

TXP Technology 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 Data Protection Laws:

(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Change: an amendment to the scope, nature or execution of the Services under the SoW.

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the change control procedure in clause 9.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5 and the SoW.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the UK GDPR.

Customer: the person or firm who purchases Services from TXP.

Customer Default: has the meaning set out in clause 4.3.

Data Protection Particulars: the data protection particulars (if any) set out in the SoW.

Deliverables: the deliverables set out in a SoW.

Developed Software: software programs developed by TXP specifically for the Customer as detailed in a SoW.

Documents: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by TXP as specified in a SoW.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Force Majeure Event: 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.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software and database rights.

Licensed Software: the TXP Pre-existing Software.

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.

Normal Working Hours: the hours 9:00am to 5:30pm GMT on a Business Day.

Services: the services, including any Deliverables, supplied by TXP to the Customer as described in the SoW which may include TXP Bespoke Software Development Services.

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

SoW Commencement Date: the date of commencement of the SoW as set out in the SoW.

Terms: these terms and conditions as amended from time to time in accordance with clause 19.

Tools: any tools and know-how developed, and methods invented, by TXP in the course of or as a result of carrying out the Services, whether or not developed or invented specifically or used exclusively to carry out the Services.

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

TXP Bespoke Software: as defined in Schedule 2.

TXP Bespoke Software Development Services: the services provided pertaining to the development of the TXP Bespoke Software where described in a SoW and provided by TXP pursuant to Schedule 2.

TXP Materials: has the meaning set out in clause 4.1.10.

TXP Pre-existing Software: the software programs proprietary to TXP which are to be provided to the Customer without modification as listed in a SoW.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Virus: any thing or device (including any software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise) or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and Vulnerabilities will be construed accordingly.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

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.

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. **Basis of contract**

2.1 These Terms are incorporated into and apply to the SoW entered into between TXP and the Customer. Schedule 2 shall apply where the SoW states that TXP Bespoke Software Development Services are being provided.

2.2 These Terms apply to the SoW to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. **Supply of Services**

3.1 TXP will supply the Services to the Customer in accordance with the SoW in all material respects.

3.2 TXP will use all reasonable endeavours to meet any performance dates specified in the SoW, but any such dates shall be estimates only and time will not be of the essence for performance of the Services.

3.3 TXP reserves the right to amend the SoW if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and TXP will notify the Customer in any such event.

3.4 TXP warrants to the Customer that the Services will be provided using reasonable care and skill.

4. **Customer's obligations**

4.1 The Customer will:

4.1.1 ensure that the terms of the SoW are complete and accurate;

4.1.2 co-operate with TXP in all matters relating to the Services;

4.1.3 make available to TXP, at least one Customer contact, during Normal Working Hours with sufficient knowledge of the Services described in the SoW to provide information and assistance to enable TXP to complete its obligations and authority to approve any Change requests;

4.1.4 provide TXP, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, power, cabling, communication and other facilities as reasonably required by TXP;

4.1.5 provide TXP on a timely basis, with such information and materials as TXP may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.6 (if applicable) prepare the Customer's premises for the supply of the Services to include (but not being limited to) maintaining at all times a safe and proper operating environment;

- 4.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 4.1.8 regularly back up all files and data;
 - 4.1.9 comply with all applicable laws, including health and safety laws;
 - 4.1.10 keep all materials, equipment, documents and other property of TXP (**TXP Materials**) at the Customer's premises in safe custody at its own risk, maintain TXP Materials in good condition until returned to TXP, and not dispose of or use TXP Materials other than in accordance with TXP's written instructions or authorisation; and
 - 4.1.11 comply with any additional obligations as set out in a SoW.
- 4.2 The Customer will procure for itself at its own expense any third-party software licences stated within the SoW as being required by the Customer and necessary to enable TXP to provide the Services and the Customer will at all times comply with such third-party licence terms.
- 4.3 If TXP's performance of any of its obligations under the SoW is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 4.3.1 without limiting or affecting any other right or remedy available to it, TXP will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays TXP's performance of any of its obligations;
 - 4.3.2 TXP will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from TXP's failure or delay to perform any of its obligations as set out in this clause 4.3; and
 - 4.3.3 the Customer will reimburse TXP on written demand for all and any costs or losses sustained or incurred by TXP arising directly or indirectly from the Customer Default, following which TXP may, but is not obliged to send to the Customer a detailed Change Control Note setting out details of any such additional Charges.
- 4.4 Responsibility for any outcome which results from a decision taken on the basis of advice given by TXP under the SoW or otherwise, whether verbally or in writing, will remain with the Customer.
5. **Charges and payment**
- 5.1 The Charges for the Services will be set out in the SoW. Such Charges shall be valid for the 12-month period beginning on the start date of delivery of the Services to which the SoW relates. TXP may increase the Charges on each anniversary of the start date of delivery in line with the average percentage increase (if any) in the average weekly earnings (**AWE**) for the Information and Communication industry by reference to the most recent figures (EARN03, AWE by Industry, category "J", not seasonally adjusted, excluding bonuses but including arrears) published by the UK Office for National Statistics (or any successor index or body) over the preceding 12-month period by reference to the most recently published monthly growth figures. TXP will provide the Customer with an updated rate card detailing the Charges following such increase.

- 5.2 Where specified in the SoW, TXP will be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom TXP engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by TXP for the performance of the Services, and for the cost of any materials.
- 5.3 TXP will invoice the Customer at the intervals specified in the SoW and if no such intervals are specified, on completion of the Services. In the absence of any such specified interval, TXP will invoice the Customer monthly in arrears.
- 5.4 Unless otherwise stated in the SoW, the Customer will pay each invoice submitted by TXP:
- 5.4.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by TXP and confirmed in writing to the Customer; and
 - 5.4.2 in full and in cleared funds to a bank account nominated in writing by TXP, and time for payment will be of the essence of the SoW.
- 5.5 All amounts payable by the Customer under the SoW are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the SoW by TXP to the Customer, the Customer will, on receipt of a valid VAT invoice from TXP, pay to TXP such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to TXP under the SoW by the due date, then, without limiting any other remedies that TXP may have, the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the SoW will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8 Any advance deposits paid against charges due to TXP for Services or Deliverables provided under the SoW will be applied in relation to charges raised for those Services and Deliverables only.
- 5.9 If the Customer disputes any invoice raised by TXP it will notify TXP promptly and in any event within 5 Business Days of receipt. In the event that the Customer acting reasonably disputes an invoice or any part of it, the Customer will pay the undisputed part of such invoice in accordance with these conditions and the disputed part of the invoice will be dealt with in accordance with the process set out in clause 14 and any amount of the disputed part of the invoice due following the process in clause 14 will be payable 14 days from resolution of the dispute as applicable.
- 6. Intellectual Property Rights**
- 6.1 The rights granted pursuant to this clause 6, shall be subject to the limitations detailed in paragraph 4 (Ownership) of Schedule 2 (where applicable). Intellectual Property Rights arising out of the Services (excluding the TXP Bespoke Software Development Services where applicable) as detailed in the relevant SoW shall, further to payment of all sums due to TXP under the SoW, vest in the Customer.
- 6.2 The Customer grants to TXP a fully paid-up, non-exclusive, royalty-free licence to use, copy and modify:
- 6.2.1 any materials provided by the Customer to TXP for the term of the SoW for the purpose of providing the Services to the Customer or its nominee; and

6.2.2 any Intellectual Property Rights arising out of the Services for the purpose of providing other parts of the Services to the Customer or its nominee.

6.3 The Customer acknowledges and accepts that prior to entering into the SoW, TXP has developed tools, ideas, concepts, processes, methodologies, software and know-how (**TXP Components**), some of which TXP may utilise in connection with its provision of the Services. The Intellectual Property Rights in the Licensed Software, TXP Components and the Tools are and shall remain the property of TXP and the Customer acquires no rights in or to the Licensed Software, TXP Components and the Tools other than those expressly granted by these Terms or in a SoW.

7. **Data protection**

Both parties will comply with all applicable requirements of Applicable Data Protection Laws together with the provisions of Schedule 1.

8. **Export**

8.1 Neither Party will in any circumstances export, directly or indirectly, any technical data acquired from the other Party under the SoW (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 United States or any other 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.

8.2 Each Party undertakes:

8.2.1 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 that in clause 8.1; and

8.2.2 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.

9. **Change control**

9.1 Unless stated otherwise, Changes shall be dealt with in accordance with this clause 9.

9.2 Either Party may submit a written request for Change to the other Party in accordance with this clause 9 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.

9.3 If the Customer requests a Change:

9.3.1 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

9.3.2 within 5 Business Days of receipt of a request, TXP will, unless otherwise agreed, send to the Customer a Change Control Note.

9.4 If TXP requests a Change, it will send to the Customer a Change Control Note.

9.5 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:

- 9.5.1 description of the Change;
 - 9.5.2 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;
 - 9.5.3 provision for signature by the Customer and TXP.
- 9.6 If, following the Customer's receipt of a Change Control Note pursuant to clause 9.3 or clause 9.4:
- 9.6.1 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.
 - 9.6.2 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 14.
- 9.7 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 9.
10. **Limitation of liability**
- 10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the SoW including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in the SoW limits any liability which cannot legally be limited, including (but not limited to) liability for:
- 10.2.1 death or personal injury caused by negligence;
 - 10.2.2 fraud or fraudulent misrepresentation; and
 - 10.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.3 Subject to clause 10.2, TXP's total liability to the Customer in respect of all breaches of duty occurring within any Contract Year will not exceed the Cap.
- 10.4 In clause 10.3:
- 10.4.1 **Cap:** The Cap is 75% of the Total Charges as set out in the SoW in the Contract Year in which the breaches occurred.
 - 10.4.2 **Contract Year:** A Contract Year means a 12-month period commencing with the SOW Commencement Date or any anniversary of it; and
 - 10.4.3 **Total Charges:** This means all sums paid by the Customer and all sums payable under the SoW in respect of goods and services actually supplied by TXP, whether or not invoiced to the Customer.

10.5 Save where expressly provided to the contrary in the SoW the following types of loss and specific loss are wholly excluded by the parties:

- 10.5.1 loss of profits
- 10.5.2 loss of sales or business.
- 10.5.3 loss of agreements or contracts.
- 10.5.4 loss of anticipated savings.
- 10.5.5 loss of use or corruption of software, data or information.
- 10.5.6 loss of or damage to goodwill; and
- 10.5.7 indirect or consequential loss.

10.6 TXP has given commitments as to compliance of the Services with the SoW in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the SoW.

10.7 Unless the Customer notifies TXP that it intends to make a claim in respect of an event within the notice period, TXP will have no liability for that event. The notice period for an event will start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and will expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11. Termination

11.1 Without affecting any other right or remedy available to it, either Party may terminate the SoW with immediate effect by giving written notice to the other Party if:

- 11.1.1 the other Party commits a material breach of any term of the SoW and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing to do so;
- 11.1.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 11.1.3 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.4 the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the SoW has been placed in jeopardy.

11.2 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:

- 11.2.1 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

11.2.2 there is a change of control of the Customer.

11.3 Without affecting any other right or remedy available to it, TXP may suspend the supply of Services and cease related provision of the Licensed Software (if applicable) under the SoW or any other contract between the Customer and TXP if:

11.3.1 the Customer fails to pay any amount due under the SoW (or any other agreement between the parties) on the due date for payment;

11.3.2 the Customer becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.4; or

11.3.3 TXP reasonably believes that the Customer is about to become subject to any of them.

In the event of such, licences granted to the Customer herein shall terminate and the Customer shall forthwith cease all use of the Licensed Software (if applicable).

11.4 On termination of the SoW, howsoever arising, all other agreements then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such agreement, unless terminated in accordance with the terms of such agreement.

11.5 Termination of any other agreement between the parties shall not affect the SoW.

11.6 Any termination or expiry of the SoW shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or continuation in force of any other clauses or provisions of the SoW which are expressly or by implication intended to come into force or continue in force on or after termination of the SoW.

12. Consequences of termination

12.1 On termination of the SoW:

12.1.1 the Customer will immediately pay to TXP all of TXP's outstanding unpaid invoices and interest under the SoW and, in respect of Services supplied but for which no invoice has been submitted, TXP will submit an invoice, which will be payable by the Customer immediately on receipt;

12.1.2 the Customer will return all of TXP Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then TXP may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with the SoW.

12.2 Termination of the SoW will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the SoW which existed at or before the date of termination.

12.3 Any provision of the SoW that expressly or by implication is intended to come into or continue in force on or after termination of the SoW will remain in full force and effect.

13. Force majeure

13.1 Provided it has complied with clause 13.3, 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.

13.2 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.

13.3 The Affected Party shall:

13.3.1 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

13.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 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.

14. **Dispute resolution**

14.1 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 14:

14.1.1 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;

14.1.2 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

14.1.3 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.

14.2 The commencement of mediation will not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 26 which clause will apply at all times.

14.3 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 14.

15. **Assignment and other dealings**

15.1 Neither Party will without the other's consent assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the SoW.

16. **Confidentiality**

16.1 Each Party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by this clause 16. The Customer will treat as confidential all confidential information of TXP contained or embodied in the Documents or otherwise supplied to the Customer pursuant to the SoW. Each Party may disclose the other Party's confidential information (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the SoW and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each Party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 16.1. Neither Party will use the other Party's confidential information for any purpose other than to perform its obligations under the SoW. In the event of any conflict between the provisions of the SoW and any non-disclosure agreement entered into solely by the parties prior to the entire execution of the SoW, the SoW shall take precedence.

16.2 Notwithstanding the provisions of clause 16.1, the Customer shall not unreasonably refuse to agree to the following:

16.2.1 That TXP may announce the fact that it is providing the Services to the Customer;

16.2.2 That TXP may prepare press releases and appropriate publicity in relation to the Services;

16.2.3 To assist TXP with the preparation of a case study following completion of all or part of the Services;

16.2.4 That all material which has been authorised by the Customer may be used by TXP for the purpose of marketing (including being used on TXP's website, social media channels and the Internet generally);

16.2.5 To act as a reference site.

17. **Non-solicitation**

17.1 Subject to clause 17.4, to protect the legitimate business interests of TXP and its Affiliates, the Customer covenants with TXP for itself and as agent for each the Customer's Affiliates that it shall not and shall procure that none of the Customer's Affiliates shall (except with TXP's prior written consent):

17.1.1 attempt to solicit or entice away any Restricted Person from the employment or service of TXP or any of its Affiliates;

17.1.2 solicit or entice away any Restricted Person from the employment or service of TXP or any of its Affiliates;

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

17.1.4 in competition with the TXP and for services which are the same or similar to the Services under the corresponding SoW, solicit business from or have any dealings or contacts with, any person, firm, company or organisation which TXP or a TXP Affiliate has had contact or dealings with exclusively through the provision of the Services under the Agreement.

17.2 The Customer shall be bound by the covenants set out in clause 17.1 during the Relevant Period.

17.3 For the purposes of this clause 17:

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

17.3.2 the **Relevant Period** is the term of the SoW and for a period of six months after the SoW's termination or expiry.

17.4 The Customer 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 TXP or its Affiliates.

17.5 In the event that the Customer is found to be in breach of clause 17.1.1 to 17.1.3 (inclusive) then the Customer shall pay TXP by way of liquidated damages an amount equal to , as at the time of the breach i) in the case of an employee, their gross annual salary or ii) in the case of a contractor, 12 x monthly payments made in respect of services they have provided. This provision shall be without prejudice to the TXP's right to seek injunctive relief.

18. **Entire agreement**

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 18 will limit or exclude any liability for fraud.

19. **Variation**

Except as set out in the SoW or these Terms, no variation of the SoW will be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. **Waiver**

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.

21. **Severance**

If any provision or part-provision of the SoW is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 21 will not affect the validity and enforceability of the rest of the SoW.

22. Notices

22.1 Any notice given by a party under the SoW shall:

22.1.1 be in writing and in English;

22.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

22.1.3 be sent to the relevant party at the address set out in the SoW.

22.2 Notices may be given, and are deemed received:

22.2.1 by hand: on receipt of a signature at the time of delivery;

22.2.2 by a next working day delivery service: at 9.00 am on the second Business Day after posting or;

22.2.3 by email to the email address set out in the SoW for service of notices.

22.3 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 22.2 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.

22.4 The provisions of this Clause 22 do not apply to notices given in legal proceedings or arbitration.

23. Relationship of Parties

Nothing in the SoW is intended to, or shall operate to, create a partnership between its Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third-party rights

Unless it expressly states otherwise, the SoW does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the SoW.

25. Governing law

The SoW, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction.

Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the SoW or its subject matter or formation.

SCHEDULE 1 Data Protection

1. For the purposes of this Schedule 1, the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and Processing shall have the meaning given to them in the UK GDPR.
2. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Schedule 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
 - 2.1 The parties have determined that, for the purposes of Applicable Data Protection Laws:
 - 2.1.1 TXP shall process the Personal Data as set out in paragraph 1.1 of the Data Protection Particulars as Processor on behalf of the Customer; and
 - 2.1.2 TXP shall act as Controller of the Personal Data set out in paragraph 1.2 of the Data Protection Particulars.
 - 2.1 Should the determination in paragraph 2.1 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this Schedule 1 and the Data Protection Particulars.
3. The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by TXP in connection with the Processing of Supplier Personal Data.
4. Without prejudice to the generality of paragraph 2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of TXP Personal Data and Customer Personal Data to TXP or lawful collection of the same by TXP for the duration and purposes of the SoW.
5. In relation to the Customer Personal Data, the Data Protection Particulars sets out the scope, nature and purpose of Processing by TXP, the duration of the Processing and the types of Personal Data and categories of Data Subject.
6. Without prejudice to the generality of paragraph 2, TXP shall, in relation to Customer Personal Data:
 - 6.1 process that Customer Personal Data only on the documented instructions of the Customer unless TXP is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where TXP is relying on Applicable Laws as the basis for Processing Customer Processor Data, TXP shall notify the Customer of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. TXP shall inform the Customer if, in the opinion of TXP, the instructions of the Customer infringe Applicable Data Protection Laws;
 - 6.2 implement the technical and organisational measures set out in the Data Protection Particulars to protect against unauthorised or unlawful Processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are 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;
 - 6.3 ensure that any personnel engaged and authorised by TXP to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 6.4 assist the Customer insofar as this is possible (taking into account the nature of the Processing and the information available to TXP), and at the Customer's cost and written request, in responding to any request from a Data Subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, Breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 6.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach involving the Customer Personal Data;

- 6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the SoW unless TXP is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this paragraph 6.6 Customer Personal Data shall be considered deleted where it is put beyond further use by TXP; and
- 6.7 maintain records to demonstrate its compliance with this Schedule 1.
7. The Customer provides its prior, general authorisation for TXP to:
 - 7.1 appoint Processors to process the Customer Personal Data, provided that TXP:
 - 7.1.1 shall ensure that the terms on which it appoints such Processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on TXP in this Schedule 1;
 - 7.1.2 shall remain responsible for the acts and omission of any such Processor as if they were the acts and omissions of TXP; and
 - 7.1.3 shall inform the Customer of any intended changes concerning the addition or replacement of the Processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to TXP's reasonable satisfaction, that the objection is due to an actual or likely Breach of Applicable Data Protection Law, the Customer shall indemnify TXP for any losses, damages, costs (including legal fees) and expenses suffered by TXP in accommodating the objection.
 - 7.2 transfer Customer Personal Data outside the UK as required for the Purpose, provided that TXP shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of TXP, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
8. Either party may, at any time on not less than 30 days' notice, revise this Schedule 1 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the SoW).
9. TXP's liability for losses arising from breaches of this Schedule 1 is as set out in clause 10.

Schedule 2 - TXP Bespoke SOFTWARE Development Services TERMS

This Schedule 2 shall apply where a SoW states that TXP Bespoke Software Development Services are to be provided. Note that the additional definitions as set out in Annex 1 to this Schedule 2 shall apply in this Schedule 2 and elsewhere in these Terms as appropriate.

1. TXP Bespoke Software

- 1.1 TXP will supply the TXP Bespoke Software Development Work and the Documents in accordance with the SoW (including the further detail provided in this Schedule 2).
- 1.2 TXP will work with the Customer to develop and agree the Technical Specification.
- 1.3 TXP will carry out the TXP Bespoke Software Development Work with reasonable diligence and despatch, and with reasonable skill and expertise, and will use its reasonable endeavours to provide the Bespoke Software, in accordance with the Technical Specification in all material aspects, by the Completion Date.
- 1.4 If agreed in a SoW, TXP will provide the Third-Party Software to the Customer under the standard licence terms provided by the relevant third parties, copies of which will be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms. TXP does not warrant the Third-Party Software and will not be liable for any errors or defects in such Third-Party Software or for any non-performance thereof. Any claim based on, related to or arising out of the use of any Third-Party Software will be governed exclusively by the terms of the Customer's engagement with the licensor.
- 1.5 TXP will provide the TXP Pre-existing Software, the Developed under the SoW (including the further detail provided in this Schedule 2).
- 1.6 If the delivery of the TXP Bespoke Software under this Schedule 2 is delayed at the request of the Customer, or because of its acts or omissions, and TXP can demonstrate that the delay has resulted in an increase in cost to TXP of carrying out its obligations, TXP may, at its sole discretion, notify the Customer that it wishes to increase the Charges by an amount not exceeding any such demonstrable cost. TXP may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.
- 1.7 The Customer will comply with its obligations set out in a SoW.
- 1.8 Any dates quoted for delivery of the TXP Bespoke Software Development Work are approximate only, and the time of delivery is not of the essence. TXP will not be liable for any delay in delivery of the TXP Bespoke Software Development Work that is caused by an event, circumstance or cause within the scope of clause 13 or the Customer's failure to provide TXP with adequate instructions.

2. Acceptance Tests

- 2.1 TXP will:
 - 2.1.1 if specified in a SoW, in conjunction with the Customer, carry out the Acceptance Tests; and
 - 2.1.2 use its reasonable endeavours to provide the TXP Bespoke Software Ready For Service by the Completion Date.
- 2.2 The parties will agree user acceptance criteria and test data for the Acceptance Tests for the TXP Bespoke Software detailed within a SoW. These criteria and data will be such as are reasonably required to show that the TXP Bespoke Software complies with the Technical Specification. TXP will provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties will use best endeavours to agree the Acceptance Tests for the TXP Bespoke Software detailed within a relevant SoW but failing that, as soon as possible after the SoW is signed.
- 2.3 If any module of the TXP Bespoke Software fails to pass the Acceptance Tests, the Customer will, within 5 days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). TXP will assess any failures, and, if judged to have been caused by a Defect or deficiency, remedy these as part of the development cycle. If judged to be a change to the original agreed Technical Specification, then TXP will discuss the requirement with the Customer, and, if it seen to be necessary, will

raise a Change Control Note and develop the required functionality. The relevant test(s) will be repeated by the Customer within a reasonable time.

2.4 If any module of the TXP Bespoke Software fails in some material respect to pass any repeated Acceptance Tests within 4 weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to TXP, choose at its sole discretion:

2.4.1 to fix a new date for carrying out further tests on the module of the TXP Bespoke Software on the same terms and conditions. If the module of the TXP Bespoke Software fails, such further tests then the Customer may request a repeat test under this paragraph 2.4 **Error! Reference source not found.**;

2.4.2 to permit installation of the module of the TXP Bespoke Software subject to such change of acceptance criteria; or

2.4.3 if TXP is unable to correct material defects within a period of 3 months from the end of Acceptance Tests, to reject the TXP Bespoke Software as not being in conformity with the SoW, in which event the Customer may terminate the SoW.

3. **Acceptance**

Acceptance of the TXP Bespoke Software will be deemed to have occurred on whichever is the earliest of:

3.1 the signing by the Customer of an acceptance certificate for the final module of the TXP Bespoke Software to pass the Acceptance Tests;

3.2 the expiry of 5 days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under paragraph 2.3;

3.3 the use in a live environment of the TXP Bespoke Software by the Customer in the normal course of its business.

4. **Ownership**

4.1 Intellectual Property Rights in the Developed Software as detailed in the relevant SoW shall, further to payment of all sums due to TXP under the SoW vest in the Customer.

4.2 The Customer acquires no rights in any other software made available to the Customer or the Documents other than the Developed Software pursuant to paragraph 4.1 above or as expressly granted elsewhere in these Terms or the SoW.

4.3 The Customer will use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Licensed Software and will promptly report to TXP any such infringement that comes to its attention. The Customer will not permit third parties (other than the employees and agents of the Customer) to have access to the Licensed Software, without the prior written consent of TXP.

4.4 The Customer acknowledges and accepts that the rights granted to it pursuant to clause 6 (Intellectual Property Rights) shall not impact or erode the rights of TXP or any relevant third party as owners of the Intellectual Property Rights in the Licensed Software, TXP Components and the Tools. For the avoidance of doubt, in the event of conflict, this paragraph 4 of Schedule 2 shall take precedence over clause 6.

4.5 The Customer acknowledges that due to the nature of 'low-code' environments that may be used in the performance of the Bespoke Software Development Services, Developed Software code may not be unique and other TXP customers may receive similar code from TXP however TXP warrants and undertakes that the code in Developed Software shall not be intentionally copied for use with another customer.

5. **Licensed Software and Documents**

5.1 Provided that the Customer is not in breach of the SoW and all payments have been made in full to TXP, TXP grants, subject to the terms of this Schedule 2 and elsewhere in the SoW, the Customer the non-exclusive right:

5.1.1 to use the Licensed Software and the Documents for any purpose related to its business and further terms of such licence may be set out in the SoW; and

- 5.1.2 subject to paragraph 4.4 to sub-license the Licensed Software to any end user provided that its end-user licence agreement terms include and are not inconsistent with the minimum terms and conditions specified by TXP from time to time.
- 5.2 The Customer will comply with the Third-Party Licences and will indemnify and hold TXP harmless against any loss of damage that it may suffer or incur as a result of the Customer's breach of such terms.
- 5.3 TXP may treat the Customer's breach of any Third-Party Licence as a breach of the SoW.
- 5.4 On termination of the licence described at paragraph 5.1 , the Customer will either return to TXP or, at TXP's option, destroy all material copies of the Licensed Software and Documents and will ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.
- 6. Transfer or reproduction of Licensed Software**
- 6.1 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with the SoW and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 6.2 TXP will at all times own all copies of all or any part of the Licensed Software.
- 6.3 Subject to paragraph 5.1.2, the Customer will not:
- 6.3.1 sub-license, rent, lend, assign or transfer in any other way these terms and conditions or the Licensed Software to any person without the prior written consent of TXP; and
- 6.3.2 give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.
- 7. Use and Adaptation of Licensed Software**
- 7.1 The Customer may use the Licensed Software with other software.
- 7.2 The Customer may not make adaptations or variations of the Licensed Software without the prior consent of TXP.
- 7.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.
- 7.4 Where TXP suspends the supply of Services pursuant to clause 11.3, TXP shall also cease related provision of the Licensed Software (if applicable) under a SoW or any other contract between the Customer and TXP. In the event of such, licences granted to the Customer herein shall terminate and the Customer shall forthwith cease all use of the Licensed Software (if applicable).
- 8. Warranties**
- 8.1 Unless specified otherwise in a SoW, TXP warrants that:
- 8.1.1 the Licensed Software and Documents are proprietary to TXP and that, as far as it is aware, it has the right to license all UK Intellectual Property Rights in and to the Licensed Software and Documents to the Customer;
- 8.1.2 as far as it is aware, use of the Developed Software and the Licensed Software does not infringe the UK Intellectual Property Rights of any third party;
- 8.1.3 the Developed Software and the Licensed Software at the date of Acceptance and for 30 days after that date, will perform, in all material respects, in accordance with the Technical Specification.
- 8.2 The sole remedies for breach of the warranties in paragraph 8.1.1 and paragraph 8.1.2 are set out in paragraph 9.
- 8.3 The sole remedy for breach of the warranty under this paragraph 8 will be correction of Defects by TXP within a reasonable time from notification by the Customer of the Defect that constitutes such breach.

- 8.4 The warranties set out in paragraph 8.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the SoW. Without limitation, TXP specifically denies any implied or express representation that TXP Bespoke Software will be fit:
- 8.4.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Documents as being compatible with TXP Bespoke Software; or
 - 8.4.2 to operate uninterrupted or error-free.
- 8.5 TXP does not warrant or guarantee that it will be able to rectify all Defects.
- 8.6 Any unauthorised modifications, use or improper installation of the TXP Bespoke Software by, or on behalf of, the Customer will render all TXP's warranties and obligations under the SoW null and void.
- 8.7 TXP will not be obliged to rectify any particular Defect if attempts to rectify such Defect other than by normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of TXP.
- 8.8 Any Open-Source Software provided by TXP may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to paragraph 8.4.
- 8.9 Save in respect of any specific warranties given elsewhere in the SoW, TXP does not warrant or guarantee that the TXP Bespoke Software, when taken in whole or in part, will:
- 8.9.1 comply with Cybersecurity Law; or
 - 8.9.2 contain no Vulnerabilities,
- and it will be the Customer's sole responsibility to ensure that the Technical Specification detail all of the Customer's cybersecurity requirements, including any requirements that might be imposed on the Customer's business operations or systems under Cybersecurity Law, in sufficient detail so they can be implemented by TXP as part of the TXP Bespoke Software Development Work.
- 8.10 The Customer:
- 8.10.1 warrants to TXP that it will at all times comply with all applicable laws and regulations with respect to its activities under the SoW and in connection with any part of TXP Bespoke Software;
 - 8.10.2 will take reasonable steps not to introduce any virus or vulnerability to TXP Bespoke Software or the network and information systems of TXP; and
 - 8.10.3 will indemnify TXP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by TXP arising out of any non-compliance by the Customer with this paragraph 8.10.
- 8.11 Each Party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into the SoW, including any related SoW and that those signing a SoW are duly authorised to bind the Party for whom they sign.
- 9. Third party Intellectual Property Rights**
- 9.1 In the event that any third party makes a claim, or notifies an intention to make a claim, against the Customer in connection with any actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer's use of the Developed Software, Licensed Software or Documents ("**Claim**"), the Customer:
- 9.1.1 shall as soon as reasonably practicable, gives written notice of the Claim to TXP, specifying the nature of the Claim in reasonable detail;

- 9.1.2 shall not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of TXP (such consent not to be unreasonably conditioned, withheld or delayed);
 - 9.1.3 shall give TXP and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable TXP and its professional advisers to examine them and to take copies (at TXP's expense) for the purpose of assessing the Claim; and
 - 9.1.4 shall, subject to TXP providing security to the Customer, to the Customer's reasonable satisfaction, against any claim, liability, costs, expenses, damages or losses that may be incurred, takes such action as TXP may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.2 Without prejudice to paragraph 8.6, TXP will have no liability for any claim of infringement of Intellectual Property Rights:
- 9.2.1 caused or contributed to by the Customer's use of the TXP Bespoke Software in combination with software, operating systems or devices not supplied or approved in writing by TXP;
 - 9.2.2 based on use of any release or version of any part of the Licensed Software other than the latest release or version supplied or made available by TXP, if such claim could have been avoided by the use of such supplied release or version; or
 - 9.2.3 where the claim for infringement arises in respect of a feature of the TXP Bespoke Software that was specified by the Customer.
- 9.3 If use of the TXP Bespoke Software becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, TXP may:
- 9.3.1 replace all or part of the TXP Bespoke Software with functionally equivalent software or documents without any charge to the Customer;
 - 9.3.2 modify the TXP Bespoke Software as necessary to avoid such claim, provided that the TXP Bespoke Software (as modified) functions in substantially the same way as the TXP Bespoke Software before modification; and
 - 9.3.3 procure for the Customer a licence from the relevant claimant to continue using the TXP Bespoke Software.
- 9.4 The SoW and the licence to use the Licensed Software will be terminated if:
- 9.4.1 use of the TXP Bespoke Software is determined in a court of law to be infringing;
 - 9.4.2 TXP is advised by a barrister of at least 10 years' call that use or possession by the Customer of the TXP Bespoke Software and/or the Documents in accordance with the SoW is likely to constitute infringement of a third party's rights; or
 - 9.4.3 if an injunction or similar order is granted in connection with a claim of the types referred to in paragraph 9.1 which prevents or restricts the use or possession by the Customer of the TXP Bespoke Software and/or the Documents in accordance with this Schedule 2,
- and TXP is unable, after best efforts, to procure for the Customer the right to continue using the TXP Bespoke Software or to provide the Customer with functionally equivalent non-infringing software.
- 9.5 Nothing in this paragraph 9 will restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
10. **Agile Methodology**
- 10.1 If a SoW confirms that Agile Methodology will be used in connection with the supply of Services:
- 10.1.1 this paragraph **Error! Reference source not found.**10 will apply; and

- 10.1.2 such SoW will confirm the Sprint duration(s), the number of Sprints.
- 10.2 TXP will carry out the Sprints described in a SoW.
- 10.3 The parties may by agreement change the factors described in paragraph 10.1.2 and the priority of the Requirements included in the Product Backlog and delete Requirements from the Product Backlog.
- 10.4 The parties will use all reasonable endeavours to accommodate as much of the Product Backlog as possible into the Sprint Backlog, based on Requirement priority, Story Points, and the need to deliver on the Requirements included.
- 10.5 Once the Requirements to be included in each Sprint Backlog (“**Sprint Requirements**”) have been agreed:
 - 10.5.1 no alterations or additions may be made to those Sprint Requirements once the Sprint has commenced; and
 - 10.5.2 the Customer, TXP and other necessary parties will work closely during the Sprint and co-operate to achieve the Sprint Goal.
- 10.6 During each Sprint TXP will develop the TXP Bespoke Software in accordance with the Sprint Backlog and the SoW.
- 10.7 TXP will use all reasonable endeavours to achieve the Sprint Goal during the relevant Sprint.
- 10.8 Within 5 Business Days of the end of each Sprint, TXP will report to the Customer the outcome of the Sprint via a Sprint Review.
- 10.9 If either Party requests that a new Requirement be added to the Product Backlog:
 - 10.9.1 the parties will ensure that the Requirement is adequately defined;
 - 10.9.2 the parties will determine the number of Story Points for that Requirement;
 - 10.9.3 the Customer will prioritise the Requirement in relation to existing items in the Product Backlog;
 - 10.9.4 the Customer may request that TXP delivers such new Requirement as an additional Requirement in accordance with TXP’s then standard rates in force.
- 10.10 In the event that any addition or change of Requirement exceeds the agreed delivery capacity, then either Party may refer the issue to the Change Control procedure as detailed in clause 11.
- 10.10 The Customer acknowledges and agrees that, unless otherwise specified in the SoW, TXP is not committing to deliver the entire Product Backlog under the SoW.
- 10.11 TXP will not be liable for any failure to comply with its obligations under this paragraph **Error! Reference source not found.**10 in the event that such failure was caused or contributed to by any Relief Event.

Annex 1 to Schedule 2

Definitions

Acceptance Criteria: the acceptance criteria set out in a SoW.

Acceptance Tests: the acceptance tests agreed and set out in a SoW. Where the Agile Methodology is utilised, the tests set out in a SoW that are to be run on a particular Result by the Customer to determine whether it complies with the Acceptance Criteria and the expected results of those tests.

Agile Methodology: a specific method of executing software development projects utilised by TXP when specified in a SoW.

Completion Date: the estimated date specified in a SoW by which TXP is to provide the TXP Bespoke Software Ready For Service.

Cybersecurity Law: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Applicable Data Protection Laws, the Cybersecurity Directive (EU) 2016/1148, Commission Implementing Regulation (EU) 2018/151, the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Defect: an error in the TXP Bespoke Software that causes it to fail to operate substantially in accordance with the relevant Documents and/or other agreed specification.

TXP Bespoke Software: the TXP Pre-existing Software, the Third-Party Software, the Open-Source Software and the Developed Software.

TXP Bespoke Software Development Work: all the works, duties and obligations to be carried out by TXP under Schedule 2 and as described in a SoW pertaining to the TXP Bespoke Software to be provided as part of the Services.

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at www.opensource.org) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at www.gnu.org), or anything similar, included or used in, or in the development, compilation or links of the TXP Bespoke Software.

Product Backlog: Requirements of the solution, typically comprising, for example:

- (a) the Requirements to be completed, sorted in terms of priority, their respective Acceptance Criteria and any further details of these Requirements;
- (b) the Results to date; and
- (c) the Story Points for each Requirement.

Ready For Service: installed, tested and having passed or deemed to have passed the Acceptance Tests.

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under the SoW;
- (b) any error or malfunction in the business systems or any other software, hardware or systems for which TXP is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which TXP is not responsible; or
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to TXP which is reasonably required by TXP for the proper performance of its obligations under the SoW.

Requirement: the non-technical description of a requirement of the Customer, describing the intended operations, functions, performance and other characteristics of the TXP Bespoke Software (or part of it).

Result: the result of development work carried out under the SoW to meet a particular Requirement.

Sprint: a fixed period, as specified in a SoW, during which the TXP Bespoke Software is developed and tested in accordance with paragraph 10 of Schedule 2.

Sprint Backlog: the list of Requirements targeted for completion during the current Sprint.

Sprint Goal: the stated business objective of the relevant Sprint.

Sprint Results: the Results of the current Sprint.

Sprint Review: a demonstration by TXP to the Customer the achievements of a particular Sprint.

Story Points: a relative measure of the complexity of a specific Requirement.

Technical Specification: the specification of the TXP Bespoke Software contained in a SoW which also incorporates the Customer's business requirements regarding the TXP Bespoke Software.

Third-Party Licences: any Open-Source Software licences and any proprietary Third-Party Software licences.

Third-Party Software: the software programs proprietary to third parties which are to be provided to the Customer by TXP without modification as listed in a SoW.