

## **GENERAL TERMS OF BUSINESS**

### **Software Implementation Agreement between**

as the 'Client'

and

Sapentia Limited

Suite 1, Windsor House, Trent Valley Road, Lichfield, WS13 6EU

referred to as Sapentia

### **INTRODUCTORY**

- (A) Sapentia provides a range of development, maintenance and support services connected with the provision and maintenance of Odoo computer software. Sapentia is a partner of Odoo under the terms of an Odoo Partnership agreement.
- (B) Under the partnership agreement Sapentia are licensed to provide the Client with Odoo software and to tailor the software to meet the business needs of the Client.
- (C) Prior to the commencement of Sapentia's work, the Client will have to enter into a License Agreement with Odoo for use of the Odoo software.

### **1. DEFINITIONS and INTERPRETATION**

1.1 In this agreement and the schedules, the following words shall have the following meaning:

'Acceptance Date'	means the date on which the software is Ready for Use.
'Acceptance Tests'	means the acceptance tests which test whether the Software is Ready for Use.
'Agreement'	means the contract made between the Client and Sapentia for the delivery of Services as set out in the Services Schedule, any annex and these GTOB, and any other documents explicitly referred to in the Services Schedule.
'Anytime Support'	urgent out of Standard Support Hours support cover as set out in the Services Schedule available [24 hours a day

	[except Easter Sunday, Christmas Day, Boxing Day and New Year's Day]].
'App'	is a specialised group of features available for installation in the Software, and listed in the public pricing section of Odoo's website.
'Bug'	any failure of the Software or of an Extra Module that results in a failure to operate, errors or a security breach, and which is not directly caused by a defective installation or configuration. Non-compliance with specifications or requirements will be considered as Bugs when the Software does not produce the results or performance it was designed to produce, during the Warranty Period.
'Client'	the company or other corporate entity that agrees to commission Sapentia to provide the Services.
'Commencement Date'	the date on which a Service is commenced as set out in the Services Schedule.
'Confidential Information'	means the Confidential Information of a Party including all information disclosed by that Party to the other Party (whether disclosed before or after the date of this Agreement) in whatever form for the purposes of or in connection with this Agreement (including but not limited to, all data incorporated in the Software or stored in any database used in conjunction with the Software).
'Covered Extra Module'	an Extra Module for which the Client agrees to pay for Support for that Extra Module.
'Data Processing Agreement'	the agreement annexed to these GTOB.
'Delivery Date'	the delivery date for a Service or the Project or a phase of a Service or Project under the Services Schedule or the Detailed Project Plan.
'Detailed Project Plan'	means the detailed plan for delivery of the Project as developed under clause 4.1(a).
'Extra Module'	a directory of source code files, or a set of Python based Customisations created in a database, that adds features or changes the standard behaviour of the Software.
'Fees'	the amounts set out in the Schedules to this Agreement in respect of each of the

	Services as may be varied from time to time.
'Force Majeure'	includes but is not limited to civil commotion, war and terrorist action, government mandated restrictions which prevent or hinder the delivery of Services, industrial action whether lawful or otherwise, non-availability of utilities, components and labour at commercially viable prices, unavoidable accident, fire, flood, earthquake, subsidence, pandemic, epidemic and other natural or physical disasters.
'Functional Specification'	means the specification that includes a description of the functions and performance criteria of the Software, as set out in the Detailed Project Plan.
'GDPR'	the General Data Protection Regulations as they apply by virtue of the Data Protection Act 2018.
'GTOB'	these General Terms of Business (including Schedules and annexes to these Terms).
'Intellectual Property Rights'	means all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any Confidential Information, business or trade names or logos, copyright, database rights, patents, trade or service marks, designs, software, computer dates, generic rights, software programmes and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration, renewal or protection of those rights.
'Licence Agreement'	means any legally binding agreement between the Client and Odoo for the use of Odoo Software by the Client.
'Odoo'	Odoo S.A., a company having its registered office at Chaussée de Namur, 40, 1367 Grand-Rosière, Belgium.
'Offer'	is defined in clause 2.3.
'Partnership Agreement'	the Partnership Agreement between Sapentia and Odoo, the terms of which can be found online at

[https://www.odoo.com/documentation/18.0/odoo\\_enterprise\\_agreement.pdf](https://www.odoo.com/documentation/18.0/odoo_enterprise_agreement.pdf)

'Party' and 'Parties'	Sapentia and the Client, and 'Party' shall mean either one of them.
'Project'	the development of the Software, the creation or procurement of Extra Modules for operation with the Software.
'Project Plan'	means the time schedule and sequence of events specified in the Services Schedule.
'Ready for Use'	means that the Software is installed and performing in accordance with its Functional Specifications.
'Review Date'	any date from which Sapentia is entitled to increase the Fees for a Service as set out in the Services Schedule.
'Review Period'	a period beginning on any Review Date and ending on the day before the next Review Date, and qualified uses of the term are to be construed accordingly.
'Sapentia'	is a company incorporated in England and Wales under company number 15001981 having its registered office is at Windsor House, Trent Valley Road, Lichfield WS13 6EU.
'Services'	include without limitation the development of Software and the provision of Support.
'Services Schedule'	the Sapentia document addressed to the Client providing a description of the Services to be provided, the Fees for the provision of the Services identified therein, the duration of any Support Services (if any) and a Project Plan.
'Site' or 'Sites'	the location or locations of the Client's System as specified in Schedule 3 and as varied from time to time.
'Software'	the computer software known as 'Odoo Enterprise Edition' or 'Odoo Community Edition' and Extra Modules.
'Support'	those support Services as identified in the Services Schedule which have been agreed to be provided to the Client and which may be delivered on Site or remotely.
'Standard Support'	Support during Standard Support Hours.

'Standard Support Hours'	Monday to Friday 8am–6pm excluding bank holidays.
'System'	the Client's computer system, network and other components of the Client's information technology infrastructure.
'Warranty'	is described at clause 6.
'Warranty Period'	is the period commencing from the Acceptance Date and expiring after the period stated in the Services Schedule or in accordance with clause 6 below if not stated in the Services Schedule.

## 1.2 In this agreement:

- (a) the singular includes the plural and one gender includes all.
- (b) references to Schedules and clauses are to those in this agreement.
- (c) reference to a statutory provision includes any amendment or replacement provision relevant to the agreement.
- (d) reference to a document includes that document as amended, altered or replaced subsequent to the date of this agreement.
- (e) reference to writing includes facsimile transmission, e-mail, and similar media unless the context otherwise expressly provides.
- (f) time expressed in days excludes the first day but includes the last day. If the last day does not fall on a normal business day in both England and Wales then the last day will be deemed to be the first normal business day.
- (g) the phrase 'in writing' shall include email messages but not SMS / text messages.

## 1.3 The headings in this document do not form part of the Agreement.

## 2. MAKING THE AGREEMENT

2.1 It is a condition of this Agreement that the Client shall first have entered into a Licence Agreement with Odoo and also that the Licence Agreement should endure for the full term of this Agreement.

2.2 The Client appoints Sapentia and Sapentia accepts such appointment to provide the Services described in the Services Schedule, upon and subject to the terms of this Agreement.

2.3 The Services to be provided under this Agreement are set out in the Services Schedule as varied from time to time. The Services Schedule is created by Sapentia with the assistance of the Client and when delivered to the Client, shall constitute an offer by Sapentia to provide those Services set out in that Schedule subject to these GTOB (the 'Offer').

2.4 The Services Schedule may be varied or added to as agreed by the Parties from time to time, in writing. Any variation or addition to a Schedule shall be clearly indicated (including the additional or different Fees to be paid by the Client).

2.5 Any purchase order delivered by the Client to Sapentia constitutes an acceptance of the Offer by the Client unless the terms of the purchase order are inconsistent with those terms set out in the Offer AND / OR the purchase order purports to make the purchase subject to any terms of purchase of the Client. In such a case, the Client's purchase order shall constitute a counter offer only, which may be accepted or rejected by Sapentia and, if rejected, Sapentia shall have no liability to the Client arising by reason of that rejection.

2.6 Where Sapentia has delivered an Offer to the Client and the Client has authorised or required in writing that Sapentia should commence the delivery of Services, the Client shall be deemed to have accepted the terms of Sapentia's Offer when authorising or requiring the commencement of the work.

2.7 The terms of this Agreement, as set out in the Services Schedule and these GTOB, shall prevail over any inconsistent terms or conditions contained in, or referred to in, any purchase order of the Client, any confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.8 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding on Sapentia unless in writing and signed by a duly authorised representative of Sapentia.

### 3. DURATION OF AGREEMENT

3.1 The Agreement shall commence on the later of:

- (a) the date upon which the Offer is accepted or deemed to have been accepted; or
- (b) the date of the making of a Licence Agreement.

3.2 The duration of this Agreement shall be specified in writing in the Services Schedule and, unless otherwise stated, it shall be automatically renewed for a subsequent equal period, unless either Party provides a written notice of termination by the giving of a minimum of 30 days' notice before the end of the period to the other Party. [Notwithstanding the foregoing, the Agreement shall cease automatically and without the giving of notice by either Party in the event that the Licence Agreement is terminated or ends due to the effluxion of time.]

3.3 Sapentia will provide the Services as set out in the Services Schedule as those may be varied from time to time in accordance with the terms of this Agreement. Each Service or Project may be subject to its own duration under this Agreement ('Term').

3.4 Irrespective of any terms of this Agreement concerning timelines for delivery of any Services, Sapentia shall have no obligation to start delivery of any Service until it is satisfied that the Client has entered into a Licence Agreement with Odoo and is bound by the terms of that Licence. In the event that Sapentia does delay the delivery of any Services because it reasonably believes that the Client is not bound by the terms of a Licence Agreement, Sapentia shall have no liability to the Client.

### 4. SAPENTIA'S OBLIGATIONS

4.1 Sapentia shall, in accordance with the Project Plan:

- (a) develop within [thirty (30)] days of the date of execution of this Agreement a Detailed Project Plan which plan will accord with and expand upon the Project Plan and be consistent with the timeframes and milestones included in the Project Plan;
- (b) agree with the Client the terms of the Detailed Project Plan;
- (c) perform the tasks allocated to Sapentia in the Project Plan and the Detailed Project Plan and do all other work reasonably necessary to develop the Software in order that it provides the functions and meets the performance criteria set out in the Functional Specification;
- (d) provide the Software Ready for Use; and
- (e) provide or procure the provision of services during the Warranty Period in accordance with clause 6.

#### 4.2 Sapentia shall:

- (a) co-operate with all third Party suppliers of software to be used with or affecting the Software from time to time during the term of this Agreement;
- (b) ensure that any subcontractors engaged by Sapentia under the Agreement comply with the Functional Specification, the Project Plan and the Detailed Project Plan to the extent required to enable Sapentia to perform its obligations under this Agreement;
- (c) ensure that the core functionality of the Software as defined in the Services Schedule is completed and system tested by Sapentia and ready for acceptance testing in accordance with this Agreement by the date specified in the Detailed Project Plan;
- (d) ensure that the Project is completed and system tested by Sapentia and ready for acceptance testing in accordance with this Agreement by the date specified in the Detailed Project Plan; and
- (e) commence the Project on the date specified in the Detailed Project Plan;
- (f) have implemented appropriate technical and organisational measures in such a manner that processing of personal data for and on behalf of the Client will meet the requirements of GDPR and ensure the protection of the rights of the data subject;
- (g) shall not process the Client's personal data other than on the instructions of the Client.

4.3 Unless explicitly agreed and stated in writing within the Agreement, time shall not be of the essence to the Agreement. Sapentia shall use its best endeavours to provide the Services within the time limits set out in the Services Schedule. If it is unable to do so for any reason it will notify the Client as soon as practically possible and inform the Client of:

- (a) the reason for its being unable to provide the Services;
- (b) when the provision of the Services will be resumed.

4.4 Failure to provide any Services within the time limits will not arise if the reason for the failure is:

- (a) a breach of this Agreement by the Client; or
- (b) a breach of the Licence Agreement; or

- (c) results from the occurrence of a Force Majeure event.

## 5. CLIENT'S OBLIGATIONS

5.1 The Client shall promptly communicate any modifications to or changes to the Detailed Project Plan as soon as reasonably practicable and in any event within twenty-one (21) days of delivery by Sapentia. Sapentia shall implement such changes accordingly.

5.2 The Client shall be a data controller within the meaning of GDPR. In the course of the delivery of the Services, Sapentia may be required to process personal data for or on behalf of the Client. Sapentia will be a data processor for that purpose. The Client undertakes and warrants to Sapentia that any such personal data that is made available to Sapentia by reason of this Agreement:

- (a) shall have been lawfully processed by the Client;
- (b) shall continue to be lawfully processed by the Client during the continuation of this Agreement;
- (c) may be lawfully processed by Sapentia at all times during the continuation of this Agreement.

5.3 The Client shall at all times during the continuation of this Agreement comply with the terms and conditions of the Licence Agreement. Any breach by the Client of the Licence Agreement shall be a breach of this Agreement and shall entitle Sapentia to terminate this Agreement on delivery by written notice to the Client.

5.4 During the continuation of this Agreement the Client will ensure that the Client's staff and agents cooperate with and assist Sapentia in the discharge of its obligations. In particular, when reasonably required by Sapentia, the Client shall:

- (a) promptly and accurately provide information to Sapentia concerning any Bug or other requirement for Support;
- (b) such access as is necessary to its System for Sapentia's agents and employees together with such passwords, codes, keys and the like necessary for the carrying out of the Support or a Service;
- (c) use of a part of the System as Sapentia shall reasonably require for the carrying out of the Support or a Service;
- (d) access to the Client's premises at all times reasonably necessary including where appropriate outside normal office hours for the purpose of carrying out Support or a Service on Site.

5.5 In the event that the Client receives any notice, decision, notification or is the object of any enforcement action by a governmental or regulatory agency or body which is likely to affect the delivery of Services by Sapentia, it will immediately inform Sapentia in writing providing details of the enforcement action and any action it is proposing to take in respect of it.

## 6. WARRANTY

6.1 Under this Warranty and during the Warranty Period:

- (a) the Client may request phone consultation, assistance and advice with respect to technical queries concerning the operation of the Software including remote assistance;
- (b) Sapentia shall take all steps which are reasonable in order to fix any Bugs, whether by remote assistance or by on-site visit, including the making of corrections to errors reported in the current release of the Software as and when the same are made available;
- (c) Software updates and patches to the Software shall be provided as and when they become available during the Warranty Period.

6.2 In the event that a Bug is incapable of being fixed, or where the Software as delivered is defective, the remedy available to the Client shall be the replacement of the defective Software but not re-installation onto the System. Re-installation shall be charged separately at the advertised charge rates unless the defect in the Software was caused by the negligent act or omission of Sapentia.

6.3 The Warranty in this Agreement is the only warranty granted by Sapentia. ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

6.4 In default of agreement for a different period, the Warranty Period shall be 3 months.

6.5 On expiry of the Warranty Period, Support shall be chargeable in accordance with the provisions of the Payment Terms as set out in the Services Schedule.

## 7. PAYMENT OF FEES

7.1 Fees shall be paid upon invoicing by Sapentia for each Service by BACS transfer. If the Client wishes to raise a purchase order to Sapentia prior to it being invoiced then it must do so and supply the order to Sapentia at least 1 month before the Fee for a relevant Service is payable. For the avoidance of doubt the Fees will be due and payable on the relevant payment date whether any purchase order has been provided as set out herein and absent the timeous provision of a purchase order the Client will be invoiced prior to the beginning of a Term and required to pay as set out in the Payment Terms.

7.2. If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in this Agreement then Sapentia shall be entitled to:

- (a) charge interest accruing daily on the outstanding amount at the rate of 5% per annum above the base lending rate of Revolut;
- (b) require the Client to pay, in advance, for any Support or Service (both including and in addition to the Services in respect of which it is in default) which has not yet been performed; and
- (c) cease provision of any or all of the Services without liability to the Client.

## 8. DETERMINATION OF REVISED FEES

8.1 The Fees for any Review Period is to be determined by Sapentia and notified in writing to the Client not less than 1 month prior to the relevant Review Date.

Fees for any Review Period may not increase by a greater percentage than any percentage increase in the RPI between the beginning and end of the previous Review Period (or in the case of the first Review Period between the Commencement Date for a Service and its first Review Date).

8.2 Where the relevant Schedule provides for charging for the Service on an hourly or other time basis then the references in this clause 8 to the Fees shall be construed as a reference to the hourly or other time rate.

## 9. SYSTEM TESTING

9.1 Sapentia shall prepare and submit to the Client in accordance with the Detailed Project Plan:

- (a) sufficient tests, test results and test data to indicate whether the Software provides the functions and meets the performance criteria set out in the Functional Specification which tests will include at least those tests which assess the performance of the Software as against the criteria set out in the Functional Specification; and
- (b) the results expected to be achieved by carrying out the tests on the System using the Software and the applicable System software.

9.2 Sapentia must give the Client, in accordance with the Detailed Project Plan, at least [five (5)] days [written] notice of the date on which Sapentia expects the Software to be ready for the Acceptance Tests.

## 10. ACCEPTANCE TESTS

10.1 The Client will within [seven (7)] days of receipt of notification of the completion of a Project inform Sapentia and seek Sapentia's agreement to the number of days the Client expects the Acceptance Tests will take (the 'Acceptance Testing Period').

10.2 The Client will prior to the commencement of the Acceptance Tests provide to Sapentia written details of the nature and purpose of the Acceptance Tests and the results expected to be achieved by carrying out the Acceptance Tests.

10.3 During the Acceptance Testing Period the Client must perform the Acceptance Tests with the co-operation and assistance of Sapentia.

10.4 If the Software fails to pass the Acceptance Tests, Sapentia must at its own cost within [thirty (30)] days after the end of the Acceptance Testing Period:

- (a) correct the Software so that it provides the functions and meets the performance criteria set out in the Functional Specification; and
- (b) repeat the Acceptance Tests with the Client at times convenient to both parties.

10.5 If Sapentia fails to comply with clause 10.4 the Client may:

- (a) set a new date for repeating the Acceptance Tests at Sapentia's reasonable cost;
- (b) accept the Software subject to a reduction in the total amount owing to Sapentia under this Agreement equal to the amount agreed between the parties to be attributable to the affected Software; or

(c) reject the Software and terminate this Agreement.

10.6 The Software will be deemed to have passed the Acceptance Tests if:

- (a) the Client provides to Sapentia written confirmation of the successful Acceptance Tests of the Software prior to the end of the Acceptance Testing Period;
- (b) the Client commences to use the Software as its primary software system for the provision of the functionality the Software is designed to deliver; or
- (c) the Acceptance Testing Period expires without the Client making any written complaint or incident report to Sapentia concerning the Software.

## 11. READY FOR USE

11.1 After the Acceptance Tests have been satisfactorily completed Sapentia must verify that the Software, when installed on the System with the applicable system software, provides the functions and meets the performance criteria set out in the Functional Specification.

11.2 After the verification required under clause 11.1, Sapentia must notify the Client of the date on which the Software is Ready for Use.

## 12. CONFIDENTIALITY

12.1 Each Party agrees not to disclose any Confidential Information provided by the other Party during the continuation of this Agreement or at any time thereafter to any third party save where the law requires. Each Party also agrees not to use any such Confidential Information for any other purpose other than in connection with the provision of the Service and will not use the information for any business or other purpose of its own.

12.2 Each Party undertakes to procure that its employees, directors, agents and advisers and any other persons to whom it makes available Confidential Information shall also keep confidential the information the subject of this clause 12.

12.3 The obligations in this clause 12 shall continue after the termination of this Agreement.

## 13. INTELLECTUAL PROPERTY

Sapentia is licensed by Odoon to carry out the Services contemplated by this Agreement under the terms of the Partnership Agreement and may use and develop the intellectual property rights ('IPR') in the Software it supplies to and / or develops for the Client in connection with the Service unless:

- (a) it belongs to a third party supplier in which case Sapentia will duly inform the Client;
- (b) specific express written provision is made in the Services Schedule or by amendment to this Agreement to the contrary.

## 14. CLIENT'S WARRANTY FOR IPR

The Client warrants that it has all proper licences, permissions and where appropriate other IPR in all software installed on its System or to which it has access in the course of the operation of the System.

## 15. USE OF SUB-CONTRACTOR

Sapentia may employ the services of a sub-contractor in order to deliver the Services to the Client. Sapentia shall in such case be responsible for ensuring that the Service provided by the sub-contractor is to the same or a comparable standard to that delivered or intended to be delivered by Sapentia.

## 16. LIABILITY

16.1 The liability of Sapentia under or in connection with this Agreement for the provision of the Service whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the amount of Fees already paid under this Agreement.

16.2 Sapentia shall not be liable to the Client for any loss of profits, any indirect, consequential or economic loss including but not limited to damage, costs or expenses of any description, loss of business, goodwill, turnover or any other loss arising from its performance or non-performance of its obligations in connection with this Agreement whether arising from breach of contract, tort, breach of duty, negligence or any other cause of action.

16.3 Nothing in this clause 16 shall be construed as limiting or excluding either Party's liability to the other for causing personal injury or death of any person or for any fraud or deceit in inducing the making of this Agreement.

## 17. INDEMNITY

17.1 The Client will indemnify Sapentia in respect of any losses, damage or liability Sapentia may incur as a result of the Client's acts or omissions, whether deliberate, accidental, negligent or reckless, in the course of the provision by Sapentia of the Service to the Client under this Agreement whether such acts or omissions amount to a breach of an express or implied obligation under this Agreement or a breach of any other legal requirement or obligation, code of practice, licence, consent, forbearance, approval, permission or rule.

17.2 For the avoidance of doubt losses, damage and liability shall include but not be limited to economic and commercial loss, loss of goodwill, legal and other costs associated with legal proceedings of any kind which Sapentia has to bring or to which it has to respond, fines, penalties, damages and any financial consequence whatever flowing directly or indirectly from the matters set out in this clause 17.

## 18. ENTIRE AGREEMENT

This Agreement supersedes and replaces any previous agreement between the Parties whether oral or in writing in relation to the provision of the Services. The Parties hereby agree that in entering into this Agreement they have not relied upon any warranty or representation made by or on behalf of the other Party save where expressly stated in this Agreement. The Parties hereby agree that this

Agreement including the Schedules and annexes constitutes the whole agreement between the Parties in relation to the provision of the Services.

## 19. TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

19.1 Services will start on the Commencement Date set out in the Services Schedule for each Service and will continue until terminated by either Party giving at least 3 months written notice in respect of each Service, such notice to expire at the end of the Term for that Service, as initially set or renewed, as the case may be. Otherwise, the Service will be renewed for a further Term equivalent in duration to the initial Term for that Service or as provided for under this clause 19.

19.2 In the event that all Services (including Projects) have been terminated for whatever reason this Agreement shall itself lapse within 28 days of the end of the provision of the last remaining Service.

19.3 Without prejudice to the other remedies or rights a Party may have, Sapentia may terminate the provision of any Service at any time, on written notice to the Client, if the Client:

- (a) is wound up due to insolvency
- (b) makes or seeks a composition with its creditors
- (c) enters into or seeks an insolvent voluntary arrangement
- (d) becomes the subject of the appointment of a manager, receiver or liquidator
- (e) is the subject of an administration order
- (f) has its assets charged or seized for the satisfaction of a debt
- (g) divulges confidential business information obtained from Sapentia
- (h) fails to comply with the terms of the Licence Agreement in connection with the Services
- (i) fails to pay any sum due under this Agreement and such sum is not paid or settled in full for 28 days or more after the due date for payment
- (h) fails to co-operate with Sapentia for a period of 28 days or more in a manner required under this Agreement or is in breach of its obligations under this Agreement and in the case of a breach capable of remedy fails to remedy the same within 14 days after receipt of a notice giving full particulars of the breach and requiring it to be remedied.

## 20. CONSEQUENCES OF TERMINATION

20.1 Upon termination of a Service the Client must pay for the Service provided prior to the date of termination as well as any further expenditure incurred by Sapentia after the date of termination arising from commitments reasonably entered into by Sapentia prior to the date of termination.

20.2 Upon termination of the last of the Services provided to the Client and consequently the termination of this Agreement, each Party shall return or destroy (as reasonably required by the other) all documents, materials or other

information, whether in hard copy or electronic form, in its possession or control which constitute or include any Confidential Information of Sapentia.

## 21. FORCE MAJEURE

Sapentia shall not have any liability to the Client for any delay, omission, failure or inadequate performance of this Agreement which is the result of any event of Force Majeure. Where Sapentia is so affected in its performance of this Agreement it will notify the Client as soon as is reasonably possible in writing.

## 22. AMENDMENTS

This Agreement may only be amended or varied in writing signed by the Parties or their duly authorised representatives.

## 23. ASSIGNMENT

23.1 Neither Party may assign, charge, mortgage, sub-contract, delegate or otherwise assign or transfer its rights or obligations under this Agreement save where express provision is made for the same in this Agreement, without the prior written consent of the other Party.

23.2 A Party may assign or transfer its rights under this Agreement if such assignment or transfer takes place in the context of the disposal of all of its business to which the Service is related provided that the proposed assignee or transferee undertakes to Sapentia directly in a form reasonably required by Sapentia to be bound by the obligations of the proposed assignor.

## 24. WAIVER

No failure, neglect or delay in enforcing any of the terms of this Agreement by one Party may be construed as a waiver of any of that Party's rights in respect thereof nor such neglect, failure or delay a variation of the express terms of the Agreement.

## 25. NO AGENCY, PARTNERSHIP, ETC.

Neither Party is for any purpose the agent or partner of the other as a result of anything arising from this Agreement and each Party hereby undertakes not to represent to any third Party that it has any authority to act on that other Party's behalf.

## 26. FURTHER ACTION

The Parties agree that they will expeditiously carry out such further acts as may be necessary for the purpose of this Agreement including the execution and delivery of such instruments, deeds, licences, notifications as may be reasonably required by the other Party or by law.

## 27. SEVERANCE

In the event that any term of this Agreement is found to be invalid or otherwise unenforceable then such term shall be regarded and construed as severable from the Agreement so as not to affect the validity and enforceability of the remainder.

## 28. NOTICES

All notices under this Agreement shall be in writing and shall be delivered personally or by first class, registered or recorded post in every case to the other Party's Agreed Address. In the case of first class post notice will be deemed to be received 2 business days after the date of posting.

## 29. NON-SOLICITATION

Neither of the Parties shall during the continuation of this Agreement and for a period of 12 months after its termination seek to entice away or recruit any employee of the other Party who is or was so employed during the continuation of this Agreement.

## 30. LAW AND JURISDICTION

This Agreement is governed by the law of England and Wales and is subject to the exclusive jurisdiction of the courts of England and Wales.

## 31. THIRD PARTY RIGHTS

The Parties to this Agreement agree that it is not hereby intended that any rights should be conferred upon or enforceable by any third Party as defined in the Contracts (Rights of Third Parties) Act 1999.

## ANNEXURE - DATA PROCESSING AGREEMENT

For the purposes of this data processing agreement the Data Processor is Sapientia and the Data Controller is the Client.

### 1. Data Processor's Obligations

1.1 The Data Processor shall not sub-contract any duties or obligations arising under this Addendum without the prior written consent of the Data Controller, such consent not to be unreasonably withheld or delayed.

1.2 The Data Processor shall:

- (a) only process the Personal Data in accordance with the terms of this Addendum or any further documented instructions from the Data Controller and solely in relation to the performance thereof. If in the reasonable opinion of the Data Processor any such term or instruction infringes the General Data Protection Regulations ("GDPR") the Data Processor shall immediately inform the Data Controller of such infringement;
- (b) ensure that persons employed to process the Personal Data have been required to commit themselves in writing via an employment agreement or some other contractual document to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) assess and implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the Supplier represented by the processing, including as appropriate:
  - (i) the pseudonymisation and/or encryption of Personal Data;
  - (ii) the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services;
  - (iii) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
  - (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

1.3 In assessing the appropriate level of technical and organisational measures required to undertake the processing and ensure security as per clause 1.2(c) above, the Data Processor shall take account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data of the type being transmitted, stored or otherwise Processed.

1.4 The Data Processor shall, taking into account the nature of the processing, assist the Data Controller by appropriate technical and organisational measures, insofar as this is possible, to enable the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR.

1.5 The Data Processor shall assist the Data Controller in the compliance of its obligations pursuant to Article 32-36 of the GDP.

1.6 The Data Processor shall, at the choice of the Data Controller, delete or return all the Personal Data to the Data Controller after the end of the provision of the processing services, and delete existing copies unless copies of the Personal Data need to be retained for compliance with the Data Processor's statutory obligations.

1.7 The Data Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and, if requested, contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.

1.8 Where the Data Processor engages a sub-processor to carry out specific processing activities on behalf of the Data Controller, the Data Processor must enter into a contract with the sub-processor on terms mirroring those contained in this contract insofar as they relate to data processing. The Data Processor shall remain fully liable to the Data Controller for the performance of sub-processor's obligations.

1.9 The Data Processor must keep electronic records of its processing activities performed on behalf of the Data Controller, including:

- (a) the details of the Data Controller/ Data Processor and any representatives, sub-processors and data protection officers;
- (b) the categories of processing activities performed;
- (c) information regarding cross-border data transfers, if any; and
- (d) a description of the technical and organisational security measures implemented in respect of the processed data.

1.10 The Data Processor must notify any Data Breach to the Data Controller as soon as possible after it becomes aware of the same. Such notice can be given verbally but must be followed up in writing within 24 hours with the following details: the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

1.11 Regarding transfers of Personal Data to a third country or an international organisation, such shall only be undertaken on the instruction of the Data Controller save where the Data Processor is required to do so by law; in which case, the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

## 2. Data Protection Warranties, Indemnities and Survival

2.1 Notwithstanding any other provision of this Addendum, the Parties warrant that, upon receipt of Personal Data, each shall duly observe all its obligations as a Data Controller and/or Data Processor under the Data Protection Act ("DPA") and the GDPR, which arise in connection with the Processing and the performance of its respective rights and obligations under this Addendum.

2.2 Each Party (the "Defaulting Party") shall indemnify and keep indemnified the other Party in full and hold harmless against all claims and proceedings and all liability, loss, costs, fine and expenses (including reasonable legal fees) suffered

or incurred by the other Party arising from or in connection with the Defaulting Party's proven unauthorised and/or unlawful Processing or destruction and/or damage to any Personal Data Processed by the Defaulting Party, its employees or agents and/or the Defaulting Party's failure to comply with its obligations under this agreement (Data Processor Obligations).

2.3 The provisions of this Addendum (Data Processor Obligations) are expressly agreed by the Parties to survive any termination of this Addendum, however arising.