

# Sapienza Consulting Limited Master Services Agreement

Last updated: 12 June 2019

## 1. Application of Conditions

- 1.1 These terms and conditions of this Master Services Agreement ("**the Conditions**") are the terms on which Sapienza Consulting Limited ("**the Company**") provides services to its customers. In these Conditions the definitions in the Definition Schedule shall apply.
- 1.2 These Conditions shall:
- (a) apply to and be incorporated into any contract making reference to them between the Company and its customer ("the Customer");
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade customer, practice or course of dealing.
- 1.3 The Company shall be entitled to amend the Conditions at any time by giving a minimum of 30 days of notice to the Customer before the changes take effect, such notice to be given by email to the Customer Representative. Upon receipt of such notice, the Customer shall be entitled to terminate the Contract with effect from the date of the notice, such termination to be notified to the Company no later than 30 days from the date of the notice (time being of the essence). The Customer shall not be entitled to any refund of the Charges and shall remain liable for any Charges previously due. Failure to give such notice of termination shall be deemed acceptance of the new Conditions. Any renewal of the Contract shall be subject to the Company's Conditions current at the date of renewal.

## 2. Contracts

- 2.1 The Customer's acceptance of a quotation for services and/or software by the Company constitutes an offer by the Customer to purchase the services ("**the Services**") and the Software Licence subject to these Conditions. No offer placed by the Customer shall be accepted by the Company unless it has been made on one of the Company's standard order forms ("**Order Form**") and acceptance by the Company of such order shall be indicated by the Company's counter-signature of such Order Form. Upon such acceptance by the Company, a contract for the supply and purchase of the Services on these Conditions and, where applicable, a Software Licence, together with the relevant accepted Order Form and any attachments, including but not limited to the Company's specific service terms (as applicable to the specified Services) ("**Service Terms**"), incorporated in such documents by reference, will be established ("**a Contract**").
- 2.2 In the event of a conflict or inconsistency between the terms and conditions of any Order Form or Service Terms (or any other document forming part of the Contract) and these Conditions, these Conditions shall prevail, unless expressly agreed otherwise by both parties in writing.
- 2.3 In this Contract, unless otherwise specified:
- (a) the masculine gender shall include the feminine and the neuter and vice versa;

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- (b) references to a person shall include reference to any individual, company, association, partnership or joint venture;
- (c) reference to "include" and "including" shall be treated as reference to "include without limitation" or "including without limitation";
- (d) unless the context requires otherwise, words in the singular shall include the plural and vice versa;
- (e) the headings are for identification only and shall not affect the interpretation of this Contract.

2.4 The Customer acknowledges that upon initial (first instance) sign-in to the Software, before being able to use the Software, the Users must accept the ECLIPSE Software Suite User Terms of Service (ref. SAP-10-TMP-008) and the ECLIPSE Software Suite Privacy Policy (ref. SAP-10-TMP-009).

### 3. Price and payment

3.1 The fees (exclusive of VAT) for the Services ("**the Charges**") shall be the quoted fees of the Company as set out and as agreed between the parties in the accepted Order Form. The Charges shall include the annual licence fee for Software if the Software Licence is being licensed to the Customer ("**Licence Fee**"). The Customer shall pay each annual Licence Fee for the Initial Period and any Further Periods in full within 30 days of the date of invoice. The Charges shall be fixed for the Initial Period. The Company reserves the right to increase the Charges (which shall for the avoidance of doubt include the Licence Fee), provided that the Company shall give the Customer at least ninety (90) days written notice of such an increase before the date of the increase.

3.2 Clause 3.3 shall apply if the Services are to be provided on a time-and-materials basis. Clause 3.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 3 shall apply in either case.

3.3 Any Services provided on demand shall be charged on a time-and-materials basis and shall be subject to a minimum charge of half an hour for Services provided remotely (15 minutes as part of a work package) or four (4) hours for Services to be provided on site. Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Company's standard commercial hourly fee rates as set out in the Order Form as may be amended from time to time;
- (b) the Company's standard hourly rates are calculated on the basis of Business Hours;
- (c) the Company shall be entitled to charge an overtime rate of:
  - (i) 150% of the normal rate for time worked by members of the Project Team outside Business Hours or on any Saturday;
  - (ii) 200% of the normal rate for time worked by members of the Project Team on any Sunday or on any bank holiday in the UK or Holland.

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- (d) the Company shall ensure that the Project Team complete time sheets to calculate the Charges covered by each invoice referred to in clause 3.6;
  - (e) the Company shall invoice the Customer in accordance with clause 3.6 for time, materials or services reasonably and properly provided by third parties required by the Company to supply the Services and, in relation to the provision of on-site Services, any subsistence, travelling and other ancillary expenses reasonably incurred by the Project Team in connection with Services. Each invoice shall set out the time spent by each member of the Project Team and provide a detailed breakdown of any associated reasonable expenses and materials, accompanied by the relevant receipts.
- 3.4 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Contract. The total price shall be paid to the Company (without deduction or set off) in accordance with the payment interval set out in the Contract (or if no payment dates are set out in the Contract, then annually in advance). Unless otherwise specified in the Contract or agreed in writing between the parties, any fixed price contained in the Contract excludes the cost of hotel, subsistence, travelling and other ancillary expenses reasonably incurred by the Project Team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Company to supply the Services.
- 3.5 The Customer shall pay the Charges in full and cleared funds within 30 days of the date ("**the Due Date**") of the invoice for the Services and time for payment shall be of the essence. Charges are stated exclusive of VAT and other taxes which shall be added to the Company's invoices where applicable and which are payable by the Customer.
- 3.6 The Company shall invoice the Charges in accordance with the payment interval stated in the Contract.
- 3.7 Without prejudice to any other remedy that the Company may have, if the Charges are not paid by the Due Date, the Company may:
- (a) charge the Customer interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after judgment and the Customer shall pay the interest immediately on demand. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and /or
  - (b) suspend all Services until payment has been made in full.
- 3.8 If, at any time, the Customer wishes to change any aspect of the Services (including timing), the Company reserves the right to re-quote. Any variations to the Services must be agreed as a written variation to the relevant Contract, in accordance with clause 20.2.
- 3.9 All sums payable to the Company under the Contract shall become immediately due on its termination, despite any other provision. This clause 3.9 is without prejudice to any right to claim for interest under the law or any such right under the Contract.
- 3.10 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer. The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim which the Customer may have or allege to have for any reason whatsoever.

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- 3.11 If the Company is prevented or delayed from performing its obligations under this Contract by reason of any act or omission of the Customer or its employees or subcontractors, the Customer will pay to the Company all reasonable costs, charges and losses sustained or incurred as a result and the Company shall nevertheless be entitled to render any invoices to the Customer on the dates or at the times when they would otherwise have been rendered but for such delay.

### 4. Duration

- 4.1 The Software Licence shall commence on the Commencement Date and shall continue for the Initial Period. On expiry of the Initial Period and subject to the payment of the annual Licence Fee for each Further Period in accordance with clause 3.1 above, the Licence shall automatically renew for Further Period(s) unless either party has given to the other party written notice to terminate at least 90 days prior to expiry of the Initial or Further Period.
- 4.2 The Services supplied under the Contract shall be provided by the Company to the Customer from the Commencement Date until completion of such Services by the Company.
- 4.3 Basic Support shall commence on the Commencement Date and shall continue for the same Period as the Software Licence.
- 4.4 The Order Form shall specify whether Enhanced Support or Consultancy Services shall be provided on an On-Going or One-Off Basis:
- (a) On-Going Enhanced Support or Consultancy Services shall commence from the Commencement Date for the Initial Period and thereafter shall automatically continue to be provided for Further Period(s) unless either party has given to the other party written notice to terminate at least 90 days prior to the expiry of the Initial Period or Further Period;
  - (b) One-Off Enhanced Support or Consultancy Services shall commence on the Commencement Date until completion of such Services by the Company.

### 5. Software

- 5.1 Except where the Company is hosting the Software, in which case the hosting terms in Part D of paragraph 3 in the Service Terms shall apply, the Company shall deliver one copy of the Software to the Customer's address set out in the Contract and shall use reasonable endeavours to complete this delivery within 10 Business Days of the Commencement. Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 5.2 The Customer shall be deemed to have accepted the Software if the Customer commences operational use of the Software, including the input of Customer Data in the Software.

### 6. Services

- 6.1 The Services shall be as set out in the Contract agreed between the Company and the Customer and shall be provided in accordance with these Conditions and the Service Terms.
- 6.2 The Customer will ensure that information and instructions that it provides to the Company in respect of the scoping and performance of the Services from time to time is complete and accurate. If the Company bases the Charges upon information provided by the Customer and this information is subsequently shown to be incorrect or incomplete, the Company reserves the right to charge any resulting additional costs to the Customer.

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6.3 The Company will use its reasonable endeavours to ensure that estimated delivery dates for Services are adhered to. However, time shall not be of the essence of any contract for Services.

### **7. Orders for Optional Services**

7.1 The Customer may from time to time request that the Company supplies the further services as set out in the Service Terms at the Company's prevailing rates and in accordance with clause 3 and clause 7.2 below. Subject to the provisions of such Service Terms, the Company shall use reasonable endeavours to comply with the Customer's request for the further services set out in Part B (Enhanced Support) and Part C (Consultancy Support and Training) in paragraph 3 of the Service Terms but the Customer acknowledges that the Company's ability to supply such Services shall depend on the availability of appropriate resources at the time in question.

7.2 Where the Company agrees to provide further Services, such agreement shall be embodied in an Order Form which is signed by both parties. Each order for further Services shall be made under, and shall incorporate, these Conditions and shall form a separate Contract. The Customer shall be liable for any subsistence, travelling and other ancillary expenses reasonably incurred by the Project Team in connection with Services provided pursuant to this clause 7 and the cost of any materials or services reasonably and properly provided by third parties required by the Company to supply the further Services.

7.3 If requested to do so by the Customer, the Company may agree to develop Customised Software in accordance with the requirements of the Objectives and subject to agreement of a separate terms and conditions. The parties intend that any Intellectual Property Rights vesting in such Customised Software shall be the sole property of the Company and shall be licensed to the Customer and supported by the Company on terms equivalent to the terms of this Contract subject to payment of the agreed fees.

### **8. Customer's Responsibilities**

8.1 Without prejudice to clause 8.2, the Customer shall provide the Company and its employees, agents representative and staff duly authorised by the Company in provision of the Services with full, safe and uninterrupted access (including remote access where applicable) to the Customer's premises and to all items of software, hardware or other materials as may reasonably be required for the purpose of performing the Services.

8.2 The Customer shall:

- (a) ensure that appropriate environmental conditions are maintained for the supported software, hardware and other items and shall take all reasonable steps to ensure that they are operated in a proper manner by the Customer's employees.
- (b) nominate a manager ("Customer Representative") to be available to liaise with, and respond to queries from, the Company's designated account manager (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance) and who are entitled to contact the Company for requests for Support Service and any further Services required pursuant to clause 7.

8.3 Where the Services are to be performed at any of the Customer's premises, the Customer shall:

- (a) provide adequate working space and office (including telephone and internet) facilities for use by the Company's personnel and take reasonable care to ensure their safety.

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- (b) make available to the Company free of charge all information, facilities and services reasonably required by the Company to enable the Company to perform the Services including without limitation reasonable office support;
- (c) provide such telecommunication facilities as are reasonably required by the Company to provide the Services (including for testing and diagnostic purposes) at the Customer's expense;
- (d) provide a suitable vehicle parking facility for use by the Company's personnel when visiting the Customer's premises which is free from any legal restrictions;
- (e) ensure in the interests of health and safety that the Company's personnel (or their agents), while on the Customer's premises, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures.

8.4 The Customer represents and warrants to the Company that it shall:

- (a) co-operate with the Company in performing the Services and provide any assistance or information as may reasonably be required by the Company;
- (b) ensure that all necessary consents, licenses and permissions are in place to enable the Company to perform the requested Services (including without limitation any relevant third party licences for software, hardware and operating environment required to provide and support the Software and the Services and other materials) and grants the Company a non-exclusive licence to use and modify any of its or its licensors materials to the extent necessary to enable the Company to perform the Services in accordance with the Contract. To the extent that the Customer has not obtained the necessary consents, licenses and permissions, the Customer shall notify the Company of any such consent or approvals required from the relevant third party and the Customer acknowledges that, in these circumstances, the provision of the Services is conditional on the Company obtaining a licence of such rights from the relevant licensor or licensors on such terms as will entitle the Company to modify the third party software or materials, or otherwise carry out the Services;
- (c) report faults promptly to the Company;
- (d) be solely responsible for keeping full back-up copies of all of its data;
- (e) comply with its data protection obligations under clause 13;
- (f) comply with all its obligations pursuant to the Service Terms;
- (g) not request, permit or authorise any owners, employees or Associates of a direct competitor of the Company, which could use the Confidential Information disloyally for its own purposes or disclose Confidential Information for use in unfair competition, industrial espionage or creating competitive products, to supply any services related to the Software that would allow them to gain insider access to detailed product information on the Software that is not available in the public domain or to standard product users; and
- (f) ensure that all Associates of its (sub)contractors who are Users of the Software expressly agree that they shall only use the Software for the purposes of the Customer's own requirements and not for any other purpose and that their use of the Software shall expressly be subject to terms that are no less restrictive than those in this Agreement.

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- 8.5 The Customer shall indemnify the Company against any liabilities, losses, damages, costs (including legal fees) and expenses suffered, incurred by or awarded against the Company as a result of:
- (a) the Customer's breach of this Contract; or
  - (b) any negligent or wrongful act or omission of the Customer, its officers, employees, (sub)contractors or agents; or
  - (c) the Customer's possession or use of the Software outside the scope of the Contract;
  - (d) any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with any breach by the Customer of the terms of any Third-Party Licences; or
  - (e) any claim made against the Company resulting from actual or alleged breach of Data Protection Legislation by the Customer or its Associates.

### 9. Additional Charges

- 9.1 The Company shall be entitled, in addition to the Charges, to further charge for Services provided at the Company's prevailing rates if the Customer requests provision of the Services and the Company provides the Services where:
- (a) the Customer has not complied with the provisions of clause 8.1 above or is otherwise in breach of this Contract (which for the avoidance of doubt shall include without limitation its obligations pursuant to clause 8 and the Service Terms); or
  - (b) the fault is caused by the act of neglect or default of the Customer or of a third party or by some event or occurrence beyond the reasonable control of the Company including without limitation, Act of God, lighting, power fluctuation or loss of power, fire, flood or unfavorable environmental conditions;
  - (c) the Customer fails to provide suitable and fully operational equipment to enable the Company to provide the Services.

### 10. Non-Solicitation

- 10.1 During the term of any Contract and for a period of six (6) months after expiry of any Contract, the Customer (and their service providers) shall not, without the prior written consent of the Company, solicit or entice away from the Company or employ (or attempt to employ) any person who is or has been engaged by the Company as an employee, consultant or sub-contractor in the provision of the Services.
- 10.2 Any consent given by the Company in accordance with clause 10.1 is conditional upon the Customer paying to the Company a sum equivalent to 30% of the then current annual remuneration of the relevant individual or, if higher, 30% of the annual remuneration to be paid by the Customer to such individual.

### 11. Intellectual Property Rights

- 11.1 In these Conditions, "Intellectual Property Rights" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software and scripts, database rights,

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topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.

- 11.2 Subject to clause 8.4(b), as between the Company and the Customer, all Intellectual Property Rights and all other rights in any Company Materials shall be owned by the Company.
- 11.3 The Company acknowledges that all Intellectual Property Rights in the Customer's Data shall belong to the Customer and the Company has no rights in or to the Customer's Data.
- 11.4 The Company undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Company Materials (or any part of them) infringes the UK Intellectual Property Rights of a third party ("Infringement Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.
- 11.5 The Company shall have no liability if the Infringement Claim is based upon the combination of Software with any product not supplied or approved by the Company.
- 11.6 Clause 11.4 is conditional on:
- (a) the Customer notifying the Company in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
  - (b) the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of the Company, which shall not be unreasonably withheld or delayed; and
  - (c) the Company having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving the Company all reasonable assistance in connection with those negotiations and such litigation at the Company's request and expense.
- 11.7 If any Infringement Claim is made, or in the Company's reasonable opinion is likely to be made, against the Customer, the Company may at its sole option and expense:
- (a) procure for the Customer the right to continue using, developing, modifying or maintaining the Company Materials (or any part of them) in accordance with the terms of this Contract; or
  - (b) modify the Company Materials so that they cease to be infringing; or
  - (c) replace the Company Materials with non-infringing works; or
  - (d) terminate the Contract immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to the Company under the Contract during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.

**12. Confidentiality**

- 12.1 Each party shall keep in strict confidence all technical or commercial know-how, processes, specifications or initiatives which are of a confidential or business sensitive nature and have

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been disclosed to it by the other party, its officers, employees, agents or representatives, (whether orally or in writing and any other confidential information concerning the disclosing party's business, business methods, products or services, any source or object code, research, development or business plans (whether announced or not), the Company's clients, service providers, financial information including actual or forecasted revenue, the existence and terms of this Contract or any information relating to each party's research, development or business activities ("**Confidential Information**").

12.2 The receiving party shall not use or disclose any such information for any other purpose except to perform its obligations under the Contract, and may only disclose such Confidential Information to its Associates who need to know such Confidential Information for the purpose of performing obligations under the Contract and provided that:

- (a) it informs such Associates of the confidential nature of the Confidential Information before disclosure;
- (b) at all times, it is responsible for such Associates' compliance with the confidentiality obligations set out in this clause 12 and shall obtain from such Associates duly binding agreements to maintain in confidence the Confidential Information to be disclosed to the same extent at least as the parties are so bound under this Contract. Such agreements must include the right of the Company to bring any claim for breach of the agreement by virtue of the Contracts (Rights of Third Parties) Act 1999; and
- (c) such Associates are not owners or Associates of a direct competitor of the Company, which could use the Confidential Information disloyally for its own purposes or disclose Confidential Information for use in unfair competition, industrial espionage or creating competitive products.

12.3 The term "Confidential Information" does not include information that is:

- (a) already in the public domain at the date of disclosure through no fault of the disclosing party;
- (b) already in the receiving party's possession prior to disclosure by the disclosing party;
- (c) rightfully received from a third party without restriction as to disclosure.

12.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 The Customer shall immediately notify the Company if it becomes aware of any breach of confidence by the Customer or any person to whom the Customer divulges any Confidential Information and shall give the Company all reasonable assistance in connection with any proceedings which the Company may institute against such person.

12.6 The obligations in this clause 12 shall remain in full force and effect notwithstanding any termination of this Contract by either party.

### 13. Data Processing

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- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligation under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor in respect of Personal Data processed by the Company in the course of performing this Contract. Schedule 1 sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.
- In general terms, the Company can only be considered to be the Processor in the meaning of the Data Protection Legislation if it is providing the Customer with Enhanced support or with Hosting Services, as defined and described respectively in Part B and Part D of the Service Terms. In cases where the Company is not the Processor in the meaning of the Data Protection Legislation, clauses 13.3 to 13.6 are not applicable.
- 13.3 Without prejudice to the generality of clause 13.1, the Customer will ensure that it has a lawful basis (including any and all necessary consents and notices) in place to transfer the Personal Data to the Company and enable the Company to lawfully process the Personal Data for the duration and purposes of this Contract.
- 13.4 Without prejudice to the generality of clause 13.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Customer unless the Company is required by the laws of (i) any member of the European Union; (ii) the United Kingdom; or (iii) the European Union applicable to the Company to process Personal Data. Where the Company is relying on the laws of (i) any member of the European Union; (ii) the United Kingdom; or (iii) the European Union as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by such applicable laws unless those applicable laws prohibit the Company from so notifying the Customer;
  - (b) ensures that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

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- (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data;
  - (g) shall make available to the Customer a list of any sub-contractors and service providers (see Schedule 1) engaged in the processing of the Customer's Personal Data and include in any contract with such sub-contractors and service providers who process Personal Data on the Customer's behalf, provisions which are similar to those in this clause 13; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits for this purpose by an independent auditor selected by the Customer or otherwise acceptable to the Customer (acting reasonably), at the Customer's cost: (i) giving the Company reasonable prior notice of such information request, audit and/or inspection; (ii) ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information request, audit and inspection is kept strictly confidential (save for disclosure required by applicable law); (iii) ensuring that the audit or inspection is undertaken during normal business hours of the Company, with minimal disruption to the Company's business, the Company's sub-processors' business and the business of other customers of the Company; and (iv) paying the Company's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.
- 13.5 The Company only processes and/or transfers, or otherwise directly or indirectly discloses, any Personal Data in or to countries outside the European Economic Area, the United Kingdom or to any international organisation upon prior written agreement with the Customer or upon request of the Customer.
- 13.6 The Customer hereby consents to the Company's use of sub-contractors and service providers in accordance with clause 13.4(g). The Company shall give the Customer not less than 60 days' written notice of a change in the list of sub-contractors and/or service providers to give the Customer an opportunity to object to such change. The Customer must notify the Company if it does not agree to a proposed change within 30 days of such written notice, specifying its grounds for such objection (acting reasonably). If the Company receives such an objection, then the Company may (at its option): (i) cancel its plans to change the affected sub-processor(s) or service provider(s); (ii) offer an alternative which is acceptable to the Customer; or (iii) take corrective steps to remove the objection identified by the Customer to the Customer's reasonable satisfaction, after which the Company may proceed with appointing the relevant sub-processor(s) or service provider(s). If none of the above option resolves the objection, then without liability for either party: (A) the Customer may terminate this Contract by providing written notice of termination with immediate effect where such notice of termination is served within 60 days of the Company informing the Customer of the change and such notice to include an explanation of the grounds for non-approval of the sub-contractors or service providers; or (B) the Company may terminate this Agreement by providing written notice with immediate effect.
- 13.7 The Company will act as a Data Controller for data concerning the use and performance of the Software by the Customer. The ECLIPSE Privacy Policy contains information on how the Company collects and uses this data. The Privacy Policy may be changed from time to time by the Company and will become part of this Contract upon approval by the Customer.

However, the Company cannot be considered a Controller if it does not have access to this data based on the Contract and the practical arrangements between the parties.

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13.8 The Customer shall defend, indemnify and hold harmless the Company against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, any compensation paid to Data Subjects, demands, and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with a breach by the Customer of its obligations under clause 13.

### 14. Warranties

14.1 The Company represents and warrants to the Customer that:

- (a) the Software will operate in material respects in accordance with the Specification;
- (b) the Services will be performed with all reasonable skill and care;
- (c) to the best of its knowledge and belief, the Company Materials will not infringe the Intellectual Property Rights of any third party; and
- (d) at the Contract Commencement Date, the Company has obtained and will maintain for the duration of this Contract all permissions, licences and consents necessary for the Company to perform the Services (subject at all times to clause 8.4(b)).

14.2 If, during the term of this Contract, the Company receives written notice from the Customer of any breach by the Company of the representation and warranties contained in clause 14.1, the Company shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the applicable Contract immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Company under that Contract during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Company to comply with its obligations under clause 14.2. This clause sets out the Customer's sole remedy and the Company's entire liability for breach of clause 14.1.

14.3 No representation or warranty is given by the Company that any or all faults will be fixed or will be fixed within a specified period of time.

14.4 Except as expressly stated, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

14.5 The Company does not warrant that the use or operation of the Software or provision of the Services will be uninterrupted or error-free.

14.5 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

14.6 Any Third Party Software provided by the Company may be used according to the terms and conditions of the Third Party Licence.

### 15 Limitation of Liability

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- 15.1 This clause 15 is drafted in order to strike a fair and reasonable balance between the Customer and the Company and to allocate risk between the parties in a way that is fair and reasonable bearing in mind the parties' respective knowledge of their businesses, the availability of insurance to protect against risks and the level of the Licence Fee and Support Charge. The Company has carefully considered the basis on which it can provide the Software and the Services commercially bearing these things in mind and this clause 15 sets out the extent to which it considers that it is fair and reasonable for it to accept liability and where the Customer accepts risk for itself in the use of the Software and the Services. The Software is designed to aid the project management of the Customer's projects. The Company does not know what the projects involve and the Customer is obliged to insure against the risk of such projects failing. The Customer acknowledges this insurance obligation and also that in order to enable the Company to provide the Software and the Services commercially the Company needs to have certainty that its liability will be restricted to a reasonable amount in the circumstances and as set out in this clause 15.
- 15.2 This clause 15 prevails over all other conditions in this Contract and sets forth the entire liability of the Company, and the sole and exclusive remedies of the Customer in respect of:
- (a) the Software and the Services;
  - (b) the performance, non-performance, purported performance or delay in performance of this Contract; or
  - (c) otherwise in relation to this Contract or the entering into or performance of this Contract.
- 15.3 Subject to clauses 15.4 and 15.5:
- (a) the Company shall have no liability for:
    - (i) any special, indirect or consequential losses, costs, charges, expenses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same arise in contract, tort (including negligence), through indemnification or otherwise howsoever;
    - (ii) loss of profits;
    - (iii) loss of anticipated savings;
    - (iv) loss of business;
    - (v) loss of goodwill;
    - (vi) loss of, or damage or corruption to, the Customer's data;
    - (vii) loss of, or damage or corruption to, Personal Data;
    - (viii) loss of contracts;
    - (ix) loss of the use of money;
    - (x) loss of opportunity;
    - (xi) loss arising from any delay to the Customer's project(s) including any increased costs; or

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- (xi) loss arising from any third party claims; and such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clause 15.3(i) to (x) applies whether such losses are direct, indirect, consequential or otherwise.
  - (b) the Customer agrees that, in entering into the Contract, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract or (if it did rely on any representations, whether written or oral, not expressly set out in the Contract) that it shall have no remedy in respect of such representations and (in either case) the Company shall have no liability otherwise than pursuant to the express terms of this Contract; and
  - (c) the total liability of the Company, whether in contract, tort, (including negligence or breach of statutory), misrepresentation, through indemnification or otherwise and whether in connection with this Contract or any collateral contract, shall in no circumstances exceed a sum equal to one hundred and ten percent (110%) of the aggregate Charges paid by the Customer in the year preceding the date the liability arises.
- 15.4 The Company shall in no circumstances be liable or responsible for (or for the consequences of):
- (a) defects or errors resulting from any modifications of the Software or the Software Documentation (as defined in the Service Terms) made by any person other than the Company without the Company's prior written consent;
  - (b) defects or errors caused by the use of any Release of the Software other than the Current Release or by use of the Software without the application of all released Patches in accordance with clause 4.8 of the Service Terms;
  - (c) use of the Software other than strictly in accordance with the Software Documentation or defects or errors due to operator error;
  - (d) a situation where a defect or error could have been avoided by consideration of all information contained in the Software Documentation, even if such consideration depends on the interpretation of such information;
  - (e) any defect or error in the Hardware and Software Platform or in any other programs used in conjunction with the Software;
  - (f) where the Customer fails to maintain the Environment or use the Hardware and Software Platform strictly in accordance with the Software Documentation;
  - (g) defects or errors caused by the malicious or negligent activities of the Customer or its employees or subcontractors or any other third parties;
  - (h) defects or errors in any way related to the Customer not affording the Company proper access to the Software for telephone or on site assistance or otherwise;
  - (i) any loss or damage arising out of any failure by the Customer to keep full and up to date security copies of the Software and any computer programs and data used in accordance with the Software in accordance with best computing practice.
- 15.5 The exclusions in clause 15.4 and 15.5 shall apply to the fullest extent permissible at law but the Company does not exclude liability for:

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- (a) death or personal injury caused by the negligence of the Company, its officers, employees, contractors or agents; or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
  - (d) any liability owed pursuant to the Data Protection Legislation to Data Subjects; or
  - (e) any other liability which cannot be excluded by law.
- 15.6 All dates supplied by the Company for the delivery of the Software or the provision of Services shall be treated as estimates and approximate only. While the Company shall use reasonable endeavours to meet estimated delivery dates the Company shall not in any circumstances be liable for any loss or damage arising from any delay in delivery or failures to meet estimated timescales and time for delivery by the Company shall not be of the essence of this Contract.
- 15.7 All references to "the Company" in this clause 15 shall, for the purposes of this clause and clause 15 only, be treated as including all employees, subcontractors and suppliers of the Company and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.
- 15.8 The Company may treat the Customer's breach of any Third-Party Licence as a breach of this Contract.
- 15.9 The Company shall not be liable in any way, for any failure to meet its obligations under this Contract or in any way otherwise if such failure is caused by any act or omission of the Customer or its employees, agents or representatives.

**16. Termination**

- 16.1 Without prejudice to any rights that have accrued under this Contract or any of its rights or remedies, the Company may at any time terminate this Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 16.2 Either party shall have the right to terminate the Contract:
- (a) if the other party commits any material breach of this Contract which, if capable of remedy, is not cured within thirty (30) days of receipt of written notice to the party in breach from the terminating party (for the avoidance of doubt, an irremediable breach shall not include any breach relating solely to failure to comply with a timescale); or
  - (b) if the other party:
    - (i) makes a voluntary arrangement under Part I of the Insolvency Act 1986 as amended by the Enterprise Act 2002, or makes or proposes any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or
    - (ii) enters into administration or is the subject of an administration order under the Enterprise Act 2002; or

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- (iii) shall enter into administrative receivership; or
  - (iv) is the subject of a resolution for voluntary winding up otherwise than for the purpose of amalgamation or reconstruction when solvent; or
  - (v) has a winding-up order made against it; or
  - (vi) is unable to pay its debts within the meaning of Section 123 (2) of the Insolvency Act 1986;
  - (vii) has an encumbrancer taking possession of any of its assets;
  - (viii) ceases to or threatens to cease to exist;
- (c) if in relation to the other party there occurs in any jurisdiction any event or process (by whatever name called) equivalent or similar to any event or process mentioned in clause 16.2(b) above
- 16.2 On termination of the Contract howsoever arising the Customer's right to receive the Services and the Software Licence shall cease automatically and the Company may delete any of the Customer's Data without liability. At its own option, the Company may provide transition assistance (including migration of any data) to assist the Customer to transition to a new service provider; any such services shall be subject to further agreement and further charges at the Company's prevailing rates and in accordance with clause 3.
- 16.3 Any termination of the Contract (howsoever arising) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuation in force of any provision of the Contract which is expressly, or by implication, intended to come into force or continue in force on or after termination.
- 16.4 On termination or as soon as reasonably practicable following termination each party shall return to the other party all material containing Confidential Information belonging to the other or at the request of the other destroy all copies of such material and provide written confirmation of such destruction subject to clause 16.2. Furthermore, on termination each party shall cease using Confidential Information belonging to the other and the Customer shall cease using the Software and the Software Documentation.
- 16.5 On termination howsoever caused the Company shall prepare an invoice for all works carried out prior to termination and the Customer shall pay the invoiced amount within 30 days of the date of the invoice.

### **17. Promotion by the Company**

Subject to prior approval by the Customer, the Company may name the Customer as its customer in a general context and may also use the Customer's name in publicity, marketing, advertising releases and other material prepared by or on behalf of the Company which makes reference to the Customer as a specific user of specific products or services of the Company.

### **18. Announcements**

- 18.1 Subject to any other provision in this Contract, neither party shall make any statement or disclose to any person who is not a party, themselves or through any third party, information which relates to or is connected with or arises out of this Contract or the matters contained in it, without the prior written approval of the other party as to its content and the manner and extent of its publication. The parties shall consult together upon the form of any such disclosure,

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press release, document or statement and the other party shall promptly provide such information and comment as the party issuing such press release, document or statement may from time to time reasonably require.

- 18.2 The provisions of clause 18 shall not apply to disclosure of matters required to be made by law or regulations or by any court or governmental or administrative authority competent to require the same.

### 19 Force majeure

- 19.1 The Company shall not be liable for any default or failure to comply with its obligations due to any circumstance beyond the reasonable control of the Company, its employees, sub-contractors, agents and representatives including, but not limited to, Acts of God, war, civil unrest, riot, strike, lock-out, acts of civil or military authorities, fire, flood, earthquake, failure of networks or utilities, or shortage of supply, decrees of governmental bodies or failure of communications (a "**Force Majeure Event**").

- 19.2 In the event that the Company is unable to perform any of its obligations due to a Force Majeure Event, it shall promptly give notice to the Customer and shall do everything possible to resume performance and upon receipt of such notice, this Contract shall be suspended. Delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such events.

### 20. General

- 20.1 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

- 20.2 Subject to clause 20.1, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties. The Company may, however, by written notice to the Customer provide that updated conditions, increased Charges (in accordance with clause 3.1) or service terms apply to the Contract after the Initial Period or to any future contracts.

- 20.3 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

- 20.4 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

- 20.5 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected. For the avoidance of doubt, this clause shall apply without limitation to the foregoing limitation of liability in clause 14 and 15 and each of subparagraphs 15.3(a)(i) to (ix) shall be treated as a separate provision for these purposes).

- 20.6 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable. If any invalid, unenforceable or illegal provision of the Contract would be valid,

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enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 20.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 20.8 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract). Nothing in this clause shall limit or exclude any liability for fraud.
- 20.9 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract. The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 20.10 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.11 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 20.12 In relation to any notice required to be given under the Contract:
- (a) such notice shall be in writing and shall be delivered personally, or sent by email to the Representative of the other Party, pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Contract, or as otherwise specified by the relevant party by notice in writing to the other party;
  - (b) such notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Contract; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if sent by email, the moment the email is sent; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
  - (c) This clause shall not apply to the service of any notices in any proceedings or other documents in any legal action.

## 21. Export

- 21.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 21.2 Each party undertakes:

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- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

**22. Governing law and jurisdiction**

The laws of England and Wales shall govern the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) and the parties hereby submit to the non-exclusive jurisdiction of the courts of England.

The definitions and rules of interpretation in this Definitions Schedule apply in this Contract:

"Affiliates"	any business entity from time to time Controlling, Controlled by, or under common Control with, either party;
"Associates"	shall mean the officers, employees, service providers or (sub)contractors of a Party;
"Basic Support"	shall have meaning assigned to it in paragraph 3.1 of the Service Terms;
"Business Day"	means any day other than a Saturday, Sunday or public or national bank holiday in the UK or Holland;
"Business Hours"	the hours between 8.30 a.m. and 5.30 p.m. Central European Time (CET) on a Business Day;
"Charges"	shall have the meaning assigned to it in clause 3.1;
"Conditions"	shall have the meaning assigned to it in clause 1.1;
"Contract"	shall have the meaning assigned to it in clause 2.1;
"Control"	a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation;
"Commencement Date"	shall mean the date of acceptance by the Company of the Customer's offer in accordance with clause 2.1 or (if different) on the date stated as the commencement date in the Contract;
"Company"	shall mean Sapienza Consulting Limited registered under company number 02986023

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"Company Materials"	whose registered office is at 61 Rodney Street, Liverpool, Merseyside, L1 9ER; shall mean any materials prepared and/or provided by the Company and regarding the Software or the related services, regardless of medium and form, including but not limited to Release notes, guides, videos, images, FAQs (all text and material provided by the LUNA Chatbot module);
"Company Telephone Support Number"	shall have the meaning assigned to it in paragraph 3.4 of the Service Terms;
"Company E-mail Support Address "	shall have the meaning assigned to it in paragraph 3.4 of the Service Terms;
"Confidential Information"	shall have the meaning assigned to it in clause 12;
"Corporate Licence"	shall have the meaning assigned to it in paragraph 2.1 of the Service Terms and is subject to the licence terms therein;
"Current Release"	the most recent release of the Software from time to time implemented by the Company or, if no new or improved release has been implemented with the Customer, the Software;
"Customer's Data"	data owned by the Customer and inputted by the Customer into the Software during the Period;
"Customer's Representative"	shall be the individual(s) listed in the Order Form who are entitled to contact the Company for a request for Support Services;
"Customised Software"	any bespoke software that the Company may agree to develop for the Customer pursuant to separate terms and conditions and any applicable Objectives, from time to time;
"Data Controller"	shall have the same meaning given to that term (or the term controller) as set out in the Data Protection Legislation;
"Data Processor"	shall have the same meaning given to that term (or the term processor) as set out in the Data Protection Legislation;
"Data Protection Legislation"	shall mean all applicable laws from time to time in force relating to the protection of personal information, which may including the UK Data Protection Act 1998, the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 and (once in force and to the extent applicable) the General Data Protection Regulation ((EU) 2016/679), and any applicable laws substituting, re-enacting or replacing any of the foregoing, as amended or updated from time to time;

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"Data Subject"	shall have the same meaning given to that term as set out in the Data Protection Legislation;
"Due Date"	shall have the meaning assigned to it in clause 3.5;
"Eclipse Toolset"	shall have the meaning assigned to it on the relevant Order Form for a Contract;
"Enhanced Support"	shall have the meaning assigned to it in paragraph 6.1 of the Service Terms;
"Environment"	the operating environment specified in the Software Documentation;
"Force Majeure Event"	shall have the meaning assigned to it in clause 19.1;
"Further Period"	means each 12 month period from the end of the Initial Period ;
"Hardware and Software Platform"	the hardware, software, operating systems and any other computer systems or equipment recommended by the Company from time to time in the Specification, Release notes or otherwise notified by the Company to the Customer in writing in order to be able to use the Software as authorised under the terms of the Contract;
"Hosting Services"	shall have the meaning assigned to it in paragraph 3.21 of the Service Terms;
"Inappropriate Content"	shall have the meaning assigned to it in paragraph 3.21 of the Service Terms;
"Infringement Claim"	shall have the meaning assigned to it in clause 11.4 ;
"Initial Period"	means the initial contract duration defined in the Order Form, starting from the Commencement Date;
"Instance Licence"	shall have the meaning assigned to it in paragraph 2.6 of the Service Terms and is subject to the licence terms therein;
"Intellectual Property Rights"	shall have the meaning assigned to it in clause 11.1;
"Major Release "	a new or improved release of the Software that adds functionality or upgrades the Software, but which does not constitute a Release or a New Version;
"New Version"	any new version of the Software which from time to time is publicly marketed and offered for purchase by the Company in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
"Licence Fees"	the fees payable by the Customer to the Company for the Software Licence granted under this Contract;
"Objectives"	the high level description of the functions to be achieved by Customised Software to be

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	agreed between the Company and the Customer, recognising that the Company and Customer shall work together in an agile collaborative way and therefore the objectives for Customised Software may evolve from time to time;
"Order Form"	shall have the meaning assigned to it in clause 2.1;
"Patch"	means a piece of code developed to remedy any bugs or issues with the Software and issued by the Company from time to time;
"Period"	means the Initial Period of this Contract together with any Further Period(s);
"Personal Data"	shall have the same meaning given to that term as set out in the Data Protection Legislation;
"Project Team"	the team of the Company providing the Services from time to time;
"Release"	any release of the Software that corrects faults or otherwise amends the Software issued by the Company from time to time but which does not add functionality or upgrade the Software;
"Scheduled Maintenance"	shall have the meaning assigned to it in paragraph 3.21 of the Service Terms;
"Services"	shall be the services identified in the Contract to be provided in accordance with the Conditions and the Service Terms;
"Service Terms"	shall have the meaning assigned to them in clause 2.1 and are set out in the Schedule to these Conditions;
"Site"	the premises from which the Customer carries out its business as stated in the Contract;
"Software"	the modules for the software known as ECLIPSE as identified in the Contract developed by and licensed by the Company which shall be licensed to the Customer by the Company in accordance with the licensing model specified in the Contract;
"Software Documentation"	the instruction manuals, user guides and other supporting material to explain and assist with the use of the Software as provided to the Customer by the Company (together with any supplemental instructions which may from time to time be supplied by the Company or any manuals or instructions replacing the same);
"Software Licence"	means either the Site Licence or the Instance Licence as specified in the Contract and subject to the applicable licence terms set out in the Service Terms;
"Specification"	means the specification describing the facilities and functions of the Software;

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"Support Issue"	shall have the meaning assigned to it in paragraph 3.2 (a) of the Service Terms;
"Third Party Licence"	means any licences relating to any open-source software, including any proprietary Third-Party Software licences which are necessary to enable the Customer to use the Software;
"Third Party Software"	means any open-source software relating to the Software and any proprietary third-party software;
"User"	means any employee, subcontractor, agent or representative of the Customer who is permitted by the Customer to use the Software in accordance with these Conditions for the Customer's own internal business purposes;
"Year"	means each 12 month period calculated from the Commencement Date.

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**SCHEDULE 1– DATA PROTECTION**

<b>Scope and purpose of processing:</b>	Personal Data contained in the Customer’s Data that the Company processes for providing the Services as identified in the Contract.
<b>Nature of processing:</b>	The Company will process the Customer’s Personal Data for the purpose of providing the Services to the Customer in accordance with this Contract.
<b>Duration of processing:</b>	Duration of this Contract.
<b>Types of Personal Data:</b>	Data relating to individuals provided to the Company by the Customer using the Services.
<b>Categories of Data Subjects:</b>	Data Subjects being individuals whose data has been provided to the Company by the Customer using the Services.
<b>Sub-Processors:</b>	OVH Ltd (United Kingdom, only for hosted UK Customers), OVH BV (the Netherlands, only for hosted Customers outside the UK), NU-IT SASU (France)