responsiv

Important Note Re Terms and Conditions:

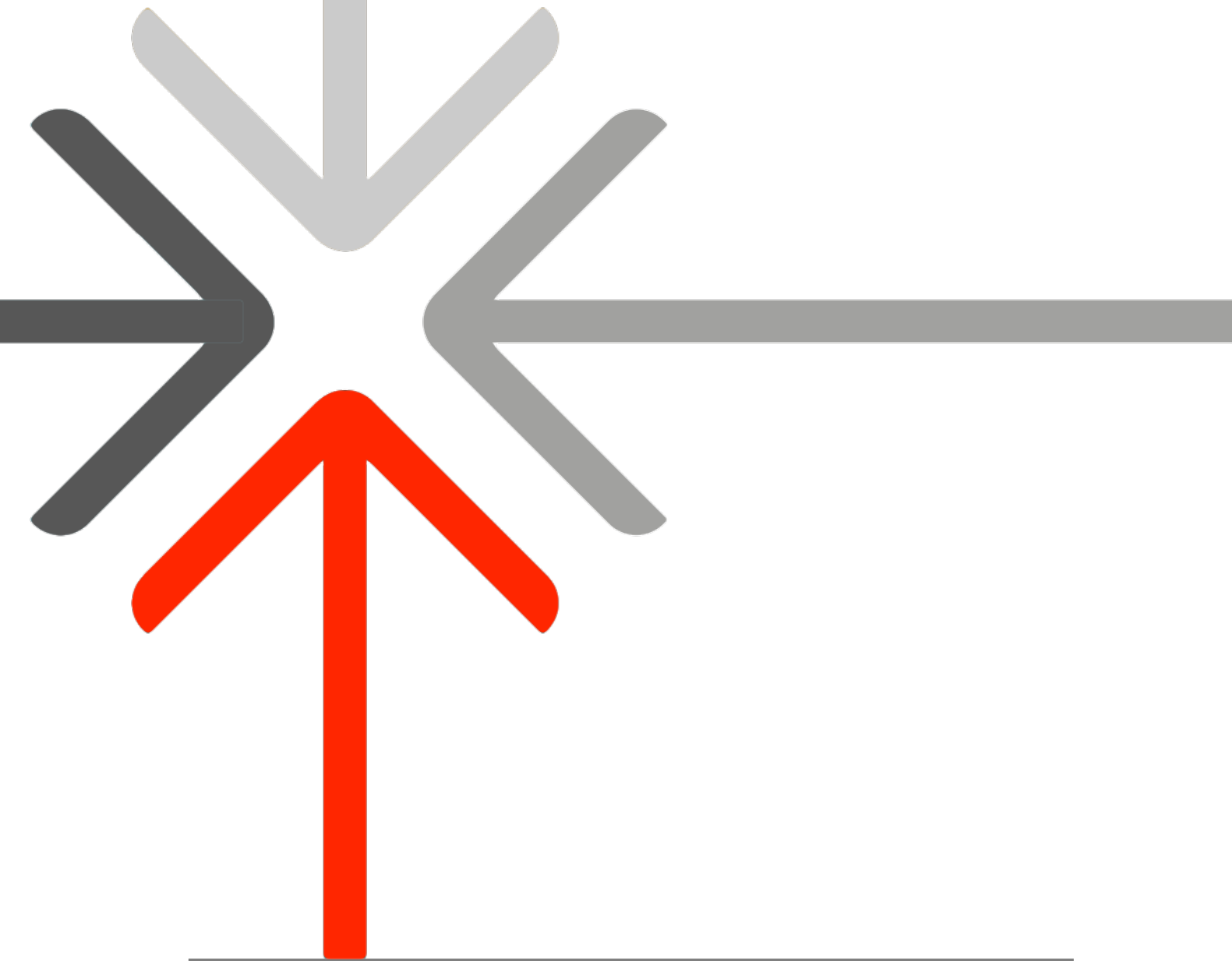
Our Software as a Service (SaaS) offerings in G-Cloud 10 will be subject to our standard Terms and Conditions detailed in our Customer Agreement that follows on subsequent pages of this document. Additionally there will be a further set of Terms and Conditions connected with the provision of the software from IBM. IBM may vary these from time to time but the current version can be found at:-

http://www-03.ibm.com/software/sla/sladb.nsf/sla/saas

CUSTOMER AGREEMENT

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES INCLUDING SUPPORT AND MAINTENANCE FROM RESPONSIV SOLUTIONS LIMITED FOR G-CLOUD CONTRACTS.

MAY 2018 EDITION



Responsiv Solutions Limited is registered in England. Company Number GB09592407.
VAT GB217087021. R18 G-Cloud 10 Terms and Conditions XaaS .docx; (18-May-18)
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AGREED TERMS

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions.

Us or We or Our or RSL: Responsiv Solutions Ltd of 9 The Courtyard, Eastern Road, Bracknell, Berkshire, RG12 2XB; Company number 09592407.

Customer, You or Your: the person, firm or company purchasing Services from Us as described in the accompanying Statement of Work.

Conditions: the terms and conditions set out in this document.

Confidential: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party, trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) business plans, details of suppliers, customers, pricing schemes, pricing, terms of business, strategic intentions, company marketing plans, sales forecasts, financial details, regulatory results, employee details, invention details, intellectual property, product plans and designs and including (but not limited to) information created, developed, received or obtained in connection with a Contract, whether or not such information (if in anything other than oral form) is marked confidential.

Contract: the contract between Us and You consisting of the Statement(s) of Work and these Conditions, and any other document(s) (if any) incorporated by reference and/or notified in writing by Us to You.

Deliverables: any specific good or service outcome that is to be produced by Us through the provision of the Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Our Project Manager: Our manager for the Project, appointed in accordance with condition 3.3.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the accompanying Statement(s) of Work.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in a Statement of Work.

Statement of Work: a statement agreed between the parties setting out the Services to be provided by Us to You describing the Project and setting out the estimated timetable (including without limitation any Project Milestones) and responsibilities for the provision of the Services by Us in accordance with the Contract.

Services: the services to be provided by Us to You under the Contract as described in the accompanying Statement of Work.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Your Project Manager: Your manager for the Project appointed in accordance with condition 4.1.1.

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1.2. The headings in these Conditions are for convenience only and will not affect its construction.

1.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4. Unless the context otherwise requires, a reference to one gender will include a reference to the other genders, and words in the singular will include the plural and vice versa.

2. Application of Conditions

2.1. These Conditions shall:

2.1.1. apply to and be incorporated in the Contract; and

2.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in any, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2. In the event of conflict the Order of precedence will be as described in clause 8.3 G-Cloud 10 Framework Agreement.

2.3. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Us unless in writing and signed by Our duly authorised representative.

2.4. Your signature on the Statement of Work constitutes an offer by You to purchase the Services specified in it on these Conditions. The execution and return of a copy of the Statement of Work by Us, or Our commencement or execution of work pursuant to the Statement of Work, establishes a contract for the supply and purchase of those Services on these Conditions. Any other terms and conditions (with the exception of G-Cloud 10 Framework contract) attached to, enclosed with, or referred to in, the Statement of Work shall not apply to this Contract.

3. Our obligations

3.1. We shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to You, in accordance in all material respects with the Statement of Work.

3.2. We shall use reasonable endeavours to meet the performance dates specified in the Statement of Work, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

3.3. We shall appoint Our Project Manager who shall have authority to contractually bind Us on all matters relating to the Project. We shall use reasonable endeavours to ensure that the same person acts as Our Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of Our business.

3.4. We will ensure that all Our personnel engaged in delivering the Services comply with such health and safety standards as are notified to Us by You from time to time

4. Your obligations

4.1. In addition to any obligations specified in the Statement of Work, You shall:

4.1.1. co-operate with Us in all matters relating to the Project and appoint Your Project Manager, who shall have the authority to bind You on matters relating to the Project;

4.1.2. provide in a timely manner such access to Your premises, data, software and networks, and such office accommodation and other facilities, as is requested by Us either in the Statement of Work or from time to time;

4.1.3. provide in a timely manner such information as We may request, and ensure that such information is accurate in all material respects;

4.1.4. be responsible (at Your own cost) for the selection and implementation of procedures and controls relating to the access to Your IT systems, security, encryption and the all data within Your systems;

4.1.5. provide in a timely manner all such licences, consents and/or permissions as may be required to enable Us to undertake work on Your systems; and

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4.1.6. be responsible (at Your own cost) for preparing the relevant premises for the supply of the Services.

4.2. You acknowledge that the provision of the Services may impact the operation of your systems, and You agree that You will be solely responsible for ensuring appropriate back up procedures are in place prior to, and during the Services to protect and preserve Your data.

4.3. If Our performance of Our obligations under the Contract is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees, You shall allow Us a reasonable extension to complete any services and shall be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Us confirming such costs, charges and losses to You in writing.

5. PERSONNEL

5.1. Each party will assign personnel that are qualified to perform the tasks assigned to each party under the relevant Statement of Work, but each acknowledges that they are responsible for the supervision, direction, control and compensation of its own personnel.

5.2. You shall not, without Our prior written consent, at any time from the date of the Contract to the expiry of twelve (12) months after the completion of the Services, solicit or entice away from Us or employ or attempt to employ, any person who is, or has been, engaged as an employee or sub-contractor of Us.

5.3. Any consent given by Us in accordance with condition 5.2 shall be subject to You paying to Us a sum equivalent to 40% of the then current annual remuneration of Our employee or sub-contractor or, if higher, 40% of the annual remuneration to be paid by You to such employee or sub-contractor.

6. CHANGE CONTROL

6.1. Your Project Manager and Our Project Manager shall meet at the frequency specified in the Statement of Work unless otherwise agreed in writing to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2. If either party requests a change to the scope or execution of the Services, We shall, within a reasonable time, provide a written estimate to You of:

6.2.1. the likely time required to implement the change;

6.2.2. any variations to Our charges arising from the change;

6.2.3. the likely effect of the change on the Statement of Work; and

6.2.4. any other impact of the change on the terms of the Contract.

6.3. If We request a change to the scope of the Services, You shall not unreasonably withhold or delay consent to it.

6.4. If You wish Us to proceed with the change, We have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Our charges, the Statement of Work and any other relevant terms of the Contract to take account of the change.

7. CHARGES AND PAYMENT

7.1. Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 7.3 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.

7.2. Where the Services are provided on a time-and-materials basis:

7.2.1. the charges payable for the Services shall be calculated in accordance with Our standard daily fee rates as amended from time to time;

7.2.2. Our standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 7.00 pm on weekdays (excluding weekends and public holidays);

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7.2.3. Work undertaken outside of the hours referred in condition 7.2.2 will be charged at the overtime rate set out in the Statement of Work of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2.2 on a pro-rata basis;

7.2.4. We shall ensure that all Our personnel maintain an appropriate record of their time spent on the Project to calculate the charges covered by each monthly invoice referred to in condition 7.2.5; and

7.2.5. We shall invoice You on the earlier of (i) the completion of the project or (ii) monthly in arrears for Our charges for time, expenses and materials (together with VAT where appropriate) for all unbilled work, calculated as provided in this condition 7 and the Statement or Work.

7.2.6. All charges and rates are subject to review at any time during the term on giving three months notice.

7.3. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Statement of Work. The total price shall be paid to Us in instalments as set out in the Statement of Work on achieving the corresponding Project Milestone. All amounts due under this agreement shall be paid by You to Us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On achieving a Project Milestone, We shall invoice You for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.

7.4. The Charges specified in a Statement of Work exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Our personnel in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the supply of the Services, which will be invoiced to You.

7.5. All prices and charges are stated exclusive of any VAT and will be payable at the then current rate.

7.6. Amounts are due upon receipt of invoice and payable as specified in the Statement of Work. The Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by RSL or by other means agreed to by the parties

7.7. If payment is not received within 30 days from the date of invoice the Customer may be subject to late payment charges.

7.8. Such late payment charges will be calculated in accordance with the applicable official rate of statutory interest as defined by the Late Payment of Commercial Debts(Interest) Act 1998. For the purpose of late payment charge calculations, the Customer's receipt of invoice will be deemed to be 3 working days after the date of invoice, unless otherwise notified to RSL at the time of actual receipt.

7.9. Without prejudice to any other right or remedy that We may have, if You fail to pay Us on the due date We may suspend all Services until payment has been made in full.

7.10. All payments payable to Us under the Contract shall become due immediately on termination of the Contract. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.11. We may, without prejudice to any other rights We may have, set off any liability of You to Us against any liability of Us to You whether under the attached or any other Statement of Work.

8. Intellectual Property Rights

8.1. You acknowledge and agree that all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us, or licensed from Our Suppliers. Unless otherwise stated in the Statement of Work, We hereby license all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary within Your business to enable You to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If We terminate the Contract under condition 12.2, this licence will automatically terminate.

8.2. We acknowledge that all Intellectual Property Rights in Your pre-existing materials, data, system infrastructure is owned by You, and You hereby grant to Us a limited licence to use, execute, reproduce, modify and enhance all such materials as are reasonably necessary to perform the

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Services. You acknowledge that we may re-use retained knowledge gained through the provision of the Services elsewhere within Our business in a way that does not reproduce any of Your proprietary or Confidential Information.

9. GDPR OBLIGATIONS

9.1. Business Contact Information is business-related contact information disclosed by the You to Responsiv, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors.

9.2. Business Contact Personnel are Your employees and contractors to whom the Business Contact Information relates.

9.3. You authorise Responsiv to process and use Business Contact Information within Responsiv and its partners to support You including the provision of support services, and for the purpose of furthering the business relationship between You and Responsiv, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing Responsiv products and services (the "Specified Purpose").

9.4. Responsiv agrees that all Business Contact Information will be processed in accordance with the GDPR and will be used only for the Specified Purpose.

9.5. To the extent required by the GDPR, You represent that (a) You have obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable Responsiv to process and use the Business Contact Information for the Specified Purpose.

9.6. You authorise Responsiv to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

9.7. For purposes of this Item "Personal Data" has the meaning set out in the Data Protection Law and relates only to personal data, or any part of such personal data, in respect of which the Licensee is the Data Controller and in relation to which Responsiv is providing services under this Contract. In the context of GDPR the term means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. The following provisions apply in the event that one party makes Personal Data available to the other:

9.7.1. Neither party will request Personal Data beyond what is necessary to fulfil the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

9.7.2. Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.

9.7.3. Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.

9.7.4. Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

9.8. Additional or different services required to comply with the Laws will be deemed a request for new services.

9.9. Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfil the purpose(s) for which it was made available.

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9.10. Access Requests

9.10.1. Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

9.10.2. Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

9.10.3. Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

9.10.4. Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfil the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

10. CONFIDENTIALITY AND OUR PROPERTY

10.1. Each party shall keep in strict confidence all Confidential Information of the other party in its possession, and shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are subject to corresponding obligations of confidentiality.

10.2. Neither party will except in the proper course of the Project, use or disclose any Confidential Information for any purpose outside the performance of the obligations arising in connection with this Contract, and will only disclose Confidential Information in as required by law, or where such Confidential Information is already in the public domain other than by reason of a breach of this condition 10.

10.3. All materials, equipment and tools, drawings, specifications and data supplied by Us to You shall at all times be and remain Our exclusive property, but shall be held by You in safe custody at its own risk and maintained and kept in good condition by You until returned to Us, and shall not be disposed of or used other than in accordance with Our written instructions or authorisation.

10.4. This condition 9 shall survive termination of the Contract, however arising.

11. LIMITATION OF LIABILITY

11.1. The following provisions set out Our entire financial liability (including without limitation any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of any breach of the Contract howsoever arising, any use made by You of the Services, the Deliverables or any part of them; and any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Nothing in these Conditions excludes Our liability for death or personal injury caused by Our negligence or for fraud or fraudulent misrepresentation.

11.4. Subject to condition 11.2 and condition 11.3 We shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses however arising, and regardless of whether We knew or ought to have known of the likelihood of such loss occurring.

11.5. Subject to conditions 11.2 and 11.3 Our total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lower of (i) the price paid for the Services under the Statement of Work or (ii) the value paid by You to Us for the Services delivered by Us to You in the 12 months prior to the claim arising, except where the liability has arisen in connection with conditions 8 and 10.1 in which case Our total liability to You shall not exceed £200,000.

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12. Termination

12.1. Our obligation to provide the Services will terminate as set out in the Statement of Work, and the Contract will automatically terminate on completion of the Statement of Work.

12.2. Without prejudice to any other rights or remedies to which We may be entitled, We may terminate the Contract immediately on notice without liability to You if:

12.2.1. You fail to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;

12.2.2. You commit a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) You fail to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;

12.2.3. You repeatedly breach any of these Condition or any other term of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with You having the intention or ability to give effect to the terms of the Contract;

12.2.4. You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or You admit inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;

12.2.5. You cease, or intend to cease the whole or a substantive part of your business activities;

12.2.6. You undergo a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

12.3. We reserve the right to amend these Conditions from time to time, without notice to You. Any such variation will not affect an existing signed Statement of Work, unless We specifically notify You of this in accordance with condition 6. You acknowledge that You are solely responsible for checking the Conditions prior to signature of any Statement of Work, or any subsequent statement of work.

12.4. Without prejudice to any other rights or remedies to which You may be entitled, You may terminate the Contract on 30 days notice without liability to Us if:

12.4.1. We commit a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) We fail to remedy that breach within a period of fourteen (14) days after being notified in writing to do so; or

12.4.2. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Our winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or Our solvent reconstruction.

12.5. Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12.6. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of either party that have accrued up to the date of termination, including the right to claim damages in respect of a breach of the Contract existing at or before the date of termination.

13. General

13.1. No variation of the Contract shall have effect unless it is in writing and signed by the parties or their authorised representatives.

13.2. These Conditions are binding on, and shall apply for the benefit of, the parties and their respective successors in title and permitted assigns. You may not, without Our prior written

approval, assign, charge or otherwise dispose of all or any part of the benefit of the Contract or sub-contract any or all of Your obligations under it. We may assign, charge, novate or otherwise dispose of any or all of Our rights under the Contract and/or sub-contract any or all of its obligations under the Contract to, or novate the Contract in favour of, any third party on notice but without the need for prior consent.

13.3. This Contract contains the entire agreement of the parties, and supersedes any previous agreement, arrangement or understanding (whether oral or written) between the parties, in relation to the Services. Each party acknowledges that, in entering into the Contract, it is not relying

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on any representation or other assurance except as expressly set out or referred to in the Contract, provided that nothing in the Contract shall limit or exclude any liability for fraud.

13.4. If the Services are to be delivered by instalments, the Contract shall be treated as a single contract and not severable.

13.5. No breach of any provision of the Contract shall be waived or discharged except with the express written consent of the parties. No failure to exercise or delay in exercising any right or remedy under the Contract shall operate as a waiver of that or any other right or remedy.

13.6. If a provision of the Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of the Contract shall not be affected.

13.7. Nothing in the Contract constitutes a partnership, joint venture, relationship of agency or contract of employment between the parties.

13.8. Any notice given to a party under or in connection with this contract will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice will be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.9. A person who is not a party to the Contract will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of the Contract.

13.10. We shall not in any circumstances have any liability to You under the Contract if We are prevented from, or delayed in, performing Our obligations under the Contract or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13.11. The Statement or Work may be signed in counterparts, with each counterpart once signed forming part of the whole Contract.

13.12. You acknowledge and agree that we may reference You as Our client, and may use the Project as a reference site in our publicity materials.

13.13. In the event of any dispute arising out of or in connection with any Statement of Work of the Contract, the matter will be first raised between the Project Managers, and if the dispute cannot be resolved in good faith discussions between them within 20 working days, the dispute will be escalated to a senior director within each party for further good faith discussions.

14. GOVERNING LAW AND JURISDICTION

14.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)

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