

**ICONICS UK Services Ltd**  
**Specialist Cloud Services agreement**  
**(Terms and Conditions)**

**Date**

[Jan 1<sup>st</sup> 2016]

This Agreement incorporates the terms and conditions set out in the G-Cloud Framework Agreement, G-Cloud Call-Off Contract and the completed Order Form. Should there be any conflict between those agreements, the parties agree that the following order of precedence applies:

1. G-Cloud Framework Agreement
2. G-Cloud Call-Off Contract
3. The completed Order Form
4. Supplier Terms and Conditions

**Parties**

1. ICONICS UK Services Ltd a company incorporated in England and Wales (registration number 06525455) having its registered office at Castle Court, Castlegate Way, Dudley West Midlands DY1 4RD (the "**Provider**"); and
2. [COMPANY NAME], a company incorporated in [England and Wales] (registration number [registration number]) having its registered office at [address], (the "**Customer**").

**Agreement**

**1. Definitions**

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Specialist Cloud Services, including both administrator accounts and user accounts;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

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

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

- (a) the amounts specified in Part 3 of Schedule 1 (Specialist Cloud Services);

"**Customer**" means the person or entity identified as such in Part 1 of Schedule 1 (Specialist Cloud Services particulars);

**"Customer Confidential Information"** means:

- (a) any information disclosed by [or on behalf of ] the Customer to the Provider [during the Term / at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential;

**"Customer Data"** means [all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Specialist Cloud Services by the Customer];

**"Documentation"** means [the documentation for the Specialist Cloud Services produced by the Provider and delivered or made available by the Provider to the Customer];

**"Effective Date"** means [the date of execution of this Agreement];

**"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 the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars]);

**"Specialist Cloud Services"** means [*name of Specialist Cloud Services* ], as specified [in the Specialist Cloud Services Specification], which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

**"Specialist Cloud Defect"** means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Specialist Cloud Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer;
- (b) any use of the Platform or Specialist Cloud Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Specialist Cloud Services and any other system, network, application, program, hardware or software not specified as compatible in the Specialist Cloud Services Specification;

**"Specialist Cloud Services Specification"** means the specification for the Platform and Specialist Cloud Services set out in [Part 2 of Schedule 1 (Specialist Cloud Services particulars) and in the Documentation];

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

**"Maintenance Services"** means the general maintenance of the Platform and Specialist Cloud Services, and the application of Updates and Upgrades;

**"Mobile App"** means the mobile application known as [*mobile application name*] that is made available by the Provider through [the *Google Play Store* and the *Apple App Store and the Windows Store*];

**"Permitted Purpose"** means [*specify purpose or purposes*];

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

**"Platform"** means the Microsoft Azure platform used by the Provider to provide the Specialist Cloud Services, including the application and database software for the Specialist Cloud Services, the system and server software used to provide the Specialist Cloud Services, and the computer hardware on which that application, database, system and server software is installed;

**"Provider"** means ICONICS UK Services Ltd a company incorporated in England and Wales (registration number 06525455) having its registered office at Castle Court, Castlegate Way, Dudley West Midlands;

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

**"Support Services"** means support in relation to [the use of, and the identification and resolution of errors in, the Specialist Cloud Services, but shall not include the provision of training services];

**"Supported Web Browser"** means [the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported];

**"Term"** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Update"** means a hotfix, patch or minor version update to any Platform software; and

**"Upgrade"** means a major version upgrade of any Platform software.

## **2. Term**

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force [indefinitely / until [date] / until [event]], subject to termination in accordance with Clause 17.

### **3. Specialist Cloud Services**

- 3.1 The Provider shall ensure that the Platform will, on the Effective Date, automatically generate an Account for the Customer and provide to the Customer login details for that Account
- 3.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Specialist Cloud Services by means of a Supported Web Browser during the Term.
- 3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
  - (a) the Specialist Cloud Services may only be used by the officers, employees, agents and subcontractors of the Customer;
  - (b) the Specialist Cloud Services must not be used at any point in time by more than the number of concurrent users specified in [Schedule 1 (Specialist Cloud Services particulars), providing that the Customer may add or remove concurrent user licences in accordance with the procedure set out therein.
- 3.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:
  - (a) the Customer must not sub-license its right to access and use the Specialist Cloud Services; without the express written agreement of the provider.
  - (b) the Customer must not permit any unauthorised person to access or use the Specialist Cloud Services ;
  - (c) the Customer must not use the Specialist Cloud Services to provide services to third parties;
  - (d) the Customer must not republish or redistribute any content or material from the Specialist Cloud Services ; and
  - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation.
- 3.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Specialist Cloud Services using an administrator Account.
- 3.6 The Provider shall use all reasonable endeavours to maintain the availability of the Specialist Cloud Services to the Customer at the gateway between the public internet and the network of the Specialist Cloud Services provider for the Specialist Cloud Services, but does not guarantee 100% availability.
- 3.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of this Agreement; or
  - (e) scheduled maintenance carried out in accordance with this Agreement.
- 3.8 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Specialist Cloud Services with the authority of the Customer or by means of an administrator Account comply with Schedule 2 (Acceptable Use Policy).
- 3.9 The Customer must not use the Specialist Cloud Services in any way that causes, or may cause, damage to the Specialist Cloud Services or Platform or impairment of the availability or accessibility of the Specialist Cloud Services.
- 3.10 The Customer must not use the Specialist Cloud Services:
  - (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 3.12 The Provider may suspend the provision of the Specialist Cloud Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Specialist Cloud Services on this basis.

#### **4. Maintenance Services**

- 4.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 4.2 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Specialist Cloud Services or are likely to have a material negative impact upon the Specialist Cloud Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.
- 4.3 The Provider shall give to the Customer at least 5 Business Days' prior written notice of the application of an Upgrade to the Platform.
- 4.4 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and at least 5 Business Days' prior written notice of the application of any non-security Update to the Platform.
- 4.5 The Provider shall provide the Maintenance Services with reasonable skill and care.

- 4.6 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

## **5. Support Services**

- 5.1 The Provider shall provide the Support Services to the Customer during the Term.
- 5.2 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement.
- 5.3 The Provider shall provide the Support Services with reasonable skill and care.
- 5.4 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 5.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.
- 5.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **6. Customer Data**

- 6.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 6.2 The Customer warrants to the Provider that the use of the Customer Data by the Provider in accordance with this Agreement will not:
- (a) breach the provisions of any law, statute or regulation;
  - (b) infringe the Intellectual Property Rights or other legal rights of any person; or
  - (c) give rise to any cause of action against the Provider,
- in each case in any jurisdiction and under any applicable law.
- 6.3 The Provider shall create a back-up copy of the Customer Data at least weekly, shall ensure that each such copy is sufficient to enable the Provider to restore the Specialist Cloud Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.

- 6.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 6.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **7. Mobile App**

- 7.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

## **8. No assignment of Intellectual Property Rights**

- 8.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **9. Charges**

- 9.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 9.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 9.2.
- 9.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 9.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring [on any anniversary of the date of execution of this Agreement.

## **10. Payments**

- 10.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Part 3 of Schedule 1 (Specialist Cloud Services particulars).
- 10.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 10.
- 10.3 The Customer must pay the Charges by using such payment details as are notified by the Provider to the Customer from time to time.
- 10.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment 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.

## **11. Provider's confidentiality obligations**

### **11.1 The Provider must:**

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

11.2 Notwithstanding Clause 11.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

11.3 This Clause 11 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

11.4 The restrictions in this Clause 11 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

11.5 The provisions of this Clause 11 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.



## **12. Data protection**

- 12.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).
- 12.2 To the extent that the Provider processes Personal Data disclosed by the Customer, the Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of that Personal Data;
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and
  - (c) it will not transfer or permit the transfer of that Personal Data outside the EEA without the prior written consent of the Customer.

## **13. Warranties**

- 13.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
  - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
  - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 13.2 The Provider warrants to the Customer that:
- (a) the Platform and Specialist Cloud Services will conform in all respects with the Specialist Cloud Services Specification;]
  - (b) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
  - (c) the Platform will incorporate security features reflecting the requirements of good industry practice.
- 13.3 The Provider warrants to the Customer that the Specialist Cloud Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 13.4 The Provider warrants to the Customer that the Specialist Cloud Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 13.5 If the Provider reasonably determines, or any third party alleges, that the use of the Specialist Cloud Services by the Customer in accordance with this

Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Specialist Cloud Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

13.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under the Agreement.

13.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into the Agreement or any related contract.

#### **14. Acknowledgements and warranty limitations**

14.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Specialist Cloud Services will be wholly free from defects, errors and bugs.

14.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Specialist Cloud Services will be entirely secure.

14.3 The Customer acknowledges that the Specialist Cloud Services are designed to be compatible only with that software and those systems specified as compatible in the Specialist Cloud Services Specification; and the Provider does not warrant or represent that the Specialist Cloud Services will be compatible with any other software or systems.

14.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Specialist Cloud Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Specialist Cloud Services or the use of the Specialist Cloud Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

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

15.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

15.2 The limitations and exclusions of liability set out in this Clause 15 and elsewhere in this Agreement:

- (a) are subject to Clause 15.1; and
  - (b) govern all liabilities arising under the Agreement or relating to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in the Agreement.
- 15.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 15.4 Neither party shall be liable to the other in respect of any loss of profits or anticipated savings.
- 15.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 15.6 Neither party shall be liable to the other in respect of any loss of use or production.
- 15.7 Neither party shall be liable to the other in respect of any loss of business, contracts or opportunities.
- 15.8 Neither party shall be liable to the other in respect of any loss or corruption of any data, database or software; providing the Provider has fully complied with its obligations under Clause 6.3 and Clause 6.4.
- 15.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

## **16. Force Majeure Event**

- 16.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 16.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
  - (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 16.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **17. Termination**

- 17.1 Either party may terminate this Agreement by giving to the other party at least 90 days' written notice of termination subject to any relevant break clauses specific to the Specialist Cloud Services.
- 17.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

17.3 Either party may terminate this Agreement immediately by giving written notice of termination 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;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement)];

## **18. Effects of termination**

18.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.11, 7, 10.2, 10.4, 11, 15, 18, 21 and 22.

18.2 The termination of this Agreement shall not affect the accrued rights of either party.

18.3 Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

## **19. Notices**

19.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 19.2 and Part 4 of Schedule 1 (Specialist Cloud Services particulars)):

- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;

- (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting.

providing that if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

- 19.2 The Provider's contact details for notices under this Clause 19 are as follows: ICONICS UK Services Ltd having its registered office at Castle Court, Castlegate Way, Dudley West Midlands DY1 4RD
- 19.3 The addressee and contact details set out in Clause 19.2 and Part 4 of Schedule 1 (Specialist Cloud Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 19.

## **20. Subcontracting**

- 20.1 The Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.
- 20.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 20.3 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **21. General**

- 21.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 21.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 21.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 21.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 21.5 This 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 this Agreement are not subject to the consent of any third party.

- 21.6 Subject to Clause 15.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 21.7 This Agreement shall be governed by and construed in accordance with English law.
- 21.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **22. Interpretation**

- 22.1 In this 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.
- 22.2 The Clause headings do not affect the interpretation of this Agreement.
- 22.3 In this 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.

## **Execution**

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** *[[individual name]* on *[.....]*, the Provider duly authorised for and on behalf of the Provider]:

.....

**SIGNED BY** *[[individual name]* on *[.....]*, the Customer / *[[individual name]* on *[.....]*, duly authorised for and on behalf of the Customer]:

.....

## **Schedule 1 (Specialist Cloud Services particulars)**

### **1. Customer details**

The Customer is *[[individual name]* of *[address]* / *[company name]*, a company incorporated in *[England and Wales]* (registration number *[registration number]*) having its registered office at *[address]* / *[partnership name]*, a partnership established under the laws of *[England and Wales]* having its principal place of business at *[address]*].

### **2. Specification of Specialist Cloud Services**

*[Specify Specialist Cloud Services and any relevant usage limitations]*

### **3. Financial provisions**

*[Insert financial provisions]*

### **4. Contractual notices**

*[Customer contractual notices address details]*

## **Schedule 2 (Acceptable Use Policy)**

### **1. Introduction**

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of [the website at [URL], any successor website, and the services available on that website or any successor website] (the "**Services**"); and
  - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to [any customer for the Services and any individual user of the Services] (and "your" should be construed accordingly); and references in this Policy to "us" are to [*identify provider*] (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before [you upload or submit any Content or otherwise use the Services].

### **2. General usage rules**

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

### **3. Unlawful Content**

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- (a) be libellous or maliciously false;
  - (b) be obscene or indecent;
  - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
  - (d) infringe any right of confidence, right of privacy or right under data protection legislation;
  - (e) constitute negligent advice or contain any negligent statement;
  - (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;



- (g) be in contempt of any court, or in breach of any court order;
  - (h) constitute a breach of racial or religious hatred or discrimination legislation;
  - (i) be blasphemous;
  - (j) constitute a breach of official secrets legislation; or
  - (k) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

#### **4. Graphic material**

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.
- 4.2 Content must not be pornographic or sexually explicit.

#### **5. Factual accuracy**

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

#### **6. Negligent advice**

- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

#### **7. Etiquette**

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.

#### **8. Monitoring**

- 8.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

**9. Harmful software**

- 9.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 9.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.