



Master Services Agreement

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FIRST TECHNOLOGY HOLDINGS LTD
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INTRODUCTION

The Service Provider and the Customer have agreed that the Service Provider will provide Services to the Customer on a non-exclusive basis and on the terms and conditions set out in this Agreement and any applicable Scope of Work.

1. DEFINITIONS

1.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:

- 1.1.1 **“Agreement”** means this master services agreement and all Scope’s of Work concluded between the Parties, as may be amended by the Parties from time to time in writing;
- 1.1.2 **“Affiliate”** means any subsidiary of a Party or any subsidiary of a holding company or any entity that controls, is controlled by or is under common control with, either Party. The terms “subsidiary” and “holding company” will have the meaning assigned to them in Chapter 1 of the Companies Act, 2008. For the purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity through the ownership of voting securities representing 50% (fifty percent) plus 1 (one) of the possible votes;
- 1.1.3 **“Applicable Laws”** means all relevant statutes, subordinate legislation, common law, regulations, ordinances, by laws, directives, codes of practice, circulars, guidance or practice notices, judgments, decisions, standards and similar provisions which are prescribed, adopted, made, published or enforced by any competent court or regulatory or other authority, or any local, provincial or national governmental authority, body or department or any inter-governmental or supra national organisation or any self-regulatory authority, body or organisation; and compliance with which is (or was or will be, at the relevant time referred to in this Agreement) mandatory for either Party, as the case may be;
- 1.1.4 **“Bespoke Intellectual Property”** means the intellectual property in all deliverables and developments resulting from the Services which are exclusively developed for the Customer pursuant to this Agreement and which are identified as Bespoke Intellectual Property in the relevant Scope of Work, including all documents, information, data, plans, investigation schedules, working papers, diagnostic models, methodologies, reports or the like customised, developed or used by the Service Provider exclusively for the Customer and supplied or delivered to the Customer. For the purpose of clarity, this term excludes any Service Provider background, pre-existing, or third party Intellectual Property existing as at Signature Date;
- 1.1.5 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in terms of the laws of the England and Wales;
- 1.1.6 **“Confidential Information”** means all information (written, oral or electronic) disclosed by a Party to the other Party whether before or after the Signature Date and concerning the business affairs of the disclosing Party including but not limited to any information relating to that Party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers and shall include this Agreement;
- 1.1.7 **“Service Provider”** means **First Technology Holdings Ltd**, Customer Number: **13712088**, a company duly incorporated in accordance with the laws of England, whose business address for the purposes of this Agreement is **49 East End Cholsey, Wallingford, OX10 9 RT, United Kingdom**;
- 1.1.8 **“Customer”** means the person who requires the Services of the Service Provider and concludes a Scope of Work with the Supplier for the provision of the same;

1.1.9	“Commencement Date”	means the date on which provision of the Services will first occur as set out in the applicable Scope of Work;
1.1.10	“Completion Date”	means the date on which the provision of the Services will be completed by the Service Provider as set out in the applicable Scope of Work;
1.1.11	“Effective Date”	means the date on which the Service Provider first provides Services to the Customer, being the date on which this Agreement will be deemed to be of full force and effect, notwithstanding the Signature Date.
1.1.12	“Intellectual Property”	means, without limitation, all patents, trademarks, designs, design rights, copyright (including all copyright in any designs and computer software), source codes, proprietary material, know-how, ideas, concepts, trade secrets, methods, techniques, rights in databases, confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, rights in the nature of any of the aforesaid items in any country or jurisdiction and all applications and rights to apply for protection of any of the same;
1.1.13	“Invoice”	means the original tax invoice prepared by the Service Provider reflecting the Service Fees to be paid by the Customer to the Service Provider and which invoice conforms to this Agreement and the provisions of the VAT Act;
1.1.14	“Member of Staff”	means any person who, during the currency of this Agreement is or was a member of staff/employee of the Service Provider and/or an independent contractor contracted by the Service Provider and/or in any way directly or indirectly involved in the delivery of the Services and/or any ancillary or incidental services provided in terms of this Agreement;
1.1.15	“Parties”	means, collectively, the Service Provider and the Customer, and “Party” shall mean any one of them as the context may require;
1.1.16	“Prime Rate”	means the prime interest rate (expressed as a % per annum, compounded monthly) from time to time published by the Service Provider’s bankers being First National Bank Limited, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove;
1.1.17	“Scope of Work”	means a document setting out those Services required by the Customer and to be performed by the Service Provider;
1.1.18	“Services”	means those services to be provided to the Customer by the Service Provider from time to time, and as more fully detailed in the relevant Scope of Work;
1.1.19	“Service Fees”	means the agreed amounts payable by the Customer to the Service Provider for the Services rendered, and as more fully set out in the relevant Scope of Work;
1.1.20	“VAT”	means value added tax in terms of the VAT Act or any similar tax or impact of a similar nature on the supply or sale of goods and/or Services;
1.1.21	“VAT Act”	means the Value Added Tax Act 1994, as amended, of England and Wales.

2. INTERPRETATION

2.1 In this Agreement:

- 2.1.1 Words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.
- 2.1.2 References to a "**person**" include any natural person, firm, company, corporation, legal entity, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) or two (2) or more of the foregoing.
- 2.1.3 References to clauses, paragraphs, schedules or annexes are, unless otherwise stated, references to clauses, paragraphs, schedules or annexes (as the case may be) of or to this Agreement.
- 2.1.4 The word "including" and its other grammatical forms shall not limit the general effect of the words which precede and shall be construed without any limitation.
- 2.1.5 A reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated.
- 2.1.6 Any notice required to be given under this Agreement shall be deemed to be a notice in writing.
- 2.1.7 Any reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it, in each case, as modified, consolidated or re-enacted.
- 2.1.8 Any reference to "**month**", "**monthly**", "**year**" and "**yearly**" and any other references in time shall be construed by reference to the Gregorian calendar.
- 2.1.9 Any reference to "**day**" or "**daily**" shall be construed as a reference to a calendar day.
- 2.1.10 The head notes to the clauses to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.1.11 If any provision in clause 1 above is a substantive provision conferring rights or imposing obligations on a Party then, notwithstanding that such provision is contained in this clause 1, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 2.1.12 When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusively of the last day.
- 2.1.13 No provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

2.2 Priority and Precedence

If there is any conflict, ambiguity or inconsistency between any parts of this Agreement the following order of precedence shall apply from the Signature Date:

- 2.2.1 This Agreement; then
- 2.2.2 The Scope of Work.

3 ENGAGEMENT

- 3.1 In situations where the Customer requires Services from the Service Provider, the Parties shall formulate and conclude a Scope of Work in relation to the relevant Services. Once accepted, each Scope of Work shall be deemed to form an indivisible part of this Agreement as if it were fully incorporated into the body of this Agreement and shall include all of the terms, conditions and provisions in this Agreement mutatis mutandis, provided that the provisions of each Scope of Work shall not apply to any other Scope of Work, unless otherwise specified in such Scope of Work.
- 3.2 The Service Provider hereby agrees to perform the Services for the Customer, as agreed between the Parties and more fully set out in any agreed to Scope of Work, and on the terms and conditions contained in this Agreement;

3.3 ENABLING AGREEMENT

- 3.3.1 This Agreement constitutes a *stipulatio alteri* in favour of the Affiliates of the Parties, which is capable of acceptance by such Affiliate through the conclusion of a Scope of Work, and each such Scope of Work will clearly

indicate that it is concluded pursuant to this Agreement;

3.3.2 Each Party shall be entitled to engage with Affiliates of the other Party under this Agreement, provided that the applicable Party concludes a Scope of Work with the other Party's Affiliate in relation to the specific Services, and upon conclusion of a Scope of Work:

3.3.2.1 each Affiliate will be entitled to any benefits or rights recorded herein;

3.3.2.2 each Affiliate's responsibility for any obligation in a Scope of Work shall strictly be limited to the Scope of Work actually concluded by such Affiliate and shall not extend to any other Affiliate;

3.3.2.3 Once a Party's Affiliate has concluded a Scope of Work, that Party warrants that all rights and obligations emanating from this Agreement will be valid and binding on that Party's Affiliate as if they are parties to this Agreement.

3.3.3 Accordingly, this Agreement shall apply to Services rendered by the Service Provider or Service Provider Affiliate to Customer or to an Affiliate of the Customer, in each instance where the Parties as identified in the Scope of Work have concluded a Scope of Work. Where appropriate, all references to the "Customer" and the "Service Provider" in this Agreement shall be a reference to the Customer Affiliate and/or Service Provider Affiliate which has concluded a Scope of Work

4 DURATION

4.1 This Agreement shall come into effect on the Effective Date and shall endure indefinitely unless and until terminated in accordance with clause 11 below.

4.2 Each individual Scope of Work shall come into effect on the Commencement Date specified in the relevant Scope of Work and continue until the Completion Date specified in the Scope of Work, unless terminated in accordance with the provisions of the Scope of Work or in terms of clause 11.2 below.

5 SERVICE PROVIDER DUTIES

5.1 The Service Provider shall work with the Customer representative, as specified in the relevant Scope of Work, to perform the Services and in accordance with the following;

5.1.1 To work on the Customer's project specified in the Scope of Work ;

5.1.2 To ensure coordination of all the Services to be performed and to communicate on a regular basis with the relevant Customer representative(s);

5.1.3 To guide the Services in respect to content and quality of output, and ensure fulfilment of that which has been agreed to in the Scope of Work;

5.1.4 To ensure the delivery of those specific deliverables as detailed in the Scope of Work; and

5.1.5 To provide electronic copies of all working materials structured in a manner that can be passed onto the Customer as a project workbook (where applicable and specifically included in the Scope of Work).

5.2 As part of the Services to be performed, the Service Provider shall also be required to:

5.2.1 Provide regular verbal and/or written reports to the Customer representative when required to do so;

5.2.2 Meet with the Customer representative, when requested to do so from time to time;

5.2.3 Provide guidance on deliverables, iterations, and milestones;

- 5.2.4 Assist the Customer, to the best of the Service Provider's ability, with all problems and questions and other matters which it may refer to the Service Provider from time to time in connection with the Scope of Work;
- 5.3 The Service Provider shall at all times for the duration of the Agreement perform all of its obligations under this Agreement strictly in accordance with:
 - 5.3.1 Good industry practice;
 - 5.3.2 The service levels (if any) as outlined in the Scope of Work;
 - 5.3.3 All Applicable Laws;
 - 5.3.4 All lawful and reasonable directions of the Customer;
 - 5.3.5 Any applicable and reasonable policies of the Customer as provided to the Service Provider in writing;
 - 5.3.6 The terms and conditions of this Agreement.
- 5.4 For the duration of this Agreement, the Service Provider shall:
 - 5.4.1 Perform the Services with due care and diligence, in a professional manner and in accordance with the Scope of Work and this Agreement;
 - 5.4.2 Exercise the skill required of a reasonable person in the same position of the Service Provider in performing the Services.

6 OBLIGATIONS OF THE CUSTOMER

- 6.1 The Customer shall –
 - 6.1.1 Timeously make available to the Service Provider all relevant information and data at the Customer's disposal which is reasonably required by the Service Provider for the performance of the Services;
 - 6.1.2 Authorise the Service Provider to act on its behalf for such purposes as the Customer deems necessary for the Service Provider to complete the Services; and
 - 6.1.3 Nominate a person ("the Customer representative") to represent it in the Customer's dealings with the Service Provider.
- 6.2 The Customer accepts that should the Service Provider be required to install any software and accept any associated software license terms on behalf of the Customer as part of the Services, then any such installation and acceptance by the Service Provider shall be deemed to have been installed and accepted by the Customer notwithstanding that the Service Provider may have installed or accepted the same on the Customer's behalf.
- 6.3 The Customer representative shall have the full legal capacity and authority to bind the Customer to the Service Provider in relation to this Agreement and/or any applicable Scope of Work.
- 6.4 The Customer shall procure any and all tools, deployment tools, hardware, software, and software licenses that the Service Provider reasonably requires the Customer to possess in order to adequately perform its obligations in terms of any Scope of Work, which shall be the sole responsibility, and for the account, of the Customer.
- 6.5 The Service Provider will not be liable for any damage suffered by the Customer as a result of any services undertaken by third parties. The Customer will, in addition, be liable for any remedial or additional services which the Service Provider is required/requested to perform as a result of services undertaken by third parties.

- 6.6 Unless otherwise agreed to in the applicable Scope of Work to form part of the Services, it shall at all times be the responsibility of the Customer to have adequate disaster recovery and data back-up systems in place and to maintain these systems. The Service Provider shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate disaster recovery and data back-up systems.
- 6.7 Unless otherwise agreed to form part of the Services as set out in the applicable Scope of Work, it shall at all times be the responsibility of the Customer to have adequate security and anti-virus systems in place and to maintain these systems. The Service Provider shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate security and anti-virus systems, including but not limited to, cyber-attacks caused by (i) Malware - such as adware, botnets, ransomware, rootkits, spyware, trojan horse, viruses/worm; (ii) Social engineering – such as phishing, deceptive phishing, pharming, spear phishing, whaling, vishing, pretexting, baiting, quid pro quo; (iii) Password attacks – such as guessing attacks, brute force attacks, dictionary attacks, rainbow attacks, stealing attacks, hybrid password attacks, birthday attack; (iv) Denial-of-Service – such as distributed denial-of-service attacks, denial-of-service attacks; (v) Data breaches – such as data breaches caused by negligence, lost/stolen devices, hacked infrastructure and/or services due to insecure configurations and/or unpatched vulnerabilities; (vi) Missing/incomplete documentation (policies, processes, procedures); (vii) Lack of existing user education/training/awareness.
- 6.8 At all times it shall be the responsibility of the Customer to ensure compliance with its own internal policies and procedures (including, but not limited to, corporate governance, due diligence, risk management, framework assessments, infrastructure assessments, self-assessments, audit compliance, and compliance reports) as well as any Applicable Laws applicable to the Customer. Should the Customer require assistance in this regard, the Service Provider may (at its discretion) provide such assistance at the sole cost and expense of the Customer.
- 6.9 Should the Customer not be in possession of the valid and legal licenses in terms of any software that may be required by the Service Provider to perform in terms of this Agreement, it expressly accepts and agrees to indemnify the Service Provider for any liability that may arise in this respect.

7 FEES AND EXPENSES

- 7.1 Subject to the provisions of clause 8 below, as consideration for the Services to be performed by the Service Provider in terms of any applicable Scope of Work, the Customer shall pay to the Service Provider the Service Fees (plus VAT), as specified in the Scope of Work.
- 7.2 Any Services to be performed outside of the greater London area will attract further expenses, which include, but are not limited to, travelling, accommodation, communication, subsistence allowance and any other out-of-pocket expenses ("Out-Of-Pocket Expenses");
- 7.3 Out-of-Pocket Expenses:
- 7.3.1 The Customer shall reimburse the Service Provider for any Out-Of-Pocket Expenses incurred by the Service Provider, but subject to;
- 7.3.1.1 presentation of proof of such expense being incurred by the Service Provider;
- 7.3.1.2 The Service Provider obtaining prior written approval from the Customer before such costs are incurred, which consent may be provided/included in the applicable of Scope of Work.

8 PAYMENT

- 8.1 The Service Provider shall submit an Invoice to the Customer on or before the last day of each month setting out the Service Fees in respect of Services performed and, subject to clause 7.3 above, any Out-Of-Pocket Expenses incurred during that calendar month.
- 8.2 The Customer shall make payment to the Service Provider within 30 (thirty) calendar days of receipt of the Invoice referred to

in clause 8.1, free of deduction or set-off. Any payments due and owing to the Service Provider must be paid on or before the due date for payment thereof, notwithstanding any corresponding payments the Customer is entitled to from its customer and/or any third party.

8.3 If the Customer fails to make full payment to the Service Provider as outlined in clause 8.2 above the Customer shall pay interest to the Service Provider on the outstanding amount at the Prime Rate, plus 3% (three percent) *per annum* calculated from the date on which payment falls due until the date on which payment is made.

8.4 In addition to clause 8.3 above and any other legal rights or remedies the Service Provider may have in law, should the Customer fail to make payment as outlined in clause 8.2 above, and this is not remedied within 7 (seven) calendar days of written notice, the Service Provider shall be entitled to immediately suspend the provision of the Services until such time as payment in full has been received by the Service Provider.

8.5 Should the Customer dispute any amount appearing on an Invoice submitted to it, pursuant to this Agreement and/or any applicable Scope of Work, the Customer shall, within 10 (ten) calendar days of receipt of the affected Invoice, notify the Service Provider, in writing, of such dispute, specifying the –

- 8.5.1 Affected Invoice;
- 8.5.2 specific amount in dispute; and
- 8.5.3 alleged reasons or grounds for dispute.

8.6 Any amount disputed in terms of clause 8.5 shall not be regarded as payable in terms of this clause 8, however the Customer shall pay the undisputed portion without delay, and if the Parties are unable to resolve such dispute within 7 (seven) Business Days from the date on which the dispute arose, it shall be referred to the financial manager of the Parties or their representatives for determination. If these representatives are unable to resolve the dispute within 7 (seven) Business Days from the date of referral, such dispute shall be referred for resolution in accordance with clause 17 of this Agreement.

9 RELATIONSHIP OF THE PARTIES

9.1 Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or the like between the Parties nor shall it constitute one Party being an agent of the other for any purpose;

9.2 No Party shall, by reason of the actions of the other Party, incur any liability to any third party and no Party shall be entitled to authorise, represent, or hold out, to any third party that the relationship between the Parties is that of a partnership, joint venture or the like as aforesaid;

9.3 The Service Provider shall at all times remain independent of the Customer and neither the Service Provider nor any employees or agents of the Service Provider shall be regarded as an employee of the Customer (as defined in the Labour Relations Act, 1995 (as amended)), and the provisions of the Basic Conditions of Employment Act, 1997 (as amended), the Labour Relations Act, 1995 (as amended) as well as any other statutes, regulations, agreements or policies that regulate an employer/employee relationship or any substituted legislation replacing them, shall not apply to the relationship between the Parties.

10 STANDARD OF CARE

For the duration of this Agreement, each Party shall:

10.1 Use the assets of the other Party entrusted to it, if any, with care;

10.2 In relation to the other Party, act honestly and in good faith;

10.3 Avoid any material conflict between its own interests and those of the other Party; and

10.4 Take reasonable precautions to ensure that, in the event of a disaster affecting a Party, the impact of such disaster on the ability of a Party to comply with its obligations under this Agreement and/or Scope of Work will be reduced to the greatest extent possible;

10.5 use reasonable endeavours to mitigate any losses it may suffer in terms of this Agreement and/or any Scope of Work.

11 TERMINATION AND BREACH

11.1 Either Party may terminate this Agreement at any stage and for any reason (including reasons of convenience) by giving the other Party 60 (sixty) calendar days written notice of the termination of this Agreement. For the sake of clarity, it is agreed that, notwithstanding termination of this Agreement, this Agreement shall continue to govern all Services provided under a valid Scope of Work until all valid existing Scope of Work's have been terminated and/or expired, and no Scope of Work may be terminated prior to the Completion Date except as otherwise expressly stated in the applicable Scope of Work or as provided for in 11.2 below.

11.2 Either Party shall be entitled to give notice to terminate this Agreement and/or Scope of Work with immediate effect, without prejudice to its rights to claim damages, such termination to be effective upon deemed receipt of such notice, if the other Party:

11.2.1 commits a material breach (including a series of minor breaches which together are considered material) of any of the terms of this Agreement and/or any applicable Scope of Work and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of the other Party being notified in writing of the breach;

11.2.2 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory and whether provisionally or finally;

11.2.3 takes steps to deregister itself or is deregistered;

11.2.4 if there is a change in control (as such term is construed in the Companies Act 71 of 2008, as amended) of either Party without the prior written consent of the other Party;

11.2.5 ceases or threatens to cease to carry on business;

11.2.6 is financially distressed;

11.2.7 or any person proposing to take, or taking, any step to pass a resolution or apply to court or actually applying to court for the business rescue of that Party;

11.2.8 commits an act which would be an act of insolvency as defined by the Insolvency Act of 1936 as amended from time to time if committed by a natural person;

12 CONSEQUENCES OF TERMINATION

12.1 In case of valid termination, the Customer shall pay to the Service Provider any amount owed in respect of the Services that have already been provided, (whether partially or in full), and where applicable any associated cancellation charges as stated in the applicable Scope of Work.

12.2 The Parties acknowledge and agree that where a Party exercises a right to terminate under this Agreement, that Party shall use reasonable endeavours to mitigate any losses it suffers as a result of exercising its right to terminate.

12.3 On termination of this Agreement:

12.3.1 any rights of the Parties that arose or accrued prior to termination of this Agreement, or are intended to survive termination, shall survive and continue to be in full force and effect, but all other rights and obligations of the Parties shall cease immediately.

12.3.2 Termination of this Agreement shall not relieve a Party of obligations imposed upon such Party by Applicable Law or by this Agreement prior to its termination.

- 12.3.3 The exercise of any termination right set out in clause 11 by a Party shall be without prejudice to the Party's other rights and remedies under this Agreement.

13 CONFIDENTIALITY AND DATA PROTECTION

13.1 All Confidential Information disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") shall only be disclosed as is strictly necessary and each Party shall procure that its employees and agents treat such information as confidential. Such Confidential Information shall only be used for the purpose for which it is disclosed and only insofar as it is strictly necessary for the purpose of this Agreement and shall not without the prior written consent of the Disclosing Party be disclosed to any third Party provided always that the Receiving Party may disclose without the consent of the Disclosing Party any Confidential Information:

13.1.1 as required to be disclosed in compliance with the Applicable Law;

13.1.2 to an employee and/or director who needs to know strictly for the purpose of this Agreement;

13.1.3 to a sub-contractor only to the extent that such disclosure is strictly necessary for the purpose of this Agreement;

13.1.4 as may be required to comply with any applicable stock exchange regulations; and

13.1.5 provided always that where such disclosure is to be made by the Receiving Party to a sub-contractor, employee or to a third Party such Receiving Party shall (a) ensure that the recipient sub-contractor, employee or third party (as the case may be) owes to the Receiving Party an obligation of confidentiality in respect of the Confidential Information to be disclosed upon terms same or similar to the provisions of this clause 13 and (b) remain liable to the Disclosing Party for any unauthorised disclosure by any such sub-contractor, employee or third Party.

13.2 Information shall not be deemed Confidential Information where it:

13.2.1 is authorised to be disclosed by the Disclosing Party;

13.2.2 is made public by the Disclosing Party or becomes part of the public domain through no fault of the Receiving Party;

13.2.3 is in possession of or is known by the Receiving Party prior to its receipt from the Disclosing Party;

13.2.4 is independently developed by the Receiving Party;

13.2.5 received from a third party in circumstances that do not amount to a breach of this clause 13; or

13.2.6 disclosed pursuant to a court order.

13.3 Any Confidential Information remains the property of the Disclosing Party. The furnishing of Confidential Information shall not result in any obligation to grant the Receiving Party rights therein other than expressly stated in this Agreement. It is acknowledged by the Receiving Party that no license or right of use under any patent, copyright, trademark or other proprietary right is granted or conveyed by this Agreement.

13.4 The Parties shall not at any time during the term of this Agreement, release any statement to the press or make any other public statement of any nature which could reasonably be expected to be published in any media regarding the relationship of the Parties or the subject matter of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

13.5 Personal Identifiable Information:

13.5.1 Both parties will comply with all applicable requirements of the Data Privacy Legislation. This Clause 17 is in

addition to, and does not relieve, remove or replace, a party's obligations under the Data Privacy Legislation.

- 13.5.2 Without prejudice to the generality of Clause 17.1, the Customer warrants that it has obtained Personal Data supplied to the Supplier in a compliant manner and has all necessary authorisation, approvals, contracts, consents and notices in place to enable lawful use, processing and transfer of the Personal Data to and by the Supplier, its agents and suppliers as required by this Agreement. In addition, all notices, information and communication (including the Supplier's Privacy Policy) required for the Supplier's use and processing of Personal Data as described in the Contract (including the transfer of Personal Data to third parties) where it acts as a Controller, shall be provided to the relevant Data Subject, as directed by the Supplier from time to time.
- 13.5.3 Where the Supplier acts as a Processor for the Customer in the processing of End User Personal Data, and for the duration of the Contract, the following clauses shall apply:
- 13.5.3.1 the Supplier will process Personal Data relating to the Customer (and related parties) on the written instructions of the Customer, in accordance with these Conditions, for the performance of its obligations and for any other agreed purposes, unless required otherwise by the laws of the United Kingdom or any member of the European Union, if applicable;
- 13.5.3.2 the Supplier will ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services);
- 13.5.3.3 the Supplier will ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 13.5.3.4 the Supplier will not transfer any Personal Data outside of the UK (other than to European Economic Area) unless the following conditions are fulfilled:
- 13.5.3.4.1 the Supplier or the Customer has provided appropriate safeguards in relation to the transfer;
- 13.5.3.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 13.5.3.4.3 the Supplier complies with its obligations under the Data Privacy Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 13.5.3.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect it obtains all required corresponding consents from the applicable data subjects.

13.6 Both Parties' obligations in terms of this clause 13 will survive the termination, for whatsoever reason, of this Agreement for a further period of 5 (five) years.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All intellectual property rights of one Party subsisting in, or used in respect of, its Intellectual Property are and shall remain the property of that Party. The other Party shall not during or at any time after termination of this Agreement acquire or be entitled to claim any right or interest in a Party's Intellectual Property or in any way question or dispute the ownership thereof.
- 14.2 To the extent that any Intellectual Property owned by a Party is contained in any material provided to the other Party, each Party grants to the other Party (to the extent legally and commercially possible), a non-exclusive, royalty-free, non-transferable licence to use such Intellectual Property solely in connection with, and for the duration of, this Agreement.
- 14.3 Neither Party shall have the right to use, and shall not use, the name of the other Party and/or any of its officials or

employees, or logos or trademarks in any manner without the prior written consent of the other Party's, which consent may be withheld in the other Party's reasonable discretion.

14.4 Where there are modifications to pre-existing material, which are inseparable from the pre-existing material, then the Party which owns the pre-existing material, will own the modifications.

14.5 To the extent that any Bespoke Intellectual Property is developed for the Customer by the Service Provider, all right, title, interest and ownership to the Bespoke Intellectual Property subsisting in such development shall be ceded to the Customer by the Service Provider, subject to all amounts owing to the Service Provider being paid in full by the Customer.

15 INTELLECTUAL PROPERTY INFRINGEMENT

15.1 Should the deliverable materials or any part thereof provided by the Service Provider, become the subject of a claim for infringement of the Intellectual Property right of any third party, the Service Provider shall:

15.1.1 Either procure for the Customer the right to continue using the deliverable material in question or procure that it becomes non-infringing; or

15.1.2 With the Customer's consent, which shall not be unreasonably withheld, require the return of the deliverable material and shall refund to the Customer all the fees paid by the Customer to the Service Provider in respect of such deliverable material.

15.1.3 The Service Provider agrees to indemnify the Customer against any claim for infringement of the Intellectual Property rights of a third Party that may be brought against the Customer.

16 NON-SOLICITATION

16.1 The Customer undertakes that neither it nor any, company, customer, firm, employee or agent of it, without the written consent of the Service Provider for the duration of this Agreement and for a period of 12 (twelve) months following termination of this Agreement, for whatever reason, engage, employ or otherwise solicit or attempt to engage, employ or otherwise solicit for employment, whether directly or indirectly under any circumstances, any person who, during the currency of this Agreement is or was a Member of Staff of the Service Provider;

16.2 Should the Customer breach the provisions of this Non-Solicitation clause, the Customer shall then have 7 (seven) days from written notice, in which to remedy the breach by cancelling and/or terminating any relationship it may have with the recruited Member of Staff;

16.3 The Customer agrees and understands that any breach of this Non-Solicitation clause may result in irreparable damage to the Service Provider for which the Service Provider will not have an adequate remedy at law. Accordingly, and in addition to any other remedies and damages available, the Customer acknowledges and agrees that the Service Provider may immediately seek enforcement of this Non-Solicitation clause by means of specific performance or interdict or injunctive relief, and without any requirement to provide a bond or any other security, and the Customer accepts that it shall be liable for all costs incurred by the Service Provider in enforcing this Non-Solicitation clause on an attorney and own client scale;

16.4 Without derogating from, and in addition to, the above rights of the Service Provider, should the Customer breach this clause 16 and/or should the Service Provider consent to the Customer employing a Member of the Staff then the Customer shall be liable to pay a once off recruitment fee of 100% (one hundred percent) of the Service Provider's Member of Staff annual package including any applicable incentives, bonuses and fringe benefits;

16.5 The Customer acknowledges and agrees that any amount to be paid under this clause 16 shall be payable within 30 (thirty) calendar days of commencement of such Member of Staff's appointment by the Customer.

17 DISPUTE RESOLUTION

17.1 If a dispute of any nature arises between the Parties, including in regard to the interpretation of, the effect of, the Parties'

respective rights or obligations hereunder, a breach of or the termination of this Agreement, then, upon written request of either Party, each Party will appoint a senior representative whose task it will be to meet for the purposes of resolving such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith in an effort to resolve the dispute on amicable terms within 14 (fourteen) days. No formal proceedings may be commenced until the designated representatives conclude in good faith that an amicable resolution of the matter is not likely to occur.

- 17.2 Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon agreement between the Parties, by arbitration in terms of this clause 17.
- 17.3 The arbitrator(s) shall be appointed by the Parties within 10 (ten) days of agreement on arbitration, and failing agreement on the choice of arbitrator, shall be nominated by the appointed by the President or a Vice President of the Chartered Institute of Arbitrators. If replacement of the arbitrator becomes necessary, this shall be effected in the same manner as set out in this clause.
- 17.4 The arbitration shall be held in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment then in force. Such arbitration shall be held in London, and conducted in the English language before one arbitrator appointed in accordance with the said Act.
- 17.5 The arbitrator shall be entitled to:
- 17.5.1 determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence;
 - 17.5.2 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
 - 17.5.3 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
 - 17.5.4 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate. The Parties shall comply with any award without delay.
- 17.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 17.7 This clause is severable from the rest of the Agreement and shall remain in effect even if this Agreement is terminated.
- 17.8 An award made by an arbitrator pursuant to the provisions of this clause 17, shall be final and binding on the Parties.
- 17.9 Nothing in this clause 17 shall preclude the Contractor from seeking interim and/or urgent relief or enforcing any of its rights and obligations from a court of competent jurisdiction within England.

18 LIMITATION OF LIABILITY

- 18.1 Subject to clause 18.3 the Parties (including their respective directors, employees, agents, or representatives) shall not be liable to each other for any indirect or consequential loss or damage, including but not limited to, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.
- 18.2 Each Party's total cumulative liability to the other Party in terms of this Agreement, no matter the cause (except for payment obligations), shall at all times be limited to the total Service Fees paid or payable by the Customer to the Service Provider in the preceding 6 (six) months from the date on which the cause of action arose.

18.3 Nothing in this Agreement shall exclude or limit either Party's liability in relation to;

- 18.3.1 death or personal injury caused by negligence or wilful or reckless misconduct of that Party;
- 18.3.2 any fraud or fraudulent misrepresentation of that Party or any other criminal act which leads to such Party suffering a loss;
- 18.3.3 any liability which cannot be excluded by law by that Party; and/or
- 18.3.4 clause 16 (non-solicitation clause).

19 ADDRESSES FOR LEGAL PROCESS AND NOTICES

19.1 Any notice to any Party shall be addressed to it at its *registered address*, and shall be delivered by hand, courier or email.

19.2 In the case of any notice:

- 19.2.1 Delivered by hand or courier, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day, otherwise on the following Business Day;
- 19.2.2 Sent via email transmission, shall be deemed to have been received on the same day, and provided such day is a Business Day, otherwise on the following Business Day.

19.3 Any Party shall be entitled by written notice to the other, to change its *domicilium*, provided that the change will become effective only 10 (ten) Business Days after service of the notice in question.

20 DEDICATED RESOURCES

20.1 Should any Service Provider's resources be allocated to the Customer on a dedicated basis (including being placed onsite) to perform the Services in terms of the Scope of Work, the provision of such resources shall at all times be subject to the following:

- 20.1.1 Customer shall be responsible for providing, all reasonable access (including remote access), instructions, guidance and overall management of the resource, and the resource shall comply with the same;
- 20.1.2 The Customer shall ensure, at its own cost, that the resource is afforded access into the Customer's site to the extent necessary to provide the Services, this shall include, but not be limited to, access cards, and safe and secure parking;
- 20.1.3 The resource placed on site may, at the Customer's discretion, be required to submit to a screening and/or interview process before being allowed on the Customer's site;
- 20.1.4 Any resource placed on the Customer's site shall at all times be obliged to adhere to all Customer policies (if applicable) as required by Customer subject to the resource being provided with copies of the same prior to commencement of any Services;
- 20.1.5 The Customer shall be required to retain all resources of the Service Provider who are providing Services, for the full duration of the applicable Scope of Work unless otherwise agreed to in writing by the Service Provider. For the sake of clarity, the Customer shall not be entitled to replace resources with any other resources not provided by the Service Provider.
- 20.1.6 At the Service Provider's discretion and/or at the reasonable request of the Customer, and upon 14 (fourteen) days written notice to the other, any resource may be replaced and/or rotated.
- 20.1.7 Subject to Service Provider providing the Customer with reasonable prior written notice (in so far as possible), the Customer accepts that the Service Provider will be under no obligation to rotate or provide a substitute resource, should any resource placed on the Customer's site take any form of statutory leave to which he/she is entitled to.

21 FORCE MAJEURE

- 21.1 **“Force Majeure”** in respect of any Party means an event beyond the reasonable control of that Party, its contractors or sub-contractors without the fault or negligence of that Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations under this Agreement (except for payment obligations), including but not limited to, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockage and embargos, civil unrest, commotion or rebellion, or any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plague, epidemic, pandemic, lockdown, theft, malicious damage not caused by that Party, its contractors or sub-contractors, strikes not caused by that Party, its contractors or sub-contractors, lock-outs or other industrial action of general application; any act of any authority (including delaying or refusing of licenses, wayleaves and/or restriction on construction work), explosion and fire.
- 21.2 If a Force Majeure event prevents a Party (“Affected Party”) from performing any of its obligations of the Agreement (“Force Majeure Event”), the Affected Party will be granted an extension to perform the relevant obligation.
- 21.3 The Affected Party is obliged to notify the other Party about the material adverse effect of a Force Majeure Event on the performance of obligations under the Agreement to the reasonable satisfaction of the other Party.
- 21.4 Upon the cessation of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.
- 21.5 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under the Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 21.6 Should the Force Majeure Event subsist for longer than 60 (sixty) days, either Party may terminate this Agreement and/or any applicable Scope of Work on written notice to the other Party.

22 GENERAL

- 22.1 Neither Party shall be entitled to cede, assign, transfer or make over any of their rights or obligations in terms of this Agreement without obtaining the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.
- 22.2 Any cession or assignment agreed to by a Party will not relieve the other Party of any obligations with respect to any covenant, condition, or obligation required to be performed by that Party under this Agreement, prior to the date of cession;
- 22.3 The laws of England shall govern the validity, interpretation and performance of this Agreement and the courts of England shall have sole jurisdiction;
- 22.4 The Customer shall be liable for all costs incurred by the Service Provider in the recovery of any amounts or the enforcement of any rights which it has in terms of this Agreement and/or any applicable Scope of Work, including collection charges and costs on an attorney and own client scale.
- 22.5 The Customer agrees that the amount due and payable to the Service Provider shall be determined and proven by a certificate issued by the Service Provider and signed on its behalf by any person duly authorised by the Service provider, which authority need not be proven. Such certificate shall be prima facie proof of the indebtedness of the Customer.
- 22.6 Notwithstanding anything to the contrary, and notwithstanding the termination of this Agreement for any reason whatsoever, those provisions of this Agreement which expressly or by their nature are intended to survive the termination of this Agreement, shall survive such termination and shall continue to be of force and effect;
- 22.7 This document contains the entire agreement between the Parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties not contained in this Agreement and/or any applicable Scope of Work shall be binding on any of the Parties, unless agreed to in writing by the Parties;

- 22.8 No latitude, relaxation, indulgence or extension of time which may be allowed on a Party or any of its employees by the other Party in respect of any performance or breach or any other matter in terms of this contract shall in any circumstances be deemed as a waiver by the other Party of any rights it may have; and
- 22.9 No variation, addition to or cancellation of this Agreement and no waiver of any right in terms of this Agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of both Parties to this Agreement.
- 22.10 Notwithstanding anything to the contrary contained in this Agreement and/or any applicable Scope of Work, the Service Provider shall be entitled to sub-contract any or all of the Services to any Affiliate without notice or the Customer's prior consent, provided the Service Provider retains overall liability in terms of this Agreement for Services provided by its sub-contractor(s).
- 22.11 Each Party shall pay its own costs of and incidental to the preparation, drawing, finalising and execution of this Agreement, including incidental negotiations, consultations and attendances.
- 22.12 This Agreement shall be binding on the Parties when either accepted by the Parties or commencement of any Services whichever occurs first. Documents scanned and transmitted electronically as well as documents signed by electronic signatures shall be deemed original signatures for purposes of this Agreement and any applicable Scope of Work and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. Each Party hereto hereby waives any right which it may have to dispute the validity or enforceability of any applicable Scope of Work by virtue of its failure to either initial each page of any applicable Scope of Work and/or have its signatory's signature verified by a witness.