

## Embridge Consulting (UK) Ltd Managed Services Terms and Conditions

These are the terms and conditions of Embridge Consulting (UK) Ltd, a company incorporated in England and Wales (registration number 9600193) with its registered office at The Old Rectory Business Centre, Springhead Road, Northfleet, Kent DA13 9HE ("**Embridge**").

These terms and conditions set out the basis upon which EMBRIDGE will provide services to the company, firm or person identified as the customer in the Proposal (the "**Customer**"). EMBRIDGE will ask for the Customer's express consent to these terms and conditions before EMBRIDGE begins working with the Customer.

Please read these terms and conditions carefully, and if you have any questions about these terms and conditions, please contact EMBRIDGE.

### 1. Definitions and interpretation

#### 1.1 In the Agreement:

"**Acceptable Use Policies**" means the acceptable use policies of EMBRIDGE's infrastructure services providers, as identified (as at the date of the Agreement) in the Proposal;

"**Additional Services**" means any services that EMBRIDGE provides or agrees to provide to the Customer that are outside the scope of those services specified in the Proposal;

"**Agreement**" means a managed services agreement between the parties incorporating:

- (a) a Proposal agreed between the parties;
- (b) these terms and conditions; and
- (c) the SLA,

together with any amendments to the Agreement from time to time;

"**Agresso Software**" means the Unit4 Business World (Agresso) ERP suite produced and maintained by Unit4 NV;

"**Business Day**" means any weekday, other than a bank or public holiday in England;

"**Business Hours**" means between 07:00 and 19:00 GMT/BST on a Business Day;

"**Charges**" means all amounts payable by the Customer to EMBRIDGE under or in relation to the Agreement;

"**Confidential Information**" means the Customer Confidential Information and EMBRIDGE Confidential Information;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" will be construed accordingly);

**"Customer Confidential Information"** means:

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to EMBRIDGE during the Term that at the time of disclosure: (i) is marked as "confidential", (ii) is described by the Customer as "confidential", or (iii) should be reasonably understood by EMBRIDGE to be confidential; and
- (b) the Customer Data;

**"Customer Data"** means all data that is stored on or processed by a Server and:

- (a) has been uploaded or copied, or otherwise added, to the Server; or
- (b) has been generated by the Server as a consequence of action taken,

by or at the instigation of the Customer, any person acting on behalf of the Customer or any person using the Customer's account(s), but excluding data stored in the Window Active Directory of the Software Platform (such as Customer account data);

**"Customer Licensed Software"** means those third party software programs and packages in respect of which the Proposal specifies the Customer must obtain a licence (excluding the Agresso Software);

**"Effective Date"** means the date of signature of the Proposal by the second of the parties to sign;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or any public telecommunications network, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Service"** means the hosting of the Software Platform and Customer Data by EMBRIDGE, and the provision of the Agresso Software to the Customer by means of the Software Platform;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and neighbouring and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Maintenance Services"** means maintenance services in relation the Agresso Software, the Software Platform and/or the Server provided or to be provided by EMBRIDGE to the Customer under the Agreement;

**"Managed System"** means the system comprising the Servers, the Software Platform and the Agresso Software;

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Proposal"** means a proposal document issued by EMBRIDGE and signed or otherwise agreed by each of the parties specifying the particulars of the Agreement,

together with a service scope document issued by EMBRIDGE to the ....

Customer; "**EMBRIDGE Confidential Information**" means:

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by EMBRIDGE to the Customer during the Term that at the time of disclosure: (i) is marked as "confidential", (ii) is described by EMBRIDGE as "confidential", or (iii) should be reasonably understood by the Customer to be confidential; and
- (b) the terms of the Agreement, including for the avoidance of doubt all financial terms and the provisions of the Proposal and the SLA;

"**EMBRIDGE Indemnity Event**" has the meaning given to it in Clause 11.6;

"**Related Entity**" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"**Resource Limits**" means the limits on the resources utilised by the Hosted Service, as set out in the Proposal, which may be varied by the mutual agreement of the parties from time to time;

"**Server**" means a physical or virtual server hosting one or more elements of the Software Platform or Agresso Software, controlled by EMBRIDGE and used for the provision of the Hosted Service, including web servers, application servers, database servers and testing servers;

"**Services**" means the services provided or to be provided under the Agreement, as specified in the Proposal and the SLA, which may include the Set-up Services, Hosted Service, Maintenance Services, Support Services and Additional Services;

"**Set-up Services**" means the set-up of the operating systems of the Servers, and the installation and configuration of the Software Platform and the Agresso Software on the Servers, enabling the provision of the Hosted Service;

"**SLA**" means the service level agreement provided by EMBRIDGE to the Customer and relating to the Services;

"**Software Platform**" means the software platform designed by EMBRIDGE to enable the provision of the Agresso Software as a cloud service incorporating and utilising a range of third party software applications and services;

"**Subcontractor**" means any third party to which EMBRIDGE subcontracts any obligations under the Agreement;

"**Support Services**" means any support services relating to the Managed System (and, if the Proposal so specifies, the thin client software used to access the Agresso Software) provided or to be provided by EMBRIDGE to the Customer under the Agreement; and

"**Term**" means the term of the Agreement.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **2. Agreement and Services**

2.1 The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 15.

2.2 EMBRIDGE shall provide the Services to the Customer during the Term.

2.3 The Services shall be provided in accordance with the Proposal and the SLA.

## **3. Set-up Services**

EMBRIDGE shall provide the Set-up Services to the Customer in accordance with the timetable set out in the Proposal.

## **4. Hosted Service**

4.1 This Clause 4 shall govern the Hosted Service to be provided to the Customer under the Agreement.

4.2 EMBRIDGE will make available for the exclusive use of the Customer the Servers specified in the Proposal, and will ensure that those Servers meet the requirements of the Proposal.

4.3 EMBRIDGE hereby grants to the Customer:

- (a) the right to use the Software Platform via the internet for the purposes of accessing and using the Agresso Software; and
- (b) administration rights in relation to each Server, restricted in such manner as the parties may agree or, absent any agreement, as EMBRIDGE may determine.

4.4 The Customer acknowledges that any changes made to a Server, the Software Platform or the Agresso Software by the Customer shall be at the Customer's sole risk.

4.5 The Customer must not configure, or allow any other person to configure, any Server, the Software Platform or the Agresso Software in any way contrary to any guidelines on configuration made available by EMBRIDGE to the Customer from time to time.

4.6 For the avoidance of doubt, hardware used to provide the Hosted Service will remain the property of EMBRIDGE and/or its Subcontractors at all times.

4.7 Unless EMBRIDGE expressly agrees otherwise in writing, EMBRIDGE shall have the right to access and audit any Server at any time for the purpose of monitoring the Customer's compliance with the terms of the Agreement. Following receipt of a

written request from EMBRIDGE, the Customer shall promptly facilitate and enable such access and audit (including providing such login details as may be required to enable such access and audit).

- 4.8 The Customer's utilisation of resources through the Hosted Service must not exceed the Resource Limits.
- 4.9 The Customer acknowledges that EMBRIDGE may use technical measures to prevent the Customer exceeding the Resource Limits.
- 4.10 If the Customer's utilisation of the Hosted Service exceeds the Resource Limits in such a way as to have a material negative effect upon:
- (a) the operation of EMBRIDGE's computers, systems, networks and/or services;  
or
  - (b) the ability of any other of EMBRIDGE's customers to use those computers, systems, networks and/or services,

then EMBRIDGE may suspend access to the Hosted Service or any element thereof, with or without notice to the Customer, and may impose additional restrictions on the Customer's use of the Hosted Service.

- 4.11 Without prejudice to EMBRIDGE's rights under Clause 4.10, if the Customer's utilisation of the Hosted Service exceeds or threatens to exceed the Resource Limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from EMBRIDGE to the Customer requesting such variation, and resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of the Agreement.
- 4.12 Subject to Clause 5.3, EMBRIDGE will maintain Hosted Service availability at the levels specified in the SLA, and in the event that the Hosted Service fails to meet those availability levels, EMBRIDGE may grant to the Customer service credits in accordance with the provisions of the SLA.
- 4.13 EMBRIDGE will make such back-ups of Customer Data, Software Platform configuration, Agresso Software configuration and Server configuration as may be specified in the Proposal and the SLA; and EMBRIDGE will implement such disaster recovery systems as may be specified in the Proposal and the SLA.

## **5. Maintenance Services**

- 5.1 This Clause 5 shall govern the Maintenance Services to be provided to the Customer under the Agreement.
- 5.2 EMBRIDGE shall apply updates and upgrades to, and shall optimise the performance of:
- (a) the Agresso Software;
  - (b) the Software Platform; and
  - (c) each Server,

during the scheduled Maintenance Services window specified in the SLA, providing that updates and upgrades may also be applied at any time agreed between the parties.

5.3 Access to the Agresso Software and other services may be unavailable or intermittently available during the provision of updates, upgrades and other scheduled and emergency Maintenance Services. Unavailability or intermittent availability of the Hosted Service as a result of scheduled or emergency Maintenance Services under this Clause 5 shall not constitute unavailability for the purposes of the availability commitments in the SLA.

5.4 Notwithstanding the other provisions of this Clause 5, EMBRIDGE reserves the right:

- (a) to install or uninstall software on any Server; and
- (b) to apply updates, upgrades and patches to any software installed on any Server,

in each case with or without notice, where it is reasonably necessary to do so to ensure the security and/or integrity of the Managed System.

5.5 EMBRIDGE will provide the Maintenance Services in accordance with the service levels specified in the SLA.

## **6. Support Services**

6.1 This Clause 6 shall govern the Support Services to be provided to the Customer under the Agreement.

6.2 EMBRIDGE will make available to the Customer a helpdesk facility for the purpose of (inter alia) providing support to the Customer in relation to the Managed System.

6.3 The Customer may access the helpdesk using the access details specified in the SLA.

6.4 The Customer must make all requests for Support Services through the helpdesk.

6.5 The helpdesk will be available during those hours specified in the SLA.

6.6 EMBRIDGE shall respond to and resolve requests for Support Services made through the helpdesk in accordance with the response and resolution timetables specified in the SLA.

6.7 EMBRIDGE will provide the Support Services in accordance with the service levels specified in the SLA.

## **7. Additional Services**

7.1 The parties may agree from time to time that EMBRIDGE shall provide Additional Services to the Customer.

7.2 Unless the parties agree otherwise in writing, Additional Services will form part of the Services under the Agreement, and accordingly shall be subject to these terms and conditions.

7.3 Unless the parties have agreed otherwise in writing, the Customer will:

- (a) pay to EMBRIDGE Charges in respect of Additional Service at EMBRIDGE's standard time-based charging rates; and
- (b) reimburse EMBRIDGE for transport, accommodation and subsistence

expenses reasonably incurred by EMBRIDGE in the provision the Additional Services.

## **8. Customer obligations**

8.1 The Customer shall be responsible for obtaining, at its own cost:

- (a) a license for the Agresso Software that permits EMBRIDGE to host the Agresso Software and use the Agresso Software in accordance with the terms of the Agreement; and
- (b) licenses for any Customer Licensed Software that permit the use of the Customer Licensed Software as anticipated by the Agreement.

8.2 The Customer must maintain the licenses referred to in Clause 8.1 during the entirety of the Term, and if the Customer fails to do so, this shall be deemed to be a material breach of the Agreement.

8.3 The Customer must provide to EMBRIDGE written evidence of the licenses referred to in Clause 8.1 and their maintenance in accordance with Clause 8.2 promptly following receipt of a written request from EMBRIDGE for the Customer to do so.

8.4 The Customer shall provide EMBRIDGE with:

- (a) all co-operation, information and documentation; and
- (b) all access to the software, computers, servers, networks, systems and premises of the Customer,

reasonably required for the provision of the Services.

8.5 The Customer must ensure that any passwords relating to the Services are non-obvious and not likely to be susceptible to standard password cracking techniques. It is the Customer's responsibility to keep such passwords confidential and secure, and to change such passwords on a regular basis. The Customer will notify EMBRIDGE immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

8.6 In the event of a failure by the Customer to comply with the provisions of Clauses 8.4 and 8.5, Embridge will be entitled to charge for the additional costs incurred by Embridge in dealing with and mitigating the consequences that failure.

8.7 Except to the extent that the Agreement expressly provides otherwise:

- (a) the Services are provided to the Customer only; and
- (b) the Customer must not resell or otherwise provide or make available the Services to any third party.

8.8 The Customer must comply with the terms of the Acceptable Use Policies, and must ensure that all persons using the Services under the authority of the Customer or by means of the Customer's account(s) comply with the terms of the Acceptable Use Policies. EMBRIDGE shall notify the Customer of any changes to the Acceptable Use Policies promptly following the publication of any such change.



**9. Charges and payments**

- 9.1 EMBRIDGE shall issue invoices for the Charges to the Customer in accordance with the provisions of the Proposal.
- 9.2 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 9.3 EMBRIDGE may vary the Charges on and from any anniversary of the Effective Date by giving to the Customer not less than 60 days' written notice of the variation, providing that no such variation will result in the relevant element of the Charges increasing during the Term by more than the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.
- 9.4 The Customer will pay Charges to EMBRIDGE in cleared funds within 30 days following the date of issue of an invoice for the relevant Charges.
- 9.5 Charges must be paid by bank transfer or any other method authorised by EMBRIDGE (using such payment details as are notified by EMBRIDGE to the Customer from time to time).
- 9.6 If the Customer does not pay any amount properly due to EMBRIDGE under or in connection with the Agreement, EMBRIDGE may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per year above the UK base rate of Barclays Bank Plc from time to time (which interest will accrue daily and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.7 EMBRIDGE shall have the right to set off any amount owed by the Customer to EMBRIDGE against any amount owed by EMBRIDGE to the Customer, in each case whether the amount is owed:
- (a) under the Agreement or any other contract; or
  - (b) as a result of any liability arising out of the Agreement or any other contract,
- and EMBRIDGE may exercise its right under this Clause 9.7 by giving written notice of such exercise to the Customer.
- 9.8 If the Customer fails to pay to EMBRIDGE any amount owed under the Agreement by the due date, then EMBRIDGE may send to the Customer a demand for payment; and if the Customer does not pay the overdue amount within 14 days following the issue of the demand, EMBRIDGE may notify the Customer of their intention to terminate the Agreement and prepare to return all of the data and systems hosted by EMBRIDGE back to the Customer. The Customer shall have a further 30 days to decide to receive the data and systems, failing which EMBRIDGE may suspend, withhold and/or render inaccessible any or all of the Services and/or the Customer's accounts relating to the Services until such time as payment is received, without prejudice to EMBRIDGE's other rights under the Agreement.



## **10. Intellectual Property Rights**

### **10.1 Save as expressly provided in the Agreement:**

- (a) all Intellectual Property Rights in: (i) the Software Platform, the Services and any improvements to the Software Platform and Services; and (ii) any works and materials produced by or on behalf of EMBRIDGE in the course of the provision of the Services, are and shall remain, between the parties, the exclusive property of EMBRIDGE; and
- (b) the Customer shall have no right or license to exercise or exploit such Intellectual Property Rights.

### **10.2 The Customer hereby grants to EMBRIDGE the right to store, copy, transmit and otherwise use the Customer Data for the purposes of performing its obligations, and exercising its rights, under the Agreement.**

### **10.3 Subject to Clause 10.2, all Intellectual Property Rights in the Customer Data are and shall remain, between the parties, the exclusive property of the Customer.**

### **10.4 EMBRIDGE must not sell the Customer Data; and EMBRIDGE must not provide the Customer Data to any third party except as contemplated by the Agreement or with the express written consent of the Customer.**

## **11. Warranties and indemnity**

### **11.1 The Customer warrants to EMBRIDGE that:**

- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) the use by EMBRIDGE of the Customer Data in accordance with the terms of the Agreement will not infringe any third party Intellectual Property Rights.

### **11.2 EMBRIDGE warrants to the Customer that:**

- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- (b) it will perform its obligations under the Agreement with reasonable care and skill;
- (c) the use by the Customer of the Software Platform in accordance with the terms of the Agreement will not infringe any third party Intellectual Property Rights; and
- (d) it shall use reasonable care in the appointment of third party internet service providers, telecommunications providers, utility providers and other infrastructure providers whose service may affect the performance of its obligations under this Agreement.

### **11.3 EMBRIDGE shall use all reasonable measures and procedures to secure the operating systems, servers and connections to those servers in line with industry intrusion prevention best practice. If EMBRIDGE is providing the Hosted Service, EMBRIDGE shall use all reasonable technological measures and procedures to**

secure the Software Platform. The Customer acknowledges that the Servers and the Software Platform may from time to time be subject to attacks by hackers, denial of service attacks and/or malicious software attacks or infections. EMBRIDGE does not warrant or represent that the Servers or the Software Platform will never be subject to a security breach. Subject to Clause 12.1 and providing that EMBRIDGE complies with the requirements of this Clause 11.3, EMBRIDGE shall not be liable to the Customer in respect of any loss or damage arising out of any hacker attacks, denial of service attacks or malicious software attacks or infections.

- 11.4 The Customer acknowledges that the Agresso Software will be supplied and licensed to the Customer by a third party, and accordingly EMBRIDGE gives no warranties or representations in relation to the Agresso Software. Subject to Clause 12.1, EMBRIDGE shall not be liable to the Customer in respect of any loss or damage arising out of any defect with the Agresso Software, any security issues with the Agresso Software or any incompatibility of the Agresso Software with any software or systems not specified as compatible in the Agreement.
- 11.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.
- 11.6 The Customer must:
- (a) upon becoming aware of an actual or potential Consultant Indemnity Event, notify EMBRIDGE;
  - (b) provide to EMBRIDGE all such assistance as may be reasonably requested by EMBRIDGE in relation to EMBRIDGE Indemnity Event;
  - (c) allow EMBRIDGE the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to EMBRIDGE Indemnity Event; and
  - (d) not admit liability to any third party in connection with EMBRIDGE Indemnity Event or settle any disputes or proceedings involving a third party and relating to EMBRIDGE Indemnity Event without the prior written consent of EMBRIDGE,

and EMBRIDGE's obligation to indemnify the Customer under Clause 11.6 shall not apply unless the Customer complies with the requirements of this Clause 11.6.

## **12. Limitations and exclusions of liability**

- 12.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
  - (c) limit any liability of a party in any way that is not permitted under applicable law; or
  - (d) exclude any liability of a party that may not be excluded under applicable law.

- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Agreement:
- (a) are subject to Clause 12.1; and
  - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty (save that Clauses 12.3 to 12.8 do not affect any liability of EMBRIDGE under the indemnity in Clause 11.6).
- 12.3 Neither party will be liable to the other party in respect of any loss of profits or anticipated savings.
- 12.4 EMBRIDGE will not be liable to the Customer for any loss of business, contracts or commercial opportunities.
- 12.5 EMBRIDGE will not be liable to the Customer for any loss of or damage to goodwill or reputation.
- 12.6 EMBRIDGE will not be liable to the Customer for any losses arising out of a Force Majeure Event.
- 12.7 EMBRIDGE will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 12.8 Providing that EMBRIDGE complies with Clause 11.2(c) and without affecting EMBRIDGE's obligations in relation to the availability of the Hosted Service, EMBRIDGE shall not be liable to the Customer in respect of any loss or damage arising from any failure or interruption of service provided by a third party internet service provider, telecommunications provider, utility provider or other infrastructure provider.
- 12.9 EMBRIDGE's liability to the Customer in relation to any event or series of related events will not exceed the greater of:
- (a) GBP 50,000; and
  - (b) an amount equal to the total paid and payable Charges during the period of 12 months preceding the commencement of the event or events.
- 12.10 EMBRIDGE's aggregate liability to the Customer under the Agreement will not exceed GBP 250,000.

### **13. Confidentiality**

- 13.1 EMBRIDGE will:
- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 13; and
  - (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least reasonable skill and care.

13.2 The Customer will:

- (a) keep confidential and not disclose the EMBRIDGE Confidential Information to any person save as expressly permitted by this Clause 13; and
- (b) protect the EMBRIDGE Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least reasonable skill and care.

13.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, subcontractors, insurers and professional advisers, provided that the recipient is bound in writing, or by a professional obligation, to maintain the confidentiality of the Confidential Information disclosed.

13.4 The obligations set out in this Clause 13 shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of EMBRIDGE prior to disclosure by the Customer, and EMBRIDGE Confidential Information that is in possession of the Customer prior to disclosure by EMBRIDGE; or
- (c) Customer Confidential Information that is received by EMBRIDGE, and EMBRIDGE Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information.

13.5 The restrictions set out in this Clause 13 shall not prevent any disclosure of Confidential Information that is required by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement gives to the other party prompt written notice of the disclosure requirement, where permitted by law to do so.

## **14. Data protection**

14.1 Data Protection Legislation means from 25 May 2018 the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time; and any successor legislation to the GDPR or the Data Protection Act 1998. This Clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to EMBRIDGE under the Agreement, and that the processing of that Personal Data by EMBRIDGE for the purposes of and in accordance with the terms of the Agreement will not breach Data Protection Legislation.

14.3 EMBRIDGE warrants that:

- (a) it will comply with all applicable requirements of Data Protection Legislation;
- (b) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by EMBRIDGE on behalf of the Customer; and

- (c) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing, and against loss or corruption, of Personal Data processed by EMBRIDGE on behalf of the Customer.

## **15. Termination**

- 15.1 Either party may terminate the Agreement by giving at least 60 days' written notice to the other party, expiring on any anniversary of the Effective Date.
- 15.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
  - (a) commits any material breach of any term of the Agreement, and: (i) the breach is not remediable; or (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - (b) persistently breaches the terms of the Agreement.
- 15.3 EMBRIDGE may terminate the Agreement immediately by giving written notice to the Customer if the Customer:
  - (a) fails to pay any amount due to be paid to EMBRIDGE under the Agreement by the due date; and
  - (b) does not remedy such failure within 14 days following the date of issue of a written notice by EMBRIDGE to the Customer requiring the Customer to do so.
- 15.4 Either party may terminate the Agreement immediately by giving written notice to the other party if:
  - (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting, or makes or proposes to make any arrangement or composition, with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

## **16. Effects of termination**

- 16.1 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to issue invoices and rights to be paid) as at the date of termination.
- 16.2 Subject to Clause 16.1, upon termination all the provisions of the Agreement will cease to have effect, save that:
  - (a) the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely):

Clauses 1, 9.6, 9.7, 10.2, 11.3, 11.4, 11.5, 12, 13, 14, 16, 17 and 19; and

- (b) the provisions of the SLA and the Proposal expressed to survive and continue to have effect will do so (in accordance with their terms or otherwise indefinitely).
- 16.3 If the Agreement is terminated by EMBRIDGE under Clause 15.1 or by the Customer under Clause 15.2 or 15.4 (but not in any other case) the Customer will:
- (a) be entitled to a refund of any Charges paid by the Customer to EMBRIDGE in respect of any Services which were to be performed after the date of effective termination; and
  - (b) be released from any obligation to pay any Charges otherwise payable by the Customer to EMBRIDGE in respect of any Services which were to be performed after the date of effective termination, such amount or amounts to be calculated by EMBRIDGE, using any reasonable methodology.
- 16.4 Save as provided in Clause 16.3, the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to EMBRIDGE.
- 16.5 Within 30 days following the termination of the Agreement, howsoever caused, EMBRIDGE shall supply the Customer Data to the Customer in such format as the parties may (acting reasonably) agree.
- 16.6 EMBRIDGE shall, if so requested by the Customer at any time before the expiry of the period of 30 days following the termination of the Agreement, provide to the Customer assistance in relation to the transfer of the Services to a replacement service provider appointed by the Customer. Save to the extent that the parties have agreed otherwise, EMBRIDGE may charge the Customer for any Services provided under this Clause 16.6 at its standard time-based charging rates.

## **17. Non-solicitation**

Neither party shall, without the other party's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself or for any other person, firm or company, solicit for employment or engagement any employee or contractor of the other party involved in the performance or receipt of the Services.

## **18. Notices**

- 18.1 Any notice given under the Agreement must be in writing (whether or not described as a "written notice" in the Agreement) and must be delivered personally, sent by courier, sent by recorded signed-for post or sent by email, in each case using the contact details of the recipient set out in the Proposal.
- 18.2 Promptly following receipt of a notice sent by email, the recipient shall give to the sender a written acknowledgement of receipt of that notice. Notices sent by email shall only be effective if and when the recipient sends this acknowledgement.
- 18.3 Subject to Clause 18.2, a notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) if the notice is delivered personally or sent by courier, at the time of delivery; and
- (b) if the notice is sent by post, 48 hours after posting.

**19. General**

- 19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 19.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 19.3 Nothing in the Agreement will constitute a legal partnership, agency relationship or contract of employment between the parties.
- 19.4 The Agreement may not be varied except by a written document signed or otherwise agreed in writing by or on behalf of each of the parties.
- 19.5 Each party hereby agrees that the other party may freely assign all of its rights and obligations under the Agreement to any Related Entity of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Subject to this, neither party may, without the prior written consent of the other party, assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 19.6 EMBRIDGE may subcontract the provision of hosting services and related services to be provided to the Customer under the Agreement to any third party, providing that EMBRIDGE shall use reasonable skill and care in the selection of subcontractors, and EMBRIDGE shall remain responsible to the Customer for the performance of the subcontracted obligations. EMBRIDGE shall not subcontract any other Services except with the prior written consent of the Customer. EMBRIDGE shall obtain the prior written consent for the subcontract of hosting services, such written consent not being unreasonably withheld by the Customer.
- 19.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 19.8 Subject to Clause 12.1:
- (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 19.9 The Agreement will be governed by and construed in accordance with the laws of England; and the courts of England will have exclusive jurisdiction to adjudicate





any dispute arising under or in connection with the Agreement.