WE SHAPE – FRAMEWORK TERMS

THIS AGREEMENT is made on [●]

BETWEEN:

(1) WE SHAPE LTD, a company incorporated in England with company number 11861753 and having its registered office at 20 St Dunstan’s Hill, Monument, London, England, EC3R 8HL (the “Shape”); and

(2) [●], a company incorporated in [●] [with company number [●]] and having its registered office at [●] (the “Customer”) (severally a “party” and together the “parties”).

BACKGROUND

This Agreement sets out the framework under which the parties will agree SOWs for the supply of services. Unless otherwise agreed in an SOW, each SOW is independent of each other SOW and each SOW is referred to as a separate contract incorporating these framework terms as further set out in the framework terms clause 2.

THE PARTIES AGREE AS FOLLOWS

1 DEFINITIONS AND INTERPRETATION

Schedule 1 (Definitions and Interpretation) governs the interpretation of these terms and any SOW.

2 TERM, AND STATUS AND EFFECT OF STATEMENTS OF WORK

2.1 This Agreement shall have effect from the Effective Date and shall continue until terminated in accordance with its terms (the “Agreement Term”).

2.2 Each SOW shall commence upon the date which it is signed by the final signatory and continue until it ends according to its terms (“SOW Term”).

2.3 Where the Customer makes a request for services and Shape wishes to provide those Services, Shape will produce and deliver to the Customer a draft statement of work based on the relevant Template SOW setting out the relevant details for those services.

2.4 Upon such draft statement of work being executed by the parties it will then become an SOW and each party shall perform their respective obligations under that SOW from its date. Neither party will be obliged to perform a draft statement of work until it is executed. If, however, Shape does perform any service in advance of an SOW being agreed, it shall be entitled to charge for those services on a time and materials basis according to the Rate Card, including where an SOW is never agreed or negotiations are abandoned.

2.5 Unless otherwise stated in the SOW, all work and deliverables under any SOW will be provided on a time and materials basis.

2.6 Each SOW is a separate contract incorporating these framework terms (save as set out in clause 2.7) and the relevant Service Specific Terms. Neither party shall have any liability in respect of the framework terms independently of or outside of an SOW.

2.7 The following terms from these framework terms shall not be incorporated into any SOW: the Background, clauses 2.1, 2.3, 2.4, 2.6 and 15.1, the Template SOWs and the Service Specific Terms not relevant to the particular SOW - save that if an SOW is the first SOW to be executed and the parties have not separately executed these framework terms, then in that case the execution of the first SOW shall be deemed to bring the full framework terms into effect between the parties.

2.8 Any additional legal or commercial terms included in an SOW or incorporated into it by reference will have no effect to the extent that they conflict with, or cover the same matters as, this Agreement unless a particular clause of this Agreement is expressly overridden in the SOW.

MUTUAL WARRANTIES

3.1 Each party represents and warrants as at the date of this Agreement and each time it enters into an SOW that:

3.1.1 it has all the necessary capacity, powers and authorities to enter into and perform the relevant SOW and the transactions and activities contemplated by it;

3.1.2 the person or persons who execute this Agreement, or an SOW, on its behalf are duly authorised to do so;

3.1.3 the execution, delivery and performance of each SOW does not and will not violate any judgment, order, or decree and does not and will not constitute a material default or breach under any of its existing or future obligations whether at law or under contract; and

3.1.4 it is not insolvent or trading wrongfully.
3.2 Each party will comply with all Applicable Laws in relation to each SOW and under this Agreement.

4 PERFORMANCE OF THE SERVICES

4.1 Shape shall:

4.1.1 ensure any its work and any Deliverable will in all material respects meet its relevant specification set out in the relevant SOW (if any); and

4.1.2 perform the Services in accordance with Good Industry Practice,

any breach of this clause 4.1 in respect of a given SOW being a ("Non-Conformance").

4.2 Except as set out in this clause 4, Shape gives no warranties or representations, whether express or implied, and all warranties and conditions implied by law or trade custom are excluded to the fullest extent permitted by Applicable Law.

4.3 Time of performance shall not be of the essence. Shape shall use its reasonable efforts to perform each SOW in accordance with any Milestones, delivery dates, commencement dates or end dates specified in the corresponding SOW. SOWs which do not have any Milestones, delivery dates, commencement dates, or end dates shall be performed by Shape within a reasonable period of time.

5 CUSTOMER DEPENDENCIES

5.1 The Customer, at no cost to Shape, must:

5.1.1 provide all information, assistance and access to Shape Personnel to enable them to perform his or her role, including access any relevant systems, locations and provide all relevant IT;

5.1.2 perform each of its responsibilities set out in this Agreement and the SOW in accordance with the timescales set out in the SOW or as otherwise specified;

5.1.3 ensure that all written information given by it to Shape is accurate and comprehensive when given (and remains so) in all material respects; and

5.1.4 obtain and maintain in full force all necessary consents, approvals, authorisations, licences and permissions which are required to enable Shape to perform its obligations under this SOW, the Agreement and under Applicable Law,

(each is a "Customer Dependency").

5.2 Each of the following events shall be treated as a ("Relief Event") for the purposes of clause 5.3:

5.2.1 failure by the Customer to meet a Customer Dependency;

5.2.2 poor performance of the Customer IT, except where both:

5.2.2.1 the specification was determined by Shape; and

6 DELIVERY AND ACCEPTANCE

Delivery

6.1 Unless expressed to be subject to Acceptance Tests in the relevant SOW, any time and materials work, each Deliverable and Milestone shall be deemed complete and delivered upon delivery, in each case subject to clause 6.2.

6.2 Subject to clause 14.2, the Customer's sole remedy in respect of a Non-Conformance shall be, at Shape's absolute discretion, either (a) re-performance of the affected Deliverable(s) and/or Milestone(s); or (b) a refund of reasonable
proportion, or reasonable reduction to, any Fees in respect of the relevant work, Deliverable or Milestone.

6.3 The Customer shall notify Shape of a clause 6.2 claim promptly upon becoming aware of the same but in any event prior to payment of the Fees in respect of the relevant work, Deliverable or Milestone.

Acceptance Testing

6.4 Shape will not be entitled to any additional Fees for Acceptance Testing in excess of the relevant Fees specified in the SOW.

6.5 The Acceptance Testing process set out in this clause applies only to any Deliverable or Milestone that is expressed in an SOW to be subject to Acceptance Testing but for which a specific acceptance test plan has not been detailed in that SOW, unless the relevant Deliverable or Milestone is to be delivered under an agile delivery methodology in which case that methodology shall apply:

6.5.1 When Shape considers that a Deliverable or Milestone ("Testable Work") is ready for Acceptance Testing, it shall submit the relevant Testable Work to the Customer together with a notice containing details of the SOW under which the Testable Work is to be delivered (including SOW number and date) along with details of the relevant Testable Work as well as any ancillary documentation (the "Test Material").

6.5.2 Shape will inform the Customer of any dependencies capable of impacting Acceptance Testing of particular Test Material, including any dependencies on the Customer or third parties.

6.5.3 The Customer shall, within ten (10) Business Days following receipt of the Test Material, carry out Acceptance Testing on it to determine whether it meets in all material respects the relevant Acceptance Criteria. If the Testable Work meets the Acceptance Criteria in all material respects then the Customer shall issue Shape with a notice of acceptance. If the Customer does not carry out Acceptance Testing within ten (10) Business Days of receiving the Test Material then the relevant Testable Work shall be deemed accepted and complete at the end of that ten (10) Business Day period.

6.5.4 If the Customer determines that the relevant Testable Work, or part of it, does not meet the relevant Acceptance Criteria in all material respects then the Customer shall provide Shape details of the results of the Acceptance Tests and the parties shall acting reasonable formulate a rectification plan under which Shape shall perform in order to ensure that the relevant failures are rectified within a reasonable time.

SHAPE PERSONNEL

7.1 Shape shall ensure that all Shape Personnel will:

7.1.1 be duly informed of Shape’s obligations under this Agreement; and

7.1.2 be adequately screened and vetted using methods in line with Good Industry Practice to ensure they are fit and proper persons for their relevant roles and responsibilities.

7.2 Shape will procure that all Shape Personnel working on a Customer site or accessing Customer systems in connection with an SOW will, while working on that site or accessing those systems, comply with all reasonable Policies, provided that the Customer has provided copies of such Policies to Shape in advance of requiring compliance. The Customer may (acting reasonably) amend such Policies by giving at least 10 Business Days’ written notice, provided that such amendments do not (a) require Shape to incur additional cost; or (b) change the allocation of risk as between the parties; and/or (c) the terms of any SOW shall prevail over any such Policies.

7.3 Whenever any Shape Personnel work on a Customer site in connection with this Agreement, the Customer shall ensure a safe working environment for all such Shape Personnel and shall ensure that it carries comprehensive insurance for any such site.

7.4 Customer nor Shape expects Directive 2001/23/EC or any relevant national implementation thereof (together, the “Acquired Rights Directive”) to apply to the activities contemplated by this Agreement, and each party (the “Indemnified Party”) will therefore indemnify the other party (the “Indemnifying Party”) against all Employee Liabilities arising out of the termination of the employment of any person whose contract of employment transfers, or is claimed to have transferred, by operation of the Acquired Rights Directive (or any other law of materially equivalent purpose or effect in any relevant jurisdiction), to the Indemnified Party, the relevant Affiliate of the Indemnified Party or (where the Indemnified Party is an Indemnifying Party) will therefore indemnify the Indemnified Party for any reason, including but not limited to, death, injury, and/or any employment transfers, or is claimed to have transferred, by operation of the Acquired Rights Directive (or any other law of materially equivalent purpose or effect in any relevant jurisdiction), to the Indemnified Party, the relevant Affiliate of the Indemnified Party or (where the Indemnified Party is the Customer) any replacement supplier as a result of, or the termination of, this Agreement or any SOW.

CHANGE REQUEST

8.1 If the Customer or Shape requires a change to an SOW for any reason, that party may submit a “Change Request” to the other in accordance with clause 8.2.

8.2 Change Requests must be in writing and include the following:

8.2.1 a description of any additional services to be performed or removed and/or any other changes to the relevant SOW;

8.2.2 a proposed timetable for completion of the change;

8.2.3 any specific roles and responsibilities affected by the change;

8.2.4 the documentation or other Deliverable(s), Milestone(s), to be modified or supplied as part of the change.
8.2.5 Shape initiated Change Requests shall also include details of any impacts on the work under all impacted SOWs and an estimate of any changes to the Fees.

8.3 For Customer initiated changes, Shape will process Change Requests as soon as is commercially reasonable. The change will be evaluated by Shape to identify any impact to all current SOWs and to provide the Customer with a fee estimate. Shape will then submit a revised Change Request to Customer.

8.4 A Change Request shall only take effect once it is executed by both parties, at which time it shall be a "Change". Thereafter, the relevant SOW shall be performed according to the Change and any revised fees shall be payable in accordance with clause 11.

9 NON-SOLICITATION

9.1 In order to protect the legitimate business interests of Shape, during the Restricted Period the Customer shall not, either directly or indirectly, by or through itself, its Affiliate, its agent or otherwise, or in conjunction with its Affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

9.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Shape Personnel with a view to employing or engaging Shape Personnel; or

9.1.2 employ or engage, or offer to employ or engage any of Shape Personnel without the prior written consent of Shape,

regardless of whether such engagement is as an employee, worker, consultant or contractor.

9.2 Where the Customer breaches clause 9.1, and without prejudice to any other right or remedy Shape may have at law or under this Agreement, the Customer will pay Shape 30% of the relevant Shape Personnel’s first year’s remuneration with Customer or Customer Affiliate.

9.3 The Customer shall pay any amount due to Shape under this clause 9 within 14 days or receipt of a written demand from Shape for such payment, to an account, or by such other method, nominated by Shape.

10 REPLACEMENT SHAPE PERSONNEL

10.1 The Customer shall have the right to demand replacement Shape Personnel at any time by following the procedure set out in clause 10.2.

10.2 If the Customer wishes for Shape to replace Shape Personnel then the Customer shall;

10.2.1 give notice to Shape explaining why they require replacement Shape Personnel ("Replacement Notice");

10.2.2 Shape shall set up a meeting with the Customer to discuss the Replacement Notice as soon as reasonably practicable but in any event not more than seven (7) days of its receipt;

10.2.3 If after this meeting the Customer still requires a replacement for Shape Personnel then Shape will immediately terminate the appointment of Shape Personnel and use all reasonable endeavours to replace them as soon as reasonably practicable (and where such replacement is for an On Demand services, the parties will enter into a new SOW for the provision of the replacements).

11 FEES AND PAYMENT

11.1 Unless otherwise stated in an SOW, Shape will invoice the Customer for the Fees monthly in arrears in the amounts specified in, and subject to any conditions specified in, the relevant SOW.

11.2 Shape shall endeavour to provide consolidated invoices for all Fees for all SOWs as well as any expenses due to Shape in accordance with clause 11.8, unless one off charges or fees fall due in between calendar months. Where the Fees for any part of an SOW is on a time and materials basis but for convenience an estimated Fee is being paid periodically, Shape shall perform periodic reconciliations in line with the period used to generate the estimate and shall either set off or provide up next period invoice to reflect the actual Fees then due to date.

11.3 Where an SOW provides for a Milestone Payment for a particular Milestone, clause 11.1 will not apply and instead Shape may invoice for a Milestone Payment on or after the date of completion or acceptance for that Milestone.

11.4 All Fees are exclusive of VAT. Where VAT is payable on Fees, Shape will add VAT to its invoice for those Fees at the appropriate rate, and the Customer will pay such VAT with the relevant Fees.

11.5 The Customer will pay the amount any invoice validly issued to it by Shape in accordance with this Agreement to Shape’s nominated UK bank account within 30 days of receipt.

11.6 From the first anniversary of any SOW, Shape may increase any fixed Fee or other non-time and materials fees or charges in that SOW by the Index provided that Shape shall not be entitled to increase the Fees under this clause more than once in any twelve (12) month period and must give the Customer thirty (30) days’ advanced notice the price increase.

11.7 Shape may increase Rate Card rates on each anniversary of the Commencement Date by giving the Customer at least thirty (30) days’ advanced notice of the price increase and such increase shall be the greater of 5% or the percentage change in Index over the previous twelve (12) month period.

11.8 Shape will be entitled to be reimbursed by the Customer for the reasonable travel, accommodation, subsistence and other incidental out of pocket expenses reasonably incurred by Shape or relevant Shape Personnel in connection with Shape’s performance of an SOW. Unless otherwise specified in an SOW, Shape shall not charge Customer for travel to and from the primary work location specified in an SOW.

11.9 If an SOW does not specify an overtime rate and any of the Shape Personnel undertake overtime in respect of an SOW, then Shape may charge overtime for such work using an overtime loading of time-and-a-half.
11.10 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date Shape may, without prejudice to any other right or remedy it has under Applicable Law or under this Agreement:

11.10.1 charge interest on such sums at 4 per cent a year above the base rate of the Bank of England from time to time in force, and such interest shall accrue on a daily basis and apply from the due date for payment until such amount has been paid in full, whether before or after judgment; and

11.10.2 suspend provision of any or all SOW(s) until such sums have been paid in full.

11.11 Each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

12 INTELLECTUAL PROPERTY GENERALLY

12.1 Except as expressly provided, nothing in this Agreement will change the ownership of any of the Intellectual Property Rights of either party (or those of their respective Affiliates), including those in respect of any of the Milestones or Deliverables.

12.2 If and to the extent that it is not reasonably practicable for Shape to perform its obligations under this Agreement without the use of any of the Intellectual Property Rights of the Customer or its Affiliates, the Customer hereby grants and will procure that its Affiliates grant to Shape a licence to use such Intellectual Property Rights, which are owned by or licensed to the Customer or its Affiliates, as Shape may reasonably require for such purpose for the duration of the relevant SOW Term.

12.3 Shape shall own any new Intellectual Property Rights created by it or any Shape Personnel or Consultant under any SOW ("SOW IPR").

12.4 Unless otherwise set out in the relevant SOW, Shape grants to the Customer a non-exclusive, royalty-free, worldwide licence to use and exploit the SOW IPR, and any of Shape’s Background IP incorporated in such SOW IPR, for Customer’s and Customer Affiliates internal business purposes only.

12.5 Shape shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired, developed or used in connection with the SOW provided always that it does not breach the Customer’s Confidential Information.

13 IP INDEMNITY

13.1 Each party (the “Indemnifying Party”) will indemnify the other (the “Indemnified Party”) for any losses, damages, liabilities and costs (including professional fees) finally awarded against the Indemnified Party by a court of competent jurisdiction as a result of any claim or allegation by a third party that the Indemnifying Party and/or any of its Affiliates have caused the Indemnified Party to infringe the Intellectual Property Rights of any third party (each a “Third Party IP Claim”).

13.2 Shape will have no obligation under this clause 13 to the extent that: (a) a Third Party IP Claim is based on alteration or modification of the relevant Services Deliverable(s), or Milestone(s) in each case not performed or authorised by Shape; and (b) the Third Party IP Claim would not have arisen but for that alteration or modification.

13.3 In the event that an Indemnified Party receives notices of a Third Party IP Claim, the Indemnifying Party will:

13.3.1 notify the Indemnifying Party in writing as soon as reasonably practicable;

13.3.2 not make any admission, agree any settlement or otherwise dispose of such Third Party IP Claim without the Indemnifying Party’s prior written consent, provided that it is not unreasonably withheld or delayed;

13.3.3 take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Third Party IP Claim;

13.3.4 on request by the Indemnifying Party, give to the Indemnifying Party conduct of such Third Party IP Claim (including its negotiation and settlement); and

13.3.5 give to the Indemnifying Party all reasonable information which the Indemnifying Party may request (at the Customer’s expense) to assist it in defending or settling such Third Party IP Claim.

13.4 If any Third Party IP Claim is made or is reasonably likely to be made against the Customer, Shape may at its option:

13.4.1 procure for the Customer the right to continue to receive the relevant Service or use the relevant Deliverable(s) in accordance with this Agreement; or

13.4.2 modify or replace the part of the relevant Service or Deliverable(s) which is the subject of the Third Party IP Claim so as to avoid the claimed or alleged infringement, without materially reducing its functionality or utility (unless the Customer agrees otherwise).

14 LIABILITY

14.1 Nothing in this Agreement or an SOW will limit or exclude either party’s liability:

14.1.1 for wilful breach;

14.1.2 for death or personal injury caused by its negligence;

14.1.3 for fraud or fraudulent misrepresentation; or

14.1.4 for any other matter for which it is unlawful to limit or exclude liability (as the case may be).

14.2 Shape shall not be liable for any Non-Conformance where the same arises directly or indirectly and whether in whole or in part as a result of:

14.2.1 a Relief Event;
14.2.2 a breach by the Customer of any of its obligations under an SOW or this Agreement;

14.2.3 a Force Majeure Event;

14.2.4 any instruction, design, specification or requirement of the Customer;

14.2.5 use of Customer Materials; or

14.2.6 any instruction or direction given to Shape Personnel by the Customer or its Affiliates.

14.3 Subject to clause 14.1, Shape will have no liability to the Customer arising under or in connection with this Agreement or any SOW (regardless of the cause of action or legal theory of liability) for:

14.3.1 any loss of profit;

14.3.2 any loss of opportunity, anticipated saving, management time, use, production or contract; and

14.3.3 any indirect or consequential loss.

14.4 Subject to clauses 14.1, 14.2 and 14.3, Shape’s total aggregate liability to the Customer arising under or in connection with an SOW (regardless of the cause of action or legal theory of liability) shall be limited to an amount equal to the Fees paid or payable by the Customer to Shape under the relevant SOW in the 12 months immediately preceding the event (or the last event in a series of events) giving rise to the claim and/or liability.

14.5 Neither party shall have any liability in respect of the framework terms independently of or outside of an SOW, if for any reason it is held that a party does have a liability (regardless of the cause of action or legal theory of liability) in respect of the framework terms then that liability shall be limited to an amount equal to the mean of Fees paid or payable by the Customer to Shape under all SOWs in the 12 months immediately preceding the event (or the last event in a series of events) giving rise to the claims and/or liability, subject in each case to clauses 14.1, 14.2 and 14.3.

15 TERMINATION AND CANCELLATION

15.4 Either party may terminate this Agreement and/or an SOW immediately by giving the other notice if:

15.4.1 the other party passes a resolution for its winding up or a court makes an order for its winding up or dissolution (other than for the purpose of any bona fide amalgamation, merger or reconstruction);

15.4.2 an application for an administration order is made in relation to the other party that has not been set aside within seven days after the order has been made, or if a receiver is appointed over, or an encumbrancer takes possession of or sells, any material part of the assets or undertaking of the other party;

15.4.3 the other party makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;

15.4.4 the other party disposes of all its assets or a substantial part of its assets (other than for the purpose of any bona fide amalgamation, reconstruction or merger);

15.4.5 the other party commences or has commenced against it any insolvency, reorganisation, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings, and, if such case or proceeding is commenced against it, such case or proceeding is not dismissed within seven days thereafter;

15.4.6 the other party becomes insolvent or generally fails to pay or admits in writing its inability to pay, its debts as they become due; or

15.4.7 the other party is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.

16 CONSEQUENCES OF TERMINATION

16.1 Subject to clause 15.2, on termination of this Agreement or any SOW(s) for any reason:

16.1.1 Shape shall immediately stop the performance of all relevant Services under this Agreement or that SOW (as the case may be); and

16.1.2 Shape shall promptly invoice the Customer for all Services performed but not yet invoiced and for any other amounts it may be entitled to invoice in respect of any relevant SOW.

16.2 Any provision of this Agreement that expressly, by implication or by its nature is intended to come into or continue in force on or after termination (including clause 17 (Confidentiality)), will do so.

16.3 Termination of this Agreement or any SOW will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.
16.4 Promptly following termination, each Receiving Party will:

16.4.1 if one or more SOWs are terminated but this Agreement otherwise remains in force, return to the Disclosing Party or (at the Disclosing Party’s election) use reasonable efforts to destroy all copies of the Disclosing Party’s Confidential Information pertaining to the terminated SOW(s) and which the Receiving Party no longer reasonably needs to retain in connection with other SOWs not so terminated and/or this Agreement generally;

16.4.2 if this Agreement and all SOWs under it are terminated, return to the Disclosing Party or (at the Disclosing Party’s election) use reasonable efforts to destroy all copies of the Disclosing Party’s Confidential Information; and

16.4.3 in either case, upon request by the Disclosing Party, give to the Disclosing Party a certificate signed by an officer of the Receiving Party that it has done so.

16.5 Any Confidential Information not actually destroyed pursuant to clause 16.4 will continue to be Confidential Information and clause 17 (Confidentiality) will continue to apply to it.

17 CONFIDENTIALITY

17.1 The Receiving Party shall keep the Disclosing Party’s Confidential Information confidential and, except with the prior written consent of the Disclosing Party or where authorised in a particular SOW, shall:

17.1.1 not use or exploit the Confidential Information in any way except for the purpose of exercising its rights and performing its obligations under an SOW;

17.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement; and

17.1.3 apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information (and which will in any event be no less stringent than the measures and care which it is reasonable to expect of a person operating in the same sector in the same circumstances).

17.2 The Receiving Party may disclose the Disclosing Party’s Confidential Information to those of its agents, sub-contractors, officers, employees, (in the case of Shape) the Shape Personnel and Professional Advisers who need to know it in connection with this Agreement or an SOW, provided that:

17.2.1 it informs each such person of the confidential nature of the Confidential Information before disclosure; and

17.2.2 it procures that each such person will be bound by obligations of confidence no less restrictive that this clause 17, and it will be liable for the failure of any such person to comply with this clause 17.

17.3 The Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any regulator or any other governmental or other regulatory authority with jurisdiction over the Receiving Party, or by a court of competent jurisdiction, or under the rules of a relevant securities exchange, provided in each case that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and it takes into account the reasonable requests of the Disclosing Party in relation to the content of that disclosure; and

18 SECURITY

18.1 In connection with its interactions with Customer Data, Shape shall maintain and enforce physical and information security procedures sufficient to ensure compliance with clause 18.2 and Shape’s information security policy, as updated from time to time provided that such amendment does not degrade the level of security over Customer Data.

18.2 Shape shall under each SOW:

18.2.1 not access any Customer Data except as reasonably necessary to perform its obligations under the particular SOW;

18.2.2 to the extent that any Customer Data is stored or accessed from Shape’s own systems take suitable technical and operational measures to restrict access to Customer Data in its possession or control to those Shape Personnel with a need to access it in connection with Shape’s obligations under a relevant SOW;

18.2.3 ensure that neither it nor anyone acting on its behalf will deliberately or negligently corrupt or erase any Customer Data from Customer IT; and

18.2.4 ensure that all of the Customer Data which may come into its possession or control is at all times fully segregated from its own data and from that of third parties.

18.3 Clauses 18.1 and 18.2 shall not apply:

18.3.1 where Shape or any Shape Personnel are acting under the instructions of the Customer, otherwise Shape shall only be liable under clauses 18.1 and/or 18.2 in respect of the acts and/or omissions of any Shape Personnel working under the direction of Customer if it does not use reasonable endeavours to require that such Shape Personnel comply with those clauses; and/or

18.3.2 to any Customer Data provided to Shape under an SOW by the Customer and which the Customer has erroneously described to Shape as consisting only of anonymised or dummy test data, unless and until the Customer has informed Shape of such error.

19 ANTI-BRIBERY
19.1 The Customer shall ensure that it does not, by any act or omission, place Shape in breach of any Bribery Laws in the performance of an SOW.

19.2 The Customer shall immediately notify Shape as soon as it becomes aware of a breach of any Bribery Laws by Shape.

19.3 Shape will ensure that neither it nor any person acting for it in connection with an SOW has taken or will take any action or engage in any activity which is likely to lead to the Customer or any of its Affiliates committing an offence under the Bribery Laws.

20 FORCE MAJEURE

20.1 A party shall not be liable if delayed in, or prevented from performing, its obligations under an SOW (other than an obligation to pay Fees) due to Force Majeure Event, provided that it:

20.1.1 promptly notifies the other of the Force Majeure Event and its expected duration; and

20.1.2 uses reasonable efforts to minimise the effects of that event.

20.2 If, due to Force Majeure Event, a party:

20.2.1 is unable to perform a material obligation; or

20.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than three months, the other party may terminate this Agreement on not less than four weeks’ written notice.

21 ASSIGNMENT AND SUBCONTRACTING

The Customer may not assign, subcontract or encumber any right or obligation under this Agreement or an SOW, in whole or in part, without Shape’s prior written consent.

22 NOTICES

22.1 A notice under or in connection with this Agreement (a “Notice”):

22.1.1 must be in writing;

22.1.2 must be in English;

22.1.3 must be sent by first class post-prepaid recorded delivery (and air mail if overseas) to the party due to receive the Notice at the relevant address specified in clause 22.3 below; and

22.1.4 if served via email, must be sent from the sending party’s designated email address in clause 22.3 to the other party’s designated email address in clause 22.3.

22.2 A Notice will be deemed to be given:

22.2.1 if delivered personally, when left at the relevant address;

22.2.2 if sent by post (other than air mail), two Business Days after posting it;

22.2.3 if sent by air mail, six Business Days after posting it;

22.4 Either party may change its address for Notices by Notice to the other.

23 CONFLICTS WITHIN AGREEMENT

23.1 In the event of any conflict or inconsistency between different parts of this Agreement or an SOW, the following descending order of priority applies:

23.1.1 the Service Specific Terms that apply to an SOW; then

23.1.2 the contents of an SOW; then

23.1.3 the terms and conditions in the main body of this Agreement (i.e. clauses 1 to 24); then

23.1.4 the other schedules of this Agreement (not referred to in clause 23.1.1).

23.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

24 GENERAL

24.1 Except where this Agreement or an SOW provides otherwise, each party will pay its own costs relating to:

24.1.1 the negotiation, preparation and execution of this Agreement and each SOW; and

24.1.2 its own performance of this Agreement and each SOW.

24.2 The parties are independent contractors. Consequently, the provisions of this Agreement and
of any SOW shall not under any circumstances be interpreted as creating any association, relationship of agency or partnership between the parties. Neither party may bind the other in any manner whatsoever or in favour of anyone whomsoever, other than as set out in the Agreement in respect of a given SOW.

24.3 Each SOW contains the whole agreement between the parties, and supersedes all prior agreements, arrangements and understandings between the parties, relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (each, a “Representation”) other than as expressly set out in this Agreement. Nothing in this clause 24.3 will limit or exclude any liability for any fraudulent Representation.

24.4 This Agreement and each SOW will be binding on the parties’ successors and assignees.

24.5 Except to the extent that this Agreement or an SOW expressly provides otherwise, a person who is not a party to this Agreement will have no right whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of it. The consent of a third party having rights under this Agreement will not be required in order to amend it.

24.6 If any provision of this Agreement or an SOW is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties. The nullity or adjustment of any provision will not affect the validity and enforceability of any other provision.

24.7 The failure of a party to enforce a provision of this Agreement, an SOW or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision or right, or in any way affect the validity of this Agreement or the relevant SOW. A waiver of any claim for a breach of this Agreement or an SOW will not operate to waive any claims in respect of any other breach or affirm this Agreement or an SOW following any other breach.

24.8 Amendments:

24.8.1 Any amendment of this Agreement or an SOW will only be valid if it is made in writing and signed by both parties. If the terms of this Agreement are agreed to be varied by the parties, then the terms as varied shall not apply to any then current SOW unless the parties explicitly provide for same.

24.8.2 Shape may vary any of its relevant policies by notice in writing to the Customer setting out the variation and, unless the Customer objects in writing to the variation within fifteen (15) Business Days of receipt of the variation, the new policy shall take affect fifteen (15) Business Days after the notice.

24.9 This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law, subject to the exclusive jurisdiction of the English courts.
1 DEFINITIONS

The following definitions apply to this Agreement and any SOW unless the context requires otherwise:

“Acceptance Criteria” means the relevant criteria to a given Deliverable and Milestone set out in an SOW, however if no Acceptance Criteria are set out in respect of a Deliverable or Milestone that is expressed to be subject to Acceptance Criteria then the Acceptance Criteria shall in any such case be whether the relevant Deliverable or Milestone meet specification set out for them in the relevant SOW in all material respects;

“Acceptance Testing” means assurance activities to determine if a Deliverable or Milestone meets its relevant Acceptance Criteria pursuant to the process set out in clause 6;

“Affiliate” means in relation to any party (or other person), any subsidiary or holding company of that party (that person) and any subsidiary of any such holding company, in each case from time to time;

“Agreement Term” has the meaning given to it in clause 2.1;

“Applicable Law” means any applicable law, rule, regulation, regulatory requirement; any form of secondary legislation, or case law; and any determination that a party (or its relevant Affiliate) is bound to have regard to in connection with an SOW;

“Background IP” means any and all Intellectual Property Rights, owned or controlled by or licensed by a third party to the relevant party prior to the commencement of the relevant SOW;

“Bribery Laws” means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the UK Bribery Act 2010 and any similar or equivalent laws in any other relevant jurisdiction;

“Business Day” means a day other than a Saturday, a Sunday or a public holiday in England;

“Change” means any change to an SOW agreed following a Change Request in accordance with the process set out in clause 8;

“Change Request” has the meaning given to it in clause 8.1 and 8.2;

“Confidential Information” means any information disclosed by the Disclosing Party (or its Affiliate) to the Receiving Party, or which is received by the Receiving Party under or in connection with an SOW and which relates to the Disclosing Party (or its Affiliate), and that is marked confidential, that the Receiving Party knows or reasonably ought to know is confidential, or which is of its nature confidential, including:

(a) all Customer Data and all business logic, methods, algorithms, concepts and ideas of the Customer or its Affiliates which are disclosed to or received by Shape, all of which is the Confidential Information of the Customer; and

(b) the terms of this Agreement (including its Schedules) and each SOW,

but excluding any information that:

(a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party or its agents, officers or employees in breach of:

(i) this Agreement or an SOW; or

(ii) any other undertaking of confidentiality which is addressed to the Disclosing Party and which the Receiving Party is aware of or reasonably ought to be aware of,

and provided that any compilation of otherwise public information in a form not publicly known will nevertheless be treated as Confidential Information;

(b) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;

(c) the parties agree in writing is not confidential or may be disclosed; or

(d) is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party;

“Customer Data” means all information in any form which Shape receives from the Customer or a Customer Affiliate in connection with an SOW, including any information it accesses on the Customer’s or its Affiliates’ IT systems in the course the relevant SOW;

“Customer Dependency” means any dependency that Shape has on the Customer, its Affiliates or its third party suppliers in order to perform the relevant SOW which Shape has notified the Customer of a reasonable time in advance of the Customer Dependency being required and includes the matters set out in clause 5.1;

“Customer Materials” any inputs, software or other materials provided to Shape by the Customer for the purposes of performing an SOW;

“Customer IT” means every layer of the Customer’s technology stack, including:

(a) the Customer’s private network;

(b) any hardware provided by the Customer (whether or not it owns it), including the operating system;

(c) any software licensed or installed by the Customer, including local APIs used to interact with it and shared libraries; and

(d) any service procured by or provided by the Customer, including software as a service, platforms as service, or infrastructure as a service, or APIs that interact with them, but excluding any software or database schema provided by Shape under an SOW;

“Deliverables” means a particular work product specified for delivery in an SOW and which may be expressed to be subject to Acceptance Testing in the relevant SOW;

“Disclosing Party” means a party to this Agreement which (or whose Affiliate) discloses or makes available, directly or indirectly, Confidential Information under an SOW;

“Disputes Procedure” means the procedure for the resolution of disputes arising in relation to this Agreement or an SOW as set out in Schedule 3;

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment;

“Effective Date” means the earlier of (a) date on which this Agreement is executed by the last party to execute it, and (b) the date that the first SOW takes effect;
“Fees” means the amounts payable by the Customer to Shape under an SOW;

“Force Majeure Event” means an event occurring or a set of circumstances arising after the date of this Agreement which is beyond the reasonable control of the Affected Party;

“Good Industry Practice” means using standards, practices, methods and procedures conforming to Applicable Law, offering the level of assistance, and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a similar sized practice engaged in a similar type of undertaking under the same or similar circumstances in the United Kingdom;

“Index” means the percentage increase in average gross weekly earnings in the Information and Communication industry over an annual period published by the Office for National Statistics (for the time being available at https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earnsandworkinghours/datasets/grossweeklyearningsbyindustryearning07), or if that index ceases to be measure then the closest analogous index published by ONS (or a successor body to it);

“Intellectual Property Rights” means patents, trade marks, rights in respect of logos and get up, trade names, designs, domain names, copyright, database rights, semiconductor topography rights, utility models, other intellectual or industrial property rights and any rights therein, in each case whether registered or unregistered and including applications or rights to apply for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world including any such rights which may now or in the future subsist;

“Milestone” means an activity, process or outcome as set out in an SOW which is to be delivered by the date specified in the relevant SOW and which may be accepted tested using the Acceptance Criteria;

“Milestone Payment” means the payment described in the corresponding SOW as being payable by the Customer when the corresponding Milestones have been achieved by Shape;

“Monthly Fee” means the payment due to Shape on a monthly basis as set out in the relevant SOW;

“Non-Conformance” has the meaning given to it in clause 4.1;

“Policies” means the policies of the Customer set out in Schedule 5;

“Professional Advisers” means, in respect of the Receiving Party, its lawyers, accountants, bankers, auditors and any other professional advisers who are subject to fiduciary duties of confidence and loyalty;

“Rate Card” means the rate card set out in Schedule 3;

“Receiving Party” means a party to this Agreement which (or whose Affiliate) receives or obtains, directly or indirectly, Confidential Information;

“Restricted Period” means each relevant SOW Term and a period of 12 months thereafter;

“Services” means the services described in an SOW;

“Service Specific Terms” means the terms set out in Schedule 6 that apply to particular types of Services in an SOW;

“Shape Personnel” means any employees, officers, staff, other workers, contractors, agents and consultants of Shape, its Affiliates and any of their subcontractors who are engaged in the performance of any SOW from time to time; and

“Source Code Form” means, in respect of any of the software, that expression of it which is most suited to be changed easily by a human, and includes not only the source code itself as written by the programmer but also all associated resource files, build scripts, libraries and other materials required to build the corresponding executable object code using commonly available build tools;

“SOW” has the meaning given to it in clause 2.4, and “SOWs” will be construed accordingly;

“SOW Term” has the meaning given to it in clause 2.2;

“Relief Event” has the meaning given to it in clause 5.2;

“Template SOW” means the templates for the SOWs set out in this Agreement;

“Total Fee” means the estimated total fee for the services provided under an SOW as set out in that SOW.

2 INTERPRETATION

The following rules of interpretation apply to each SOW:

2.1 This Agreement is made up of the main terms and each Schedule, Appendix and Attachment to it, each as affected by an SOW.

2.2 Clause, schedule and paragraph headings will not affect the interpretation of this Agreement.

2.3 Wherever the words “other”, “in particular”, “includes”, “including” or “for example” are used in this Agreement, they are to be construed without limitation.

2.4 References in this Agreement to a “person” include both natural and legal persons.

2.5 A requirement in this Agreement that a communication be “written” or “in writing” includes email, but does not include facsimile.

2.6 A reference to an enacted law, a statute or a statutory instrument is a reference to it as it is in force at the relevant time, taking account of any amendment, extension, re-enactment or replacement of it, and includes any subordinate legislation made under it and any binding decisions by a court of competent jurisdiction as to its or their correct interpretation.

2.7 Each SOW is a separate contract made of its terms, this Agreement and, as relevant to the particular SOW, the Service Specific Terms. When terms from this Agreement are incorporated into an SOW, references to “this Agreement”, “these terms” or “these framework terms” shall be construed as references to that particular SOW.

2.8 Any obligation on a person not to do something includes an obligation not to agree, allow or encourage that thing to be done.

2.9 Any remedy given to a party, unless expressly stated otherwise, is without prejudice to any other remedy that party may have, whether under an SOW or at law.

SCHEDULE 2 – Data Protection

11
1 DATA PROTECTION INTERPRETATION

1.1 In this Schedule:

“Data Protection Laws” means
(a) means, as applicable to either party in respect of their responsibilities and in connection with this Agreement;
(b) the GDPR;
(c) the UK Data Protection Act 2018;
(d) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003;
(e) any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either Party in connection with this Agreement;
(f) any laws which implement any of (a) – (e); and
(g) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing or laws that are analogous to any of them;

“Description of Processing” means processing of Personal Data of which the Customer is a controller by Shape as reasonably necessary for Shape to carry out its obligations under an SOW;

“GDPR” means the General Data Protection Regulation, Regulation (EU) 2016/679;

“Personal Data” means any personal data contained in the Customer Data available to Shape under an SOW;

“Sub-Processor” means a person that processes the Personal Data solely on Shape’s written instructions; and

“Sub-Processor List” means the list of authorised Sub-Processors in relation to Services, as set out in the relevant SOW.

1.2 Where a term or phrase has a defined meaning under the GDPR and is not otherwise defined in this Schedule, it shall have the meaning given to it under the GDPR.

2 CONTROLLER / PROCESSOR STATUS

The parties acknowledge and agree that the Customer is the controller of Personal Data, and Shape is its processor.

3 MUTUAL OBLIGATIONS

Each party shall:

3.1 comply with the Data Protection Laws applicable to it in connection with the Agreement;

3.2 provide reasonable information and assistance to the other party, on request and at the requesting party’s cost, to the extent:

3.2.1 required for the requesting party to respond to any complaint, request, investigation or correspondence from a data subject or supervisory authority; and

3.2.2 it is able to do so under Data Protection Laws and under any duty of confidentiality it owes to a third party; and

3.3 to the extent permitted by applicable law, promptly notify the other party of any notice from a supervisory authority alleging non-compliance with the Data Protection Laws by the other party (including any penalty notice, enforcement notice, information notice or transfer prohibition notice).

4 PROCESSOR OBLIGATIONS

Where Shape processes personal data on behalf of the Customer as the Customer’s processor pursuant to this Agreement, or uses a sub-contractor to do so, Shape shall:

4.1 process the Personal Data only on behalf of the Customer and only for the purposes of performing its obligations under the Agreement (including the relevant SOW), which the parties agree are, taken together, the Customer’s written instructions to Shape for processing the Personal Data;

4.2 ensure that all persons with access to the Personal Data are subject to an obligation of confidentiality or are under an appropriate statutory obligation of confidentiality;

4.3 implement appropriate technical and organisational measures to protect the Personal Data, which Shape may amend from time to time provided that such amendment does not degrade the level of security over the Personal Data;

4.4 only engage a Sub-Processor, or disclose Personal Data to a Sub-Processor, if:

4.4.1 the Customer specifically consents to this by virtue of the Sub-Processor being named in the Sub-Processor List as at the Effective Date; or

4.4.2 that Sub-Processor is a member of Shape Personnel, other than a sub-contractor;

4.5 when appointing a Sub-Processor:

4.5.1 ensure that the Sub-Processor complies with Data Protection Laws;

4.5.2 engage the Sub-Processor on a written agreement giving commitments in relation to the processing of the Personal Data no less onerous on the Sub-Processor than this clause 4 is on Shape; and

4.5.3 remain liable to the Customer for the acts and omissions of the Sub-Processor in relation to the Personal Data;

4.6 taking into account the nature of the processing and the information available to Shape, and at the Customer’s cost, provide the Customer with such information that it requires in order to comply with:

4.6.1 Articles 32, 35 and 36 GDPR; and

4.6.2 Chapter III GDPR.

in each case provided that such information has not already been provided to the Customer by Shape;
4.7 in the event that it becomes aware that it has experienced a personal data breach in respect of Personal Data:

4.7.1 notify the Customer without undue delay after becoming aware of that personal data breach, providing as much information about the nature and impact of it, including the specific categories of Personal Data affected by it, as Shape is reasonably able to provide (the Customer acknowledges that such information may be provided in stages as Shape’s investigation proceeds, if it is reasonable to do so); and

4.7.2 support and co-operate with the Customer in collecting the information needed by the Customer to comply with its notification obligations under Data Protection Laws to the relevant supervisory authorities and affected data subjects, as the Customer reasonably requires;

4.8 at the Customer’s option, delete or return to the Customer the Personal Data when it ceases to provide the relevant Services, including all copies of it unless either:

4.8.1 applicable law requires Shape to retain the Personal Data; or

4.8.2 Shape requires such Personal Data in connection with actual or potential legal proceedings;

4.9 only transfer the Personal Data outside of the European Economic Area in compliance with Data Protection Laws;

4.10 make available to the Customer such information that it reasonably requests where that information is necessary to demonstrate Shape’s compliance with this clause 4; and

4.11 allow the Customer, or its external auditor which is not a direct competitor of Shape (and subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Shape’s data processing activities and those of its relevant Affiliates, to enable the Customer to verify that Shape is in compliance with its obligations under this clause 4, provided that:

4.11.1 such right of audit shall not be exercised by the Customer more than once each year, unless specifically required by a supervisory authority of competent jurisdiction;

4.11.2 the Customer gives Shape not less than 30 days’ prior written notice of its intention to so audit, unless the Customer has reasonable grounds to suspect non-compliance with this clause 4;

4.11.3 the Customer uses or procures that its auditor uses all reasonable efforts to avoid disruption to Shape’s business or operations;

4.11.4 neither the Customer nor its auditor will thereby be entitled to access to any data of any other customer of Shape, or direct access to any of Shape’s or its Affiliates’ systems, unless specifically ordered otherwise by a supervisory authority of competent jurisdiction;

4.11.5 any and all information thereby coming into the possession of the Customer or its auditor will be the confidential information of Shape or its relevant Affiliate and the Customer will not use or allow it to be used for any other purposes whatsoever and will not disclose, and will procure that it is not disclosed, to any third party unless required by law; and

4.11.6 the Customer reimburses Shape for any costs reasonably incurred by it and its relevant Affiliates, including for its personnel’s time, except where the audit identifies a material breach of this clause 4 by Shape or its relevant Affiliates.

5 CUSTOMER OBLIGATIONS

The Customer acknowledges and agrees that:

5.1 the Description of Processing fully and accurately describes the processing of Personal Data under that SOW;

5.2 if it makes available Personal Data to Shape or its Affiliates, or otherwise provides Shape or its Affiliates with Personal Data, that does not meet the Description of Processing, it shall inform Shape in advance, providing details of how the Personal Data differs from the Description of Processing, and Shape shall have the right to refuse to process that Personal Data without being in breach of its obligations under the Agreement if the processing of that additional Personal Data is not commercially viable and/or would incur Shape or its Affiliates significant additional costs; and

5.3 it is satisfied that the technical and organisational measures put in place by Shape satisfy the requirements of Article 32 GDPR in respect of the processing of Personal Data under this Agreement.
## SCHEDULE 3 - Rate Card

(All figures are quoted in £ sterling per day, exclusive of VAT).

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<th>Service Management</th>
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SCHEDULE 4 - Dispute Resolution

1 INTERPRETATION

1.1 In this Schedule:

“Representatives” means the representatives appointed by each party. In respect of Shape, [●] and in respect of the Customer, [●].

“Senior Representatives” means the representatives at senior management level appointed by each party. In respect of Shape, [●] and in respect of the Customer, [●].

2 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this schedule.

2.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice must include reasonable information as to the nature of the dispute.

2.3 The parties shall use all reasonable efforts to reach a negotiated resolution through the following procedures:

2.3.1 Within seven (7) days of service of the notice, the Representatives of the parties shall meet to discuss the dispute and attempt to resolve it.

2.3.2 If the dispute has not been resolved within seven (7) days of the first meeting of the Representatives, then the matter shall be referred to the Senior Representatives. The Senior Representatives (or equivalent) will meet within seven (7) days to discuss the dispute and attempt to resolve it.

2.4 The specific format for the resolution of the dispute under paragraph 2.3.1 and, if necessary, paragraph 2.3.2 will be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

2.5 If the dispute has not been resolved within fourteen (14) days of the first meeting of the Senior Representatives under paragraph 2.3.2, the dispute shall be referred to an independent expert in the applicable field (“Independent Expert”) for determination (at the cost of the party raising the dispute). The decision of the Independent Expert shall be final and binding on the parties. For the avoidance of doubt, the Independent Expert shall not act as an arbitrator.

2.6 If the parties agree (or the Independent Expert finds) that the Services have not been completed in accordance with the SOW, without prejudice to the Customer’s other rights or remedies under this Agreement, Shape shall promptly ensure the Services are completed to the necessary standard.
SCHEDULE 5 - Policies
PART A - “SHAPE ADVISORY” SPECIFIC TERMS

These specific terms apply to the provision of any Advisory Services by Shape to Customer.

1 GENERAL

1.1 Shape will, subject to holidays and illnesses, use reasonable endeavours to ensure that the Consultant attends at the relevant Location to undertake work on the Assessment at the direction of the Customer from the relevant Intended Commencement Date until the work is completed. Shape will aim to provide the final Report by the Estimated Completion Date. The Estimated Completion Date is an estimate only as Shape and Consultant are heavily reliant on Customer for information about and materials relating to Customer business.

1.2 If for any reason the Consultant is unable to continue working Shape will use reasonable endeavours to find a replacement suitable to the Customer as soon as reasonably possible in order to attempt adhere to the Estimated Completion Date. The appointment of the replacement shall be subject to the terms of this SOW.

1.3 Supplier’s sole liability, and Customer’s sole remedy, for the non-attendance of a Consultant shall be a refund of any monies pre-paid in respect of the non-attendance.

1.4 Shape will charge for the Assessment and the Report on the basis of the Fees. If:

1.4.1 the basis of charge is an estimate,

1.4.2 any out of scope work is performed; and/or

1.4.3 the Report is not able to be delivered by the Estimated Completion Date due to delays caused by Customer or outside Shape’s reasonable control,

then Shape shall be entitled to charge the Customer on a time and materials basis using the Rate Card.

1.5 Shape will invoice the Customer periodically according to the Engagement Details. If the Engagement Details do not specify an invoicing frequency then Shape may invoice monthly in arrears.

1.6 The services under this SOW will be deemed complete and any remaining payments shall fall due on the date on which Shape provides the Report to the Customer, unless Shape has agreed to present the Report to Customer management in which case any remaining payments shall fall due on the date on which that presentation is first scheduled.

2 RELIANCE

2.1 The Report is solely for the benefit of the Customer and Shape shall not be liable, nor owe any duty to care, to any other party in respect of the preparation or contents of the Report.

2.2 The Report may not be disclosed to or relied upon by any person other than the Customer without the prior written consent of Shape. Should such consent be given it is a condition of such other person relying on the Report that:

2.2.1 Shape will not be liable to such persons under any circumstances;

2.2.2 Shape makes no representations to such person on whether the Report is suitable for its purposes and such person has to make its own judgement in that regard; and

2.2.3 such person shall not disclose the Report to any other person without the prior written consent of Shape.

3 TERMINATION

3.1 The Customer may terminate this SOW at any time on at least twenty four (24) hours’ written notice to Shape. Upon termination the Customer shall become immediately liable to Shape, and Shape may invoice the Customer, for the remainder of the full Estimated Fixed Fee as well as any other outstanding charges owed it.

3.2 Shape may terminate this SOW or the engagement of any Consultant on the provision of not less than one (1) months’ notice.

3.3 This SOW will automatically terminate on the date that the Consultant finishes the Assessment whether or not this occurs on the Indicative End Date.
PART B - “ON DEMAND” SPECIFIC TERMS
These specific terms apply to the provision of any On Demand Services by Shape to Customer.

1 GENERAL

1.1 Terms not defined in a SOW have the meaning given to them in this Agreement.

1.2 Shape will, subject to holidays and illnesses, use reasonable endeavours to ensure that the Consultant attend at the relevant Location, or works remotely, according to their Working Pattern to undertake work on the Project at the direction of the Customer. Shape will use reasonable endeavours to make the Consultant available from the relevant Intended Start Date until the Indicative End Date. Customer may request to extend the Indicative End Date by giving at least one (1) months’ written notice to Shape; however Shape cannot guarantee that a particular Consultant will be available beyond the Indicative End Date. If the original Consultant is not available for a requested extension, then Shape will use reasonable endeavours to find a replacement suitable to the Customer as soon as reasonably possible and the parties will enter into a new SOW for such replacement.

1.3 If for any reason the Consultant is unable to continue working until the Indicative End Date then Shape will use reasonable endeavours to find a replacement suitable to the Customer as soon as possible (provided that the Customer requires a replacement). Once Shape has secured the services of a suitable replacement, it shall enter into a new SOW with the Customer setting out the terms of the replacement consultant’s engagement.

1.4 Each Consultant will, save in exceptional and emergency circumstances, be required to give at least one (1) months’ notice of any holidays. Each Consultant will be required to follow the Customer’s internal processes for reporting illnesses to their relevant Customer Manager.

1.5 Each Consultant will primarily receive their instructions and directions from the Customer. The Customer must ensure that any instructions or directions it gives to the Consultant are lawful, consistent with the Engagement Details and consistent with the Grade and Responsibility/Role of the relevant Consultant. However, in order to allow the Shape Manager to supervise the Consultant effectively, the Customer shall periodically allow the Shape Manager:

1.5.1 to review the work produced by the Consultant;

1.5.2 to access the Location to supervise/monitor the work of the Consultant to ensure Consultant is complying with the instructions and directions of the Customer; and

1.5.3 access any data, documents, systems or other relevant information that may be required by the Shape Manager in order to provide instructions or directions to the Consultant.

1.6 If the Shape Manager is unable to effectively supervise the Consultant due to a breach of paragraph 1.5 by the Customer then Shape will not be liable for any damage caused by the Consultant’s actions.

1.7 Shape’s sole liability, and Customer’s sole remedy, for the non-attendance of a Consultant shall be a refund of any monies pre-paid in respect of the non-attendance.

1.8 Customer may ask Consultants to work overtime. If a Consultant agrees to work overtime then Customer shall notify Shape of the same and be liable to pay for time spent on any day in excess of Working Pattern. The charge for overtime shall be calculated by multiplying Consultant’s hourly rate (to be calculated by a pro rating the Consultant’s day rate against his/her average number of hours he/she is required to work per day by the Working Pattern) by the Overtime Loading.

2 TERMINATION

2.1 The Customer may terminate any individual Consultant, or the SOW as a whole, at any time on at least twenty four (24) hours’ written notice to Shape. Where such notice is less than the Minimum Notice, then the Customer shall become immediately liable to Shape, and Shape may invoice the Customer, for the fees that would have been payable during the Minimum Notice period had the relevant notice of termination not been given.

2.2 Shape may terminate this SOW or the engagement of any Consultant on the provision of not less than one (1) months’ notice.

2.3 This SOW will automatically terminate on the date that the Consultant finishes work on the Project whether or not this occurs on the Indicative End Date.
PART C - “SHAPE SQUAD” SPECIFIC TERMS

These specific terms apply to the provision of any Squad Services by Shape to Customer.

1 GENERAL

1.1 Terms not defined in a SOW have the meaning given to them in this Agreement.

1.2 Shape will, subject to holidays and illnesses, use reasonable endeavours to ensure that each Squad Member, attends at the relevant Location according to their respective Working Patterns to undertake work on the Project at the direction of the Customer from the Intended Start Date until the Indicative End Date.

1.3 Customer may request to extend the Indicative End Date by giving at least one (1) months’ notice to Shape; however Shape cannot guarantee that each Squad Member will be available beyond the original Indicative End Date.

1.4 If for any reason any Squad Member(s) is unable to continue working until his/her Indicative End Date then Shape will use reasonable endeavours to find replacement Squad Member(s) for the Customer as soon as possible (provided that the Customer requires a replacement). If Shape is required to replace a Squad Member(s) then that consultant shall work under the terms of this SOW.

1.5 Squad Members will, save in exceptional or emergency circumstances, be required to give at least one (1) months’ notice of any holidays. Each Squad Member will be directed to follow the Customer’s internal processes for reporting illnesses to Customer.

1.6 The Squad will primarily receive its instructions and directions from the Customer. A Squad Member will be designated by Shape as the “Squad Lead” and will act as the Customer’s primary point of contact with the Squad.

1.7 The Squad Lead will:

1.7.1 supervise the Squad Members;

1.7.2 review the work produced by the Squad;

1.7.3 access any data, documents, systems or other relevant information that may be required by the Shape Manager in order to provide instructions or directions to the Squad.

1.8 Shape’s sole liability, and Customer’s sole remedy, for the non-attendance of a Squad Member shall be a refund of any monies pre-paid in respect of the non-attendance.

1.9 Customer may ask Squad Members to work overtime. If a Squad Member agrees to work overtime then Customer shall notify Shape of the same and be liable to pay for time spent on any day in excess of the respective Working Pattern. The charge for overtime shall be calculated by multiplying the Squad Member’s hourly rate (to be calculated by a ratio of the Squad Member’s day rate against his/her average number of hours he/she is required to work per day by the Working Pattern) by the Overtime Loading.

1.10 The Squad will use its reasonable efforts to adhere to the Delivery Plan.

2 TERMINATION

2.1 The Customer may terminate this SOW as a whole, at any time on at least twenty four (24) hours’ written notice to Shape. Where such notice is less than the Minimum Notice, then the Customer shall become immediately liable to Shape, and Shape may invoice the Customer, for the fees that would have been payable during the Minimum Notice period had the SOW not been terminated.

2.2 Shape may terminate this SOW on the provision of not less than one (1) months’ notice.
PART D - “SHAPE TRAINING” SPECIFIC TERMS

These specific terms apply to the provision of any Training by Shape to Customer.

1 GENERAL

Terms not defined in a SOW have the meaning given to them in this Agreement.

2 CANCELLATIONS

2.1 The Customer may cancel a Course or a Session by giving Shape written notice at least twenty-one (21) days before the relevant Course or Session Date.

2.2 If a Course or a Session is cancelled at least twenty-one (21) days before the Session Date then the Customer will receive a refund, if they have prepaid, of the Course or Session Fee, less any unavoidable costs (including, but not limited to, any costs incurred preparing course materials and any time spent preparing these materials).

2.3 If the Customer does not provide Shape with the relevant notice of its cancellation in accordance with paragraph 2.1 then the full Course or Session Fee shall remain payable.

3 PARTICIPANT ATTENDANCE

3.1 The provisions in this paragraph 3 shall only apply if a Course or a Session is charged on a per participant basis.

3.2 If a participant is unable to attend a Session then the Customer shall provide Shape with written notice of this at least twenty-one (21) days before the Session Date.

3.3 Shape shall provide the Customer with a refund of the Participant Fee, if prepaid, provided that the Customer has complied with paragraph 3.2.

3.4 If a participant does not attend a Session and the Customer has not provided notice of this in accordance with paragraph 3.2 then the Participant Fee shall remain payable.

3.5 In the event that the number of participants who attend a Session is less than the Minimum Participants the Customer shall be liable to pay the Participant Fee for the Minimum Participants.

3.6 In the event that the number of participants attending a Session is more than the Maximum Participants, the Customer shall pay a Participant Fee for each additional participant as well as the Course Fee.

4 USE OF MATERIALS

4.1 All Intellectual Property Rights in the materials for a Course or used by Shape to present a Course (including all course content, powerpoint slides, hand-outs, textbooks) (“Course Materials”) are and remain the property of Shape or its licensors, whether or not it is adapted, written or customised for the Customer.

4.2 Subject to paragraph 3.3 the Customer is not authorised to:

4.2.1 copy, modify, reproduce, re-publish, sub-licence, sell, upload, broadcast, post, transmit or distribute any of the Course Materials or any part of them without prior written permission;

4.2.2 record on video or audio tape, relay by videophone or other means the Course given;

4.2.3 use the Course Materials in the provision of any other course or training without prior written permission.

4.3 If so specified under the Course Details and subject to the payment of Royalties, the Customer is granted a limited, non-transferable, non-exclusive licence to use the Licenced Material for the Licence Term for the Licence Purpose.
PART E “SHAPE CULTURE” – SPECIFIC TERMS

1 GENERAL

1.1 Terms not defined in this SOW have the meaning given to them in the FSA.

1.2 Subject to the Customer meeting any relevant Customer Dependencies, Shape shall use reasonable endeavors to provide the Customer with the Deliverables and the Milestones in accordance with the High Level Project Plan.

2 PHASE 1

The “Shape Advisory Specific Terms” apply to Phase 1 work:

2.1 save that references to “Report” shall be deemed to refer to “Transformation Report”; and

2.2 paragraphs 1.5, 1.6 and 3 of those do not apply.

3 PHASE 2

The “Shape Squad Specific Terms” apply to Phase 2 work save that paragraph 2 of those terms does not apply.

4 PHASE 3

4.1 Events

4.1.1 This paragraph 4.1 applies only to work carried out under clause 5 of a Culture Service SOW.

4.1.2 The Customer may nominate a representative from its organisation to speak at the Event on a topic to be agreed by the parties.

4.1.3 The Customer acknowledges that it is not being offered sole sponsorship of any Event(s) and Shape may approach speakers and sponsors from any organisation Shape deems appropriate.

4.1.4 Shape may remove speakers and amend the agenda of an Event and will provide the Customer with reasonable notice of this should it need to do so.

4.1.5 The Customer shall have permission to distribute marketing materials at the Event(s). Shape may withdraw such permission and remove any materials it considers objectionable.

4.1.6 If Shape cancels an Event, both parties shall be released from the obligations set out in this paragraph 4.1. The Customer will be reimbursed any Fee for the Event within 14 days of cancellation. The rest of the SOW terms will remain valid and enforceable.

5 PHASE 4

The “Shape Squad Specific Terms” apply to work carried out in accordance with clause 6 of this SOW save that paragraph 2 does not apply.
Signed for and on behalf of the **Customer:**

(Signature)

(Print name)

(Date)

Signed for an on behalf of **We Shape Ltd:**

(Signature)

(Print name)

(Date)