



Master Services Agreement

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Master Services Agreement

These Master Services Agreement terms ("Terms") contain the terms and conditions under which we provide our services. We will ask you to agree to this MSA and one or more PCDs, before we begin working with you.

1. Definitions and interpretation in the Agreement:

"**Agreement**" these Terms; any PCDs agreed between the Parties; the Schedules to these Terms insofar as applied by a PCD; and any amendments to them from time to time;

"**Business Day**" any week day, other than a bank or public holiday in England;

"**Business Hours**" between 09:00 and 17:30 on a Business Day;

"**Charges**" the amounts payable by the Customer to Icon under or in relation to the Agreement (as set out in the Schedules and PCDs);

"**Customer Data**" the data inputted or owned by the Customer or inputted on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;

"**Icon**" means Icon Solutions (UK) Limited;

"**Commencement Date**" means the date of execution of the Agreement;

"**Confidential Information**" means: (a) any information supplied (whether supplied in writing, orally or otherwise) by one Party to the other Party marked as "confidential", described as "confidential" or reasonably understood to be confidential;

"**Customer**" means the company, firm or person specified in the PCD; also a "Party" and together with Icon, collectively "the Parties".

"**Customer Environment**" the Customer's IT infrastructure;

"**Day Rate**" the day rate for Icon employees as specified in a PCD or otherwise as applicable from time to time.

"**Deliverables**" any products, software and materials supplied or developed by Icon in relation to any PCD in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts);

"**Documentation**" the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by Icon as detailed in the PCD;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Initial Term**" means a period of 12 months starting on the Commencement Date;

"**Project Plan**" a detailed plan describing any project to be completed by Icon as part of the Services and setting out the Deliverables to be provided, the estimated timetable (including any project milestone dates) and responsibilities for the provision of Services by Icon in accordance with the PCD.

"**Schedules**" means the schedules attached to these Terms;

"**Services**" means the services, including but not limited to the Deliverables to be provided under the Agreement as more particularly described in the Schedules and any PCDs;

"**Service Levels**" Icon's agreed service levels for providing Services as detailed in a Service Level Agreement or otherwise in a PCD.

"**Service Level Agreement**" Icon's policy for providing support services in relation to the Services as detailed in any PCD;

"**Specification**" the specification of the Services which describes the facilities, functions and performance of Deliverables as detailed in any PCD

"**PCD**" means a Purchase Confirmation Document signed by each of the Parties detailing the scope of the Services, any Project Plan, Specification and any related Charges or other matters relating to (and incorporating) the Agreement;

"**Term**" means the term of the Agreement.

In this Agreement, a reference to a statute or statutory provision includes a reference to: (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and (b) any subordinate legislation made under that statute or statutory provision. The Clause headings do not affect the interpretation of the Agreement. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and

includes any subordinate legislation for the time being in force made under it. A reference to writing or written includes faxes but not e-mail. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

These conditions shall prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

In the event of a conflict between the terms and conditions of this Master Services Agreement ("MSA"), the PCD ("PCD") or any Service Level Agreement ("SLA"), the following order of preference shall prevail: 1) PCD, 2) MSA, 3) SLA.

2. Services.

This Agreement together with any PCD and Service Level Agreements will operate as a framework agreement which defines the contractual terms and conditions under which Icon will supply Services to the Customer. Whilst this Agreement remains in force the Parties shall agree the provision of Services as set out in a PCD which shall be governed by and be subject to, the terms and conditions of this Agreement.

Icon undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care and shall from the Commencement Date and throughout the Term and any Renewal Term, provide the Services to the Customer on and subject to the terms of this Agreement and any PCD. Any dates quoted for delivery of Services are approximate only, and unless otherwise agreed between the Parties in the PCD the time of delivery is not of the essence.

During the Term, where agreed in a PCD, Icon will, as part of the Services, provide the Customer with Icon's standard customer support services during Business Hours in accordance with Icon's Service Level Agreement in effect at the time that the Services are provided.

If Icon'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 Icon on demand all reasonable costs, charges or losses sustained or incurred by it (including consequential losses, and loss of opportunity to use Icon resources elsewhere), subject to Icon confirming such costs, charges and losses to the Customer in writing.

3. Customer obligations.

The Customer will: (i) provide Icon with all timely co-operation, information, access (including to Customer personnel assistance, access to premises, office accommodation and other facilities), data and documentation requested for the provision of the Services and ensure that such information is accurate in all material respects; and, (ii) appoint a customer representative who shall have the authority to contractually bind the Customer on matters relating to the Services (iii) be responsible for procuring any third party co-operation reasonably required for the provision of the Services and be responsible (at its own cost) for preparing the relevant premises and the Customer Environment for the provision of Services; and, (iv) comply with all applicable laws and regulations with respect to its activities under this Agreement;

Unless otherwise agreed, the Customer will be responsible for obtaining and maintaining all necessary licences, consents, and permissions necessary (including but not limited to licenses for third party software) for Icon, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

The Customer will take all reasonable and usual precaution to safeguard and maintain the Customer Environment, including taking regular and useable backups to ensure against data loss, operating firewalls and virus checks and implementing effective and appropriate data security in respect to the provision and receipt of Services.

In the event of any delays in the Customer's provision of such assistance as agreed by the Parties or a failure to comply with the above paragraph, without prejudice to its rights under clause 2 above, Icon may adjust any

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agreed timetable or delivery schedule as reasonably necessary.

4. Acceptance

Where applicable in a PCD the Parties shall, no later than 30 days from the date of signature of such PCD, agree acceptance tests for the Deliverable which shall be attached to the PCD. These criteria and data ("Acceptance Tests") shall be such as are reasonably required to show that the Deliverable complies with any Specification agreed between the Parties. Acceptance of a Deliverable shall be deemed to have occurred on the expiry of five days after the completion of all the Acceptance Tests, unless the Customer has given written notice to Icon that the Deliverable has failed to pass the Acceptance Tests.

5. Change Control

If either Party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

If either Party requests a change to the scope or execution of the Services, Icon 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 Icon's Charges arising from the change; (c) the likely effect of the change on the Project Plan or any timetable in a PCD; and, (d) any other impact of the change on the terms of the Agreement or PCD.

If Icon requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. If the Customer wishes Icon to proceed with the change, Icon has no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to its Charges, the Project Plan, PCD and any other relevant terms of the Agreement to take account of the change.

6. Charges and payment

Icon will issue invoices for the Charges to the Customer in accordance with the provisions of the Schedules and Statement(s) of Work. Time for payment of the Charges shall be of the essence in this Agreement. The Customer shall pay the Charges to Icon for the Services in accordance with this clause 6, subject to any other payment terms detailed in the Schedules, any PCD, or as otherwise agreed between the Parties.

Time-and-Materials

Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Icon's standard daily fee rates as amended from time to time;
- (b) Icon's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.30 pm on weekdays (excluding weekends and public holidays). For the avoidance of doubt, unless otherwise agreed between the Parties, any hours worked in excess of 5 hours shall constitute a full day's work and be charged at the applicable Day Rate, work up to 5 hours shall be charged at ½ the applicable Day Rate then in force. Icon may, at its discretion, waive fees for certain work completed in under 1 ½ hours, provided that even in the event of such a waiver, where such waived time over a 3 month period cumulatively totals more than 5 hours, Icon may make an appropriate charge for such works at its then applicable Day Rates;
- (c) Icon shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked outside the hours referred to in condition 6(b) on a pro-rata basis;
- (d) Icon shall use such time sheets to calculate the charges covered by each monthly invoice; and
- (e) Icon shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 6. If requested by the Customer each invoice shall set out the time spent by each member of the Icon team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

Fixed Price

Where Services are provided for a fixed price:

- (i) The Customer will pay the Charges to Icon in full without any set off: (a) on or before the dates set out in the relevant Schedules or PCD; or (b) where no such dates are set out in the relevant Schedules or PCD, within 30 days of the date of issue of an invoice and Icon 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 PCD excludes:

- (1) unless otherwise agreed in a PCD, the cost of hotel, subsistence,

travelling and any other ancillary expenses

reasonably incurred by the Icon team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Icon for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Icon at cost; and (2) VAT, which Icon shall add to its invoices at the appropriate rate.

Unless otherwise agreed in a PCD, all invoices shall be payable and due within 30 days of the date of invoice without set-off. All Charges stated in or in relation to the Agreement are stated exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

Without prejudice to any other right or remedy that Icon may have, if the Customer fails to pay Icon on the due date Icon may: charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and suspend all Services until payment including any interest, administrative and legal costs of collecting payment and any further sums payable has been made in full.

All payments payable to Icon under the Agreement shall become due immediately on termination of the Agreement or any PCD, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Agreement. Icon may, without prejudice to any other rights it may have, set off any liability of the Customer to Icon against any liability of Icon to the Customer.

Icon may vary the Charges on and from any anniversary of the Commencement Date by giving to the Customer not less than 60 days' written notice of the variation and the PCD shall be deemed to have been amended accordingly.

Subject to the payment of the appropriate Charges and the terms of this Agreement, Icon shall provide additional services as agreed between the Parties from time to time in a separate PCD.

7. Warranties

The Customer warrants to Icon that it has the legal right and authority to enter into and perform its obligations under the Agreement and that any materials provided to Icon by or on behalf of the Customer, and the use by Icon 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. The Customer hereby indemnifies and undertakes to keep indemnified Icon against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with any breach by the Customer of any term of the Agreement.

Icon warrants to the Customer: (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and (b) that Services will be performed by adequately qualified and trained personnel, with due care and diligence and to standards appropriate to the industry. The warranties under this Agreement shall not apply to the extent such non-conformance is caused by use of the Services contrary to Icon's instructions, or modification or alteration of the Services by any other party other than Icon or its authorised agents.

Any warranty provided to Icon in respect of third party equipment and/or software supplied under any PCD shall, where possible, be transferred to the Customer, subject to any terms or restrictions imposed by the manufacturer / software vendor. Icon does not warrant that any Deliverables will be fit to operate in conjunction with any other equipment or software not identified in the PCD as being compatible with the Deliverables.

8. Limitations and exclusions of liability

The following provisions set out the entire financial liability of Icon (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Agreement howsoever arising; (b) any use made by the Customer of the Services, the Deliverables or any part of them; and any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

All warranties, conditions and other terms implied by statute or common law

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are, to the fullest extent permitted by law, excluded from the Agreement.

Nothing in these conditions excludes the liability of Icon: (i) for death or personal injury caused by Icon's negligence; or (ii) for fraud or fraudulent misrepresentation; (iii) or for an other liability in any way that is not permitted by law.

Subject to the above paragraphs in this clause, Icon shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for: (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or (x) any losses arising out of a force majeure event

Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Deliverables, Services and the Documentation and for conclusions drawn from such use and actions taken. The Customer accepts responsibility for the selection of the Deliverables and Services to achieve its intended results and acknowledges that the Deliverables and Services have not been specifically developed to meet the individual needs of the Customer. Icon shall have no liability for any damage caused by errors or omissions in any information, customer data, instructions or materials provided to Icon by the Customer or used in relation to or queried by the Deliverables, or any action taken by Icon at the Customer's direction. Due to the nature of the Deliverables and Services and their potential application by the Customer (over which Icon have no control) the Customer assumes full responsibility for death or personal injury or any other harm caused or arising as a result of or by its use of the Software.

Icon's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement and any collateral contracts shall in relation to any event or series of related events not exceed the total amount paid by the Customer to Icon under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

Notwithstanding the above paragraph, Icon's liability for tangible property damage shall be one million pounds (£1,000,000) per incident or series of connected incidents.

Except as expressly and specifically provided in this Agreement: (a) the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Icon shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Icon by the Customer in connection with the Services, or any actions taken by Icon 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 any Deliverables are provided to the Customer on an "as is" basis.

9. Data protection.

(a) 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.

(b) If Icon 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 Icon shall be a data processor and in any such case:

(i) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Icon's other obligations under this Agreement; (ii) The Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Icon so that Icon may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf; (iii) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection

legislation;

(c) Icon shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and

(d) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

10. Intellectual Property Rights ("IPR").

The Customer acknowledges and agrees that Icon and/or its licensors own all Intellectual Property Rights in the Services and the Deliverables. Except as expressly stated herein, or is otherwise specifically agreed in a PCD this Agreement does not grant the Customer any rights to, or in, any intellectual property rights (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation. Icon hereby licenses all such relevant Intellectual Property Rights to the Customer on the terms agreed in any PCD solely to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as agreed by the Parties. If Icon terminates the Agreement such licence will automatically terminate. Icon confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. Indemnity

(a) The Customer shall defend, indemnify and hold harmless Icon against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that: (i) the Customer is given prompt notice of any such claim; (ii) Icon provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (iii) the Customer is given sole authority to defend or settle the claim.

(b) Icon shall, subject to clause 8, defend the Customer, its officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (i) Icon is given prompt notice of any such claim; (ii) the Customer provides reasonable co-operation to Icon in the defence and settlement of such claim, at Icon's expense; and (iii) Icon is given sole authority to defend or settle the claim.

(c) In the defence or settlement of any claim, Icon may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

(d) In no event shall Icon, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (i) a modification of the Services by anyone other than Icon; or (ii) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Icon; or (iii) the Customer's use of the Services after notice of the alleged or actual infringement from Icon or any appropriate authority.

The foregoing states the Customer's sole and exclusive rights and remedies, and Icon's (including Icon's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any intellectual property rights.

12. Confidentiality.

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 independent development can be shown by written evidence; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

Each Party shall hold the other's Confidential Information in confidence and,

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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.

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.

Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. Icon acknowledges that the Customer Data is the Confidential Information of the Customer.

The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Icon's Confidential Information. All materials, equipment and tools, drawings, specifications and data supplied by Icon to the Customer shall at all times be and remain the exclusive property of Icon, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Icon, and shall not be disposed of or used other than in accordance with Icon's written instructions or authorisation.

This clause 12 shall survive termination of this Agreement, however arising, and shall apply for 2 years after such termination.

13. Publicity.

Neither Party shall make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other Party.

14. Term and termination

This Agreement shall, unless otherwise terminated as provided in this clause 14 or any PCD, commence on the Commencement Date and shall continue through the Term and, thereafter, shall be automatically renewed at the end of the Term for successive periods of the Term (each a Renewal Term), unless: (a) either Party notifies the other Party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of any outstanding PCDs; or (b) it is otherwise terminated in accordance with the provisions of this Agreement.

Without affecting any other rights that it may be entitled to, either Party may terminate this Agreement without liability to the other if: (a) the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or (b) the other Party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business.

Without affecting any other rights that it may be entitled to, Icon may terminate the Agreement for breach if: (a) Payment of any invoiced amount is overdue and following notification to the Customer and the Customer does not pay the overdue amount within four (4) Business Days of a written notice from Icon (or such other time as has been agreed between the Parties in writing); (b) Payment arrangements have been made by the Customer for payment via a third party and the third party refuse to honour Icon's Charges; (c) the Customer breaches any other terms specifically agreed in a PCD.

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; (c) Icon may destroy or otherwise dispose of any of the Customer Data in its possession unless Icon receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of such Customer Data. The Customer shall pay all reasonable expenses incurred by Icon in returning or disposing of Customer Data; and (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. If this Agreement is terminated prior to the end of the Term, other than for unremedied material breach by Icon as detailed above, all Charges payable up to the end of the Initial Term shall be immediately due and payable to

Icon.

15. Non-solicitation.

neither Party shall, without the prior written consent of the other Party, at any time from the date of the Agreement to the expiry of six months after its termination, solicit or entice away from the other Party any person who is, or has been, engaged as an employee or sub-contractor of that Party, and has been actively involved in a relevant engagement. No such consent or fee should a candidate initially have responded to a non-targeted advertisement or recruitment campaign.

16. Force majeure

Icon 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 Icon or any other Party), failure of a utility service or transport or telecommunications network, act of God, 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 Icon's or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

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

If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

21. Assignment

The Customer shall not, without the prior written consent of Icon, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

Icon may at any time assign, transfer, charge, sub-contract or deal in any

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other manner with all or any of its rights or obligations under the Agreement.

21. No partnership or agency

Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Third party rights

No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.