

TXP Talent - Project Terms and Conditions of Supply

1. Interpretation

The following definitions and rules of interpretation apply in these Terms

1.1 Definitions

Affiliates in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time and **control** means the beneficial ownership of more than 50% of the issued share capital or the legal power to direct or cause the direction of the general management of the company, partnership or other entity in question;

Applicable Law means the laws of England and Wales, any other laws, and any policies, guidelines or industry codes made by any regulatory body having jurisdiction over a party or any of that party's assets which apply to the performance of the Services or to which either party is subject;

Bribery Laws means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

Business Day means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

Change means any change to the SoW including to any of the Services;

Change Control Procedure means the process by which a Change is agreed as set out in clause 12.

Change of Control means where there is a change in the beneficial ownership representing 50 percent or more of the issued share capital of the company or other entity;

Confidential Information means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the SoW;

Contract Year means a period of twelve (12) months commencing on the Effective Date and/or each anniversary of the Effective Date;

Contractor means an intermediary that meets the conditions of liability under the Off Payroll Working Rules and their representatives or substitutes assigned by TXP to perform the Services;

Customer means the person or firm who purchases Services from TXP as identified in the SoW.

Customer Dependencies means the Customer responsibilities as described in the SoW;

Customer Intellectual Property means all Intellectual Property either proprietary to the Customer or its Affiliates which the Customer or its Affiliates is licensed to use by third parties and which is required for use in connection with the Services;

Customer Site means any premises of the Customer Group and of any third party involved in the Services which it is necessary or desirable for TXP to have access to for the performance of the Services, including at the commencement of the Services, the premises of the Customer Group;

Data Protection Laws means, as binding on either party or the Services:

- (a) the UK General Data Protection Regulation (EU 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018 (**UK GDPR**);
- (b) the Data Protection Act 2018;
- (c) any laws which implement or supplement any such laws; and
- (d) any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of the SoW)

Dispute Resolution Procedure means the process set out in Clause 25;

Effective Date means the effective date as described in the SoW;;

Fees means the charges payable to TXP for the Services as described in the SoW, as amended from time to time;

Force Majeure Event means any circumstance not within a Party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts; and
- (h) interruption or failure of utility service.

Group means the relevant party, its Affiliates and any other entity which are part of the corporate group of the relevant party;

Insolvency Event means circumstances when either:

- (a) a receiver is appointed for either party or its property;
- (b) either party makes a general assignment for the benefit of its creditors;
- (c) either party commences or has commenced against it, bankruptcy proceedings and such proceedings are not dismissed within 90 days; or
- (d) either party is liquidating, dissolving or ceasing to conduct business;

Intellectual Property means all intellectual property and other rights of any kind now or hereafter existing including without limitation: service marks, registered designs, applications, trademarks, patent, trade secrets, copyrights, design and invention rights;

Loss means any loss, damage, liability, demand, claim, proceedings, judgement, settlement, fine, interest, penalty, award, order, cost and/or expense (including reasonable management time, legal disbursements and costs of investigation), litigation, settlement, judgement, and other professional costs and expenses; and **Losses** shall be construed accordingly;

Master Service Agreement or **MSA** means any master service agreement entered into between TXP or any member of TXP's Group and the Customer or any member of the Customer's Group under which SoWs may be placed.

Milestone means an objective or goal set forth in the SoW which triggers a payment of Fees;

Non-Outsourced Services means Services that are not Outsourced Services and, for the avoidance of doubt, includes Services provided by TXP under the SoW where payment is made on a time and materials basis;

Off Payroll Working Rules means Chapter 10 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 and The Social Security Contributions (Intermediaries) Regulations 2000;

Outsourced Services means where the nature of the Services is such that TXP is providing an outsourced, outcomes-based service to the Customer (and not, for the avoidance of doubt, a labour-based service). Whether the Services are Outsourced Services or not shall depend on the nature and circumstances of the Services themselves and shall be determined by the parties on a case-by-case basis, but Services where TXP:

- (a) is the party for whom a Contractor performs the work or services (that make up part of the Services);
- (b) is the party who is most akin to the employer of the individual supplying services through a Contractor;
- (c) is the party who is responsible for the engagement and management of the Contractor and any applicable oversight of the services performed by a Contractor; and
- (d) is the party who is responsible for a Contractor's acts, omissions and performance

are more likely to be determined by the parties to be Outsourced Services;

Service(s) means the service as described in the SoW to be provided by TXP to the Customer;

Small Company means a person, firm, undertaking or corporate body which is classed as small as defined in Sections 60A to 60G of Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003;

Specification means the description of the Services as set out in the SoW;

Statement of Work or **SoW**: the SoW entered into between the Customer and TXP for the supply of Services incorporating these Terms.

Status Determination Statement means a valid status determination statement as defined under section 61NA of Chapter 10 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003;

Sub-contractor means a sub-contractor of TXP (or of a sub-contractor), including a Contractor, utilised to perform some or all of TXP's obligations under the SoW;

TXP Personnel means the person(s), employee(s) or Sub-contractor(s) assigned by TXP to perform the Services from time to time and **Personnel** shall have the same meaning;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or where applicable other equivalent local regulations as may be amended from time to time.

TXP means TXP Solutions Limited (company number 02333415) with registered office TXP House, Pinewood Business Park, Coleshill Road Solihull, West Midlands, B37 7HG.

- 1.2 In these Terms, a reference to:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.2 a Party includes its permitted assigns;
 - 1.2.3 a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision; and
 - 1.2.4 a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
 - 1.2.5 clauses and schedules are to the clauses and schedules of these Terms and references to paragraphs are to paragraphs of the relevant schedule.
 - 1.2.6 a numbered paragraph will, unless otherwise stated, be deemed to be a reference to the paragraph of that number in the schedule in which the reference is made.
 - 1.2.7 writing or written includes email but not fax.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms or the SoW.
- 1.4 The schedules form part of the Terms and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to writing or written excludes fax but includes email unless expressly stated otherwise.
- 1.7 A reference to legislation or a legislative provision:
- 1.7.1 Is a reference to it in force as at the time of the SoW; and
 - 1.7.2 Shall include all subordinate legislation made as at the date of the SoW.
- 1.8 Any words following the terms including or include or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 If there is a conflict or ambiguity between or among any of the Master Services Agreement, these Terms and documents attached to and incorporated by reference, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list, solely to the extent of that inconsistency:
- 1.9.1 A Statement of Work;
 - 1.9.2 these Terms;
 - 1.9.3 a document referred to in these Terms;
 - 1.9.4 the Master Services Agreement (if applicable).
- 1.10 Any terms contained in the client's purchase order, acknowledgment or invoice will be of no effect, even if such acknowledgement or invoice provides TXP's acceptance of the purchase

order is conditioned upon the Customer's agreement to the proposed terms contained in such acknowledgment or invoice.

2. ENGAGEMENT

2.1 Services

TXP will perform the Services as set out in the SOW in accordance with the Specifications and requirements set out in the SOW. A SOW is only valid if it is signed by the Customer and TXP.

2.2 Performance

TXP will supply the Services as set out in the SOW with reasonable skill and care and in accordance with Good Industry Practice. The parties agree that time is not of the essence in the performance of the Services unless specifically agreed in the SOW. TXP will use its reasonable endeavours to meet any timetable agreed for performance of the Services. For the avoidance of doubt, TXP will not be liable for any failure to provide the Services or delay caused by a Force Majeure Event, or the Customer's failure to comply with the Customer's obligations as described in Clause 9.

2.3 Customer Dependencies

If the Customer identifies a that the Services have not been performed in accordance with the Specification and such failure was caused or contributed to by the Customer's actions or omissions, including a failure of the Customer to comply with any Customer Dependencies, the Customer shall pay TXP its reasonable and demonstrable costs arising from any work reasonably required for TXP to determine that the failure was caused by the Customer and, if requested, to rectify the impact of such failure, in accordance with the applicable Fees. Provided always that TXP notifies the Customer of any such failure, any deadlines for reperforming Services shall be extended for a period of time equal to the period of any delay caused by the Customer.

2.4 Subject to clause 2.3, if the Customer identifies that Services have not been performed in accordance with the Specification then the Customer shall allow TXP the opportunity to remedy such failure. Such remedy shall be TXP's sole liability to the Customer provided that TXP remedies such failure within a reasonable period of time.

3. OFF PAYROLL WORKING

3.1 The parties acknowledge that, for the purposes of the Off Payroll Working Rules, TXP may provide Outsourced Services or Non-Outsourced Services under the SoW. The parties shall agree between them the nature and status of the Services and confirm the position in each SoW. In the event that the SoW does not include this information, the parties shall assume the SoW relates to Non-Outsourced Services.

3.2 Each party shall comply (to the extent that it is required by Applicable Law, and/or that it is able to depending on the acts and omissions of the other party) with its respective obligations (if any) under the Off Payroll Working Rules, depending on the nature of the Services, and specifically whether they are Outsourced Services or Non-Outsourced Services.

3.3 For Non-Outsourced Services:

3.3.1 the Customer shall be deemed to be the 'client' (as defined in the Off Payroll Working Rules);

3.3.2 TXP shall notify the Customer of any Contractor and its representatives it intends to engage to deliver any part of the Services; and

- 3.3.3 the Customer shall complete a status assessment and issue a Status Determination Statement for any representative of the Contractor TXP may engage to deliver part of the Services unless it is exempt from applying the Off Payroll Working Rules by virtue of being a Small Company or based wholly outside the United Kingdom.
- 3.4 For Outsourced Services:
- 3.4.1 TXP shall be deemed to be the 'client' (as defined in the Off Payroll Working Rules);
- 3.4.2 TXP shall complete a status assessment and issue a Status Determination Statement for any representative of the Contractor it may engage to deliver any part of the Services unless it is exempt from applying the Off Payroll Working Rules by virtue of being a Small Company; and
- 3.4.3 the Customer shall have no obligation to complete a status assessment and issue a Status Determination Statement for any representative of the Contractor, since this obligation rests solely with TXP.
- 3.5 For Outsourced Services:
- 3.5.1 TXP is not obliged to provide a named individual in respect of the performance of any aspect of the Services, nor shall the Customer have any right to specify or request specific TXP Personnel to deliver the Services. TXP has sole, unfettered discretion to utilise any TXP Personnel to deliver all or any part of the Services (including changing any TXP Personnel at any time without prior notice to the Customer), save that TXP shall ensure that any TXP Personnel utilised hold the necessary level(s) of skill, experience and expertise to deliver the relevant part of the Services; and
- 3.5.2 In the event that TXP Personnel are specifically named in the SoW, the Customer acknowledges that Clause 3.5.1 still applies, and any TXP Personnel of comparable skill, expertise and expertise to the named individual may be utilised by TXP to deliver all or any part of the Services.
- 3.6 The parties acknowledge that TXP shall manage and deliver the Services in accordance with the timescales and Milestones as described in the SoW and subject to reporting criteria as agreed between the parties, and the Customer shall have no managerial or supervisory role over TXP or TXP Personnel.
- 3.7 The Customer warrants that it shall not, and its employees, officers, sub-contractors, agents, representatives or advisers shall not, through its or their actions or omissions, whether wilfully, negligently or otherwise, engage with TXP or any TXP Personnel in such a way that could change the parties' stated responsibilities under the Off Payroll Working Rules under this Clause 4.
- 3.8 Subject to Clauses 13.3, 13.4, 13.5 and 13.6, the Customer shall indemnify TXP against any Losses incurred by TXP as a result of the breach of the Customer's obligations under Clause 3.3.3 or in connection with HMRC or any court or tribunal, determining that the Customer has for any reason provided an incorrect Status Determination Statement in relation to any Contractors engaged by TXP for Non-Outsourced Services, and/or any breach by the Customer of its obligations under this Clause 3.

4. FEES and PAYMENT

4.1 Fees

The Customer shall pay the Fees described in the SoW to TXP in respect of the Services. All TXP Fees are net Fees and exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes (**VAT**), which is payable by the Customer at the rate and in the manner from time to time prescribed by law. Unless otherwise agreed between the

parties, TXP shall be responsible for all other taxes which are incurred as a result of the SoW the Services being provided.

4.2 Invoicing

- 4.2.1 In consideration of the performance of the Services by TXP, TXP shall be entitled to invoice the Customer the Fees due for each of the Services.
- 4.2.2 Each invoice issued by TXP shall include those details as are reasonably specified by the Customer as necessary to satisfy the Customer's internal accounting and charge-back requirements.
- 4.2.3 If the Customer acting in good faith considers any invoice to be incorrect or not due the Customer shall notify TXP within seven (7) Business Days of receipt of the relevant invoice and state the reasons therefore (provided that the Customer will not withhold or delay payment of any part of an invoice which is undisputed). If TXP accepts that the invoice is incorrect or not due, TXP shall issue a revised invoice and the Customer shall settle such invoice immediately or in accordance with the payment terms set out below in Clause 4.3.
- 4.2.4 If an invoice remains disputed after thirty (30) Business Days of receipt of the relevant invoice both parties shall follow the Dispute Resolution Procedure in accordance with the provisions of clause 28.

4.3 Payment

- 4.3.1 Subject to Clause 4.2.3 and 4.2.4 the Customer shall pay TXP's Fees within fourteen (14) days of receipt of the invoice (the **Due Date**).
- 4.3.2 The Customer's failure to pay any undisputed invoice for a period of more than thirty (30) days past the Due Date shall be considered a material breach by the Customer and entitle TXP to terminate the SoW in accordance with Clause 15.

4.4 Retail Prices Index

- 4.4.1 All Fees are fixed for the first Contract Year. Thereafter, subject to a Change agreed by the parties pursuant to the Change Control Procedure, TXP may increase the Fees on an annual basis upon written notice to the Customer in line with the percentage change in the Retail Prices Index All Items during the preceding Contract Year or, if lower, by 5%.

4.5 Set Off

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

4.6 Late Payment

- 4.6.1 Should any payment not be made by the Due Date, TXP shall be entitled to charge the Customer interest at 4% above the Bank of England base rate on any balance outstanding from time to time until payment is made in full (including interest) except no interest shall be charged on payments reasonably disputed and withheld unless it is subsequently determined that the amount withheld is validly due. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount.

5. NO EMPLOYEE RELATIONSHIP OR PARTNERSHIP

5.1 No Employee Relationship

5.1.1 TXP is solely responsible for all payments to TXP Personnel and other similar obligations with respect to the performance of all the Services and receipt of Fees under the SoW. TXP and TXP Personnel will not be entitled to any of the benefits the Customer may make available to its employees and TXP is solely responsible for all taxes and withholdings, severance and redundancy pay, benefits and other similar obligations whether statutory or otherwise, with respect to the performance of all its work and receipt of Fees under the SoW. To the extent that such claim arises solely out of the acts, omissions or negligence of TXP, TXP shall indemnify the Customer from all claims made by any person or entity in respect of its breach of its obligations as set out in this Clause 5.1.

5.2 Independent Contractors

5.2.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the SoW does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

5.3 Transfer Regulations

5.3.1 The parties agree and confirm that the provision of the Services by TXP to the Customer under the SoW is not intended to constitute a service provision change as defined in regulation 3(1)(b) of the Transfer Regulations and therefore, neither the employment or engagement of TXP or any TXP Personnel is intended to transfer under those provisions.

5.3.2 Notwithstanding the parties' belief that a relevant transfer as defined under the Transfer Regulations will not apply:

5.3.2.1 should the Transfer Regulations apply to the commencement of the Services, the provisions of Schedule 1 Part 1 shall apply; and

5.3.2.2 should the Transfer Regulations apply to the cessation of the Services on expiry, termination or partial termination of the SoW, the provisions of Schedule 1, Part 2 shall apply on expiry, termination or partial termination of the SoW.

6. INTELLECTUAL PROPERTY

6.1 TXP agrees that the Customer Pre-Existing IPR belongs to the Customer. The Customer hereby grants TXP and TXP Personnel the non-exclusive right to use, and to permit its Affiliates and Sub-contractors to use, Customer Pre-Existing IPR and New Intellectual Property free of charge to the extent reasonably required for the purpose of the SoW and the provision of the Services.

6.2 The Customer hereby indemnifies TXP against Losses incurred by TXP as a result of any action, demand or claim by a third party infringement of any Intellectual Property made as a result of or in connection with the use by TXP or TXP Personnel, in accordance with the licence granted under these Terms of any Customer Intellectual Property licensed by the Customer to TXP or TXP Personnel in connection with the SoW (**IPR Claim**), provided that the Customer shall have no such liability if TXP:

6.2.1 does not notify the Customer in writing setting out full details of any IPR Claim of which it has received notice promptly;

6.2.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Customer;

- 6.2.3 does not let the Customer at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
- 6.2.4 does not take all reasonable steps to minimise the Losses that may be incurred by it or by any third party as a result of the IPR Claim (provided any costs associated with the same are paid in advance by the Customer); and
- 6.2.5 does not, at the Customer's request, provide the Customer with all reasonable assistance in relation to the IPR Claim (at TXP's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of TXP.

7. CONFIDENTIALITY AND PUBLICITY

- 7.1 The receiving party shall only disclose Confidential Information to its employees and contractors who have a need to access such Confidential Information solely for the purpose of fulfilling their obligations under the SoW and have been advised of the obligations of confidentiality and are under obligations substantially similar to those set out in this Clause 7.
- 7.2 The receiving party shall not disclose to any other person, firm or entity, other than those described in Clause 7.1, any Confidential Information without the disclosing party's express written consent.
- 7.3 Each party shall exercise at least the same level of care to protect the other's Confidential Information as it exercises to protect its own Confidential Information but in no event less than reasonable care except to the extent of Applicable Law or where professional standards require a higher requirement.
- 7.4 The receiving party shall deliver to the disclosing party all Confidential Information of the disclosing party and all copies thereof when the disclosing party requests the same.
- 7.5 The obligations of the receiving party concerning confidentiality hereunder shall terminate three (3) years following receipt of the Confidential Information except to the extent a longer period is required either by Applicable Law or under the SoW.
- 7.6 These Terms and the SOW shall be considered Confidential Information for the purposes of this Clause 7 and shall only be disclosed in accordance with the provisions of Clause 7.1.
- 7.7 The provisions of this Clause 7 shall not apply to the extent that such information is:
 - 7.7.1 already known to or in possession of the receiving party prior to its disclosure without an obligation of confidentiality upon the receiving party or such information is not acquired by the receiving party as a result of a breach of an obligation of confidentiality by the receiving party;
 - 7.7.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;
 - 7.7.3 rightfully received from a third party without obligation of confidentiality;
 - 7.7.4 independently developed by the receiving party without breach of this the SoW or access to the applicable Confidential Information of the other party; or
 - 7.7.5 required to be disclosed by Applicable Law (provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any such disclosure).

8. OBLIGATIONS OF SUPPLIER

- 8.1 TXP shall:

- 8.1.1 ensure that TXP and TXP Personnel comply with all relevant Customer policies and regulations applicable to suppliers to which have been provided to TXP in advance of the Services;
- 8.1.2 use qualified Personnel necessary and appropriate for the timely and satisfactory completion of the Work;
- 8.1.3 allocate sufficient resources to perform the Services in accordance with any dates specified for performance, as amended from time to time by agreement between the parties via the Change Control Procedure or otherwise, if no dates are specified, as soon as possible but in any event within a reasonable time and in accordance with the provisions of the relevant SoW;
- 8.1.4 ensure that any employee, TXP Personnel or Sub-contractor of TXP has the legal right to work in the country where the Services are to be performed;
- 8.1.5 so far as known to TXP or could be reasonably expected to be known to TXP, notify the Customer of any issue or event likely to cause a material delay in the delivery of any of the Services or that is likely to adversely affect TXP's ability to meet any obligations under the SoW; and
- 8.1.6 ensure that any of TXP Personnel who are engaged in the performance of any Services shall, if required by the Customer, attend such meetings at the Customer Site or elsewhere as may be reasonably required by the Customer.

9. OBLIGATIONS OF CLIENT

- 9.1 The Customer shall:
 - 9.1.1 perform its obligations in accordance with the SoW
 - 9.1.2 pay the Fees for the Services and the Milestone payments in accordance with the the SOW;
 - 9.1.3 provide any Customer Dependencies as listed in the SOW;
 - 9.1.4 provide TXP and TXP Personnel reasonable access to the Customer Site, facilities and premises where the Services are to be performed, including but not limited to, access to computers, hardware, data, and information;
 - 9.1.5 co-operate with and provide assistance to TXP and TXP Personnel as reasonably necessary to provide the Services;
 - 9.1.6 remain responsible for all data, hardware, equipment and applications in its control;
 - 9.1.7 comply with any additional obligations as specified in each SOW;
 - 9.1.8 inform TXP in a timely manner of any matters (including health and safety or security requirements) which may affect the provision of the Services or the performance of the SOW;
 - 9.1.9 ensure that all tools, equipment or materials provided to TXP or TXP Personnel are suitable and in good working order; and
 - 9.1.10 remain responsible for obtaining all licences, approvals and permits necessary for TXP to perform the Services whilst on the Customer Site.

10. WARRANTIES AND REPRESENTATIONS

- 10.1 Each party warrants and represents:

- 10.1.1 it has the full capacity and authority to enter into the SoW and to carry out its obligations under the SoW;
 - 10.1.2 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under the SoW and
 - 10.1.3 it will perform and procure the performance of its obligations under the SoW in compliance with all Applicable Laws.
- 10.2 TXP expressly does not warrant that the Customer's use of the Services will be uninterrupted or error-free. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to merchantability, satisfactory quality or fitness for a particular purpose. It is the responsibility of the Customer to ensure that the Services meet its requirements, and TXP shall not be held liable for any failure of the Services to provide any facility or function not expressly stated in the SoW. No oral or written information or advice given by TXP shall create a warranty or representation or in any way increase the scope of the above warranties.

11. ASSIGNMENT AND SUB-CONTRACTING

- 11.1 Neither party may assign any of its rights or obligations under the SoW without the express written consent of the other party.
- 11.2 TXP may sub-contract any part of the Services provided that TXP shall remain liable for the performance of all the sub-contracted obligations and shall make all payments to its Sub-contractors.
- 11.3 TXP indemnifies the Customer for all Losses subject to the limitations set out in Clause 13, incurred by the Customer caused by the acts, omissions or negligence of its Sub-contractors or TXP's failure to pay a Sub-contractor.

12. CHANGE CONTROL

- 12.1 Unless stated otherwise, Changes shall be dealt with in accordance with this clause 12.
- 12.2 Either Party may submit a written request for Change to the other Party in accordance with this clause 12 and the provisions contained in the SoW, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.
- 12.3 If the Customer requests a Change:
 - 12.3.1 the Customer will submit a written request to TXP containing as much information as is necessary to enable TXP to prepare a Change Control Note; and
 - 12.3.2 within 5 Business Days of receipt of a request, TXP will, unless otherwise agreed, send to the Customer a Change Control Note.
- 12.4 If TXP requests a Change, it will send to the Customer a Change Control Note.
- 12.5 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:

- 12.5.1 description of the Change;
- 12.5.2 details of the effect of the proposed Change on:
 - a. the Services;
 - b. the Charges;
 - c. any systems or operations of the Customer which communicate with, or are otherwise affected by, the Services; and
 - d. any other term of the SoW;
- 12.5.3 provision for signature by the Customer and TXP.
- 12.6 If, following the Customer's receipt of a Change Control Note pursuant to clause 12.3 or clause 12.4:
 - 12.6.1 the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend the SoW as detailed within the Change Control Note.
 - 12.6.2 either Party does not agree to any term of the Change Control Note, then the other Party may refer the disagreement to be dealt with in accordance with the dispute resolution procedure at clause 25.
- 12.7 Save where agreed otherwise between the parties in context of a significant change to scope, each Party will bear its own costs in relation to compliance with the change control procedure set out in this clause 12.

13. INDEMNIFICATION AND LIMIT OF LIABILITY

- 13.1 Subject to Clauses 13.3, 13.4, 13.5 and 13.6, the Customer shall indemnify TXP against any Losses incurred by TXP as a result of or in connection with the Customer breaching, or failing to comply with, any Applicable Laws in connection with the SoW. For the avoidance of doubt, the indemnity in this Clause 13.1 shall not apply to the extent that such Losses result from, or are caused or materially contributed to by, the acts, omissions or negligence of TXP.
- 13.2 The Customer shall be responsible for the accuracy, completeness and propriety of information concerning its products, services and organisation that the Customer provides to TXP in connection with the Services. Accordingly, the Customer shall indemnify TXP against any and all Losses incurred by TXP, or arising out of or in connection with:
 - 13.2.1 use of the Customer's services or products;
 - 13.2.2 use of information or materials provided to TXP; or
 - 13.2.3 compliance with the Customer policies and regulations which conflict with TXP's own policies.
- 13.3 Neither party shall be liable whether in contract, tort (including negligence) or otherwise for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising or any loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings or wasted management or staff time, even if that party has been advised of the possibility.
- 13.4 Neither party limits or excludes liability to the other for death or personal injury caused by its negligent acts or omission or any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; any claims

relating to corrupt gifts or fraudulent misrepresentation or deceit; or any other liability that may not be limited or excluded by law.

- 13.5 Subject to Clauses 5.1, 13.3, 13.4 and 13.6, the total liability of each party to the other howsoever arising, including all indemnities, arising under or in connection with the SOW, and whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall be limited in the aggregate on a per annum basis to the higher of (a) £1,000,000 (one million pounds sterling) or (b) 150% of the Fees paid or due and payable by the Customer to TXP in the last full Contract Year prior to the cause of action giving rise to the relevant claim or series of connected claims.
- 13.6 For the avoidance of doubt, the limit of liability set out in Clause 13.5 shall not apply to the Customer's obligation to pay the Fees due for Services performed under the SoW.

14. INSURANCE

- 14.1 TXP shall at all times during the term of the SoW, procure and maintain in effect those insurance policies and minimum levels of coverage as designated in Clause 14.2 below, and any other insurance required by law in any country or territory where TXP provides Services under the SoW.
- 14.2 TXP shall maintain Employer's Liability insurance as required by Applicable Law, and in no event, less than the amount required by Applicable Law. TXP shall maintain Public Liability insurance for a limit of not less than £5 million and Professional Indemnity insurance for a limit of not less than £2 million in the aggregate.
- 14.3 When requested by the Customer, TXP shall provide evidence of insurance as specified in Clause 14.2 above.
- 14.4 TXP shall ensure that Sub-contractors shall provide and maintain appropriate insurances and TXP shall obtain evidence of same.

15. TERMINATION

- 15.1 Either party may terminate the SoW immediately upon the occurrence of and in accordance with an Insolvency Event which occurs in relation to the other party.
- 15.2 Without affecting any other right or remedy available to it, TXP may terminate the SoW with immediate effect by giving written notice to the Customer if:
- 15.2.1 the Customer fails to pay any amount due under the SoW or any other SoW made between the Parties on the due date for payment; or
- 15.2.2 there is a change of control of the Customer.
- 15.3 Either party may terminate the SoW, or both, upon written notice to the other for any material breach not remedied within thirty (30) days of receipt of notice of the breach. The Customer shall be liable to pay for such Services as have been undertaken by TXP at the time of the termination of the SoW. TXP shall not have further service delivery obligation to the Customer under the terminated SoW if TXP terminates the SOW under the provisions of this Clause 15.3.
- 15.4 Either party may terminate the SoW upon giving the other party the amount of written notice as set out in the SOW.
- 15.5 On termination or expiry of the SoW the Customer shall immediately pay to TXP all of TXP's outstanding unpaid invoices (and interest where applicable) and, in respect of work in progress and/or Services performed but for which no invoice has been submitted, TXP may submit an invoice in accordance with Clause 4 and the Customer shall be liable for payment of such invoices.

- 15.6 Termination of the SoW (howsoever arising) shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the SoW which existed at or before the date of termination.
- 15.7 Other than as set out in the SoW, neither party shall have any further obligation to the other under the SoW after its termination. Any provision in the SoW which by its intent or terms is meant to survive termination will do so.
- 15.8 Upon expiration or termination of the SoW the parties will, upon request of the other party, destroy or promptly return all material containing any Pre-Existing IPR, Confidential Information or proprietary information pertaining to the other party.

16. AUDIT

- 16.1 TXP shall maintain accurate and complete documents relating to the Services and the performance of TXP's obligations under the SoW for a period of one (1) year after termination of the SoW. Upon the provision of at least fourteen (14) Business Days' notice, TXP shall permit reasonable access during normal business hours to the Customer for the purpose of inspection, auditing and copying records relating to these Terms and the Services. TXP shall provide the Customer and the Customer's duly authorised personnel with all reasonable co-operation, and assistance in respect of the above.

17. DATA PROTECTION

- 17.1 The parties agree that the provisions of Schedule 2 shall apply with respect to the data protection obligations of the parties under the SoW.
- 17.2 Subject to Clause 13.3, 13.4, 13.5 and 13.6, each party will indemnify the other in respect of all Losses which the other may incur arising out of any breach of the parties' obligations as set out in Schedule 2.

18. NON-SOLICITATION

- 18.1 Subject to clause 18.4, to protect the respective legitimate business interests of the parties and their Affiliates, each party (**Covenantor**) covenants with the other party (**Covenantee**) for itself and as agent for each of the Covenantor's Affiliates that it shall not and shall procure that none of the Covenantor's Affiliates shall (except with the prior written consent of the Covenantee):

18.1.1 attempt to solicit or entice away from the employment or service of the Covenantee or any of its Affiliates;

18.1.2 solicit or entice away from the employment or service of the Covenantee of any of its Affiliates;

18.1.3 employ, engage or otherwise facilitate the employment or engagement of;
any Restricted Person.

- 18.2 The Covenantor shall be bound by the covenants set out in clause 18.1 during the Relevant Period.

- 18.3 For the purposes of this clause 18:

18.3.1 a **Restricted Person** means any firm, company or person employed or engaged by the Covenantee or any of its Affiliates during the term of the SoW who has been engaged in the provision or receipt of the Services or the management of the SoW either as principal, agent, employee, independent contractor or in any other form of employment or engagement;

- 18.3.2 the **Relevant Period** is the term of the SoW and for a period of twelve month's after the SoW's termination or expiry.
- 18.4 A Covenantor or its Affiliates may employ or engage an employee, person or sub-contractor of the other party who has replied to an unsolicited general advertisement not specifically targeted at the employees or contractors of the Covenantee or its Affiliates.
- 18.5 Where a Covenantor or its Affiliates are in breach of this Clause 18, it shall pay the other party liquidated damages equivalent to 30% of the most recent basic annual salary or income net paid by the other party to that employee, person or sub-contractor. Both parties agree that such liquidated damages represent a genuine pre estimate of loss.
- 19. SEVERABILITY**
- 19.1 If any provision of the SoW (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the SoW shall not be affected.
- 19.2 If any provision of the SoW (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 20. NOTICES**
- 20.1 Any notice given by a party under the SoW shall:
- 20.1.1 be in writing and in English;
- 20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 20.1.3 be sent to the relevant party at the address set out in the SoW.
- 20.2 Notices may be given, and are deemed received:
- 20.2.1 by hand: on receipt of a signature at the time of delivery;
- 20.2.2 by a next working day delivery service: at 9.00 am on the second Business Day after posting or;
- 20.2.3 by email to the email address set out in the SoW for service of notices.
- 20.3 Any change to the contact details of a party as set out in the SoW shall be notified to the other party in accordance with Clause 20.2 and shall be effective on the date specified in the notice as being the date of such change or if no date is so specified, five (5) Business Days after the notice is deemed to be received.
- 20.4 The provisions of this Clause 20 do not apply to notices given in legal proceedings or arbitration.
- 21. ANTI-BRIBERY**
- 21.1 For the purposes of this Clause 21 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Laws.
- 21.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate policies and procedures to prevent bribery and use all reasonable endeavours to ensure that all of that party's personnel and all of that party's sub-contractors involved in performing the SoW so comply.

- 21.3 Without limitation to Clause 21.2, neither party shall make or receive any bribe (as defined in the Bribery Laws) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 21.4 Each party shall immediately notify the other as soon as it becomes aware of a breach, or possible breach, of any of the requirements in this Clause 21.

22. WAIVER

- 22.1 A waiver of any right or remedy under the SoW or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the SoW or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the SoW or by law will prevent or restrict the further exercise of that or any other right or remedy.

23. FORCE MAJEURE

- 23.1 Provided it has complied with clause 23.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the SoW by a Force Majeure Event (the **Affected Party**), the Affected Party shall not be in breach of the SoW or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 23.2 The corresponding obligations of the other Party will be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 23.3 The Affected Party shall:
- 23.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the SoW; and
- 23.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 23.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 45 days, the Party not affected by the Force Majeure Event may terminate the SoW by giving 45 days' written notice to the Affected Party.

24. CONTRACT (RIGHTS OF THIRD PARTIES) ACT

- 24.1 No provision of the SoW will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 (**the Act**). This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act.

25. DISPUTE RESOLUTION

- 25.1 If a dispute arises out of or in connection with the SoW or the performance, validity or enforceability of the same (**Dispute**), then, except as expressly provided in this SoW, the parties will follow the procedure set out in this clause 25:
- 25.1.1 either Party will give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, TXP and the Customer will attempt in good faith to resolve the Dispute;

- 25.1.2 if TXP and the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute will be referred to a director of TXP and a director of the Customer who will attempt in good faith to resolve it; and
- 25.1.3 if the respective directors of TXP and the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR Notice**) to the other Party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 7 days after the date of the ADR Notice.
- 25.2 The commencement of mediation will not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 28 which clause will apply at all times.
- 25.3 If the Dispute is not resolved within 40 days after service of the ADR notice or either Party fails to participate or ceases to participate in the mediation before the expiry of that 40-day period, or the mediation terminates before the expiry of that 40-day period, the Dispute will be finally resolved by the courts of England and Wales in accordance with clause 28.
- 26. MODERN SLAVERY**
- 26.1 Both parties shall comply with the provisions of the Modern Slavery Act 2015.
- 27. CRIMINAL FINANCES ACT**
- 27.1 Each party shall not, and shall procure that its employees, agents, sub-contractors and contractors shall not, engage in any activity, practice or conduct which would constitute an offence and/or contravention of the Criminal Finances Act 2017.
- 28. GOVERNING LAW AND JURISDICTION**
- 28.1 The SoW and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with the SoW, its subject matter or formation (including non-contractual disputes or claims).
- 29. ENTIRE AGREEMENT**
- 29.1 The SoW, these Terms and the documents incorporated by reference into it, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into the SoW it does not rely on and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the SoW or any document incorporated into it. Each Party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the SoW. Nothing in this clause 29 will limit or exclude any liability for fraud.

SCHEDULE 1 - TRANSFER REGULATIONS

PART 1

S3.1.1 Where the Services are transferred from the Customer and/or Incumbent Supplier and the Transfer Regulations apply, the following terms and conditions and definitions apply (in addition to the definitions within the Terms):

Employees mean those employees whose contract of employment transfer to TXP from the Customer or Incumbent Supplier as at the Transfer Date;

Employee Liability Information means in respect of each of the Employees:

- (i) the identity and age of the Employee;
- (ii) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (iii) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (iv) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against TXP arising out of the Employee's employment with the Customer; and
- (v) information about any collective agreement which will have effect after the Transfer Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations;

Incumbent Supplier means any supplier providing services to the Customer before the Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of such sub-contractor);

Transfer Date means the date on which the Employees transfer to TXP; and

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.1.2 The Customer and TXP believe that, pursuant to the Transfer Regulations, as at the Transfer Date TXP will become the employer of the Employees.

S3.1.3 The Customer represents, warrants and undertakes on its behalf and on behalf of any Incumbent Supplier to TXP that:

- (a) no persons are employed or engaged in the provision of the Services other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Schedule 1;
- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable) are set out in Schedule 1;
- (d) there is not in existence any contract of employment with any Employee (or any contract for services with any individual who would be considered an Employee for the purposes of this Schedule 1) which cannot be terminated by three (3) months' notice or less without giving rise to the making of a payment in lieu of notice or a

claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

- (e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:
 - (i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives (where such regulations or directives continue to have legal force and effect in the United Kingdom and/or have been incorporated into national law within the United Kingdom) and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
 - (ii) maintained adequate and suitable records regarding the service of each of its employees;
 - (iii) calculated and paid all holiday pay for periods of holiday taken under Regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
 - (iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
 - (v) complied with all relevant orders and awards made under any statute affecting their conditions of service;
- (f) the Customer has not been involved in any industrial or trade disputes in the last three (3) years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of the SoW including the identity of TXP is likely to lead to any industrial dispute;
- (g) there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- (h) the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- (i) the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- (j) there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
- (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;

- (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Customer or TXP arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- (m) the Customer has provided the Employee Liability Information to TXP regarding each of the Employees;
- (n) the Employee Liability Information contains information as at a specified date not more than fourteen (14) days before the date on which the information was provided to TXP;
- (o) the Customer has notified TXP in writing of any change in the Employee Liability Information since the date on which it was provided; and
- (p) the Employee Liability Information was provided not less than 28 days before the Transfer Date.

S3.1.4 The Customer shall on its behalf and/or on behalf of any Incumbent Supplier indemnify TXP in full and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred by TXP in relation to the Customer's acts and omissions relating to the Employees occurring on or after the Transfer Date and/or for any claims in respect of emoluments and outgoings (including wages, bonus, tax, pension contributions and otherwise) accrued and payable after the Transfer Date.

S3.1.5 The Customer shall indemnify TXP in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by TXP including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination by the Customer of the employment of any of the Employees;
- (b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by TXP by virtue of the Transfer Regulations (or in the event that it is found that the Transfer Regulations do not apply, would have been deemed to have been done by TXP had the Transfer Regulations actually applied); and
- (c) any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against TXP by virtue of the Transfer Regulations (**Claims**) provided that such costs, claims, expenses and liabilities are not incurred as a result of any act or omission of TXP.

S3.1.6 The Customer shall procure on its behalf and on behalf of any Incumbent Supplier that their employees, sub-contractors, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as TXP shall from time to time reasonably request;
- (b) provide free of charge all such assistance and information as TXP may reasonably request relating to the Claims to enable the Claims to be pursued;
- (c) subject to any restriction imposed by law, provide TXP, its legal and other advisers with access to all documents, records or other information held by the Customer relating to the Claims;

- (d) provide TXP and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist TXP with the preparation of its cases in relation to the Claims;
- (e) permit and require such employees as TXP and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as TXP and/or its legal or other professional advisers may reasonably require;
- (f) provide such other assistance as TXP may reasonably request in order to ensure the due and timely prosecution of the Claims;
- (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing TXP and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining TXP's consent to such waiver, such consent not to be unreasonably withheld.

S3.1.7 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Transfer Date and by TXP with effect from the Transfer Date.

S3.1.8 TXP shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) any failure by TXP to comply with its obligations pursuant to the Transfer Regulations; and
- (b) anything done or omitted to be done by TXP in respect of any of the Employees whether before or after the Transfer Date, provided that such acts and omissions by TXP do not occur as result of any act or omission of the Customer in relation to its own obligations under the Transfer Regulations.

S3.1.9 During the term of the SoW TXP shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services under the SoW (subject to applicable Data Protection Laws).

S3.1.10 If the Transfer Regulations applies to transfer the employment of any person employed by the Customer or any Incumbent Supplier to TXP, then if TXP shall serve a notice terminating the employment of such person within six (6) months after the date of such transfer, the Customer shall indemnify TXP (for itself and any Incumbent Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which TXP is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

SCHEDULE 1 – TRANSFER REGULATIONS

PART 2

S3.2.1 Where some or all the Services are transferred to the Customer and/or Replacement Supplier on cessation of the Services and the Transfer Regulations apply, the following terms and conditions and definitions apply (in addition to the definitions within these Terms):

Replacement Supplier means another party chosen by the Customer to take over the provision of all or part of the Services;

Returning Employees means those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by TXP wholly and/or mainly in the Services immediately before the Subsequent Transfer Date;

Subsequent Transfer Date means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between TXP and the Customer and/or a Replacement Supplier (as the case may be); and

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.2.1 The parties acknowledge and agree that where all or part of the Services cease to be provided by TXP for any reason and where all or part of the Services are subsequently provided by the Customer and/or a Replacement Supplier, there may be a relevant transfer of the Returning Employees to the Customer and/or the Replacement Supplier for the purposes of the Transfer Regulations. If there is such a transfer, the employment of the Returning Employees shall transfer to the Customer and/or the Replacement Supplier in accordance with the Transfer Regulations with effect from the Subsequent Transfer Date.

S3.2.2 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Transfer Regulations, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Customer and/or the Replacement Supplier.

S3.2.3 TXP shall not later than six (6) months prior to the cessation of all or part of the Services, or termination or expiry of the SoW to the extent lawfully permitted provide the Customer with the following details:

- (a) a list of those personnel engaged in the Services (**Potential Returning Employees**);
- (b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
- (c) terms and conditions of employment of the Potential Returning Employees, including any particulars that TXP is obliged to give under section 1 of the Employment Rights Act 1996;
- (d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
- (e) any claims, current or which TXP has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
- (f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and

- (g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to the Transfer Regulations.

TXP shall provide updates of the details listed above at regular intervals to be specified by the Customer.

S3.2.6 TXP shall indemnify the Customer (both for itself and a Replacement Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Customer and/or a Replacement Supplier in connection with or as a result of:

- (a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee, whether in contract, tort, under statute, pursuant to European law (to the extent that such law has continuing legal effect in the United Kingdom) or otherwise, arising from any act, fault or omission of TXP on or before the Subsequent Transfer Date;
- (b) any failure by TXP to comply with its obligations under regulations 13 and 14 of the Transfer Regulations, or any award of compensation under regulation 15 of the Transfer Regulations, save where such failure arises from the failure of the Customer and/or Replacement Supplier to comply with its or their duties under regulation 13 of the Transfer Regulations; and
- (c) any claim by any person who transfers or alleges that they have transferred to the Customer or the Replacement Supplier but whose name is not included in the list of Returning Employees.

S3.2.7 If the Transfer Regulations applies to transfer the employment of any person employed by TXP to the Customer or any Replacement Supplier then if the Customer or such Replacement Supplier shall serve a notice terminating the employment of such person within six (6) months after the date of such transfer, TXP shall indemnify the Customer (for itself and any Replacement Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Customer is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

SCHEDULE 2 – DATA PROTECTION

PART A

Data Processing Obligations

S4.1. Definitions

S4.1.1 In addition to terms defined in the Terms, in this Schedule the terms **Controller**, **Data Subject**, **International Organisation**, **Personal Data Breach**, **Processor**, and **Processing** shall have the meaning given in applicable Data Protection Laws from time to time, (and related expressions, including **process**, **processed** and **processes** shall be construed accordingly);

Protected Data means Personal Data received from or on behalf of the Customer, or otherwise obtained by the RPO Provider (or anyone acting on its behalf) in connection with the performance of the RPO Provider's obligations under the SoW;

Sub-Processor means any party engaged by the Processor (or by any other Sub-Processor) for carrying out any Processing activities in respect of the Protected Data on behalf of the Controller; and

Data Protection Supervisory Authority means the UK's Information Commissioner's Office or applicable statutory body in any other jurisdiction in which the Services are performed;

S4.1.2 For the purposes of Processing Protected Data pursuant to the SoW, the parties agree that the Customer is the Controller and that TXP is the Processor.

S4.2. Controller's obligations

S4.2.1 The Controller warrants, represents and undertakes that at all times:

S4.2.1.1 the Processing of all Protected Data (if processed in accordance with the SoW) shall comply in all respects with Data Protection Laws, including in terms of its collection, use and storage;

S4.2.1.2 fair Processing and all other appropriate notices have been provided to the Data Subjects of the Protected Data (and all necessary consents from such Data Subjects obtained and at all times maintained) to the extent required by Data Protection Laws in connection with all Processing activities in respect of the Protected Data which may be undertaken by the Processor and its Sub-Processors in accordance with the SoW;

S4.2.1.3 the Protected Data is complete, accurate and up to date;

S4.2.1.4 except to the extent resulting from transfers to international recipients made by the Processor or any Sub-Processor, the Protected Data is not subject to the laws of any jurisdiction outside of the United Kingdom;

S4.2.1.5 it shall establish and maintain adequate security measures to safeguard the Protected Data in its possession or control (including from unauthorised or unlawful destruction, corruption, processing or disclosure);

- S4.2.1.6 it shall maintain complete and accurate backups of all Protected Data provided to the Processor (or anyone acting on its behalf) so as to be able to immediately recover and reconstitute such Protected Data in the event of loss, damage or corruption of such Protected Data by the Processor or any other person;
- S4.2.1.7 all instructions given by it to the Processor in respect of Personal Data shall at all times be in accordance with Data Protection Laws;
- S4.2.1.8 it will ensure that it has all necessary appropriate consents and/or notices in place to enable lawful transfer of Protected Data to the Processor (and its Sub-Processors) for the duration of the relevant SoW and that it has a valid legal basis for the Processing of Protected Data in order that the Processor may lawfully process the Protected Data in accordance with these Terms on the Processor's behalf;
- S4.2.1.9 the Processing (including transfer to the Processor) of Protected Data for the purposes of the SoW does not violate any laws or rights of any third party, including without limitation any Intellectual Property rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies; and
- S4.2.1.10 it shall not unreasonably withhold, delay or condition its agreement to any Change requested by the Processor in order to ensure the Services and the Processor (and each Sub-Processor) can comply with Data Protection Laws.

S4.3. Processor's obligations

S4.3.1 Insofar as the Processor processes Protected Data on behalf of the Controller, the Processor shall:

- S4.3.1.1 Process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the SoW;
- S4.3.1.2 unless required to do otherwise by Applicable Law, Process in accordance with Part B of this Schedule (and shall ensure Processor Personnel only Process) the Protected Data except to the extent that alternative Processing instructions are agreed between the parties in writing or otherwise required by Applicable Law;
- S4.3.1.3 taking into account the nature of the Processing, provide reasonable assistance to the Controller to enable the Controller to respond to requests from a Data Subjects seeking to exercise their rights under Data Protection Laws. In the event that such request is made directly to the Processor, the Processor shall promptly inform the Controller of the same;
- S4.3.1.4 to the extent required by Data Protection Laws, taking into account the nature of the Processing and the information available to the Processor, provide the Controller with commercially reasonable assistance with data protection impact assessments (as such term is defined in Data Protection Laws) or prior consultations with any Data Protection Supervisory Authority that the Controller is required to carry out under Data Protection Laws;
- S4.3.1.5 record and promptly (and in any event within five (5) Business Days of receipt) refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Controller which relate (or which may relate) to any Protected Data. The Processor will not respond to any requests or communications

without the Controller's express written approval and strictly in accordance with the Controller's instructions unless and to the extent required by law;

S4.3.1.6 promptly (and in any event within forty eight (48) hours) notify the Controller if it (or any of its Sub-Processors or the Processor Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach (howsoever caused) in respect of any Protected Data; and

S4.3.1.7 provide, at the Controller's cost, all reasonable assistance and information as the Controller requires to report the circumstances referred to in paragraph S4.3.1.6 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

S4.4. Security

S4.4.1 The Processor shall implement and maintain the technical and organisational measures set out in **Error! Reference source not found.** of this Schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

S4.5. Sub-processing and personnel

S4.5.1 The Processor shall:

S4.5.1.1 not permit any Processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Controller;

S4.5.1.2 prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Protected Data, ensure each Sub-Processor is appointed under a binding written contract containing materially the same obligations as under this Schedule (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) and ensure each such Sub-Processor complies with all such obligations;

S4.5.1.3 remain liable to the Controller under the SoW for all the acts and omissions of each Sub-Processor as if they were its own; and

S4.5.1.4 ensure that all persons authorised by the Processor or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

S4.6. Further Sub-Processors

S4.6.1 The Controller shall reply to any communication from the Processor requesting any further prior specific authorisation of a Sub-Processor pursuant to paragraph S4.5.1.1 of this 0 promptly and in any event within ten (10) Business Days of request from time to time. The Controller shall not unreasonably withhold, delay or condition any such authorisation.

S4.7. International transfers

S4.7.1 The Processor shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Controller except where required by Applicable Law.

S4.8. Audits

S4.8.1 The Processor shall, in accordance with Data Protection Laws, make available to the Controller on request such information that is in its possession or control as is necessary to demonstrate the Processor's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of UK GDPR, and allow for and contribute to audits, including inspections, by the Controller for this purpose (subject to a maximum of *one (1)* audit request in any 12 month period under this paragraph S4.8.1).

S4.9. Return of Protected Data

S4.9.1 At the Controller's cost, expense and option, upon the termination of the Services relating to the Processing of Protected Data (the **Processing End Date**), the Processor shall either return all of the Protected Data to the Controller or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires the Processor to store such Protected Data. To the extent the Controller has not notified the Processor within one week of the Processing End Date that it requires the return of any Protected Data the Processor is irrevocably authorised to securely dispose of the Protected Data at the Controller's cost and expense.

S4.10. Survival

S4.10.1 This Schedule shall survive termination or expiry of the SoW:

S4.10.1.1 indefinitely in the case of paragraph S4.9 of this 0; and

S4.10.1.2 in the case of all other paragraphs and provisions of this Schedule, until the later of the termination or expiry of this Agreement or return or secure deletion or disposal of the last of the Protected Data in the Processor's (or any of its Sub-Processor's) possession or control in accordance with the SoW.