

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this agreement unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Assessment” means the web based assessment operated by Cognisco and referred to in the Proposal.

“Authorised Users” means employees or contractors of the Client whom the Client wishes to have access the Assessment

“Client” means the company or organisation identified as the client in the order form

“Confidential Information” means all information concerning the business, finances, technology, clients or commercial affairs of a party or its clients which is described as confidential by the party providing the information or which, by its nature, should be assumed to be confidential, including but not limited to, the identity of Authorised Users and the results of the Assessment and the Reports

“Data Protection Legislation” means (i) from the Commencement Date until and including 24 May 2018, the Data Protection Act 1998; (ii) from 25 May 2018, the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and any national implementing laws, regulations and secondary legislation (as amended from time to time), unless and until the GDPR is no longer applicable in the United Kingdom and (iii) any successor legislation to the GDPR or the Data Protection Act 1998.

“Fees” means the fees for the Services and user licences set out in the Order Form and as otherwise agreed with the Client pursuant to this agreement

“Intellectual Property Rights” means patents, trade marks, Internet domain names, service marks, registered designs, applications for registration of any of the foregoing, copyright, database rights, design rights, trade and business names and any other similar protected rights in any country

“Order Form” means the order form signed on behalf of the parties

“Proposal” means the assessment proposal referred to in the Order Form

“PID” means the project initiation document referred to in the Proposal and agreed between the parties

“Reports” means the reports provided to the Client as a result of Authorised Users participating in the Assessment

“Services” means the build, implementation, reporting and support services more specifically described in the Proposal and/or PID

2. PROVISION OF THE SERVICES

- 2.1. In consideration of the payment of the Fees, Cognisco shall provide the Services and make the Assessment available to the Client's Authorised Users in accordance with the provisions of this agreement.
- 2.2. Any additional services relating to the use of the Assessment shall be charged to the Client on a time and materials bases.
- 2.3. Any changes to an Assessment or the Services required by the Client shall be agreed between the parties in writing and shall be undertaken by Cognisco for the agreed fee.
- 2.4. Cognisco shall use its reasonable endeavours to perform the services accordance with the timescales set out in the PID but time of performance shall not be of the essence to this agreement

3. ACCESS TO THE ASSESSMENT

- 3.1. Cognisco will issue the Client with personal identification information (username and password) ("PII") that will allow access to the Assessment.
- 3.2. The Client shall keep confidential the PII issued by Cognisco and not disclose it to third parties. The Client will be responsible for any unauthorised use of PII issued to it. The Client will notify Cognisco immediately in writing upon becoming aware of any known or suspected misuse of PII.
- 3.3. If the Client wishes to add, remove or amend the details of any Authorised User, the Client shall notify Cognisco and Cognisco will provide revised PII as soon as reasonably practicable thereafter. The cost of any such changes is not included in the Fee and shall be the subject of a separate charge.
- 3.4. Cognisco shall use its reasonable endeavours to ensure that during the term of this Agreement the Assessment is accessible by the Client and Authorised Users and can be used by the Authorised Users to carry out the Assessment during the Contract Term specified in the Order Form subject to routine and emergency maintenance and repairs.
- 3.5. Cognisco shall have no liability to the Client in respect of the Client's or Authorised Users' inability to access the Assessment or errors in the functioning of the Assessment which are attributable to: (i) an Event of Force Majeure (see clause 13); (ii) non compliance with Clause 6.1; (iii) operator error; or (iv) provision of incorrect information by the Client.
- 3.6. Cognisco shall use up to date industry recognised virus protection software in the operation of the Assessment.
- 3.7. Cognisco shall be entitled to suspend access to the Assessment: (i) on reasonable notice to the Client for such period as may be reasonably required for maintenance, repairs or improvements; and (ii) without prior notice to the Client for exceptional operational reasons and in such circumstances Cognisco shall provide the Client with an explanation for any suspension.

4. SUPPORT SERVICES

- 4.1. When using the support services the Client shall provide sufficient material and information to enable Cognisco to duplicate or identify the problem being reported by the Client; and (ii) Cognisco shall attempt to solve such problem as soon as reasonably possible after notification of the problem by the Client.
- 4.2. Cognisco shall not be obliged to provide support in respect of any problem attributable to an Event of Force Majeure (see clause 13). Should Cognisco agree to provide any support that falls within such exclusion, Cognisco shall be entitled to make an additional charge in accordance with its standard scale of charges from time to time in force.

5. FEES AND PAYMENT

- 5.1. The Client shall pay Cognisco's invoices with within 30 days of the date of invoice, without deduction, set-off or counterclaim. All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Client, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 5.2. The Client shall reimburse Cognisco's reasonable travel, accommodation and subsistence expenses incurred in the provision of such services.
- 5.3. If the Client does not make payment by the date due, Cognisco may, without prejudice to any other rights and remedies at its option: (i) charge the Client interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and (ii) suspend the Authorised Users' access to the Assessment.

6. THE CLIENT'S PARTICIPATION

- 6.1. The Client shall ensure that its computer systems used for accessing and participating in the Assessment meet the minimum requirements made known to the Client by Cognisco.
- 6.2. Client shall fulfil all of its requirements as set out in the PID.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Cognisco acknowledges that the Intellectual Property Rights in any materials provided by the Client to Cognisco in connection with the Assessment ("Client's Materials") are and shall remain the property of the Client or its licensors. Cognisco will not obtain any rights in such Materials other than expressly granted to it under this agreement.
- 7.2. The Client acknowledges that the Intellectual Property Rights in the Assessment and Cognisco software other than the Client's Materials ("Cognisco's Materials") and the Reports shall be the property of Cognisco. The Client will not obtain any rights in Cognisco's Materials other than expressly granted to it under this agreement.
- 7.3. The Client grants to Cognisco a non-exclusive, non-transferable, royalty-free licence to use the Client Materials in the Assessment.
- 7.4. Cognisco grants the Client a non-exclusive licence for each Authorised User to access and participate in the Assessment on one occasion only at any time during the period referred to in the PID.
- 7.5. Cognisco shall not supply the Reports to any third party but Cognisco may use the information in such reports for development, statistical and marketing purposes but only in an anonymous way and only if aggregated with other data so that the source of such information could not be determined.

8. INDEMNITY

- 8.1. Cognisco shall at its own expense, defend or, at its option settle any third party claim or suit alleging that the use by the Client of the Assessment in accordance with this agreement or any part of it infringes any third party's Intellectual Property Rights ("a Claim") and agrees to be responsible for any reasonable costs involved and to pay any damages finally awarded against the Client in any such Claim by a court of competent jurisdiction provided that: (i) the Client shall immediately notify Cognisco if a Claim is made against the Client and agrees to grant to Cognisco exclusive control of all litigation and negotiations in connection with such Claim; (ii) the Client shall at the request and expense of Cognisco afford to Cognisco all reasonable assistance for the purpose of contesting any Claim; (iii) the Client shall not make any admissions (save where required by court order or governmental regulations) which may be prejudicial to the defence or settlement of any Claim without the approval of Cognisco (not to be unreasonably withheld or delayed).
- 8.2. The Client warrants and represents that use or possession of the Client's Materials by Cognisco for the purpose of the Assessment shall not infringe the rights of any third party.

9. DATA PROTECTION

- 9.1. The Client shall ensure that the transmission of any data to Cognisco in connection with this agreement is lawful. To the extent that such data contains Personal Data (as defined in the "Data Protection Legislation")), the Client warrants that it has complied with its obligations under the "Data Protection Legislation" and shall indemnify and keep indemnified Cognisco against any losses, damages, costs or expenses suffered by Cognisco as a result of a breach of such warranty.

- 9.2. Cognisco will carry out the processing (as defined by the “Data Protection Legislation”) of Personal Data transmitted by or on behalf of the Client or an Authorised User only to the extent necessary for the provision of the Assessment, the Reports and clause 7.5 and will not divulge the whole or any part of the Personal Data to any person, except to the extent necessary for the provision of the Assessment and Reports or as permitted by the Client or an Authorised User.
- 9.3. Cognisco will ensure that it has appropriate security measures in place to safeguard against any unauthorised access or damage to or accidental loss, destruction or disclosure of such Personal Data in line with “Data Protection Legislation”.

10. LIMITATION OF LIABILITY

- 10.1. The parties’ liability to each other for death or personal injury resulting from its negligence or for fraudulent misrepresentation shall not be limited.
- 10.2. Subject to Clause 10.1, Cognisco shall not be liable to the Client for: any indirect or consequential loss or damage; loss of profit; loss of business; loss of reputation; depletion of goodwill; and loss of, damage to or corruption of data.
- 10.3. Subject to Clause 10.1, Cognisco shall not be liable for any deficiencies, errors or inaccuracies in the information supplied by the subject matter expert(s) and used in compiling the assessment.
- 10.4. Subject to Clause 10.1, Cognisco’s liability in respect of: (i) damage to the Client’s tangible property resulting directly from Cognisco’s negligence or that of its employees shall not exceed £5,000,000 for any one event or series of connected events; and (ii) any other and all losses not covered by clause 10.3 (i) shall not exceed, in aggregate, more than 125% of the Fees paid by the Client under this agreement.
- 10.5. Unless expressly set out in this agreement all conditions, warranties, representations (unless made fraudulently) or other terms implied by statute or law are excluded to the fullest extent permitted by law.

11. TERMINATION OF THIS AGREEMENT

- 11.1. This agreement shall come into force on the date on which it is signed by the parties and shall continue until the Contract End Date stipulated in the Order Form unless terminated earlier pursuant to this Clause 11.
- 11.2. Cognisco may terminate this agreement by notice to the Client if the Client: (i) fails to pay any of the Fees as they fall due; or, (ii) has used or permitted access to the Assessment otherwise than in accordance with the terms of this agreement.
- 11.3. Either Party may terminate this agreement immediately by notice in writing to the other if:
- 11.4. 11.3.1 the other commits any material breach of any term of this agreement which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 11.5. 11.3.2 an order is made or a resolution is passed for the winding-up of the other or an order is made for the appointment of an administrator to manage the affairs, business and property of the other or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other takes or suffers any similar or analogous action in consequence of debt.

- 11.6. Any termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

12. CONFIDENTIALITY

- 12.1. Each party shall keep strictly confidential all Confidential Information received directly or indirectly from the other party. Such Confidential Information shall not be disclosed to any third party other than the employees and authorised subcontractors of the receiving party without the prior written consent of the party to whom such Confidential Information belongs. Neither the party receiving Confidential Information nor its employees or authorised subcontractors shall use any such Confidential Information for any purpose other than the performance of the agreement. Further, each party shall procure that such employees and subcontractors act in a manner consistent with the obligations of confidentiality set out herein. This clause shall not apply to Confidential Information if and to the extent that: (i) it is required to be disclosed by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, provided that where possible and without breaching any such requirements, 2 days' prior notice is given to the other party of such disclosure; (ii) it is information which is, at the date of this agreement or subsequently, in the public domain through no fault of the party receiving such information; (iii) the receiving party can demonstrate subsequently came into its knowledge by means of disclosure by a third party free from any obligation of confidentiality; (iv) the receiving party can show it was information in the possession of the receiving party prior to disclosure under this agreement; or (v) it is information that is independently developed by personnel of the receiving party having no access to the other party's Confidential Information.
- 12.2. The obligations of this clause shall survive termination of this agreement.

13. FORCE MAJEURE

- 13.1. Neither party shall have any liability to the other under this agreement to the extent that the performance of its obligations is delayed, hindered or prevented by an Event of Force Majeure. "Event of Force Majeure" shall mean fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, terrorism or the threat thereof, nuclear, chemical or biological contamination, compliance with any law, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, public disorder, traffic congestion, accident, breakdown, vandalism, interruptions in communications or power supply, shortages of materials or supplies, failure or malfunction of computer systems or any other event or circumstance outside the control of a party to this agreement.

14. NOTICES

- 14.1. Any notice, request, instruction or other document to be given by a party under this Agreement shall be delivered by hand, sent by pre-paid first class post, or by, or e-mail transmission to the recipient's usual e-mail address or such other address, or e-mail address which may be notified by that party in accordance with this clause 14.1.
- 14.2. Unless proved otherwise, a notice shall be deemed to have been received if delivered by hand, at the time of delivery; if sent by facsimile or e-mail during the day of transmission as long as the sender can show satisfactory transmission on a

week day (not a public holiday) between 9.00am and 5.00pm; and if sent by post, 48 hours after posting.

15. GENERAL

- 15.1. The terms and conditions of this agreement are the entire agreement between the parties with regard to their subject matter. Each party acknowledges that in entering into this agreement it does not do so on the basis of, and does not rely on any representation, unless made fraudulently, warranty or other provision not expressly contained in this agreement. Any variation to this agreement must be in writing and signed on behalf of both parties. If a court decides that any part of this agreement cannot be enforced, that particular part of this agreement will not apply, but the rest of this agreement will. A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under this agreement shall not prevent the exercise of that or any other right. The Client may not assign or transfer any benefit, interest or obligation under this agreement. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

16. GOVERNING LAW AND JURISDICTION

- 16.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.