

Master Service Agreement

Master Services Agreement

Agreed Terms

The following terms and conditions shall govern the provision and use of the Software and Services.

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this MSA:

Agreement:	means this MSA and all Orders entered into between the parties during the term of this MSA.
API:	means any application programming interface(s) operated or used by EPM for provision of the Software to the Customer.
Applicable Data Protection Laws:	means all applicable privacy and data protection laws, including the EU General Data Protection Regulation (Regulation 2016/679) (" GDPR "), the GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the DPA 2018 (" UK GDPR "), the Data Protection Act 2018 ("DPA 2018"), and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426)).
Authorised Users:	means those employees and independent contractors of the Customer who are authorised by the Customer to use the Software under this Agreement.
Background IPRs:	means all Intellectual Property Rights owned or created by a party prior to the Commencement Date or after the Commencement Date but independently of the Services.
Business Day:	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date:	means the commencement date for the Services as set out in an Order.
Customer:	means the entity set out in the Order.
Customer Data:	means any commercial or proprietary data which is uploaded or otherwise submitted to the Software directly by the Customer, its Authorised Users, or by EPM on the Customer's behalf, including any data submitted into the Software indirectly via any third party application used by the Customer excluding any Derived Data.
Customer Materials:	all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to EPM in connection with the Services, including the Customer Data.

Customer Personal Data:	any personal data which EPM processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.
Deliverables:	means any output of the Services to be provided by EPM to the Customer as specified in an Order (or otherwise agreed in writing) and any other documents, products and materials provided by EPM to the Customer in relation to the Services (excluding Customer Materials).
Derived Data:	means any data which is derived from the Customer's use of the Services or the processing by EPM of Customer Data, which shall include: (i) any data which is processed and stored as mathematical constructs; and (ii) statistical or aggregated data, but shall exclude any Personal Data.
Fair Usage Policy:	means the fair usage terms applicable to each Service as set out or referenced in the relevant Service Specification.
Fees:	means the sums payable for the Services as set out in an Order.
Force Majeure Event:	has the meaning given to it in clause 16.1.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order:	means the order form (including its schedules, annexes and appendices (if any)) ordering Services and entered into by or on behalf of the Customer and EPM, incorporating this MSA (and as varied between the parties by agreement in writing from time to time).
Services:	means the services to be provided by EPM to the Customer as set out in the Order and more particularly described in the relevant Service Specification(s), including the Software. By way of illustration only, Services may include: a) HR Essentials b) HR Advisory c) HR Partner d) Payroll and Pension Services e) Consultancy services
Service Specification(s):	means the specification(s) setting out the specific details of each of the Services as set out or referenced in the Order.

Software:	means EPM's software application known as EPM Connect (including any related API, app, or Website from time to time) provided as a SaaS platform to which Authorised Users on behalf of the Customer will be granted remote access pursuant to the terms and conditions of this Agreement.
Term:	has the meaning set out in clause 13.1
VAT:	value added tax or any equivalent tax chargeable in the UK or elsewhere

1.2 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

1.3 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.4 A reference to writing or written includes fax and email.

1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of Contract

2.1 The Customer may order Services at any point during the term of this Agreement using an Order. The Order constitutes an offer by the Customer to purchase Services in accordance with the terms of the Agreement and shall only be legally binding if and to the extent accepted by EPM.

2.2 This MSA applies to the Agreement 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.

2.3 In the event of any conflict in respect of the provision of this Agreement and/or documents referred to therein the following order of priority shall prevail (in descending order of priority):

- i. the Order;
- ii. the Service Specification(s); and
- iii. the MSA.

3. Access to the Software

3.1 Subject to the Customer paying the Fees and complying with the terms and conditions of this Agreement, EPM hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to permit the Authorised Users to use the Software [in the United Kingdom during the Term, solely for its own internal business purposes and in accordance with the relevant Fair Usage Policy.

3.2 The Customer shall not access, store, distribute or transmit any Viruses or any material during its use of the Software that is unlawful, harmful, infringing, offensive, discriminatory, or which facilitates illegal activity or depicts sexually explicit images or causes damage or injury to any person or property. EPM reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's and Authorised Users' access to any material that breaches the provisions of this clause 3.2.

3.3 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement, the Customer shall not, and shall not attempt to, copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means, or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software (including its object code and source code).

3.4 The Customer shall not, and shall not attempt to: (a) access all or any part of the Software in order to build a product or service which competes with the Software; (b) make the Software or any of the Services available to any third party except to Authorised Users; or (c) attempt to obtain, or assist any third party in obtaining, access to the Software, other than as provided under this clause 3.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify EPM.

3.6 The Customer acknowledges and agrees that each Authorised User must keep a secure password for their use of the Software which must be kept confidential and secure against unauthorised access or use (including by any other Authorised User).

3.7 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any affiliate, subsidiary or holding company of the Customer.

4. Supply of Services

4.1 EPM shall provide the Services to the Customer from the Commencement Date for the Term as set out in an Order or until terminated in accordance with clause 13 (Termination).

4.2 EPM shall (a) provide the Services to the Customer on and subject to the terms and conditions of this Agreement; and (b) use commercially reasonable endeavours to ensure that the Software materially conforms to the Services Specification.

4.3 EPM shall use reasonable endeavours to meet any performance dates or timelines specified in an Order and the Services Specifications but any such dates shall be estimates only and time for performance by EPM shall not be of the essence of this Agreement.

4.4 EPM reserves the right to amend the Services Specification(s) if necessary to (a) comply with any applicable law or regulatory requirement; or (b) if the amendment will not materially affect the nature or quality of Services and EPM shall notify the Customer in any such event. 4.5 Notwithstanding clause 4.2, the Customer acknowledges that the Software may evolve over time and that functionality may be added or removed from time to time.

4.6 EPM does not warrant that the Customer's use of the Software will be uninterrupted or error-free, or that the Software and/or the information or results obtained by the Customer through its use of the Software will meet the Customer's requirements. Subject to its obligations under Data Protection Legislation, EPM is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Customer Data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

4.7 EPM shall not be liable for any breach of its obligation under clause 4.2(b) to the extent any non-conformance with the Services Specification is caused by the Customer's use of the Software contrary to EPM's instructions, or modification or alteration of the Software by any party other than EPM or its duly authorised contractors or agents.

4.8 If the Software does not conform materially with the Services Specification, EPM will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the expected result or function stipulated in the Services Specification. Such correction or substitution constitutes the Customer's sole and exclusive remedy for such non-conformance.

4.9 This Agreement shall not prevent EPM from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.10 In providing the Services, EPM shall:

- (a) only use personnel who are suitably skilled and experienced to perform the tasks assigned to them;
- (b) use all reasonable endeavours to ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations under the Agreement;
- (c) comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- (d) If applicable, observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and are notified to EPM.

5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with EPM in all matters relating to the Services;
- (b) granting to EPM all necessary access to information and Customer Data as may be required by EPM from time to time to fulfil its obligations under this Agreement, including granting to EPM full and unrestricted access to the Customer's account in order for EPM to provide support for, or to fix any errors in, the Software;
- (c) if applicable, provide EPM, its employees, agents, consultants and subcontractors, with such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by EPM for the purposes of providing the Services, including to the Customer Background IPRs and the Customer Materials;
- (d) provide such necessary information and materials for the provision of the Services as EPM may reasonably request and ensure that such information is complete and accurate in all material respects;
- (e) 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;
- (f) comply with all applicable laws, including health and safety laws; and
- (g) carry out any other acts as are expressly allocated to the Customer in the Order.

5.2 The Customer shall be responsible for setting the access rights for each of its Authorised Users and shall ensure that all Authorised Users' use of the Software is strictly in accordance with the terms and conditions of this Agreement. The Customer shall be responsible for any Authorised User's breach of this Agreement.

5.3 The Customer is responsible for providing any Dependencies stated in the Order Form (if applicable) and shall ensure that its network and systems comply with the relevant specifications provided by EPM from time to time necessary for the operation of the Software. The Customer shall be solely responsible for procuring and maintaining all network connections and telecommunications links from its systems to EPM's data centres.

5.4 If EPM's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (**Customer Default**) then:

- (a) without prejudice to any other right or remedy it may have, EPM may suspend the 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 obligation in each case to the extent the Customer Default prevents or delays EPM's performance of any of its obligations;
- (b) EPM shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from EPM's failure or delay to perform any of its obligations as set out in this clause 5; and
- (c) the Customer shall reimburse EPM on written demand for any costs or losses sustained or incurred by EPM arising directly or indirectly from the Customer Default.

6. Suspension of Services

6.1 EPM may suspend the access to or use of the Software by any or all of the Authorised Users if EPM determines that use of the Services:

- (a) is in breach of this Agreement;
- (b) poses a security risk;
- (c) is adversely impacting or may adversely impact (as appropriate) the Services or any service provided by EPM to a third party;
- (d) where it is in the legitimate interests of EPM to do so, including where there is a reasonable risk that the Customer may default in the payment of the Fees,

and EPM shall use its reasonable endeavours to notify the affected Authorised Users before the suspension takes effect and as soon as reasonably practicable thereafter, and may use any reasonable means to do so.

6.2 Where EPM suspends access to or use of the Software under clause 6.1, the Customer remains responsible for all Fees.

7. Customer Data and Derived Data

7.1 The Customer shall own all right, title and interest in and to all the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data.

7.2 The Customer warrants and represents that it has the authority, including all necessary rights, licences, and permissions, to upload and use, and to permit EPM to use and process, the Customer Data in accordance with this Agreement.

7.3 The Customer hereby grants to EPM a worldwide, non-exclusive, irrevocable, royalty free licence during the Term to use the Customer Data for the purpose of providing the Services.

7.4 The Customer acknowledges that EPM may use the Customer Data to improve the performance and functionality of the Software to develop improvements, updates, upgrades, modifications, or derivative works thereof which shall constitute Improvements (as defined in clause 9.2).

7.5 EPM may track and analyse the Customer's and its Authorised Users' use of the Software for the purposes of security and to help the EPM improve the Services, including the Software.

7.6 The Customer shall indemnify and hold harmless EPM from and against all losses, damages, liabilities and claims, arising from or in relation to any third party claim that the processing and use of the Customer Data in accordance with this Agreement infringes or misappropriates any third party Intellectual Property Rights or breaches Data Protection Legislation.

8. Fees

8.1 The Customer shall pay the Fees in accordance with this clause 8 and the Order.

8.2 EPM shall submit invoices for the Fees plus VAT to the Customer on the 1st of every month in advance of services performed during that month.

8.3 The Customer shall pay each invoice which is properly due and submitted to it within thirty (30) days of the invoice date.

8.4 Except in respect of a bona fide invoice dispute, if the Customer fails to make any payment due to EPM under the Agreement by the due date for payment, then, without limiting EPM's remedies under clause 13 (Termination) the EPM may, at its sole discretion;

(a) suspend performance of the Services until payment of the overdue amount has been made, including disable the Customer's and all Authorised Users' access to all or part of the Software until the invoice(s) concerned are paid in full; and/or

(b) charge the Customer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 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%.

8.5 All sums payable to EPM under this Agreement:

(a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.6 Fees are payable in the currency detailed in the Order and are non-cancellable and non-refundable.

8.7 EPM shall be entitled to increase the Fees at the start of each yearly anniversary of the Commencement Date upon thirty (30) days' prior written notice to the Customer.

9. Intellectual property rights

9.1 A party shall retain ownership of its own Background IPRs. All Intellectual Property Rights in and to the Software, the Services, and the Derived Data, shall belong to and remain vested in (or automatically upon creation shall vest in), EPM. Except for the licence granted to the Customer in clause 3.1, nothing in this Agreement grants to the Customer any rights to or in any Intellectual Property Rights in the Software or the Services

9.2 Without prejudice to clause 9.1, to the extent that the Customer's or any Authorised User's use of the Software results in any modifications, adaptations, developments, or any derivative works of or to the Software or the Services ("**Improvements**"), then notwithstanding any rights or remedies of EPM under clause 3 above, any and all Intellectual Property Rights in and to such Improvements shall immediately vest in and be owned by EPM.

9.3 EPM and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables (other than Customer's Background IPRs or any Intellectual Property Rights in the Customer Materials) and EPM grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy and modify the Deliverables for the purpose of receiving and using the Services and Deliverables in its business.

9.4 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials and grants to EPM a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Background IPRs and the Customer Materials for the purpose of providing the Services to the Customer.

9.5 EPM makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Software.

9.6 EPM shall defend the Customer against any third party claim that the use of the Software in accordance with this Agreement infringes any third party Intellectual Property Rights and shall indemnify Customer for and against any amounts awarded against the Customer in judgment or settlement of such claims, provided that (i) EPM is given prompt notice of such claim; (ii) the Customer provides reasonable co-operation to EPM in the defence and settlement of such claim, at EPM's expense; (iii) EPM is given sole authority to defend or settle the claim; and (iv) the Customer makes no admission of liability or fault itself or on behalf of EPM.

9.7 In the defence or settlement of any claim pursuant to clause 9.6 above, EPM may at its sole option and expense either: (i) procure for the Customer the right to continue using the Software in the manner contemplated by this Agreement; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) terminate this Agreement immediately by providing written notice to the Customer, without liability to the Customer.

9.8 EPM shall not in any circumstances have any liability (including in respect of the indemnity provided under clause 9.6) if the alleged infringement is based on: (i) modification of the Software by anyone other than EPM; or (ii) the Customer's or any Authorised User's use of the Software otherwise than in accordance with this Agreement or in a manner contrary to the instructions given to the Customer by EPM; or (iii) the Customer's or any Authorised User's use of the Software after notice of the alleged or actual infringement from EPM or any appropriate authority; or (iv) use or combination of the Software with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.

9.9 The Customer shall defend EPM against all or any costs, claims, damages or expenses incurred by EPM in respect of any third party claim relating to the Customer's or any Authorised User's use of the Software otherwise than in accordance with this Agreement, provided that (i) the Customer is given prompt notice of such claim; (ii) EPM provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (iii) the Customer is given sole authority to defend or settle the claim; and (iv) EPM makes no admission of liability or fault itself or on behalf of the Customer.

10. Data protection

10.1 For the purposes of this clause 10, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the Applicable Data Protection Laws.

10.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

10.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

EPM shall process the personal data as set out in paragraph 1.1 of Schedule 1 as processor on behalf of the Customer; and

10.4 Should the determination in clause 10.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 10 and Schedule 1.

10.5 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer

Personal Data to EPM or lawful collection of the same by EPM for the duration and purposes of this Agreement.

10.7 Without prejudice to the generality of clause 10.2, EPM shall, in relation to Customer Personal Data:

(a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in Schedule 1 (Processing, personal data and data subjects) unless EPM is required by applicable laws to otherwise process that

Customer Personal Data (**Purpose**). Where EPM is relying on applicable laws as the basis for processing Customer Processor Data, EPM shall notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit EPM from so notifying the Customer on important grounds of public interest. EPM shall inform the Customer if, in the opinion of EPM, the instructions of the Customer infringe Applicable Data Protection Laws;

(b) implement the technical and organisational measures set out in Schedule 1 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;

(c) ensure that any personnel engaged and authorised by EPM to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

(d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to EPM), 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;

(e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

(f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless EPM is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 10.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by EPM; and

(g) maintain records to demonstrate its compliance with this clause 10, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on advanced reasonable written notice.

10.8 The Customer provides its prior, general authorisation for EPM to:

(a) appoint processors to process the Customer Personal Data, provided that EPM:

(i) 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 EPM in this clause 10;

(ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of EPM; and

(iii) 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 EPM's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify EPM for any losses, damages, costs (including legal fees) and expenses suffered by EPM in accommodating the objection.

(b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that EPM 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 EPM, 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.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other, except as permitted by clause 11.2(a).

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or

advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. Limitation of liability

12.1 References to liability in this clause 12 (Limitation of liability) include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. This clause 12 sets out the entire financial liability of EPM to the Customer arising under or in connection with this Agreement, including in respect of any use made by the Customer or its Authorised Users of the Software and the Services.

12.2 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for any information or results obtained by Authorised Users from use of the Software, and for conclusions drawn from such use. EPM shall have no liability for any damage caused by errors or omissions in any information or data, or any actions taken by EPM at the Customer's direction. No other party is entitled to rely on the output, information or results produced by the Customer through its use of the Software for any purpose whatsoever.

12.3 Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement. The Customer acknowledges that the Software, the Services, and any information provided by or on behalf of EPM are provided to the Customer on an "as is" basis.

12.4 Nothing in this clause 12 shall limit the Customer's payment obligations under this Agreement.

12.5 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; or (iii) or for any liabilities that cannot be excluded under applicable law.

12.6 Subject to clause 12.5, EPM's total aggregate liability to the Customer:

(a) for loss arising from EPM's failure to comply with its data processing obligations under clause 7 (Data protection) shall not exceed £500,000; and

(b) for all other loss or damage which does not fall within subclause (a), shall not exceed the lower of (i) the total fees payable under the applicable Order in the 12 months immediately preceding the event that gives rise to the liability; (ii) or £500,000

12.7 Subject to clause 12.4 and clause 12.5, neither party will be under any liability to the other for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):

(a) loss of profits or revenue;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill;

(g) indirect, special or consequential loss; and

(h) loss caused as a result of the Software being unavailable as a result of planned downtime for the Software, as notified to the Customer from time to time, loss arising from any failure of the Customer's infrastructure and/or utilities, loss caused as a result of the Software being unavailable due to a Force Majeure Event, or loss caused by the failure or delay of any third party application or service or network.

13. Termination

13.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other party not less than six months' written notice to terminate, expiring on or after the term. After expiry of such notice, the parties will not execute any further Orders, but unless otherwise agreed in writing, all then current Orders will continue until completed and upon completion of the last outstanding Order, this Agreement shall automatically terminate.

13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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; or
- (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 Without affecting any other right or remedy available to it, EPM may terminate this Agreement (or any Order) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 20 Business Days after being notified that payment is overdue.

13.4 On termination or expiry of this Agreement (for any reason):

- (a) all licences granted under this Agreement shall immediately terminate;
- (b) the Customer shall immediately pay to EPM all of EPM's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, EPM may submit an invoice, which shall be payable immediately on receipt;
- (c) the Customer shall stop using the Services with immediate effect; and
- (d) subject to the terms and conditions of this Agreement, each Party shall return or destroy and make no further use of any Confidential Information, equipment, property and other items (and all copies of them) belonging to the other party.

13.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

13.6 Termination or expiry of this Agreement 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 Agreement which existed at or before the date of termination or expiry.

14. Non-solicitation

14.1 The Customer shall not, without the prior written consent of EPM, at any time from the Commencement Date to the expiry of 12 months after the expiry or termination of this Agreement, solicit or entice away from EPM or employ or attempt to employ any person who is, or has been, engaged as an employee of EPM in the provision of such Services.

14.2 Any consent given by EPM in accordance with clause 14.1 shall be subject to the Customer paying to EPM a sum equivalent to 50% of the then current annual remuneration of EPM's employee, consultant or subcontractor or, if higher, 50% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

15. Audit

15.1 EPM is entitled on reasonable notice from time to time to require the Customer to permit or procure the permission for a duly authorised employee, agent or representative of EPM to audit the use of the Software, and to assess compliance with this Agreement, including for this purpose to access premises and systems, and to take copies of records.

16. Force majeure

16.1 Neither EPM nor the Customer shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**"). Any dates or times by which each party is required to render performance under this Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by a Force Majeure Event. If the Force Majeure Event prevents, hinders, or delays the affected Party's performance of its obligations for a continuous period of more than 30 days, the affected Party may terminate this Agreement by giving 30 days' written notice to the other Party

17. Assignment and other dealings

17.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

17.2 EPM may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

18. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Waiver

19.1 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall 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 this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20. Severance

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall 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 shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

21. Entire agreement

21.1 This Agreement constitutes 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.

21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22. No partnership or agency

22.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person

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23. Third party rights

23.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24. Notices

24.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out in the Order or as otherwise specified by the relevant party by notice in writing to each other party.

25. Governing law

This Agreement 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 shall 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 shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

Schedule 1 **Processing, personal data and data subjects**

1. Parties' roles

1.1 Where EPM acts as a processor

2. Processing Instructions

As may be agreed in this Agreement or any subsequent order, or as reasonably provided by EPM.

2.1 Scope

The provision of services by the Supplier to EPM as outlined in this Agreement and any subsequent order and/or associated documentation.

2.2 Nature and Purpose of processing

Processing activities, such as storage and data transfer will be undertaken by the Supplier and Personal Data will be processed to provide the services to EPM as outlined in an Order and/or associated documentation.

2.3 Duration of the processing

For the duration of this Agreement (or if shorter, for such period as is required by the nature of the processing).

2.4 Types of personal data

Types of Personal Data as may be supplied by EPM including name, address, email address, phone numbers.

2.5 Categories of data subject

Data subjects include individuals who are of EPM or EPM's customers, representatives and personnel, such as employees, contractors and collaborators and other categories of data subjects as may be supplied by EPM.