



CLOUDCOCO LTD MASTER SERVICES AGREEMENT

BACKGROUND

- (A) The Supplier provides technology services for customers.
- (B) The Customer wishes to contract with the Supplier for the supply of services and/or hardware as specified in Orders signed under this Agreement, and the Supplier wishes to provide such services and/or hardware on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 The following words and expressions have the following meanings unless the context otherwise requires:

“Applicable Law”	any: <ul style="list-style-type: none">(a) statute, statutory instrument, bye law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);(b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body (including the general conditions of entitlement notified by Ofcom under section 48 of the Communications Act 2003 from time to time); and/or(c) legally binding industry code of conduct or guideline which relates to this Agreement and/or the Services
“Charges”	the Charges for the applicable Services as set out in the relevant Order(s), as such Charges may be varied from time to time in accordance with clause 4.2
“Consumption Charges”	Charges the amount of which depend on the amount of a stated resource that is used (eg electricity or call charges)
“Controller”	the meaning given in the Data Protection Legislation
“Customer Related Party”	(a) the employees, sub-contractors, agents and representatives of the Customer; and

	(b) the employees, sub-contractors, agents and representatives of the Customer's third party suppliers
"Data Processing Legislation"	the General Data Protection Regulation (Regulation (EU) 2016/679) and any UK implementing laws, regulations and secondary legislation, as amended or updated from time to time and any successor legislation to the GDPR or UK implementing laws;
"Data Subject"	the meaning given in the Data Protection Legislation
"Floor Service Level"	the level described as such in an Order, if any
"Force Majeure Event"	any event or circumstance to the extent that it is beyond the reasonable control of the relevant party, or which it would not be reasonable to expect a party to control, and that prevents or delays that party from, or in, fulfilling its obligations. Force Majeure includes any act of God, act of terrorism, war, national emergency, insurrection, riot, pandemic, failure or brown out of the internet, failure or brown out of any third party communications network (other than where the communications network is being provided as part of the Services), power outages at sites which are not operated by the Supplier, labour dispute affecting a third party, severe weather conditions, governmental interference and any event which a telecoms provider refuse to accept responsibility, eg in a BT "Matters Beyond our Reasonable Control" notice.
"Insolvent"	<p>a party:</p> <ul style="list-style-type: none"> (a) has a receiver, administrator or provisional liquidator appointed; (b) is subject to a notice of intention to appoint an administrator; (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring); (d) has a winding up order made by a court in respect of it;

	<p>(e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring); or</p> <p>(f) ceases to carry on business</p>
“Liability”	liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under this Agreement, in each case howsoever caused including if caused by negligence
“Monitoring Requirements”	any and all Applicable Laws which are relevant to the Services provided under any Order from time to time and which relate to the recording, interception, storage and/or disclosure of data for the purposes of safeguarding national security and/or preventing or detecting of crime and/or prosecution of offenders, including the Regulation of Investigatory Powers Act 2000, the Terrorism Act 2000, the Data Retention (EC Directive) Regulations 2009, the Retention of Communications Data (Code of Practice) Order 2003, the Investigatory Powers Act 2016 and any provisions which have similar effects that exist from time to time
“Office Day”	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
“Office Hours”	9:00 am to 5:00 pm on an Office Day
“Order”	an order for Services stated to be made under this Agreement
“Processor”	the meaning given in the Data Protection Legislation
“Quarter”	the period of 3 months starting on the Start Date, each successive period of 3 months during the Term and the period (if any) starting on the day following expiry of the last such period of 3 months and ending on the Termination Date; and “Quarterly” will be construed accordingly
“Recurring Charges”	That element of the Charges which is payable on a periodic basis

“Service Credits”	has the meaning given in clause 7
“Service Levels”	any service levels which the Supplier has agreed in relation to a Service, being the service level standards set out in the applicable Order(s), and expressly identified as a Service Level
“Services”	the Services being provided by the Supplier to the Customer as specified in the applicable Order(s), as such Services may be modified from time to time in accordance with this Agreement
“Set Up Charges”	Charges payable on a one off basis for the installation, commissioning or set up of a Service, as set out in the Order Form
“Start Date”	the date identified as such in the relevant Order; a Start Date in one Order is of no relevance to any other Order
“Supplier Team”	<p>(a) the employees, sub-contractors, agents and representatives of the Supplier; and</p> <p>(b) the employees, sub-contractors, agents and representatives of the Supplier’s agents, representatives and sub-contractors</p>
“Term”	the period during which Services are to be provided under a specific Order; the Term of one Order is of no relevance to any other Order
“Termination Date”	the date on which this Agreement or the relevant Order expires or terminates for whatever reason
“VAT”	value added tax
“Year”	In relation to each Order, the period of 12 months starting on the Start Date of that Order, each successive period of 12 months during the Term of that Order and the period (if any) starting on the day following expiry of the last such period of 12 months and ending on the Termination Date of that Order

- 1.2 headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;

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- 1.3 unless the context otherwise requires:
- 1.3.1 words denoting the singular include the plural and vice versa;
 - 1.3.2 words denoting any gender include all genders; reference to any person includes a reference to companies and all other legal entities;
 - 1.3.3 any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time;
 - 1.3.4 any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and
 - 1.3.5 any uses of the word “include” “includes” or “including” shall be deemed followed by the words “without limitation”;
- 1.4 references to this Agreement are references to this Agreement as varied from time to time;
- 1.5 the Orders form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement, and any reference to this Agreement will include the relevant Orders; and
- 1.6 terms set out in on Order shall only apply to that Order, and not any other Order; if there is a conflict between an Order and the rest of this Agreement, the relevant Order shall take precedence, in relation to that Order only.
2. **SUPPLY OF THE SERVICES**
- 2.1 In consideration of the payment of the Charges by the Customer and the performance by the Customer of its obligations under this Agreement, the Supplier agrees to provide the Services to the Customer in accordance with the terms and conditions of this Agreement.
- 2.2 The Supplier will use reasonable endeavours in respect of each Order to ensure that the Services are ready for use by the Start Date, but that date is only a target date.
- 2.3 The Supplier shall at all times during the Term of each Order ensure that any premises, equipment or other assets made available to the Customer are in good order, safe, properly maintained, suitable for the purposes for which they are to be used, and that they conform to all Applicable Law.
- 2.4 **Customer Obligations**
- The Customer shall at all times during the Term of each Order:
- 2.4.1 provide such co-operation as the Supplier (or the Supplier’s Team) may reasonably require in all matters relating to the Services;

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- 2.4.2 provide accurate and full information, materials, access to the Customer assets, authorisations, user manuals and other documentation reasonably required by the Supplier Team in order for the Supplier to provide, implement and configure the Services;
- 2.4.3 ensure that any premises, equipment or other assets made available to the Supplier Team are in good order, safe, properly maintained, suitable for the purposes for which they are to be used, and that they conform to all Applicable Law;
- 2.4.4 except to the extent specifically stated otherwise in the relevant Order, obtain and maintain all necessary wayleaves, licences and consents and comply with all Applicable Law in relation to the installation or provision of Services, the installation of the equipment, the use of Customer materials or equipment in relation to the Services;
- 2.4.5 maintain at its own cost with a reputable insurance company such insurance cover against all risks which would normally be insured against by a prudent business, including insurance in relation to:
- 2.4.5.1 any equipment or other assets of the Customer;
 - 2.4.5.2 any loss or damage caused to the Supplier's property or to the Supplier's Team and/or visitors by the negligence or default of the Customer or any Customer Related Party or caused by any malfunctioning of the Customer's equipment or other assets; and
 - 2.4.5.3 any loss of data or business interruption.
- 2.4.6 comply at all times, and ensure that Customer Related Parties visiting the Supplier's premises comply at all times, with all Applicable Law and with all reasonable rules and regulations applicable to the Premises and notified to the Customer by the Supplier from time to time;
- 2.4.7 not use the Services or the Supplier Team's assets or premises for any illegal or unlawful purpose, nor in a manner which constitutes a violation or infringement of the rights of any other party;
- 2.4.8 provide the Supplier with a contact telephone number which is operational and manned 24 hours per day 7 days per week for use by the Supplier in contacting the Customer in relation to the Services; and
- 2.4.9 when on any premises of the Supplier Team, and in its use of the Services, it will act with reasonable care and skill and in accordance with Applicable Law.

3. **TERM**

3.1 Not Used

4. PRICE AND PAYMENT

- 4.1 The Customer will pay the Charges to the Supplier. Any sum payable under this Agreement is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum as provided by law from time to time.
- 4.2 The Supplier will invoice the Customer for the Charges for the Services in accordance with the relevant Order. The Supplier will be entitled to issue each invoice in advance of its due date.
- 4.3 Each invoice will be a valid VAT invoice and will be sent to the Customer at the address and marked for the attention of the individual set out in Contract Information section above (or such other address and/or individual as may be notified by the Customer to the Supplier from time to time).
- 4.4 Subject to any provisions of this Agreement which permit the Customer to make any deductions or withholdings from payments, each invoice will be payable by the Customer within the period or on the date specified in the relevant Order. All payments will be made in pounds sterling in cleared funds.
- 4.5 If the Customer, on bona fide grounds, disputes any part of an invoice, the Customer will, within 14 days of the date of receipt of the relevant invoice, notify the Supplier in writing of that dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
- 4.5.1 the Customer will pay that part of the invoice which is not disputed in accordance with the terms of the Order;
 - 4.5.2 the Customer will be entitled to withhold payment of the disputed amount;
 - 4.5.3 the parties will negotiate in good faith to resolve the dispute, but if a resolution cannot be reached within 14 days of the Customer giving notice under this **clause 4.5, each party shall be entitled to take such steps as it considers appropriate;**
 - 4.5.4 the Supplier will provide the information and evidence necessary to verify any disputed sum; and
 - 4.5.5 following resolution of the dispute the Customer will, within 7 days, pay to the Supplier that part of the disputed amount (if any) as it is resolved is payable by the Customer.
- 4.6 Subject to any provisions of this Agreement which permit the Customer to make any deductions or withholdings from payments, if any sum payable under this Agreement is not paid on or before the due date for payment the Customer will pay to the Supplier interest on that sum at 3% per annum above the base lending rate from time to time of Royal Bank of Scotland plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis and be compounded monthly. Interest will not be payable on any amount that was successfully disputed under clause 4.5 but interest will be payable on any part of any such amount that is resolved as being payable (interest will be payable from the date on which payment of the original invoice was originally due). The parties agree that this clause 4.6 is a substantial remedy for late payment of any sum

payable under this Agreement, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.7 Subject to any provisions of this Agreement which permit the Customer to make any deductions or withholdings from payments (including clause 4.5), if the Customer fails to make any payment due to the Supplier under this Agreement on or before the due date and continues to do so for 7 days following a demand from the Supplier for payment, the Supplier will be entitled to suspend provision of the Services until a reasonable time after payment of all overdue sums (so that Services can be recommenced) has been made and to cancel or suspend any or all Orders which have not yet been performed.

5. **WARRANTIES AND INDEMNITIES**

Supplier Warranties

- 5.1 The Supplier warrants and represents to the Customer that:
- 5.1.1 it will provide the Services with reasonable care and skill and in accordance with the Service Levels (where applicable) and Applicable Law;
 - 5.1.2 as far as it is aware, provision or use of the Services will not infringe the intellectual property rights of a third party; and
 - 5.1.3 the execution and performance of this Agreement is within the Supplier's powers and authority.
- 5.2 The Customer acknowledges that the Supplier cannot and does not guarantee, represent or warrant that the Services will be uninterrupted.

Customer Warranties

- 5.3 The Customer warrants and represents to the Supplier that:
- 5.3.1 where the Customer is to provide equipment or other assets, that equipment and other assets will comply with the descriptions and standards set out in the applicable Order(s), and with all Applicable Law;
 - 5.3.2 the information provided to the Supplier is and will remain complete and accurate;
 - 5.3.3 the execution and performance of this Agreement is within the Customer's powers and authority;
 - 5.3.4 it has, and will at all times during the term of this Agreement maintain, all necessary wayleaves, consents, licences and authorities (whether statutory or otherwise) in connection with this Agreement and the Services, and shall fully comply with its obligations under them and under all Applicable Law; and

5.3.5 the use and possession by the Supplier Team of the Customer's equipment or other assets in provision of the Services will not infringe the rights of any third party, including Intellectual Property Rights.

5.4 The Customer shall fully indemnify and hold harmless the Supplier against any and all costs (including legal costs), expenses, liabilities, losses, damages, claims, demands and judgments which the Supplier incurs or suffers as a result of:

5.4.1 any claim arising from the Customer's breach of any of the warranties and representations in clause 5.3;

5.4.2 any claim that the presence of any equipment or software of the Customer Equipment on the premises or equipment of any member of the Supplier Team (or the provision of the Services in respect of such equipment or software) infringes the intellectual property rights of any third party in any country; or

5.4.3 any claim arising from the content or data stored on or transmitted through the equipment or software provided by the Customer or sent or posted via the Services (unless it was sent or posted by the Supplier Team).

6. EXCLUSIONS AND LIMITATIONS OF LIABILITY

6.1 Financial Cap

Subject to **clause 6.3**, the Supplier's maximum aggregate Liability which arises from any and all acts omissions or other circumstances which occur in any one Year under or in connection with any Order, will be limited to a sum equal to 100% of the aggregate Charges paid by the Customer for the provision of the Services under that Order during the then immediately preceding Year (or during the first Year, the Charges which have been paid and any other Charges which are scheduled to be paid in that Year under that Order, assuming that each party complies with its obligations and no changes are made to the Services the Customer purchases).

6.2 Exclusion of certain liabilities

6.2.1 Neither the Supplier nor any member of the Supplier Team will be liable for, or have any Liability (whether direct, indirect or consequential) to the Customer for, any:

6.2.1.1 loss of profit;

6.2.1.2 loss of revenue, loss of production or loss of business;

6.2.1.3 loss of goodwill, loss of reputation or loss of opportunity;

6.2.1.4 loss of anticipated savings;

6.2.1.5 liability of the Customer to third parties;

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- 6.2.1.6 loss of use or value of any data or software;
 - 6.2.1.7 wasted management, operational or other time (whether indirect or consequential);
 - 6.2.1.8 loss or damage arising out of any failure by the Customer to keep full and up to date back up copies of any computer program, configurations and data held or used by or on behalf of the Customer; or
 - 6.2.1.9 any loss which was not in the contemplation of the parties when the relevant Order was entered,
 - 6.2.1.10 any consequential of indirect loss
 - subject always to **clauses 6.2.2 and 6.3.**
 - 6.2.2 Without prejudice to **clause 6.3** this **clause 6.2** will not limit the amount of the Charges or any related interest payments, which sums will not count towards the financial limit set out in **clause 6.1.**
 - 6.3 **Liabilities that are not excluded**
 - 6.3.1 Nothing in this Agreement will operate to exclude or restrict one party's Liability (if any) to the other:
 - 6.3.1.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
 - 6.3.1.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 6.3.1.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;
 - 6.3.1.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982; or
 - 6.3.1.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
 - 6.4 Nothing in this **clause 6** restricts the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
 - 6.5 The parties agree that they have negotiated this **clause 6** and that the allocation of risk in this clause is a fair and equitable position.

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- 6.6 The exclusions from and limitations of liability contained in this **clause 6** will apply after each Termination Date and any act, omission or other circumstance which occurs after the Termination Date will be deemed to have occurred in the last Year of this the relevant Order.
- 6.7 Subject to **clause 6.3** all warranties, conditions and other terms implied by Applicable Law (whether by statute, common law or otherwise) are excluded from this Agreement.
- 6.8 Each of the Supplier Team will be entitled to enforce all the terms of this clause 6 subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement. The financial limits on Liability set out in this clause 6 are the maximum Liability of the Supplier Team in aggregate.
- 6.9 Notwithstanding any other term of this Agreement the Supplier will not be in breach of this Agreement to the extent that its failure to perform or delay or defect in performance of its obligations under this Agreement arises as a result of:
- 6.9.1 any breach by the Customer of its obligations contained in this Agreement or any Order;
 - 6.9.2 the Supplier relying on any incomplete or inaccurate data provided by the Customer or a Customer Related Party;
 - 6.9.3 the failure of or any fault in (i) any equipment or assets provided by the Customer; and/or (ii) any software other than software which is supplied or supported by the Supplier under this Agreement;
 - 6.9.4 planned maintenance notified to the Customer in accordance with the relevant Order or, if no such notice is specified in an Order, on reasonable notice;
 - 6.9.5 any circumstance in respect of which an Order specifies that the Supplier will not be in breach of this Agreement; or
 - 6.9.6 the Supplier complying with any instruction or request by the Customer or any Customer Related Party.

7. **Service Credits**

- 7.1 If credits are payable under the express terms of any Order against certain specific losses of, failures in or delays to the Service and/or failures to meet Service Levels, those credits ("**Service Credits**") will be payable in accordance with that Order and this clause 7.
- 7.2 Any Service Credits paid by the Supplier will be taken into account in calculating whether the financial limit set out in **clause 6.1** has been reached.
- 7.3 Subject to **clauses 6.3** and Error! Reference source not found., the payment of Service Credits is the Customer's sole remedy for the relevant loss of Service and for failure by the Supplier to achieve the Service Levels to which such Service Credits relate, up to the Floor Service Level. The Supplier shall be liable for damages under normal contract principles and the terms of this

Agreement for any breach of a Service Level to the extent that it is worse than the Floor Service Level.

7.4 Service Credits are payable by way of offset against the Charges, and will be credited in the Supplier's next invoice. In the event of termination of the relevant Order, the Supplier will promptly pay the applicable Service Credit to the Customer.

7.5 The maximum Service Credit that the Supplier shall be liable to pay in respect of all incidents under any Order in any given month shall be the percentage of the periodic Charges payable in respect of that month stated in that Order (or if nothing is stated, 10% of the periodic Charges).

7.6 Service Credits will not be payable:

7.6.1 in circumstances in which the relevant Order provides that Service Credits will not be payable;

7.6.2 where the Customer has failed to pay any Charges by the due date; or

7.6.3 where any of the circumstances set out in clause 6.9 applies.

8. **TERMINATION**

8.1 Not used

9. **CONSEQUENCES OF TERMINATION**

9.1 Following termination of this Agreement for whatever reason:

9.1.1 the following provisions will continue in force: clauses 4 (price and payment), 6 (exclusions and limitations of liability), 9 (consequences of termination), 11 (confidentiality), 27 (rights of third parties), 29 (governing law) and 30 (jurisdiction) together with any other provisions which expressly or impliedly continue to have effect after termination of this Agreement; and

9.1.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

9.2 Termination or expiry of an Order shall not prejudice the continuation or terms of any other Order or this Agreement.

9.3 **Return of Confidential Information**

Within 14 days after the Termination Date each party will, subject to the exception set out in **clause 9.4**,

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- 9.3.1 return to the other party all Confidential Information (including all copies and extracts) of the other party in its possession or control, to the extent that the Confidential Information does not relate to a continuing Order;
 - 9.3.2 destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any Confidential Information of the other party ("**Records**") to the extent that the Records do not relate to a continuing Order; and
 - 9.3.3 cease to use the Confidential Information of the other part, except to the extent that the Confidential Information does relates to a continuing Order.
- 9.4 Each party may retain any Confidential Information of the other party and/or Records which it has to keep to comply with any Applicable Law or which it is required to retain for insurance, accounting or taxation purposes. **Clause 11 will** continue to apply to retained Confidential Information and Records, which may only be used for the purposes for which they have been retained.
- 9.5 Following the Termination Date (save where the relevant Order is terminated by the Customer under **clause 8.1**):
- 9.5.1 the Supplier will be entitled to invoice the Charges (or any part of them) which have not yet been invoiced; and
 - 9.5.2 all invoices (including any invoices issued under **clause 9.5.1**) will become immediately due and payable by the Customer.

10. **FORCE MAJEURE**

- 10.1 A party will not be in breach of this Agreement or otherwise liable to the other party for any failure to perform or delay in performing its obligations under this Agreement to the extent that such failure or delay is due to a Force Majeure Event.
- 10.2 If a Force Majeure Event occurs, the party affected will:
 - 10.2.1 as soon as reasonably practicable after becoming aware of the Force Majeure Event give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;
 - 10.2.2 use reasonable endeavours (provided that such obligation shall not require the engagement of third parties) to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event; and
 - 10.2.3 continue to perform all of its obligations under this Agreement the performance of which are not affected by the Force Majeure Event.

11. CONFIDENTIALITY

11.1 “**Confidential Information**” means any information (whether written, oral, in electronic form or in any other media) that:

11.1.1 is disclosed by or on behalf of a party (the “**Discloser**”) to the other party (the “**Recipient**”) in connection with this Agreement and that relates (in whole or in part) to the Discloser or its business; and/or

11.1.2 relates to the existence, terms or performance of this Agreement,

but excluding any information that falls within the exclusions set out in **clause 11.4**.

11.2 The Recipient will:

11.2.1 keep the Confidential Information secret and will only disclose it in the manner and to the extent expressly permitted by this Agreement or otherwise agreed;

11.2.2 use the Confidential Information only to the extent necessary for the performance of its obligations under this Agreement;

11.2.3 only make such copies, notes, reports, analyses and recordings (in whatever media) that contain or are based on Confidential Information as are reasonably necessary for the purpose of complying with its obligations under this Agreement; and

11.2.4 keep the Confidential Information safe and secure and apply security measures as good as those the Recipient operates in relation to its own confidential information.

11.3 The Recipient may disclose Confidential Information:

11.3.1 to such of its officers and employees and, in the case of the Supplier, the Supplier Team, who need access to that Confidential Information for the purpose of complying with its obligations under this Agreement. The Recipient will take reasonable steps to procure that any person to whom the Recipient discloses Confidential Information pursuant to this **clause 11.3.1** will not do or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of this **clause 11**;

11.3.2 to the extent required by the Monitoring Requirements, other Applicable Law or a court of competent jurisdiction or the rules of any listing authority, stock exchange, the Panel on Takeovers and Mergers or a regulatory authority. Where reasonably practicable and lawful the Recipient will give notice to the Discloser in advance of such disclosure, will consult with the Discloser as to the content, purpose and means of disclosure and will seek to make such disclosure subject to obligations of confidence consistent, so far as possible, with the terms of this **clause 11**.

11.4 The Recipient’s obligations under this **clause 11** will not extend to Confidential Information which:

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- 11.4.1 has ceased to be secret without default on the Recipient's part;
 - 11.4.2 was already in the Recipient's possession prior to disclosure by or on behalf of the Discloser;
 - 11.4.3 has been received from a third party who did not acquire it in confidence and who is free to make it available to the Recipient without restriction;
 - 11.4.4 was independently developed by the Recipient without any breach of this Agreement; or
 - 11.4.5 at the time of disclosure was in the public domain or subsequently enters into the public domain without default of the Recipient.

12. **ANTI-CORRUPTION**

Each party will not, and will procure that its officers, employees, agents and sub-contractors will not, commit any act which causes a relevant commercial organisation (as defined in the Bribery Act 2010) to be guilty of an offence under Section 7 Bribery Act.

13. **MODERN SLAVERY**

The Supplier agrees to ensure that it and the Supplier Team comply with the Applicable Laws relating to modern slavery.

14. **DATA PROTECTION**

14.1 **The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller of the data which the Customer processes through the Services and the Supplier is the Data Processor.**

14.2 **Each party shall, in respect of each Service:**

14.2.1 provide such help and co-operation as is reasonably necessary or reasonably requested by the other to enable compliance with this clause 14 and/or with the Data Protection Legislation; and

14.2.2 without prejudice to the express provisions of this clause 14, at all times comply, and procure that the Customer Related Parties and the Supplier Team (as appropriate) comply, with its obligations under the Data Protection Legislation,

it being agreed that this clause 14.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.3 The Customer confirms that the content of each Order relating to Personal Data to be processed by the Supplier is correct and:

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- 14.3.1 each Order constitutes an instruction by the Customer for the purposes of the Data Protection Legislation to the Supplier to process the Personal Data to be processed in the Services provided under that Order, in accordance with the terms of that Order;
- 14.3.2 a representation and a warranty by the Customer that:
- 14.3.2.1 the contents of the Order that record the nature of Personal Data to be processed as part of the relevant Service (and manner of processing that data) are accurate;
 - 14.3.2.2 the Customer has obtained all necessary and appropriate consents and notices to enable lawful transfer of all of the Personal Data to the Supplier (and by the Supplier to the other members of the Supplier Team) for the duration and purposes of the applicable Order, and that it has recorded and documented such consents and notices in compliance with the record keeping requirements of the Data Protection Legislation; and
 - 14.3.2.3 the Customer considers the arrangements (including security arrangements) in respect of Personal Data set out in the Order appropriate and agrees to them.
- 14.4 If at any time during the provision of a Services:
- 14.4.1 any of the facts or requirements related to Personal Data set out in the Order change; or
 - 14.4.2 the Customer no longer complies with any of its obligations under this clause 14,
- the Customer will promptly notify the Supplier in writing and any necessary changes will be agreed between the parties.
- 14.5 **The Supplier** shall in relation to any Personal Data processed in connection with the performance of the Services:
- 14.5.1 process such Personal Data only on the documented instructions of the Customer as set out in the applicable Order or otherwise, including with regard to transfers of Personal Data to a country outside the European Union or an international organisation (unless required to do so by European Union or member state law to which the Supplier is subject, in which case, the Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest);
 - 14.5.2 take all measures required pursuant to the Data Protection Legislation in respect of security of processing, in accordance with the agreed security measures set out or referred to in the applicable Order;
 - 14.5.3 operate appropriate security procedures, processes and systems in accordance with the applicable Order to ensure that unauthorised persons do not, through a failing of the

Supplier Team, have access to any equipment used to process such Personal Data or to the Personal Data itself;

- 14.5.4 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 14.5.5 use reasonable endeavours to ensure the reliability of the Supplier Team with access to such Personal Data and ensure that all such members of the Supplier Team are under appropriate obligations of confidentiality in relation to such Personal Data;
- 14.5.6 in respect of any transfer of Personal Data to a sub-processor, comply with (i) the relevant provisions of the applicable Order; and (ii) the requirements of the Data Protection Legislation. For the purposes of the Data Protection Legislation, consent shall be deemed to be given for the transfer of Personal Data to the sub-processors and/or categories of sub-processors as provided in each Order, in which case such transfer shall be in accordance with the Order;
- 14.5.7 provide reasonable assistance to the Customer to meet a request or complaint made by a Data Subject in respect of his/her Personal Data in order to meet the requirements of the Data Protection Legislation in respect of Data Subject rights; such assistance shall be by appropriate technical and organisational measures insofar as this is possible and in accordance with any commitments in the relevant Order. The Supplier shall be entitled to charge the Customer at its then current time and material rates for any time spent in connection with the requests of privacy agencies, subject access requests or similar requests or providing information required by the Customer to comply with their obligations under the Data Protection Legislation;
- 14.5.8 not transfer any Personal Data outside of the European Economic Area unless (i) the prior written consent of the Customer has been obtained (and consent shall be deemed to be given in respect of any transfer specified in the Order); and (ii) the following conditions are fulfilled:
 - 14.5.8.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 14.5.8.2 the Data Subject has enforceable rights and effective legal remedies;
 - 14.5.8.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 14.5.8.4 the Supplier complies with reasonable instructions notified to it by the Customer in advance of arranging a transfer process with respect to the processing of the Personal Data;
- 14.5.9 notify the Customer if, in its opinion, an instruction given by the Customer infringes the Data Protection Legislation; and

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- 14.5.10 after termination of the applicable Order (or relevant part of it) or after the end of the carrying out of data processing, at the choice of the Customer (to be notified to the Supplier in writing) delete or return all Personal Data subject to the relevant Services to the Customer and delete existing copies in accordance with the other terms of this Agreement (unless and to the extent it is required by clause 11.3.2 or for the Supplier's business records), provided that if there is any conflict between such other terms and the provisions of Article 28.3(g) of the GDPR, such Article 28.3.(g) shall prevail to the extent necessary to resolve the conflict.
- 14.6 **The Customer accepts that the Supplier Team will comply with the Monitoring Requirements and cannot control the route that Personal Data transmitted across the internet will take, or (without prejudice to the Supplier's express obligations under this clause) where copies of that data might be created or stored.**
- 14.7 Without prejudice and subject to any express obligations in this clause 14 and the Orders, the Supplier shall use its security policies from time to time in relation to the Services; the current version of those policies is available on request from the Supplier.
- 14.8 The Supplier may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply from the date that the Customer is notified of such clauses or similar terms).
15. **ASSIGNMENT**
- 15.1 This Agreement is personal to the Customer and the Customer will only be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement if it has obtained the prior written consent of the Supplier to do so, such consent not to be unreasonably withheld.
- 15.2 The Supplier will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this Agreement.
16. **SUB-CONTRACTING**
- 16.1 Not used
17. **NOTICE**
- 17.1 Not used
18. **ENTIRE AGREEMENT**
- This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

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- 18.1 neither party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in this Agreement;
- 18.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract; and
- 18.3 nothing in this **clause 18** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
19. **NO WAIVER**
20. Unless the contrary is stated in a written notice, no delay nor any partial or complete failure to exercise any right or remedy under or in connection with this Agreement shall be taken to be a waiver of any such right or remedy, or to limit the future use of that or any other right or remedy.
21. **SEVERANCE**
- If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.
22. **VARIATION**
- No variation to this Agreement will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
23. **TIME**
- Time is not of the essence of any obligation under this Agreement or any Order.**
24. **NO PARTNERSHIP OR AGENCY**
- Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
25. **INDEPENDENT CONTRACTORS**
- Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

26. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.

27. **RIGHTS OF THIRD PARTIES**

Save to the extent set out in clause 6.8, the parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

28. **SET-OFF**

- 28.1 Save as otherwise expressly provided in this Agreement or required by law, all payments to be made under this Agreement will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

29. **GOVERNING LAW**

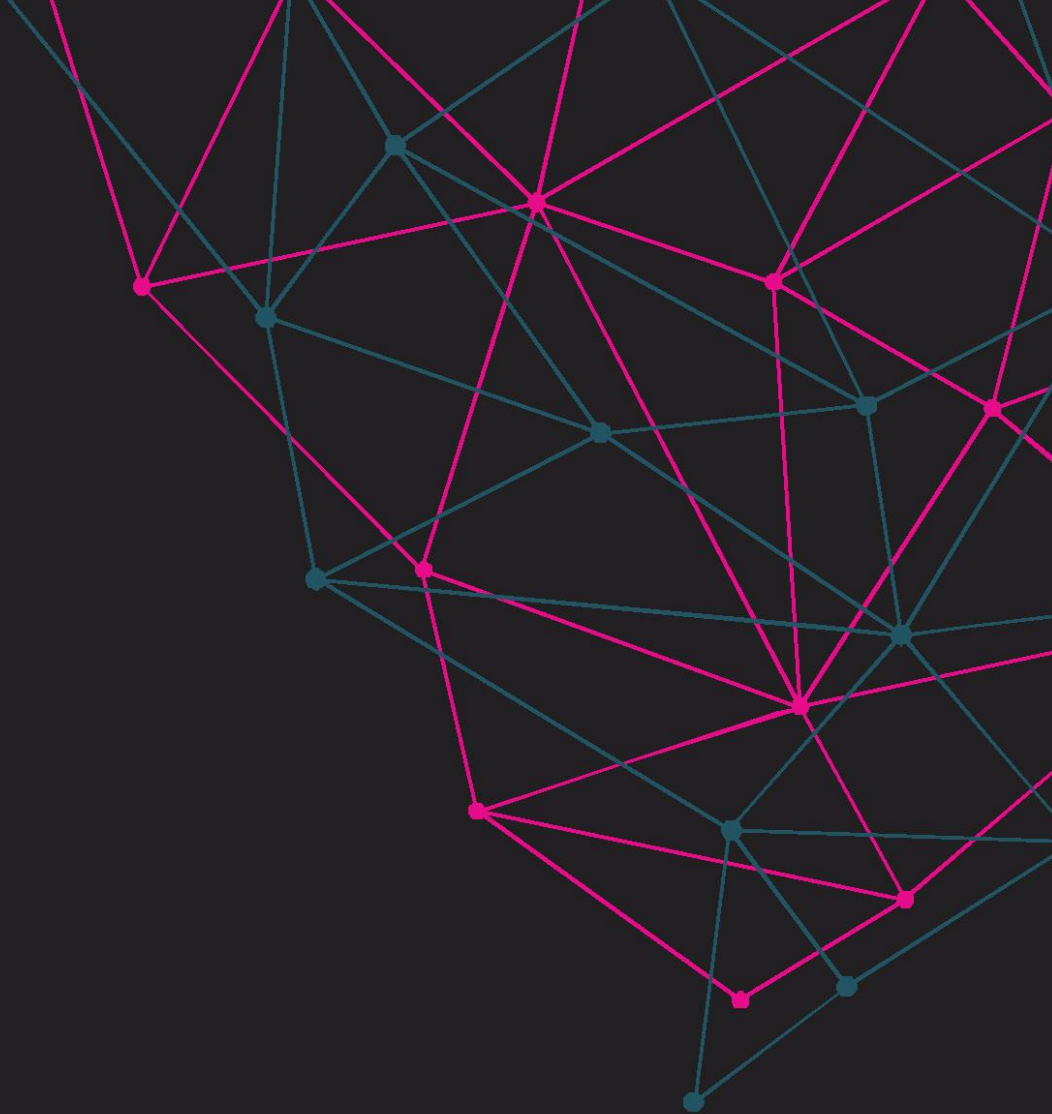
This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England.

30. **JURISDICTION**

Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).



SCHEDULE



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