



BUSINESS DATA PARTNERS LIMITED

and

CLIENT

IT Services Agreement

dated [insert date]

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THIS AGREEMENT is made on the [] 202X

BETWEEN:

- (1) BUSINESS DATA PARTNERS LIMITED a company registered in England under Company Registration Number 09277132 whose registered office is at 4 Admirals Way, Doxford International Business Park, Sunderland, SR3 3XW
(“Business Data Partners”).
- (2) [CLIENT] a company registered in England under Company Registration Number [insert number] whose registered office is at [insert address] (“the Client”).

BACKGROUND:

- A. Business Data Partners is a company that provides IT solutions & services.
- B. The Client wishes Business Data Partners to [] and Business Data Partners to provide the same upon the terms and subject to the conditions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Agreement:

“Acceptance” or “Accepted”	means in relation to the Deliverables or any part of them, successful completion of the Acceptance Tests or deemed acceptance in accordance with clause 5.10;
“Acceptance Criteria”	means the criteria for Acceptance which is to be agreed pursuant to clause 4;
“Acceptance Date”	means the date on which the Deliverables are Accepted by the Client and Business Data Partners pursuant to clause 5;
“Acceptance Period”	means the acceptance period set out in the applicable Schedule;
“Acceptance Tests”	means the tests to assess compliance of the Deliverables with the Acceptance Criteria and which are to be (a) agreed between the parties pursuant to clause 4; and (b) conducted by the Client in accordance with clause 5;
“Additional Charges”	means the costs and charges for any additional services;

“Agreement”	means this agreement between Business Data Partners and the Client including all schedules and its annexes, appendices and any and other documents referred to in this Agreement or attached hereto which may be or are agreed by the parties to form part of this agreement;
“Business Data Partners Representative”	means the Business Data Partners representative(s) set out in the applicable Schedule;
“Business Data Partners Software”	means the computer programs and applications (in both source code and object code form) including the Toolkit as well as any modifications, amendments updated thereto and any other materials or data, methodologies which are (i) owned by Business Data Partners prior to or independently of this Agreement or (ii) used to create or modify or are embedded in the Deliverables but excluding the Client Software;
“Business Hour”	means any hour during the Working Day
“Client Materials”	means content, data, documentation, designs, text, logos, graphics, images, illustrations, copyright material, domain names, and other content which is provided by the Client or Client Members to Business Data Partners in connection with the Project and/or Ongoing Services or the performance of the Services
“Client Representative”	means the Client representative(s) set out in the applicable Schedule;
“Client Software”	means any software programs to be written by Business Data Partners for the Client including custom extensions to configurable software and identified in the Specification, as bespoke software for the sole benefit of the Client;
“Client Works”	means the Client Software and [Distinctive Client Features (if any)];
“Change Notice	means a change request which has been agreed to in writing by the representative of each party in the form set out in Appendix 3;

“Change Request”	means any request for additional services, new applications, new functionality or any modifications to the Specification made by either party in writing in accordance with Clause 8 of this Agreement;
“Charges”	means Business Data Partners charges or any part thereof for the Services as set out in Annex B to a Schedule and for Change Notices as charged by Business Data Partners from time to time as set out in the Rates Card;
“Commencement Date”	means the commencement date set out in the applicable Schedule;
“Deliverables”	means deliverables set out in the applicable Schedule;
“Dependencies”	means hardware, software (including operating system software and ancillary equipment and accessories) and such other dependencies set out in Annex D of the applicable Schedule;
“Distinctive Client Features”	means all graphics, text and customised design that are unique to the Client’s specific business processes, requirements and which are defined in the specification to be created by Business Data Partners solely for the Client;
“Good Industry Practice”	means the exercise of the degree of skill and care which would reasonably and ordinarily be expected from a person skilled and experienced in providing the same or similar Services under the same or similar circumstances;
“Go-Live”	means the date set out in the Project Plan, or the date that the Deliverables is first used by the Client in "live" operation, whichever is the earlier;
“Helpdesk”	The support facility provided by Business Data Partners in the provision of the Ongoing Services
“Installation” or “Install”	means installing and commissioning the Software on the Servers at the Installation Site;
“Installation Date(s)”	means the date(s) specified in the Project Plan for Installation of the Software by Business Data Partners at the Installation Site(s);
“Installation Site(s)”	means the physical location(s) of the system on which the Software is to be installed as specified in the applicable Schedule;

“Intellectual Property Rights”	means all rights in inventions, patents, copyrights, database rights, design rights, trademarks and trade names, trade secrets and other intellectual property rights (whether registered or unregistered) and all applications for any of them and rights to make such applications anywhere in the world;
“Business Data Partners Know-how”	means the methodology, stylistic and distinctive features, techniques, experience, manner of working, approaches and concepts used and/or acquired by Business Data Partners under or in connection with this Agreement;
“Ongoing Services”	means the hosting, support and maintenance and/or managed services set out in the applicable schedule
“Payment Plan”	means the programme for payment of the Charges set out in Annex B of the applicable Schedule;
“Project”	means the project set out in the applicable Schedule;
“Project Plan”	means the Project Plan agreed between the parties for performance of Business Data Partners Services under this Agreement as set out in Annex C of the applicable Schedule;
“Rate Card”	means Business Data Partners day rates and used for the calculation of any adjustment to the Charges following a Change Notice;
“Restricted Live Operation”	means the period set out in the Project Plan when the Deliverables are tested by the Client in a "live" environment using a restricted number of users;
“Server(s)”	means the computer machine(s) and any additional hardware upon which the system(s) will reside;
“Services”	means the services set out in the applicable Schedule;
“Service Hours”	means the times when Business Data Partners maintains Helpdesk facilities for the Client in relation to the provision of the Ongoing Services specified in the applicable schedules

“Service Levels”	means the system availability, Business Data Partners response times and prioritisation classification applied in the delivery of the Ongoing Services as specified in the applicable schedule
“Software”	means the Business Data Partners Software, the Toolkit, Client Software written by Business Data Partners for use by the Client in connection with the Project;
“Software Licence(s)”	means the licence(s) granted by Business Data Partners to the Client for the right to use the Toolkit, the Business Data Partners Software and the licence(s) necessary for the right for Business Data Partners and the Client to use third party software included in the Deliverables;
“Specification”	means the detailed description of functionality, data processing, content and/or performance set out in the functional specification and the technical specification in Annex B to the applicable Schedule;
“Toolkit”	means the library of functions and functionality provided to the Client by Business Data Partners to assist in the efficient use and functions of the Business Data Partners Software and/or the Client Software;
“Training Plan”	means the training plan to be agreed between the parties in accordance with clause 6.2;
“Working Day”	means 09:00 to 17:30 hours Monday to Friday (excluding Bank Holidays and other public holidays in England) or such other period of seven and one half (7.5) hours provided by Business Data Partners;
“Warranty Period”	means the period of thirty (30) days from the Acceptance Date.

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.4 Words in the singular include the plural and, in the plural, include the singular.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.6 References to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation.

2. SCOPE OF SERVICES

- 2.1 Client hereby engages Business Data Partners to perform the Services for Client and Business Data Partners agrees to provide such Services upon the terms and conditions set out below.
- 2.2 This Agreement contemplates that Client and Business Data Partners may from time to time sign additional Schedules in the form set out in Appendix A which will be governed by the terms of this Agreement and shall be deemed to automatically include all the terms and provisions of this Agreement. All capitalised terms which are defined in this Agreement shall have the same meaning in a Schedule provided that:
- 2.2.1 the parties may otherwise agree in writing in a Schedule; and
- 2.2.2 [in the event and to the extent only of any conflict between the clauses and the Schedules the clauses shall prevail] OR [whenever the provisions of a Schedule or an Annex to a Schedule do not reflect the provisions of this Agreement, the provisions of the Schedule control and take precedence over the provisions of this Agreement but only for the purposes of that Schedule and the terms and provisions of this Agreement are not otherwise amended, modified, cancelled, waived or released].
- 2.3 Business Data Partners shall procure that all advice and recommendations given by the Consultants shall be made in good faith and upon the basis of information provided by the Client and otherwise in accordance with Good Industry Practice. Where a piece of advice or recommendation does not form part of, or relate to, the Services that advice or recommendation shall in no circumstances constitute a warranty by Business Data Partners as to the accuracy of such advice or recommendation and Business Data Partners shall not in any event be liable for any loss or damage that may be suffered whether directly or indirectly as a result of Client acting upon such advice or recommendation.
- 2.4 Each of Business Data Partners and Client shall comply with its respective designated responsibilities under the Project Plan or in the Schedule.
- 2.5 Business Data Partners will use its reasonable endeavours in accordance with Good Industry Practice to meet the milestones in the Project Plan but such date or time shall be treated as an estimate only and time shall not be of the essence in relation to this Agreement.
- 2.6 All dates will be extended for a reasonable period if any delay or stoppage is caused by any act or omission of Client or its employees, agents or sub-contractors.

3. SUPPLY OF SERVICES

- 3.1 The Client appoints Business Data Partners to provide the Services with effect from the Commencement Date.

- 3.2 In consideration of the Client paying the Charges, Business Data Partners shall from the Commencement Date:
- 3.2.1 commence the work and provide the Services in accordance with the Project Plan;
 - 3.2.2 provide the Client at its request and expense with such assistance as it may reasonably require to carry out the Acceptance Tests (including providing all necessary documentation);
 - 3.2.3 work with the Client to develop and agree a mutually acceptable Training Plan;
 - 3.2.4 at the Client's request and expense provide the training set out in the Training Plan, and
 - 3.2.5 provide support, configuration and error fixing services during the Acceptance Test Period and the Warranty Period, all in accordance with the Project Plan and on the terms and conditions more particularly set out in this Agreement.
- 3.3 The Client shall, at the Client's expense, promptly provide Business Data Partners with such information that Business Data Partners may reasonably require to enable it to perform its obligations under this Agreement.
- 3.4 The Client shall be responsible for the Dependencies at the Installation Site, unless otherwise agreed in writing
- 3.5 Business Data Partners shall deliver the Client Software and commission the Deliverables at the Installation Site in accordance with the Project Plan.
- 3.6 Unless otherwise agreed by the Client, delivery and Installation shall be undertaken during a Working Day or Working Days as required.

4. ACCEPTANCE TEST PREPARATION

- 4.1 The provisions of this Clause 4 and any applicable Schedule will apply in respect of the Acceptance Testing and Acceptance of the Deliverables.
- 4.2 The Parties shall work together to agree a set of Acceptance Criteria and/or a set of Acceptance Tests, such agreement not to be unreasonably withheld or delayed.
- 4.3 The Acceptance Criteria shall demonstrate compliance of the Deliverables with the Specification.
- 4.4 The Acceptance Tests shall test whether the Deliverables attains the Acceptance Criteria.
- 4.5 Where requested by Business Data Partners, the Client shall provide Business Data Partners with appropriate test data and test cases to test whether the Deliverables conform to the Specification.

5. ACCEPTANCE TESTING

- 5.1 The Client shall, not later than the end of the Acceptance Period (or such longer period as the parties may agree in writing) complete Acceptance Tests of the Deliverables. The Client is responsible for the planning and conduct of the Acceptance Testing and the deployment of suitable resources to perform the Acceptance Testing. The Client will be responsible for the establishment of a fault handling process that will ensure the timely notification of faults to Business Data Partners for fixing before Acceptance.
- 5.2 Business Data Partners shall at the Client's request and expense assist the Client to carry out the Acceptance Tests.
- 5.3 The Deliverables shall not be rejected or fail the Acceptance Tests by reason of any failure to provide any facility function or performance level not specified in the Specification.
- 5.4 The Deliverables shall be deemed to have passed the Acceptance Tests if it provides the facilities and functions set out in the Specification. Otherwise the Deliverables shall fail the Acceptance Tests. The Client shall cooperate with Business Data Partners in identifying in what respects (if any) the Deliverables has failed to conform with the Specification.
- 5.5 If Business Data Partners is unable to remedy any failure of the Deliverables to conform with the Specification so that it passes the Acceptance Test with a further five (5) Business Days, or such longer period as is reasonably necessary to fix any deficiency in the Deliverables to conform with the Specification and that failure is the fault of Business Data Partners, then the Client shall not be obliged to pay the final instalment of the Charges set out on the invoice schedule in the Payment Plan until a remedy is forthcoming, provided that in the case of a minor non- conformity the Client shall not delay its Acceptance of the Deliverables so long as Business Data Partners uses all reasonable endeavours to rectify such non-conformity as soon as possible.
- 5.6 Upon successful completion of the Acceptance Tests or repeat Acceptance Tests, the Client shall notify Business Data Partners that it is satisfied that the Acceptance Criteria have been met.
- 5.7 Upon receipt of notification from the Client in clause 5.6 above, and subject to Business Data Partners joint acceptance, Business Data Partners shall if required under the Project Plan implement and configure the Deliverables in preparation for Go-Live, subject to the Project Plan.
- 5.8 The Client may use the Deliverables for a period of Restricted Live Operation in accordance with the Project Plan in order to undertake its Acceptance Testing.
- 5.9 In order for the solution to transfer into the Go-Live production environment, the parties must jointly accept that the Acceptance Criteria has been met and that any failures identified during Acceptance Testing have either been fixed and/or closed for Go-Live purposes. The Acceptance may take the form of an e-mail confirmation between the project managers of each party. From Go-Live the Client shall commence full use of the Deliverables and take delivery subject to the Intellectual Property Rights of the parties. In the event that the Deliverables do not meet the

Acceptance Criteria due to material failures, the parties agree that it would be their intention to assess the reasons for the non-acceptance and the commercial implications at that time and to seek to resolve the matter in good faith by involvement of the respective executive management of each party. From

Go-Live the Client shall commence full use of the Deliverables, subject to 5.11 below. The Client shall not unreasonably withhold or delay Acceptance.

5.10 If the Client reports any errors, bugs, problems or issues (an "Incident") to Business Data Partners during the Warranty Period, and such Incident is the fault of Business Data Partners, Business Data Partners shall at its own expense carry out sufficient investigation or remedial work as necessary in order to resolve the Incident. Business Data Partners shall resolve all Incidents as quickly as possible and, in any event, shall start investigating all Incidents within a reasonable time of an Incident being reported to Business Data Partners. At the end of the Warranty Period the parties shall jointly agree the list of outstanding Incidents to be fixed at the expense of Business Data Partners ('the Agreed List'). On expiry of the Warranty Period Business Data Partners ceases to have obligations to make any fixes other than the Incidents included in the Agreed List. If Business Data Partners is unable to provide a fix for any Incident, and that Incident is the fault of Business Data Partners, then in the case of fixed price work the Client shall not be obliged to pay the final instalment of the Charges set out on the invoice schedule in the Payment Plan until a remedy is forthcoming.

5.11 Acceptance at the Deliverables shall occur at the earliest of: 5.11.1

both parties have given Acceptance; or

5.11.2 the date of Go-Live.

6. TRAINING

6.1 If training forms part of the Deliverables then, Business Data Partners shall provide training services in accordance with the Training Plan and the Project Plan and the provisions of this clause 6 shall apply.

6.2 The parties shall work together to develop and agree a mutually acceptable Training Plan to include at least one (1) day's training (to be provided as two (2) half days) and which shall include details of the topics, structure and Project Plan for providing training to the Client's staff. The training programme and materials developed or provided by Business Data Partners shall include sufficient detail to enable the Client to operate the Deliverables.

6.3 Business Data Partners agrees that its staff shall make all reasonable efforts to work with the Client's technical and business staff during the course of the Agreement to:

6.3.1 provide the Client's technical staff with technical understanding of the Deliverables;

6.3.2 aid the Client's technical and business staff in documenting and recording the technical and configuration details and the related business processes of the Deliverables

7. CHARGES

- 7.1 In consideration of Business Data Partners performing its obligations under this Agreement, the Client agrees to pay Business Data Partners the Charges in accordance with the Payment Plan outlined in Schedule 2. Business Data Partners may on completion of the relevant phase of the project set out in the Payment Plan, raise an invoice in respect of that part of the Charges.
- 7.2 The Charges are exclusive of Value Added Tax for which the Client shall be additionally liable at the applicable rate.
- 7.3 All prices exclude normal disbursements which may only be invoiced, at cost, if the disbursements have been approved by the Client before being incurred. Reasonable travel expenses connected with the Project will be invoiced at cost.
- 7.4 All payments payable by the Client shall be made in Pounds Sterling.
- 7.5 Unless otherwise specified, the Client shall pay all invoices within thirty (30) days of the date of the invoice.
- 7.6 If payment is not made on the due date, Business Data Partners shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount at the rate of four percent (4%) above the base rate from time to time of NatWest Bank plc from the due date until the outstanding amount is paid in full.

8. CHANGE REQUESTS/CHANGE NOTICES

- 8.1 The parties recognise that circumstances may give rise to a change in the Client's requirements in relation to any fixed price work. Any change requested by either party must be made by Change Request. Each Change Request shall be recorded by Business Data Partners and Business Data Partners shall not progress or implement any change(s) without agreement in writing by both the parties.
- 8.2 Any adjustment to the Charges (increase or decrease) shall only arise in respect of a Change Request that alters Business Data Partners costs base for delivering the Project or providing the Services. The additional cost for implementing a Change Request shall be calculated by Business Data Partners based on the Rate Card and shall be notified to the Client in reasonable detail, to enable the Client to evaluate the cost effectiveness of the change. Work undertaken on a time and materials basis will be charged based on the days utilised in accordance with the agreed Rate Card.
- 8.3 A Change Notice shall have the effect of amending the Specification to take account of the change. Such change will come into effect on the date shown in the written authorisation.
- 8.4 Receipt of any authorised Change Notice shall entitle Business Data Partners, (when applicable), to submit an invoice or credit note at Business Data Partners prevailing rates.

9. CONFIDENTIAL INFORMATION

- 9.1 Subject to Clause 9.2, neither party shall use or disclose any information, (whether verbal or in writing or on magnetic or any other media) relating to the other party's marketing or business development, business operations, business affairs, products, processes, technology, Intellectual Property Rights, Inventions, trade secrets, suppliers and customers associations, transactions, financial arrangements or in relation to any activities of either party or any person, firm or company with whom either party has any dealings and which is made available to either party under or in connection with the Agreement which is marked as such or which should by its nature be reasonably understood to be confidential by the other party ("Confidential Information")
- 9.2 Such Confidential Information (or any part thereof) may only be disclosed or reproduced or used by such persons (such as employees, authorised sub-contractors and agents) who need to know the Confidential Information for the purposes of either party performing its obligations or exercising its rights under the Agreement. Each party shall use its reasonable endeavours to keep Confidential Information secret and confidential and shall not disclose the same to any person except in compliance with this Clause 9 (Confidentiality) and shall procure that such persons to whom Confidential Information may be disclosed pursuant to this Clause 9 (Confidentiality) are made aware of and comply with substantially similar obligations of confidentiality and non-disclosure.
- 9.3 Confidential Information does not include information which:
- 9.3.1 is required to be disclosed by law or by governmental or other regulatory authority (including without limitation the rules and regulations of any applicable stock exchange) acting within the scope of its powers;
 - 9.3.2 is or becomes part of the public domain through no fault of the receiving party;
 - 9.3.3 the receiving party can demonstrate was known to it prior to the disclosure by the disclosing party without an obligation to keep such Confidential Information confidential;
 - 9.3.4 is subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party; or
 - 9.3.5 is independently developed by the receiving party or a company within the receiving party's group without any breach of the Agreement.
- 9.4 The parties agree that monetary damages may not be a sufficient remedy if either party is in breach of this Clause 9 (Confidentiality) and the party who disclosed the Confidential Information will be entitled to seek any legal remedy or relief to prevent any breach, or anticipated breach, by the other party. This right shall be in addition to the party who disclosed the Confidential Information other rights in law or in equity.

10. NON-SOLICITATION

During the continuance of the provision of the Services and for a period of twelve (12) months following termination of this Agreement each of Business Data Partners and the Client hereby undertake not to employ subcontract or otherwise engage employees engaged by the other party during the provision of the Services without the prior written consent of Business Data Partners ("Restricted Employees") save that either party may employ or engage any Restricted Employee (or former Restricted Employee) of the other party who has responded to a bona fide recruitment drive, either through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other party. Breach of this condition will render the party in breach liable to pay to the other party liquidated damages equal to twelve (12) months' gross salary paid by the party for the Restricted Employee.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Subject to the following provisions of this Clause 11, all Intellectual Property Rights in the Business Data Partners Software, Know-how and third party proprietary works to which the Client has access shall at all times remain vested in Business Data Partners or its licensor.

11.2 All Intellectual Property Rights in the Client Materials to which Business Data Partners has access in connection with the Deliverables shall remain vested in the Client.

11.3 Upon Acceptance of the Deliverables and payment in full for the Services and Deliverables Business Data Partners will grant a non-transferable, royalty free, non-exclusive licence to the Client in relation to the Client Works on the same terms as the Business Data Partners Software outlined in 11.4

11.4 To the extent that Business Data Partners Software are provided to the Client by Business Data Partners for use and/or incorporated into the Client Works and/or the Deliverables, Business Data Partners hereby grants a non-transferable, royalty free, non-exclusive licence to the Client to:

- 11.4.1 use, modify, amend, enhance and make such copies thereof as may be necessary for the Client's use of the Client Software and Deliverables including for security, back-up, disaster recovery and archival purposes;
- 11.4.2 print copies of the documentation relating to the Business Data Partners Software which are incorporated in the Deliverables in which event all proprietary notices on such documentation shall be reproduced;
- 11.4.3 permit consultants and/or contractors or replacement supplier to exercise all of the rights granted to the Client under the licence set out in clause 11.4 solely in connection with the use, maintenance and development of the Deliverables and for no other purpose.

11.5 If the Client Works provided by Business Data Partners to the Client infringes the Intellectual Property Rights of a third party, Business Data Partners will replace the infringing part or code (as the case may be) with non-infringing material.

11.6 Where the Client requests Business Data Partners to use or to include any Client Materials in any part of the Deliverables, the Client warrants that the use of such material shall not infringe any third party's rights.

12. IPR INDEMNITY

12.1 Business Data Partners undertakes to defend the Client from and against any action or claim that the use or possession of the Deliverables, or any part of them infringes the Intellectual Property Rights of any third party ("IPR Claim") and shall indemnify the Client from and against any losses, damages, costs (including legal fees and an assessed basis) and expenses incurred as a result of any IPR Claim by way of settlement or awarded by a court of competent jurisdiction against the Client as a result of, or in connection with, that IPR Claim. Business Data Partners shall have no liability under the foregoing indemnity to the Client if the Client:

12.1.1 does not notify Business Data Partners in writing of any IPR Claim of which it has notice as soon as reasonably practicable;

12.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of Business Data Partners (which shall not be unreasonably delayed or withheld);

12.1.3 does not let Business Data Partners, at its request and own expense have the conduct of or settle all negotiations and litigation arising from the relevant IPR Claim; or

12.1.4 does not, at Business Data Partners request and cost, give Business Data Partners all reasonable assistance in the circumstances described in sub-clause 12.1.3.

12.2 If any IPR Claim is made, or in Business Data Partners reasonable opinion is likely to be made, against the Client, Business Data Partners may at its own expense either:

12.2.1 procure for the Client the right to continue using and possessing the Deliverables; or

12.2.2 modify or replace the infringing part of the Deliverables and without diminishing or curtailing any of the functions or facilities of the Deliverables as specified in the Specification so as to avoid the infringement or alleged infringement.

12.3 The undertaking and indemnity given by Business Data Partners under clause 12.1 shall not apply to any infringement arising from any modification to the Deliverables made by Client or any employee, agent or service provider of the Client without the authorisation of Business Data Partners.

12.4 The Client agrees to indemnify and defend at its own expense Business Data Partners from and against any and all claims of infringement of copyright, patents, trademarks, industrial designs, or other intellectual property rights affecting the Project and based upon the Client's contribution to the Specification.

13. WARRANTIES AND UNDERTAKINGS

13.1 Business Data Partners warrants to the Client that during the "Warranty Period" the Deliverables supplied by Business Data Partners shall function substantially uninterrupted in accordance with Specification provided always that should the Deliverables be modified in any manner other than by Business Data Partners then this warranty shall immediately lapse.

13.2 Business Data Partners warrants that the Deliverables will be provided at the Installation Site in accordance with the Technical Specification and shall meet the Client's requirements set out in the Functional Specification.

13.3 Business Data Partners warrants to the Client that it shall discharge its obligations under this Agreement using personnel of requisite skill and experience and in accordance with Good Industry Practice.

13.4 Business Data Partners shall make reasonable endeavours to ensure that at the time of Installation, the Deliverables will be free from all viruses, including but not limited to any codes or instructions that may be or will be used to access, modify, delete or damage any data files used by the Client.

13.5 Business Data Partners shall have no liability to remedy a breach of warranty arising from:

- 13.5.1 any fault in the equipment or in any programs used in conjunction with the Deliverables;
- 13.5.2 use of the Deliverables on or with equipment not approved in writing by Business Data Partners;
- 13.5.3 defects or errors caused by or resulting from any reason external to the Deliverables, including failure or fluctuation of electrical supplies accidents or natural disasters;
- 13.5.4 defect caused by the fault, default or negligent act or omission of the Client or its Representatives;
- 13.5.5 failure by the client to implement recommendations in respect of solutions to defects or errors previously advised by Business Data Partners
- 13.5.6 any fault and/or bug in third party software incorporated into the Deliverables

13.6 The Client shall provide the Dependencies by the date set out in the Project Plan. The Client has sole responsibility for obtaining the appropriate licences or rights required for access and use of the Dependencies and is liable for any claim that the use of the Dependencies infringes the Intellectual Property Rights of any third party.

14. BUSINESS DATA PARTNERS LIABILITY

- 14.1 The Client agrees that it has accepted these terms and conditions in the knowledge that Business Data Partners liability is limited and that the Charges that are payable have been calculated accordingly.
- 14.2 Subject to clause 14.3, Business Data Partners liability to the Client in contract, tort (including negligence or breach of statutory duty by its personnel or the personnel of its subcontractors) or otherwise arising in connection with the Agreement shall be limited to the lesser of the Charges or one hundred thousand Pounds Sterling (£100,000).
- 14.3 Nothing in the Agreement shall serve to limit either party's liability in respect of death or personal injury caused by or arising from that party's negligence or for fraud or for any liability which cannot by law be limited.
- 14.4 Subject to Clause 14.3 above, Business Data Partners shall not in any event be liable for any consequential loss including without limitation: any indirect, special or consequential loss, loss of profits or anticipated profits or loss of contract, loss or corruption of data, loss of anticipated savings, loss of goodwill, loss of business or economic loss suffered by the Client or by any third party whatsoever and howsoever arising out of or in connection with the performance or partial performance of any of the obligations of Business Data Partners under this Agreement and/or Business Data Partners failure to perform some but not all of its obligations under this Agreement and/or Business Data Partners negligence or that of its employees, agents or subcontractors whether or not Business Data Partners was advised the possibility of such potential loss (in this Agreement called "Consequential Loss").
- 14.5 Business Data Partners shall not be liable for any failure to provide, or for defects in, the Services to the extent that these arise solely from failings in the telecommunications network or the Internet or any hardware or any Dependencies.

15. TERMINATION

- 15.1 Either party may, by notice in writing to the other party, terminate this Agreement if any of the following events shall occur, namely:
- 15.1.1 if the party commits a material breach of its obligations under this Agreement and fails to remedy such breach (if capable of remedy) within thirty (30) days of having received written notice of such breach from the other party;
 - 15.1.2 if the other party, ceases to trade, becomes insolvent or presents a petition or has a petition presented by a creditor for its winding up, or convenes a meeting to pass a resolution for its voluntary winding up, or enters into any liquidation, or has a receiver of any of its undertakings or assets appointed.

15.2 Business Data Partners may terminate this Agreement by giving not less than thirty (30) days written notice to the Client and the Client shall be liable for all charges accrued up until the time of such termination (including charges for scheduled resources in the notice period).

15.3 The Client may terminate the Agreement by giving not less than thirty (30) days written notice to Business Data Partners and the Client shall be liable for all charges accrued up until the time of such termination (including charges for scheduled resources in the notice period) or fifty percent (50%) of the Project value, whichever is the greater.

15.4 Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the parties may have under this Agreement or in law.

16. DATA PROTECTION

16.1 When supplying the Services to the Client, Business Data Partners may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Client.

16.2 The parties agree that where such processing of personal data takes place, the Client shall be the 'data controller' and Business Data Partners shall be the 'data processor' as defined in the General Data Protection Regulation (GDPR) as may be amended, extended and/or re-enacted from time to time.

16.3 For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.

16.4 Business Data Partners shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as mentioned in these terms and conditions or as requested by and agreed with the Client, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.

16.5 Business Data Partners shall not disclose Personal Data to any third parties other than employees, directors, agents, sub-contractors or advisors on a strict 'need-to-know' basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.

16.6 Business Data Partners shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Service Provider on behalf of the Client.

16.7 Further information about the Business Data Partners approach to data protection are specified in its Data Protection Policy, which can be found on our website. For any enquiries or complaints regarding data privacy, you can contact our Data Protection Officer at the following e-mail address: data@businesdatapartners.com.

17. DISPUTES

- 17.1 If any dispute arises between the parties under or in connection with the Agreement and it cannot be resolved by good faith negotiations between the parties' immediate contract representatives, it shall be escalated to senior management level within five (5) Working Days of a written request from either of the parties
- 17.2 If any dispute cannot be resolved by the parties' contract representatives within a maximum of ten (10) Working Days after it has been referred under clause 17.1, that dispute shall be referred to a board director of each party for resolution.
- 17.3 If the dispute cannot be resolved by the board directors within a maximum of ten (10) Working Days after it has been referred under clause 17.2, the dispute may be referred, with the agreement of both parties:
- (a) to the Centre for Effective Dispute Resolution for a process of Alternative Dispute Resolution; or
 - (b) if the parties agree that the dispute is of a technical nature relating to the interpretation of the Technical Specification or the functionality or performance of the Deliverables or any similar or related matter, it shall be referred for final determination to an expert ("Expert") who shall be deemed to act as an expert and not as arbitrator; and
 - (c) in all other matters, it shall be determined by a single arbitrator (Arbitrator).
- 17.4 Both the Expert and the Arbitrator shall be selected by mutual agreement or, failing agreement, within fifteen (15) Working Days after a request by one party to the other, shall be chosen, at the request of either party, in the case of the Expert, by the President for the time being of the British Computer Society and, in the case of the Arbitrator, under the Rules of the London Court of International Arbitration.
- 17.5 The Expert shall be instructed to deliver their determination to the parties within fifteen (15) Working Days after their appointment. The Arbitrator shall be instructed to deliver their determination within forty (40) Working Days after their receiving all information necessary for their determination.
- 17.6 Decisions of the Expert shall be final and binding and not subject to appeal. References to the Arbitrator shall be deemed to be a submission to arbitration under the Rules of the London Court of International Arbitration and the arbitration shall be conducted in the English language, in London, England.
- 17.7 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbitrator and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

- 17.8 The fees of the Expert and the Arbitrator shall be borne by the parties in the proportion as may be determined by the Expert or Arbitrator (as the case may be) having regard (amongst other things) to the conduct of the parties.
- 17.9 If either party does not agree to the dispute being referred for determination in accordance with clause 17.3 then the dispute shall be determined by the English courts and the parties submit to the jurisdiction of those courts for that purpose.

18. NOTICE

18.1 A notice given under this agreement:

- (a) shall be in writing in the English Language;
- (b) shall be sent for the attention of the person, and to the address or e-mail address given in this clause 18 (or such other person, address or e-mail address as the receiving party may have notified to the other, such notice to take effect five (5) days from the notice being received); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) sent by e-mail; or
 - (iii) sent by pre-paid first-class post, recorded delivery or registered post; or
 - (iv) (if the notice is to be served or post outside the country from which it is sent) sent by registered airmail.

18.2 The addresses for service of notice are:

- (a) **for the Client:**
 - Address:**
 - For the attention of:**
 - E-mail:**
- (b) **for Business Data Partners:**
 - Address:**
 - For the attention of:**
 - E-mail:**

18.3 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or

- (b) in the case of e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or
- (c) in the case of pre-paid first-class post, recorded delivery or registered post, forty-eight (48) hours from the date of posting; or
- (d) in the case of registered airmail, five (5) days from the date of posting; or
- (e) if deemed receipt under the previous paragraphs of this clause 18.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

18.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the correct fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

19. PUBLICITY

19.1 At Business Data Partners request and expense, the Client agrees and consents:

- 19.1.1. to provide telephone references to third parties and, subject to reasonable notice, to allow prospective clients of Business Data Partners to review the services or solutions provided by Business Data Partners; and
- 19.1.2. to co-operate with and assist Business Data Partners in the creation of a case study of the services or solutions provided by Business Data Partners to the Client under this Agreement. The content of such case study will be subject to the Client's final written approval, such approval not to be unreasonably withheld or delayed.

19.2. The Client consents and agrees that, following the signing of this Agreement by both parties Business Data Partners may issue a press release or post an announcement on its website regarding the entering into of this Agreement by the Client, provided no information will be so posted or press release so issued without the prior written approval of the Client, such approval not to be unreasonably withheld or delayed.

20. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement, in whole or in part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and representations of whatever nature unless expressly incorporated by reference in this Agreement. No variation of these terms and conditions will be valid unless

confirmed in writing by authorised signatories of both parties on or after the effective date of this Agreement. Nothing in this clause shall limit or exclude a party's liability for fraud or fraudulent misrepresentation.

22. THIRD PARTY RIGHTS

Nothing in this Agreement shall confer or is intended to confer on any third party any benefit or the rights to enforce any term of the Agreement under the Contracts (Rights of third Parties) Act 1999. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

23. VARIATION AND WAIVER

- 23.1 A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.
- 23.2 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 23.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

24. SEVERANCE

- 24.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were severed from the remaining provisions which shall continue to be valid to the fullest extent permitted by law.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into on the date stated at the beginning of the Agreement.

26. APPENDIX 1 - FORM OF SCHEDULE FOR PROJECT SERVICES

Schedule [insert no.]

Date:

BETWEEN:

(1) BUSINESS DATA PARTNERS LIMITED a company registered in England under Company Registration Number 09277132 whose registered office is at Business Data Partners UK, Cobalt Business Exchange, Cobalt Park Way, Newcastle upon Tyne, NE28 9NZ ("Business Data Partners").

(2) [CLIENT] a company registered in England under Company Registration Number [] whose registered office is at [Insert Details] ("Client")

This Schedule is made pursuant to the [Project/IT Services Agreement] entered into between Business Data Partners and the Client dated [insert date] (the "Agreement")

The Project	[Insert details]
The Services	[Insert details:
The Deliverables	[Insert details
Commencement Date	[Insert details]
Installation Site	[Insert details]
The Domain Name/s	[Insert details]
The Dependencies	See Annex E
The Acceptance Period	[Insert details]

Business Data Partners Representatives

	Role	Email	Phone
<name>	Account Manager		
<name>	Project Manager		
<name>	Consultant		

Client Representatives

	Role	Email	Phone
<name>	Account Manager		
<name>	Project Manager		
<name>	Consultant		

ANNEX A - STATEMENT OF WORK

The Project and Deliverables have been defined in the Statement of Work or Project Initiation Document attached as Annex A to this Schedule:

CLIENT-001_StatementofWork_v1 doc

[Attach Statement of Work, PID or list of Deliverables. Documents to be attached to the applicable Schedule]

27. SIGNATORIES

This agreement is executed for and on behalf of the parties by their authorised representatives on the date which first appears on page 1.

Signature		Signed for and on behalf of	Date
	Name Title	Client company	
	Name Title	Business Data Partners Ltd	