to any legal requirement prohibiting such notification. The Customer's documented instructions include any tasks attributed to the Company in a Service Level Agreement;
- (b) Only transfer personal data to a third country or international organisation, on the instruction of the data controller (Customer) or with the data controller's authorisation;
- (c) Ensure that only personnel that are authorised by the Company to have access to personal data, have been properly trained and appropriately vetted and have committed themselves to confidentiality in respect of the personal data and are made aware of the Company's obligations hereunder;
- (d) Taking into account the nature of the processing implement and take such measures in relation to the security, confidentiality, availability, and integrity of the personal data as are required of it by the Data Protection Legislation and this Agreement;
- (e) Observe and comply with the requirements of the Data Protection Legislation with regard to the engagement of, and responsibility for, sub-processors;
- (f) Taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests by data subjects to exercise their rights under the Data Protection Legislation (including the right to transparency and information, the data subject access right, the right to rectification and erasure, the right to the restriction of processing, the right to data portability and the right to object to processing). Where notification of the exercise of such rights is given to the

Company, the Company shall notify the Customer without undue delay, but in any case, within 5 days of the request;

- (g) Taking into account the nature of the processing and the information available to the Company, assist the Customer in carrying out its obligations under the Data Protection Legislation with respect to security, breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators. Any such assistance required from the Company (by the Customer) in relation to a breach of Data Protection Legislation by the Customer, shall be chargeable by the Company at the then prevailing rates;
- (h) Make available to the Customer information that demonstrates its compliance with appropriate Data Protection Legislation and this clause 16, in relation to its obligations as a processor;
- (i) Notify the Customer without undue delay but in any event within 48 hours, after becoming aware of a Data Incident.

16.4 If the Company notifies the Customer that, in its opinion, an instruction infringes any applicable Data Protection Legislation, or is of the opinion that an instruction to process personal data is for purposes other than the performance of the relevant Agreement, it will consult with the Customer as soon as reasonably possible. If the Company, after consultation is of the same opinion, it will not be obliged to follow that instruction.

16.5 The Company acknowledges that the personal data belongs to the Customer.

16.6 The engagement of any sub-processor named in the Order Document or other Contract Document for the purposes stated therein is authorised by the Customer and such shall be a general written authorisation for the purposes of the Data Protection Legislation in relation to the purpose for which the sub-processor is engaged.

16.7 Where a sub-processor ceases to trade, becomes insolvent or is in breach of the Data Protection Legislation, the Company may change that sub-processor without reference to the Customer provided that:

- (a) it notifies the Customer as soon as practicable and in any event prior to the processing being undertaken;
- (b) the replacement sub-processor is reputable and of such size and standing as to be able to fulfil its obligations to the Company without difficulty; and
- (c) where requested by the Customer the Company shall provide a summary of the findings of due diligence undertaken in respect of the replacement sub-processor.

16.8 If the Customer objects to the change pursuant to clause 16.7 it may terminate the relevant Agreement (or where practicable, that part of it dealing with the relevant services) on the provision of 6 months' notice and (unless it can show that the objection was objectively reasonable in the circumstances) subject to the payment, prior to the expiry of that notice, of all outstanding charges for the balance of the Agreement Term.

16.9 Provided that the Company only undertakes the following activities on an aggregated basis using anonymised data which cannot be linked back to the Customer or any individual, nothing in this clause 16 shall restrict or prevent the Company from recording, retaining and using for monitoring, Product improvement, user-experience improvement, statistical analysis or marketing purposes:

- (a) any information derived from the Customer or its Representatives access to and use of any Software or Services; or
- (b) any information or data stored or processed using the Software or Services.

16.10 Subject to clause 3.1 (c) the Company shall permit the Customer (or a third party authorised by it), to carry out data protection audits and inspections of the Company.

16.11 Without limiting the generality of the foregoing, the Customer shall:

- (a) ensure that it, and its Associated Companies, comply with the Data Protection Legislation and all applicable codes of practice in respect of the personal data from time to time, including in its role as a controller and in supplying or making available to the Company any personal data for Processing by the Company in performance of its obligations under the Agreement; and
- (b) not instruct the Company to process personal data for purposes other than the performance of the Agreement.

16.12 The Customer warrants to the Company that:

- (a) it has all necessary appropriate legal basis and notices in place to enable the lawful transfer of personal data to the Company for the duration and purposes of the Agreement.
- (b) all personal data provided to the Company pursuant to the Agreement will be, to the best of its knowledge, accurate and complete in all material respects, and that the Customer is entitled to provide the same to the Company without recourse to any third party; and
- (c) the personal data does not and shall not, so far as it is aware, infringe the rights of any third party.

16.13 The Customer acknowledges that the Company is reliant on the Customer for direction as to the extent that the Company is entitled to use and process personal data and that such direction will be set out in the Order Document.

16.14 If either party breaches its obligations under this clause 16 or the Data Protection Legislation it shall indemnify the other from and against any resulting Losses.

16.15 Where it is determined that both the Company and the Customer are involved in the same processing of the data and are jointly and severally liable under Article 82 paragraphs 2 and 3 for damage caused by the processing; no settlement in relation to that damage shall be made without first consulting the other party.

16.16 Upon expiry of the Agreement Term (or early termination however so arising) of the Agreement the Customer shall, within 5 working days of receipt of a request from the Company, provide written instruction to the Company in respect of the return and/or deletion of the data that has been processed under the Agreement. Upon receipt of such instruction the Company shall promptly comply and either:

- (a) provide a copy of the Customer's data as an Oracle export (unless otherwise agreed as part of the exit process and charges) and then securely delete the Customer instance and the data within it; or
- (b) securely delete the Customer instance and the data within it.

16.17 The Company shall upon completion of the deletion of the data provide a certificate of destruction to the Customer.

16.18 Where a Customer fails to return the instruction or collect the data extract after a period of 30 days the Company shall delete the Customer's instance and the data within. The Customer warrants that it shall not hold the Company liable for any breach of the Data Protection Legislation or any losses incurred through its failure to provide the instruction at clause 16.16.

17. REPRESENTATIVES

17.1 Each party shall take reasonable precautions to ensure the health and safety of the other party's Representatives while such Representatives are at its premises, and to ensure that its own Representatives observe the other party's safety rules and procedures (as provided by each party to the other) while such Representatives are on the other party's premises.

- 17.2 If the employment of any employee of the Customer or any third party is deemed to transfer to the Company by operation of the Transfer Regulations (a “Transferring Employee”), then the Customer shall be liable for and shall indemnify the Company from and against:
- (a) all wages, bonuses, benefits, holiday pay, employment benefit costs, redundancy costs and unfair dismissal or discrimination awards and costs in respect of the Transferring Employee and all Losses relating directly or indirectly to the terms and conditions of employment, pensions and life assurance arrangements, health, welfare or any other matters concerning the Transferring Employee or any other claims which the Transferring Employee may have against the Customer or any third party in respect of any period before the transfer of the employment of the Transferring Employee to the Company;
 - (b) all claims arising out of any breach by the Customer, the Company or any third party of the Transfer Regulations in respect of any Transferring Employee; and
 - (c) all payments (including redundancy and unfair dismissal or discrimination payments or awards) which the Company may be obliged to make to the Transferring Employee together with all costs (including legal costs) in the event of the dismissal by the Company of the Transferring Employee following the transfer of the employment of the Transferring Employee to the Company.

18. COMPLIANCE WITH CONTRACT DOCUMENTS

- 18.1 The Company shall be entitled to take reasonable steps to verify and confirm that the Customer's use of any Software and/or Services complies with the Customer's obligations under any Contract Documents in relation to such use (including that the Customer is only using any Software to the extent it is licensed to do so) and the Customer agrees to provide the Company with reasonable co-operation and assistance to do so.
- 18.2 Where such reasonable steps include an audit to take place at the Customer's site, the Company shall provide the Customer with reasonable prior notice and the audit shall take place within Normal Working Hours on a Working Day. The Customer agrees (at its cost) to cause its Representatives to co-operate fully with the Company or its appointed third-party auditor(s).

19. FORCE MAJEURE

- 19.1 In this clause 19, the expression “Force Majeure” shall mean an event which is beyond the control of an affected party and which such party could not anticipate or mitigate by means of insurance, contingency planning or any other prudent business means. Any event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default, or other failure to take reasonable precautions of the affected party, its agents, employees, or contractors. Industrial dispute or action shall not give rise to an event of Force Majeure.
- 19.2 No party shall in any circumstances be liable to the other party for any Losses suffered by the other party by reason of any failure or delay in the performance of its obligations under a Contract Document which is due to Force Majeure. Notwithstanding the foregoing, each party shall use reasonable endeavours to continue to perform, or resume performance of, such obligations for the duration of such Force Majeure.
- 19.3 If either party is unable to perform its obligations under a Contract Document due to Force Majeure for a consecutive period of more than three months the other party may terminate such Contract Document by notice in writing and the provisions of clause 8.4 shall apply.
- 19.4 For the avoidance of doubt, neither party considers any variant of COVID-19 (otherwise referred to as SARS-CoV-2) which is in existence at the Agreement Date as constituting a Force Majeure event.

20. ANTI-BRIBERY AND ANTI-SLAVERY

20.1 Each party shall:

- (a) comply with all applicable laws, statutes, regulations, codes, and guidance relating to anti-bribery and anti-corruption ("Anti-bribery Laws"), including the Bribery Act 2010;
- (b) not do, or omit to do, any act that will cause the other party to be in breach of the Anti-bribery Laws;
- (c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Agreement;
- (d) maintain throughout the term of the Agreement its own anti-bribery policies and procedures to ensure compliance with the Anti-Bribery Laws, provide a copy of such policies and procedures to the other party on request, and enforce such policies and procedures where appropriate.

20.2 Each Party shall:

- (a) comply with all applicable laws relating to anti-slavery including the Modern Slavery Act 2015 ("Relevant Requirements");
- (b) not engage in any activity, practice, or conduct which would constitute an offence under the Modern Slavery Act 2015 if such activity, practice, or conduct had been carried out in the United Kingdom;
- (d) have and maintain in place throughout the Term its own policies and procedures, including adequate procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.

20.3 Breach of this section 20 shall be deemed a material breach of the Agreement.

21. WAIVER

- 21.1 Failure or neglect by either party at any time to enforce any of the provisions of a Contract Document shall not be construed as, neither shall it be deemed to be, a waiver or abandonment of the respective rights of that party nor in any way affect the validity of the whole or any part of a Contract Document nor prejudice that party's rights to take subsequent action.

22. SEVERABILITY

- 22.1 If any limitation or provision contained in a Contract Document shall be determined invalid, unlawful, or unenforceable it shall be severed from the remainder of a Contract Document which shall continue to be valid to the extent permitted by law.

23. ASSIGNMENT AND THIRD PARTY RIGHTS

- 23.1 The Company shall be entitled to assign the benefit (subject to the burden) of the Agreement to a company which succeeds to the business of the Company as a result of any internal reorganisation reconstruction or amalgamation of the Company or any group of companies of which the Company from time to time forms part.
- 23.2 Where the Customer is a statutory authority or agency, it shall be entitled to assign the benefit (subject to the burden) of the Agreement to anybody which by law shall succeed to the functions of the Customer.
- 23.3 Save as provided for in clauses 23.1 or 23.2, neither party may assign, novate, sub licence or otherwise transfer a Contract Document or any rights or obligations under it whether in whole or in part, without the

written consent of the other party (such not to be unreasonably withheld or delayed).

- 23.4 Each Contract Document shall be enforceable by the original parties to it and by their successors in title and permitted assignees.
- 23.5 Save as set out in the relevant Third Party Product terms and conditions, no person may enforce the terms of a Contract Document pursuant to the Contracts (Rights of Third Parties) Act 1999 (or any successor legislation).

24. ENTIRE AGREEMENT

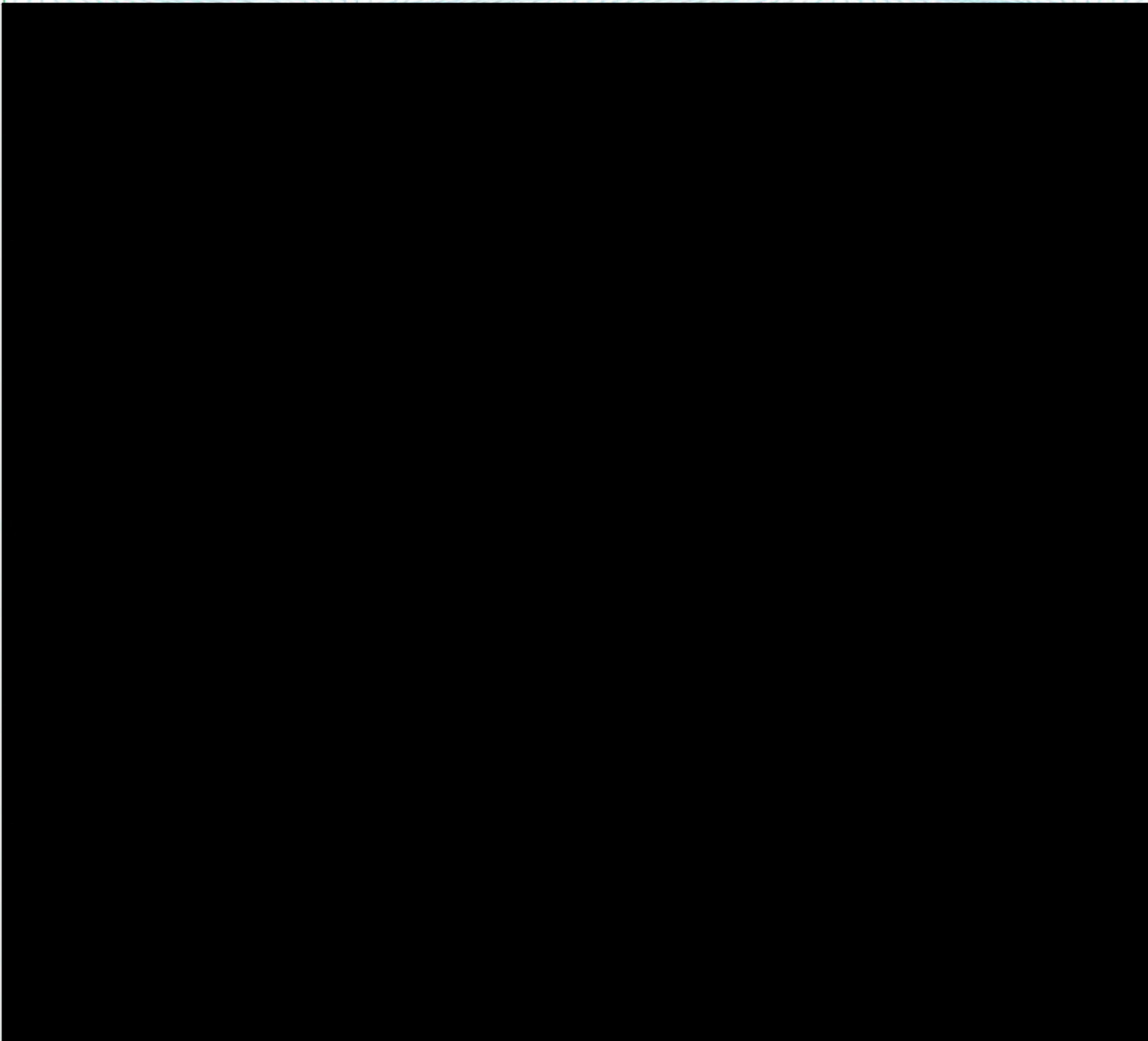
- 24.1 The Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in that Agreement and supersedes cancels and nullifies any previous agreement between the parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 24.2 Each of the parties acknowledges and agrees that in entering into the Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement as a warranty. The only remedy available to it for breach of the warranties will be as set out in the Agreement.

25. GENERAL, NOTICES AND COMMUNICATIONS

- 25.1 Any terms and conditions contained within the Customer's form of order shall be superseded by the terms of the Agreement.
- 25.2 Any variation of the Agreement shall only be binding if it is in writing and signed by the Authorised Representative of each party.
- 25.3 The Customer will procure that its Associated Companies, Permitted Agents and agents comply with any restrictions on the Customer under the Agreement as if they were a party to the Agreement. The Customer shall be liable for the acts and omissions of its Associated Companies, Permitted Agents and agents as if they were the acts and omissions of the Customer.
- 25.4 Any notice required or permitted under the terms of a Contract Document or required by law shall be in writing (in English) and shall either be delivered in person, sent by first class mail, or air mail, to the Authorised Representative of the party to whom the notice is being given at the address stated in this MSA (It shall be deemed to have been given upon delivery (if delivered in person), or otherwise 48 hours after having been posted or by email (and in the case of notices sent to the Company, to the email address detailed in the Order Document for the attention of the Company Secretary), and for the purposes of clause 16, to the data protection officer or designated data protection lead via email after an initial verbal notification. For the avoidance of doubt, this clause 25.4 shall not apply to the serving of any documents pertaining to legal proceedings.
- 25.5 Each party warrants that it has the right, power, and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

26. LAW AND DISPUTE RESOLUTION

- 26.1 If any non-contractual dispute, or any dispute between the parties about either the interpretation of the provisions of the Agreement or the performance by either of the parties of its obligations under the Agreement cannot be resolved at an operational level, upon the written request of either party, each party will within 3 Working Days after the date of service of such written request appoint a designated representative (being a senior member of staff of the party who does not devote a substantial part of his time to the operation or performance of the Agreement) who will meet with the equivalent representative of the other party to endeavour to resolve such dispute subject to the further provisions of this clause 26. Nothing in this clause 26 will prevent either party from seeking injunctive or interlocutory relief or interlocutory remedies from the Courts in relation to any dispute.
- 26.2 In any attempt to resolve a dispute in accordance with clause 26.1:
- (a) designated representatives will meet as often as the parties reasonably deem necessary to gather and exchange all information regarding the matter in issue which the parties believe to be relevant to its resolution;
 - (b) such representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceedings;
 - (c) during the course of such negotiation, all reasonable requests made by one party to the other for information will be honoured so that each party may be fully advised of the relevant facts. The specific format for such discussions will be left to the discretion of the relevant representatives.
- 26.3 If at any time when the parties are endeavouring to resolve any dispute in accordance with clauses 26.1 and 26.2, the parties agree that the dispute should be resolved by mediation, or if a period of fifteen [15] Working Days has expired since the service of a written request in accordance with clause 26.1 and either party gives the other notice in writing requiring the dispute to be so referred, the parties shall refer the dispute to a mediator.
- 26.4 If within five [5] Working Days of the decision pursuant to clause 26.3 to appoint a mediator or the parties are unable to agree on the mediator to be appointed, then the mediator shall be determined by the Centre for Effective Dispute Resolution (CEDR).
- 26.5 As of the date of the last signature hereto, the formation, existence, construction, performance, validity, and all aspects whatsoever of each Contract Document shall be governed by the laws of England and Wales. The courts of England and Wales have exclusive jurisdiction to settle any disputes arising out of or in connection with any Contract Document.



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