

applaud

MASTER SERVICES AGREEMENT

Definitions in this document

Additional Services: those additional services provided by Applaud under an SOW.

Affiliate means any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by or under common control with the Customer or Applaud.

Agreement These terms and conditions together with the Schedules and any Project Documents.

Business Day: any day not a Saturday, Sunday or public holiday.

Commencement Date: the date on which: (a) a SOW is signed; and / or (b) unless otherwise agreed in a SOW, full payment of the Commencement Fees has been received by Applaud.

Commencement Fee: the commencement fee payable by the Customer on the Commencement Date as detailed in the SOW.

Completion Date: the date detailed in any Project Plan for the completion of Services as amended by agreement between the parties from time to time.

Customer Infrastructure: means the Customer's IT infrastructure, networks and systems.

Equipment any computer hardware and equipment owned by the Customer relating to the Services in accordance with this Agreement.

Fees The fees payable for Services to be provided under this Agreement as detailed in a SOW.

Initial Term: the initial term for any Services, as detailed in a SOW.

Location(s) an address of the Customer at which Services are to be delivered as detailed in a SOW or other Project Documentation.

Statement of Work (SOW) any Statement of Work agreed between the parties that details the Services and the related Fees, signed by the Customer, or any other agreement between the Parties in writing that details Services to be provided and any related Fees.

Project Document the latest dated project document issued by Applaud in respect to any aspect of the Services being provided.

Project Plan: the plan, time schedule and sequence of events for the provision of Services (including any training detailed in a SOW), and as amended on agreement between the parties from time to time.

Services the services to be provided by Applaud to the Customer under this Agreement as more particularly described in a SOW and associated Project Documentation

Software any Third-Party Software specified in a SOW.

Statement of Work (SOW): means a SOW signed by each of the parties detailing the scope of the Services, any Project Plan (describing the work to be completed, the estimated timetable and responsibilities for the provision of Services), implementation plan, acceptance tests and acceptance criteria, specifications, training to be provided, Support Services and related Fees or other matters relating to (and incorporating) the Agreement.

Support Agreement Applaud's standard policy for providing support services in relation to the Services as more particularly described in the SOW ("Support Services"), as amended by Applaud from time to time.

Third Party Software / Services third party software or services supplied to the Customer by Applaud and specified in a SOW.

Training any training in the use of the Software to be provided by Applaud for the Customer's staff as detailed in any SOW or other Project Document.

Each SOW forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. **In the event of a conflict between the terms and conditions of this Master Services Agreement ("MSA"), a SOW, or Schedules, the following order of preference shall prevail: 1) SOW 2) MSA, 3) Schedules.**

1. Scope of Services.

- 1.1 This agreement together with any **SOW, Project Plans** and associated **Schedules** and any other **Project Documents** provided by Applaud ("**the Agreement**") operates as a framework agreement which defines the contractual terms and conditions under which Applaud will supply **Services** to the **Customer**.
- 1.2 Whilst this Agreement remains in force the **Parties** shall agree the provision of Services as set out in a SOW which shall be governed by and be subject to, the terms and conditions of this agreement.
- 1.3 The rights provided under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless otherwise agreed in writing in a SOW.

2. Performance of Services

- 2.1 Subject to the Customer's compliance with this Agreement, Applaud shall, subject to and in accordance with this Agreement and any applicable Project Documents:
 - (a) perform the Services with all reasonable skill and care and in a timely, reliable and professional manner using employees with appropriate skills, qualifications and experience.
 - (b) provide the Services under the terms of this Agreement by any agreed delivery date;
 - (c) Carry out any **Professional Services**: including, where applicable, migration services, consultancy services, project management, Development Services and training in accordance with a SOW.
 - (d) Carry out any **Support Services**, as detailed in an SOW.
- 2.2 **Additional Services.** Applaud will carry out any Additional Services, as may be agreed between the Parties from time to time in a separate SOW and any additional Schedules. Unless otherwise detailed in a SOW, Applaud will

send the Customer an invoice for any Additional Services either as soon as they have been provided or at the end of the month in which they were provided.

3. Agreeing Services and Project Documents.

- 3.1 Following the signature of this Agreement the Parties will meet either in person or via conference call to discuss (the "Kickstart Meeting") formalising the delivery of Services to be provided by Applaud to the Customer in a SOW and appropriate accompanying Project Documentation.
- 3.2 Within 30 Business Days of the Kickstart Meeting, Applaud shall provide the Customer with proposed delivery dates, updated SOW and updated Project Plan for approval.
- 3.3 **Agreeing Project Documents.** On receipt of any Project Document from Applaud (at any time), the Customer shall promptly review such documents and may reject them (having provided Applaud in writing its reasons for any rejection) no later than 7 Business Days after they are first delivered to the Customer. Any documents provided to the Customer in respect to the provision of Services under this Agreement which are not rejected by the Customer within seven Business Days of receipt shall be deemed to have been accepted in full by the Customer.
- 3.4 If the Customer does reject any Project Document, Applaud shall then revise the document (taking reasonable account of the Customer's comments) and re-submit the document to the Customer for approval within 10 Business Days of the Customer's notice of rejection. The process in this clause shall continue to apply to any subsequent rejections.
- 3.5 The Customer acknowledges that no work will begin on any Services until an approved Customer purchase order has been received by Applaud and applicable Project Documents have been signed off in writing by both Parties. Any work which is not specifically detailed in a Project Document is out of scope and subject to additional charges.
- 3.6 **Delays in agreeing Project Documents and amendments.** In the event that: (a) the Commencement Fee is not paid within 30 days of the Commencement Date; or, (b) there is a delay or amendment to any date detailed in the Project Plan requested by or caused by the Customer, then unless otherwise agreed by Applaud in writing, the Customer accepts that Applaud may, at its sole discretion, revise any Fees payable and any affected delivery dates, as it may deem reasonable, to reflect any changes in its pricing model, or commercial offer to the Customer, without liability.

4. Delivery Dates for Services.

- 4.1 Applaud shall use reasonable endeavours to meet the performance dates specified in any Project Document or applicable Schedule, but unless otherwise agreed in writing, any such dates shall be estimates only and time shall not be of the essence (provided always that Applaud shall use all reasonable endeavours to complete delivery as soon as reasonably possible).
- 4.2 Delivery shall be made during normal Business Hours (excluding bank or public holidays). Applaud may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 4.3 Unless otherwise detailed in applicable Project Documentation, the Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Services and for the provision of all necessary access and facilities reasonably required by Applaud.
- 4.4 Any work not set out in a SOW or other Project Documentation is out of scope and may be chargeable.
- 4.5 **Extensions of time to any delivery dates for the provision of Services.** Applaud shall be given an extension of the timetable of any one or more of the stages in any Project Document or for any other Services if one of more of the following events occurs: (a) a variation to Services is made at the Customer's request or a request is made for something out of scope; (b) a Force Majeure Event occurs as described in this Agreement; (c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or any third-party.
- 4.6 If Applaud is entitled to an extension of time under clause 4.5, it shall give written notice to the Customer not later than thirty days after having become aware of the event. Such notice shall specify the event relied on and, in the case of a force majeure event, shall estimate the probable extent of the delay.
- 4.7 The Parties shall use best endeavours to agree in writing, signed by both Parties, what extension of time and variation to the Agreement is reasonable in the circumstances. Any SOW or any applicable timetable or Fees payable shall be deemed amended accordingly.
- 4.8 **Delays caused by Customer.** If Applaud's performance of its obligations under this Agreement is hindered, prevented or delayed by any act or omission of the Customer, the Customer's agents, sub-contractors or employees, the Customer will be liable to pay to Applaud, on demand, all reasonable costs, charges or losses sustained or incurred by it (including loss of opportunity to use Applaud resources elsewhere), subject to Applaud confirming such costs, charges and losses to the Customer in writing. If Applaud can demonstrate that the delay has resulted in an increase in cost to Applaud of carrying out its obligations under this Agreement, Applaud may at its sole discretion increase any applicable Fees by an amount not exceeding any such demonstrable cost.
- 4.9 **Acceptance Tests.** Where applicable the Parties shall agree acceptance tests for the Services as detailed in a SOW. These criteria and data ("Acceptance Tests") shall be such as are reasonably required to show that the Services in whole or part comply with any specification agreed between the Parties in writing. Acceptance Tests shall be carried out by the Customer with the assistance, as required, of Applaud. Where the provision of Services is detailed in an SOW as subject to the successful completion of Acceptance Tests by the Customer, the provision of further Services will not proceed until such time as the Customer has successfully completed all Acceptance Tests, as detailed by Applaud.

5. Changes to the Services.

- 5.1 **Change Requests.** If either Party requests a change to the scope or execution of the Services, Applaud shall, within a reasonable time, provide a written estimate to the Customer of: (a) the likely time required to implement the change; (b) any variations to Applaud's Fees arising from the change; (c) the likely effect of the change on any project documents; and (d) any other impact of the change on the terms of this Agreement.
- 5.2 If Applaud requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. If the Customer wishes Applaud to proceed with a change, Applaud has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its Fees, the Project Documents and any other relevant terms of this Agreement to take account of the change. Unless otherwise agreed in writing and in advance, Applaud's standard rates for the provision of services and Services on a time and materials basis, applicable at the time, available on request, shall apply to all applicable Fees.
- 5.3 Applaud has no obligation to make any changes to the Services unless and until the parties have agreed in writing on the necessary variations to its Fees, the Project Documents and any other relevant terms of this Agreement to take account of that change.
- 5.4 **Service Delivery and Improvements.** The Customer acknowledges that Applaud will make improvements to the Services and service provision from time to time during the term of this Agreement and that any third party supplier may make changes to their terms and conditions from time to time, provided that where any such changes substantially adversely affect the Customer's receipt of the Services, Applaud will: (a) give the Customer reasonable notice of not less than 30 days of such Applaud change prior to it being implemented; (b) promptly provide the Customer details of any third party change as soon as Applaud has been notified in writing by such third party.
- 5.5 **Compliance with Law or Regulation.** The Customer acknowledges that Applaud may from time to time and with or without notice, change the Services in order to comply with any applicable law and regulation. In such circumstances, Applaud will use reasonable endeavours to ensure that the Services continue to meet the requirements agreed between the Parties. Applaud reserves the right to increase any applicable Fees to reflect the cost of any change in applicable law or regulation.

6. Project Personnel.

- 5.1 **Appointing a project lead.** Both Parties shall appoint suitably qualified, competent and trained individuals (and provide details of those individuals to the other Party), who shall have the responsibility and commensurate authority for the overall progress of the Services and to whom all questions regarding this Agreement can be referred.
- 5.2 Both Party's **Project Managers** shall co-operate with the other and shall attend meetings agreed at reasonable intervals or where otherwise specified in applicable Project Documentation to advise and assist Applaud on all matters relating to the Services.
- 5.3 The provision of employees, subcontractors and agents of Applaud to carry out the Services shall be at the discretion of Applaud.
- 5.4 **Ensuring continuity of Project Teams.** Both Parties agree to take all reasonable steps to maintain continuity in relation to their **Project Team** for any Services and that any **Key Individuals** (named in any SOW) shall not be replaced without notice to the other, unless: (a) the individual to be replaced is prevented by ill health from carrying out his duties in connection with the agreement for a significant period; (b) the individual resigns from employment with that Party; (c) the contract of employment of the individual is terminated; or (d) either Party makes a reasonable, written request to the other to replace the individual because they have performed unsatisfactorily or have caused a breach of any of the other Party's obligations under this Agreement.
- 5.5 If any such person is replaced, each Party shall consult with the other about the identity of a suitable replacement. The Parties shall meet as soon as practicable to discuss its implications and to negotiate in good faith with a view to agreeing such changes as are reasonably required to this Agreement or any Project Document.

6. Customer Obligations.

- 6.1 The Customer acknowledges that:
 - (a) Applaud is reliant on the information being provided to it by the Customer as being complete and accurate, and that the due diligence Applaud carries out and questions asked of the Customer, as well as the SOW and other Project Documents prepared and agreed will all be based upon this information.
 - (b) Applaud is reliant on the Customer being able to provide it with, or provide it with access to, all assets (including documentation, content, code, software, intellectual property rights, and any other physical or digital materials) that Applaud deems necessary in order to fully carry out the due diligence process, and subsequently to perform the Services.
 - (c) the Services may not be able to be performed adequately or meet the Customer's requirements where information provided by the Customer to Applaud is incomplete, incorrect, or misleading.
- 6.2 **The Customer shall:** complete all its obligations as detailed in any Project Documents and provide Applaud with timely co-operation in relation to this Agreement; and access to such information as may be required by Applaud in order to render the Services, including but not limited to, Customer personnel, premises and other facilities, security access information and configuration services and Customer Data and documentation requested for the provision of the Services (and ensure that such information and data is accurate in all material respects) and afford to the authorised personnel of Applaud during normal working hours, or as otherwise agreed, access to any relevant Location and shall provide adequate free working space and such other facilities at such Location as may be reasonably requested by Applaud to provide the Services. The Customer shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to Applaud. Applaud

will take all practical steps to ensure that its personnel will, whenever on Customer's premises, obey all reasonable security and health and safety standards, procedures and directions notified to it by Customer. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Applaud may adjust any agreed timetable or delivery schedule as reasonably necessary.

- 6.3 The Customer acknowledges that Applaud's ability to provide the Services is dependent upon the Customer's full and timely co-operation as well as the accuracy and completeness of materials and any information and data the Customer provides. Applaud is not responsible for any loss suffered by the Customer if the Customer does not provide it with this access, cooperation and information.
- 6.4 The Customer shall:
- (a) subject to any Training provided by Applaud as detailed in a SOW, be solely responsible for ensuring that all users of the Services are trained in the use of the same. Applaud shall have no responsibility to provide support if support issues are deemed by Applaud to be the result of misuse or lack of appropriate training by the Customer in the use of Services;
 - (b) be responsible for the provision of and ongoing payment of any and all fees for the provision of third party services required for the use of the Services unless otherwise provided for by Applaud in a SOW;
 - (c) obtain and shall maintain all necessary licences, consents, and permissions necessary for Applaud, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - (d) be responsible for procuring any third party co-operation reasonably required for the receipt of Services and hold current up-to-date maintenance, support or active subscription agreements in place with all aspects of the Customer Infrastructure and systems to allow Applaud to seek and receive technical assistance when necessary in respect to the Support Services. In the event that there is no such third party support agreement in place, Applaud shall have no obligation to provide support and may at its sole option provide reasonable assistance to the Customer in resolving any issue or may suspend Services. For the avoidance of doubt, unless otherwise provided in writing in a SOW the Customer shall be responsible for the provision of and ongoing payment of any and all fees for the provision of Third Party Services required for the use of the Services;
 - (e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
 - (f) upgrade any part of the **Customer Infrastructure** as may be requested by Applaud where required to meet any minimum specification detailed in any Project Document (as amended from time to time) to continue to use the Services. In the event that the Customer fails to follow such instructions, neither Applaud nor its suppliers shall be liable for any degradation or disruption to the Services in the event the Customer does not make the required upgrade;
 - (g) operate best practice and ensure appropriate security precautions are taken in connection with its use of the Services. The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard the Customer technology infrastructure, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the receipt of Services.
- 6.5 **Site Preparation.** If applicable under any SOW, upon request by the Customer Applaud shall supply to the Customer in reasonable time before delivery of any Services such information as Applaud has available to it to enable the Customer to prepare the relevant Location for the receipt of Services and to provide proper environmental and operational conditions for the efficient working and maintenance thereof. The Customer shall at its own expense prepare the Location and provide such environmental and operational conditions as are required for Applaud to provide the Services prior to delivery.

7. Supply of Third-Party Software and Services.

- 7.1 All Third Party Software and Services are supplied from third party sources. Any advice provided by Applaud on Software or Service selection is based upon the requirements of the Customer's business as made known by the Customer to Applaud at the time of the SOW and shall be consistent with such standard as is applicable to those providing such advice generally including recommendations made from time to time by such equipment manufacturers, or other relevant third party software providers.
- 7.2 **Fees payable for Third Party Services** shall be separate chargeable items as detailed in the applicable Payment Schedule. Any increases in third party fees shall be applied directly as soon as they apply to any Third Party Services.
- 7.3 The Customer's use of any Third-Party Software or Services is governed by the terms of the agreement with the provider of that Third-Party Software or Services, and its warranties. Use of Third-Party Software or Services is at the Customer's sole risk. Third Party Software and Services are provided "as is" and Applaud is not responsible in any way for any Third Party Software or Services performance, features or failures and makes no warranty in respect to the Third Party Software being fit for the Customer's specific purposes are not responsible for the Customer's use of or any harm or losses arising from or relating to the Customer's use of any third-party equipment, services or Software. Applaud shall provide any Third Party Software or Services to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms and to ensure that its Affiliates are bound under similar obligations owed to the relevant third parties. Any warranty provided to Applaud in respect of the Software or Services supplied under the Agreement shall, where possible, be transferred to the Customer, subject to any terms or restrictions imposed by the software vendor.
- 7.4 **Service issues due to third party providers.** The Customer agrees that the provision of a response to a fault or the provision of services by third parties will be dependent on the service levels established within the contractual

arrangements with that third party supplier. Applaud will liaise with this party suppliers for the provision of Services and support, in accordance with, and to the extent agreed in the applicable Project Documentation and Schedules but will not be liable for any acts or omissions of such third party suppliers, disclaims all liability for and makes no representation or warranty whatsoever in respect to any provision or delivery of Services by or a response from that third party under this Agreement, or that any defect or service or support requests dependent on a response from a third party will be fixed or that any service request will be responded to within a specified period of time by that third party.

9. Charges and Payment

- 9.1 **Payment Terms and Invoicing.** The Fees for Services shall be paid by the Customer in accordance with the payment profile set out in the applicable SOW or Project Document. Invoices and payments shall be in Sterling unless otherwise detailed in an SOW. Except for any payment due upon execution of this Agreement, Commencement Fee or as otherwise set out in an SOW, all payments shall be made: (a) on or before the dates detailed in any applicable SOW; or (b) where no such dates are set out, by the Customer within thirty (30) days of the date of issue of an invoice under this clause 9. Where an invoice is disputed in good faith there will be no penalty, as long as Applaud is informed of the dispute within 14 days of receipt of the invoice
- 9.2 All Charges stated in or in relation to the Agreement are non-cancellable and non-refundable and are stated exclusive of delivery, packaging, packing, shipping, carriage, insurance, relevant sales taxes and other charges and duties.
- 9.3 Time for payment of Fees shall be of the essence in this Agreement.
- 9.4 **Form of Invoices.** All invoices submitted by Applaud shall include Applaud' invoice reference number and date, the billing period, any reimbursable expenses incurred broken down by type, a description of the fee being charged and its calculation, and where relevant, a brief narrative of the billable task(s) undertaken in connection with the delivery of Services.
- 9.5 The Price and fees for Services are exclusive of Value Added Tax or other Government imposed excises or taxes (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 9.6 **Non-payment of Invoices.** If the Customer does not pay any amount properly due to Applaud under or in connection with the Agreement, Applaud may: (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); and/or (b) withhold performance of the Services until all payment of overdue sums has been made; and/or (c) terminate this Agreement. For the avoidance of doubt, if any invoice is not paid on the due payment date then Applaud shall be under no obligation to provide Services, renew or pay third party costs or fees associated with this Agreement or any Services unless and until the relevant invoice is paid in full. Any additional charges payable as a result of the non-payment of third-party related fees (within the time requested by Applaud) shall be passed on directly to the Customer.

Payment Terms

The Customer shall pay all Fees to Applaud under this Agreement in accordance with this clause 9, subject to any other payment terms detailed in a SOW or as otherwise agreed in writing between the parties. Unless otherwise detailed in an Order Form invoices for Services shall be raised accordingly:

The Customer will pay the Fees to Applaud in full without any set off: (a) on or before the dates set out in the relevant Schedules or SOW; or (b) where no such dates are set out in the relevant Schedules or SOW, within 30 days of the date of issue of an invoice and Applaud shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided below.

Any fixed price contained in the SOW excludes:

(1) Unless otherwise agreed in an SOW, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Applaud team in connection with completing the work, and the cost of any materials or services reasonably and properly provided by third parties required by Applaud to complete the work. Such expenses, materials and third party services shall be invoiced by Applaud at cost; and, (2) VAT, which Applaud shall add to its invoices at the appropriate rate.

Expenses. The Customer shall reimburse Applaud for any reasonable expenses necessarily incurred by Applaud in connection with the provision of the Services as detailed in a Sales Proposal or SOW.

Technical Service Costs. Where Applaud incur third party costs for any services provided to the Customer or otherwise in the performance of the Services, such third party services shall be invoiced by Applaud and added to its invoices at the appropriate rate. All Technical Service Costs shall be payable in advance at pre-agreed periods.

Increases to Fees. Applaud shall be entitled to increase the Fees payable for Services, and at the start of any subsequent Renewal Term, on sixty days' prior written notice to the Customer. Applaud may also be entitled to increase Charges to reflect any increase in fees from its suppliers at any time.

10. Warranties.

- 10.1 Applaud warrants and represents that: (a) it will perform the Services in a timely, reliable and professional manner, in conformity with good industry practice by a sufficient number of competent staff with appropriate skills, qualifications

and experience, and has and will at all times have the ability and capacity to meet such requirements; (b) has full capacity and authority and all necessary consents to enter into and to perform this Agreement.

- 10.2 **Warranty Period.** Applaud represents that the Services it exclusively provides (excluding any third party services) shall from any agreed [Delivery Date / Go-Live Date], and for 30 days after that date, conform in all material respects with the Specification provided by Applaud to the Customer. The sole remedy for breach of this representation shall include correction of any defect (being an error in the Services that causes them to fail to operate substantially in accordance with the relevant Specification) by Applaud, 30 days from notification by the Customer of the defect that constitutes such breach. Applaud does not warrant that it will be able to rectify all defects or that any defect will be rectified within any particular time. In each case (provided that the Customer provides all the information that may be necessary to assist Applaud in resolving any defect or fault, including sufficient information for Applaud to re-create the defect or fault, at Applaud's option it may: either repair or replace the Services with alternative Services which provide a similar level of functionality. Such correction or substitution constitutes the Customer's sole and exclusive remedy.
- 10.3 Applaud does not warrant or represent: (a) that the Services will be fit for any purpose or use other than that specifically stated by Applaud in writing; or (b) that it will be able to rectify all defects, provided that it shall use all reasonable endeavours to rectify such defects in accordance with service levels in the applicable Support Agreement. The Customer acknowledges that non-material defects in the Services shall not constitute a material breach of this Agreement or prevent acceptance of the Services.
- 10.4 Applaud shall not be obliged to rectify or be liable in any way for, and any authorised modifications, alteration, use, repair or maintenance of the Services by any other person other than a representative of Applaud, shall render any warranties, obligations and support obligations in relation to this Agreement, null and void.
- 10.5 The warranties, representations (and where applicable, warranties) set out in this clause 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 this Agreement.

11. Intellectual Property Rights

- 11.1 **Customer license to use Applaud IP.** The parties agree that, except as expressly provided to the contrary, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in the Services or any software programs proprietary to Applaud (the "Applaud Software"). Subject to the Customer's compliance with this clause 11, and the Customer ensuring any licensee's compliance with the same, Applaud grants, subject to the terms of this agreement, the Customer the non-exclusive, sub-licensable right to use the Applaud Software in respect to the use of the Services in the normal course of its business.
- 11.2 **Customer ownership of IP in the Services.** The Intellectual Property Rights in the Services developed by Applaud specifically for the Customer, to the extent agreed under a SOW, shall, on payment of the applicable Fees, vest in the Customer. Applaud assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Customer.
- 11.3 **Use of third party IP in the Services.** The Customer's use of any third-party software comprised in the Services is governed by the terms of the agreement with the provider of that software, and its warranties. Use of third party software is at the Customer's sole risk. Applaud is not responsible in any way for any third party software's performance, features or failures and makes no warranty in respect to the software being fit for the Customer's purposes.
- 11.4 **Customer Materials.** The Customer warrants to Applaud that it has the legal right and authority to enter into and perform its obligations under the Agreement and that any materials provided to Applaud by or on behalf of the Customer, and the use by Applaud of those materials in connection with this Agreement will not infringe any person's Intellectual Property Rights or other legal rights and will not breach any applicable laws or legislation.
- 11.5 **Customer Indemnity.** The Customer shall defend, indemnify and hold harmless Applaud against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs, sums payable by way of settlement and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, or in connection with any breach by the Customer of any term of this Agreement or arising from any claim, demand or action alleging that the Services or use of them are contrary to any law, code or regulation in any country.
- 11.6 The Customer agrees to indemnify Applaud 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 professional costs and expenses) suffered or incurred by Applaud arising out of any non-compliance by the Customer with the Customer's warranties under this agreement or any third party claim of whatever nature, including defamation and infringement of third party Intellectual Property Rights.
- 11.5 **Applaud' Intellectual Property Rights Indemnity.** Applaud shall, subject to clause 15, defend the Customer, its officers, directors and employees against any claim that: (a) use of the Services or Documentation provided exclusively by Applaud amounts to an infringement of intellectual property rights; (b) Applaud have breached Data Protection Legislation, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (a) Applaud is given prompt notice of any such claim; (b) the Customer provides reasonable co-operation to Applaud in the defence and settlement of such claim, at Applaud' expense; and (c) Applaud is given sole authority to defend or settle the claim.
- 11.6 **Resolving Claims** In the defence or settlement of any claim, Applaud may procure the right for the Customer to continue using the affected Services, replace or modify the affected Services so that they becomes non-infringing or, if such remedies are not reasonably available, suspend access to such Services on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the

Customer other than to reimburse the Customer the Fees paid, following the date Applaud is made aware of the infringement, which are associated with the affected part of the Services.

- 11.7 **Exclusions to Applaud's Indemnity** In no event shall Applaud, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than Applaud; or (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Applaud; or (c) the Customer's use of the Services after notice of the alleged or actual infringement from Applaud or any appropriate authority.
- 11.8 The foregoing states the Customer's sole and exclusive rights and remedies, and Applaud' (including Applaud' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality or breach of Data Protection Legislation.

12. Confidentiality & Publicity

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which development can be shown by written evidence; (e) is required to be disclosed by law, any court of competent jurisdiction or any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute Applaud' Confidential Information.
- 12.6 Applaud acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 The Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third Parties sufficient to enable Receiving Party to enforce all the provisions of this clause 15.
- 12.8 The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this **clause** by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure
- 12.9 Upon termination of this Agreement for any reason, Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same

Remedies. The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction

The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other Party's Confidential Information

- 12.10 **Suggestions.** The Customer may from time to time provide suggestions, comments or other feedback ("Suggestions") to Applaud with respect to Confidential Information provided originally by Applaud. Both Parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Applaud. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the Parties, Applaud shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

Publicity. The Customer allows Applaud to publish the Customer as a Customer of Applaud for marketing purposes and to use the Customer's then current trade mark logo and name on the Applaud web site. Applaud may from time to time collaborate with the Customer to produce and publish Customer comments, endorsements, case studies and other instances of advocacy, for the purposes of marketing, which the Customer has the right to amend and / or approve before publication. Applaud will make reasonable efforts to inform the Customer when and where the publications occur. Whilst Applaud will use its best endeavours to ensure best practice, Applaud cannot be held liable for any inaccuracies or errors in Applaud or third party marketing materials. Neither Party shall make any disclosure or comment to any third party regarding this Agreement, the Services provided under it, or otherwise relating to the other Party, which could be damaging to the commercial standing, goodwill or reputation of the other Party.

13. Customer Data and Materials.

- 13.1 **Customer Materials.** The Customer is entirely responsible for the accuracy and completeness of any material or content forming part of the Services and shall ensure that the customer content does not infringe any applicable laws, regulations or third party rights (including any third party Intellectual Property Rights). The Customer is solely responsible for ensuring that its use of the Services comply with any legal or regulatory requirements in all countries and for all purposes for which use is intended. All materials or content provided by the Customer for incorporation into the Services shall be owned by the Customer (provided that they do not contain any of Applaud' Intellectual Property Rights) and the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer warrants that all Intellectual Property Rights in such content and data are the Customer's property or that the Customer has a license to use the same for the purpose of their incorporation and use as part of the Services. The Customer grants Applaud the non-exclusive right to use such items for the purpose of performing its obligations under this Agreement. The Customer shall own all rights, title and interest in and to all of the Customer data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer data.
- 13.2 Applaud shall not be responsible or liable for any loss, destruction, alteration or disclosure of Customer Data or Materials caused by any third party.
- 13.3 **Compliance with Data Protection Act / GDPR.** If Applaud processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and Applaud shall be a data processor and in any such case the Parties shall comply with the Data Processing Addendum.

14. Term and Termination.

- 14.1 This Agreement shall commence on the Commencement Date and shall continue unless terminated in accordance with the terms of this Agreement.
- 14.2 **Provision of ad hoc / one-off Services.** The provision of ad hoc services detailed in a SOW shall commence on the dates specified in that SOW and shall continue in accordance with any agreed terms and applicable Schedules until the completion of that work.
- 14.3 **Provision of ongoing/renewing Services.** The provision of ongoing Services shall commence on the date specified in a SOW and throughout any Initial Term detailed therein, and (unless otherwise stated in a specific SOW) thereafter, the agreement for the provision of those Services shall be automatically renewed for successive rolling periods of 12 months, or such other term as may be detailed in the SOW (each a Renewal Term), unless: (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the provision of those Services shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b) otherwise terminated in accordance with the provisions of this Agreement. Unless otherwise agreed, the termination of Services under a SOW shall not effect any other Services detailed in that SOW. The Initial Term together with any subsequent Renewal Terms shall constitute "the Term". (a) either party notifies the other party of termination, in writing, in accordance with the terms of termination as detailed in the applicable SOW. The termination of a SOW shall not automatically terminate any Third Party Services agreement which shall continue in force until the end of its applicable term.
- 14.4 **Termination** Either Party may terminate this Master Services Agreement or any SOW forthwith by written notice to the other if:
- the other Party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other Party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business
 - the other Party commits any material breach of any provision of this Agreement or the SOW which is capable of remedy and that other Party fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 14.5 The termination of any individual SOW (in whole or part) shall not terminate this MSA or any other concurrent SOW which shall continue in full force and effect from their individual commencement dates unless otherwise terminated by the Parties in accordance with this clause 14 or as otherwise agreed between the parties in writing in respect to that specific Service, Schedule or SOW.
- 14.6 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.7 Without affecting any other rights that it may be entitled to, Applaud may terminate the agreement for breach if: (a) Payment of any invoiced amount (except to the extent such invoice is disputed in good faith) is overdue and following notification to the Customer the Customer does not pay the overdue amount within seven Business Days of a written notice from Applaud; (b) Payment arrangements have been made by the Customer for payment via a third party and the third party refuse to honour Applaud' Fees.
- 14.8 **Consequences of Termination.** On termination all outstanding unpaid invoices in respect of the Services shall become immediately payable (except where fees are the subject of a bona fide dispute). Applaud shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

- 14.9 **Early Termination.** If this Agreement is terminated prior to the end of any applicable Initial Term or any Renewal Term, other than for material breach by Applaud, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to Applaud under this Agreement shall be immediately due and payable to Applaud.
- 14.10 On termination of this agreement for any reason: (a) all licences and access to the Services granted under this agreement shall immediately terminate; (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party; (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 14.11 **Transition Support.** Following the service of a termination notice for any reason, Applaud may on agreement between the parties for a maximum period of three months, continue to provide the Services in accordance with this Agreement, (subject to the Customer's full compliance with the Agreement and provided that all undisputed Fees are paid in full) and shall, if requested by the Customer, provide reasonable assistance to the Customer and/or any replacement supplier (subject to appropriate confidentiality undertakings being entered into) to the extent reasonably required to facilitate the smooth migration of the Services to the Customer, or a replacement supplier.
- 14.12 Applaud shall: (a) provide access to the Customer and any replacement supplier for up to three months after termination of this Agreement to such information relating to the Services that remains in the possession or control of Applaud; (b) use all reasonable endeavours, at the Customer's request, to assign or novate, whether in favour of the Customer or any alternative supplier, any contract for Services between Applaud and any third party performing any part of the Services.
- 14.13 If termination is by the Customer as a result of Applaud's material breach, such reasonable co-operation and assistance shall be provided at no cost to the Customer, in all other cases Applaud may charge a reasonable sum at its then day rates in force (for the appropriate personnel) or for such other resource, to cover the cost of providing such co-operation and assistance (plus any expenses to be recovered at cost).

15. Liability

- 15.1 Except as expressly and specifically provided in this agreement: (a) Applaud shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Applaud by the Customer in connection with the Services, or any actions taken by Applaud at the Customer's direction; (b) 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; and (c) the Services and the Documentation are provided to the Customer on an "as is" basis
- 15.2 Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law:
- (a) the Customer shall be solely responsible, as against Applaud, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Customer, any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Services by the Customer;
 - (b) Applaud shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Applaud by the Customer in connection with the Services; and
 - (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this Agreement.
- 15.3 This clause 15 sets out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of: (a) any breach of this agreement and any Schedule; (b) any use made by the Customer of the Services and Documentation or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 15.4 Neither party excludes or limits liability to the other party for: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by negligence; (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (d) any matter for which it would be unlawful for the parties to exclude liability.
- 15.5 Subject to clause 15.4, neither party shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (b) any loss or corruption (whether direct or indirect) of data or information;
 - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 15.6 Clause 15.5 shall not prevent claims, which fall within the scope of clause 15.5, for tangible property or physical damage.
- 15.7 Subject to clause 15.4, Applaud's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to the Fees paid during the 12 months preceding the date on which the claim arose. As the Fees for the service properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

- 15.8 Applaud's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement with regard to any third party Services shall be limited to such sum as Applaud actually recovers from such third party after such claim is made.
- 15.9 Any claim by the Customer against Applaud shall be made within 6 months of the date of the event giving rise to the claim.

16. Force Majeure

- 16.1 Notwithstanding anything else contained in this Agreement, neither Party shall be liable for any delay in performing its obligations under this Agreement, any Project Document if such delay is caused by circumstances beyond its reasonable control including, without limitation, any delay caused by any act or omission of the other Party (whether or not such act or omission constitutes a breach of this Agreement) or any third Party. Applaud shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Applaud or any other party), failure of a utility service or transport or telecommunications network, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Applaud' or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 16.2 Subject to the Party which is entitled to claim the protection of clause 16.1 ("Affected Party") promptly notifying the other Party in writing of the reasons for the delay (and the likely duration of the delay), the performance of the Affected Party's obligations shall be suspended during the period that the relevant circumstances persist and, if applicable to any obligation under this Agreement or Project Document the Affected Party shall be granted an extension of time for performance equal to the period of the delay. Except where such delay is caused by the act or omission of the other Party (in which event the rights, remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Agreement and by law) any costs arising from such delay shall be borne by the Party incurring the same. Notwithstanding the above, in the event of a Force Majeure event which affects only part of the Services, the Customer shall during the course of such Force Majeure event to continue to pay for any non-affected part of the Services.
- 16.3 Both Parties will in any event use all reasonable endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under this Agreement as soon as reasonably possible
- 16.4 If the period of delay exceeds 30 days then either Party has the right to terminate the applicable SOW or this Agreement with no further liability.

17. Dispute Resolution

- 17.1 Each Party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning this Agreement or any SOW or any appendices schedules or documents incorporated by reference therein. If a dispute cannot be resolved amicably within 7 days of such dispute being notified in writing by one Party to the other for the purposes of this clause then the dispute shall be determined as follows: (a) If the dispute is of a technical nature concerning the interpretation of any Project Document, SOW or relating to the functions or capabilities of the Software or any similar or related matter or that the Parties agree is of a technical nature ("Technical Dispute") then such dispute shall be referred to the next scheduled project team meeting or a meeting of the Project Managers and Customer Contacts convened for this purpose; (b) If such meeting cannot resolve a Technical Dispute to the satisfaction of both Parties then the dispute will be referred as a matter of urgency to an appropriately qualified senior manager or director of each Party; (c) If such senior managers or directors cannot resolve a Technical Dispute within 21 days of the meeting referred to above or such other period that they may agree then such a dispute must be referred for final settlement to an expert nominated jointly by the Parties or, failing such nomination within 14 days of either Party's written request to the other for such referral, nominated at the request of either Party by the President from time to time of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. Each Party shall co-operate fully with the expert, including by the provision of such documentation and explanations as the expert may reasonably request. Each Party shall be entitled to make written and oral representations to the expert regarding the subject matter of the disagreement. The expert's decision shall (in the absence of clerical or manifest error) be final and binding on the Parties and his fees for so acting shall be borne by the Parties in equal shares unless he determines that the conduct of either Party or his determination of the issues is such that one Party should bear all or a greater proportion of such fees.
- 17.2 Non-technical disputes shall be referred as a matter of urgency to the managing directors of each Party and if they cannot resolve such dispute within 21 days of it being referred to them then the dispute shall be determined by the English Courts and the Parties hereby submit to the non-exclusive jurisdiction of that court for such purpose

18. Non-Solicitation

No party shall, without the prior written consent of the other, at any time from the date of the Agreement to the expiry of six (6) months after its termination, solicit or entice away from the other or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the other. Any consent given by the other in accordance with this Agreement in writing shall be subject to the Customer paying to the other a sum equivalent to 20% of the then current annual remuneration of the other's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the other party to such employee or sub-contractor.

19. Notices

Any notice required to be given under this agreement shall be in writing and be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes as set out in this agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9am on the first day after delivery. Where Applaud are required under this agreement to give the Customer any notice in writing, Applaud may give this notice by letter or email.

20. Anti-Bribery

Applaud shall: (a) comply with all applicable laws, statutes, regulations, relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements); (b) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; (c) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by Applaud in connection with the performance of this agreement. Breach of this clause 20 shall be deemed a material breach of this agreement.

21. General.

- 21.1 Neither Party may assign, transfer or otherwise dispose of any of its rights or obligations under the Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, except that Applaud may assign within its group of companies without consent. Each Party shall remain primarily liable to the other in respect of any act or omission of any sub-contractors as if any act or omission were its own.
- 21.2 This Agreement, including the Schedules, supersedes all prior representations, arrangements, understandings and agreements between the Parties (whether written or oral) relating to its subject matter and expresses the entire complete and exclusive agreement and understanding between the Parties at the date of execution of this Agreement. Each Party warrants to the other that it has not relied on any representation arrangement understanding or agreement (whether written or oral) not expressly set out or referred to in this agreement. Neither party may make any claim or seek any remedy under this agreement in respect of misrepresentation (whether negligent or otherwise) or untrue statement made by the other party except that this clause does not purport to exclude any liability for fraudulent misrepresentation.
- 24.2 **TUPE.** It is the parties' intention and understanding that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as subsequently amended or re-enacted) ("TUPE") do not apply to this agreement and none of either party's staff shall transfer to the other party upon any circumstances occurring as contemplated by TUPE or otherwise by operation of this agreement. The parties shall take all reasonable steps to avoid circumstances that give rise to a situation where the provisions of TUPE are likely to apply by operation of this agreement. For the avoidance of doubt, each party shall fully indemnify and keep indemnified the other party against all costs and claims the first party may suffer arising from either the intended or unintended transfer of personnel from the application of TUPE to the operation of this agreement.
- 24.3 Any variation of this Agreement must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the party whose waiver or consent is required.
- 24.4 Each provision of this document shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this agreement and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 24.5 The relationship of Applaud to the Customer is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, and or other business relationship between Applaud and the Customer.
- 24.6 The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 24.7 This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

ALTERNATIVE CLAUSE TO USE IN CLAUSE 24.7 IF ENGLISH LAW IS NOT ACCEPTED – PLEASE NOTE, THIS MUST NOT BE USED IN ANY CONTRACT IN THE MIDDLE EAST OR CHINA

Any proceedings relating to any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) instituted against Applaud by

[Company] shall be brought in the courts of England and Wales, and any such proceedings against [Company] by Applaud shall be brought in the courts of [Company's home jurisdiction]. Each Party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims save that any counterclaim may be brought in any proceedings already commenced, and either Party may take emergency proceedings in any court of competent jurisdiction.