

**This Agreement** is made \_\_\_\_\_

**Between:**

- (1) **essensys (UK) Limited** (company number: 05959557) whose registered office is at Aldgate Tower 7<sup>th</sup> Floor, 2 Leman Street, London E1 8FA ("**essensys**"); and
- (2) [ ] (company number: [ ] ) incorporated in [England and Wales] whose registered office is at [ ] (the "**Customer**"),  
  
(each a "**party**" and together the "**parties**").

**Background:**

- (A) essensys has developed the Solution and provides the Services to businesses to enable the orchestration and management of information technology infrastructure and services at workspace premises.
- (B) Customer wishes to procure and essensys has agreed to supply the Solution and Services to the Customer in accordance with the terms of this Agreement.
- (C) The Customer shall procure the Solution and Services using Service Order(s). The terms and conditions of this Agreement shall apply to the Service Orders made under it.

**It is agreed** as follows:

**1. Definitions The following defined terms have the following meanings:**

- 1.1 "**Actual Commencement Date**" The date provided for actual commencement of the Services as set out in the In-Service Notification;
- 1.2 "**Agreement**" means the main body of this agreement clauses 1 to 29 (and the recitals), together with the Schedules forming part of it, and any Service Orders;
- 1.3 "**Applicable Laws**" means, all applicable regional, national and international laws, regulations, rules, requirements and binding guidance, standards and directions, including those imposed by any governmental or regulatory or judicial authority, in each case which apply from time to time to the person or activity in the circumstances in question;
- 1.4 "**Authorised Representative**" means an authorised representative of either party for the purposes of the Service Description;
- 1.5 "**Business Day**" means any day excluding weekends and bank or public holidays in the territory the Services are being delivered;
- 1.6 "**Business Hours**" means 08.30 – 18.00 on a Business Day;
- 1.7 "**Change**" means any change to this Agreement;
- 1.8 "**Confidential Information**" means any and all information in any form whatsoever relating to essensys, or a Customer Party, or their business, prospective business, finances, technical process, computer software (both source code and object code) and IPRs, or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party's possession as a result of this Agreement, including the provision of the Solution or Services, and which the disclosing party reasonably regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;

- 1.9 **"Control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression "Controlled", "Controls" and "Change of control" shall be construed accordingly;
- 1.10 **"Consumer"** means a customer of the Customer whose Users have access to the Solution and/or Services;
- 1.11 **"Customer Data"** means all data inputted or imported into Solution or Services in accordance with the Agreement by the Customer Parties;
- 1.12 **"Customer Hardware"** means any equipment owned by Customer or any other Customer Party and used directly in the receipt of the Solution and/or Services, but not including the Hardware or the essensys Equipment;
- 1.13 **"Customer Marks"** has the meaning given to in clause 10.5;
- 1.14 **"Customer Parties"** shall mean Customer, Consumer and Users as the context dictates;
- 1.15 **"Data Protection Legislation"**: - a) To the extent that the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and b) To the extent that the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or essensys is subject, which relates to the protection of personal data;
- 1.16 **"Domestic Law"** the law of the United Kingdom or a part of the United Kingdom;
- 1.17 **"Expected Commencement Date"** has the meaning given to it in clause 5.5(a);
- 1.18 **"EU GDPR"** the General Data Protection Regulation ((EU) 2016/679);
- 1.19 **"EU Law"** the law of the European Union or any member state of the European Union;
- 1.20 **"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
- 1.21 **"Documentation"** means standard training materials, published specifications and user manuals relating to use of Solution and Services, as well as any additional documentation essensys creates for or otherwise provides to Customer to assist in the correction of any issue with Solution or Services;
- 1.22 **"Effective Date"** means the date of this Agreement;
- 1.23 **"End User Policy"** means the end user policy as amended by essensys from time-to-time which forms [Schedule 3 \(the End User Policy\)](#) of the Agreement;
- 1.24 **"essensys Company"** means, in the case of essensys, essensys or any entity that directly or indirectly Controls, is Controlled by, or is under common Control with essensys;
- 1.25 **"essensys Equipment"** means any equipment, including tools, systems, cabling, facilities, server hardware or disk storage, provided by essensys and used directly or indirectly in the supply of the Solution or the Services, including any such items specified in a Service Order, but excluding Hardware;
- 1.26 **"essensys Materials"** means firewall protection, server operating systems, management programs, mobile device applications, web server programs, documentation and all other information developed or provided by essensys or its suppliers under this Agreement, as well as all other documents, software, products and services contained or made available in the course of using Solution and Services;

- 1.27 **"Feedback"** means feedback, enhancement requests, recommendations or suggestions regarding attributes, performance or features of Solution or Services and provided by any one or more of the Customer Parties to essensys;
- 1.28 **"Fees"** means fees set out in each Service Order;
- 1.29 **"Force Majeure Event"** means anything outside the reasonable control of a party, including, without limitation, acts of God, fire, storm, flood, earthquake, explosion, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, labour disputes, power shortage, transportation embargo, failure or delay in transportation; any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition; or failing to grant a necessary licence or consent.;
- 1.30 **"Hardware"** means any goods, products or materials sold to Customer by essensys pursuant to a Service Order, and for the avoidance of doubt excluding essensys Equipment;
- 1.31 **"Illegal Content"** means any data or content which is defamatory, or constitutes a breach of the IPR or legal rights of any party or third party;
- 1.32 **"In-Service Notification"** means a form that is sent to the Customer upon final installation of the Services at a Premise and which confirms the Actual Commencement Date;
- 1.33 **"IPR"** means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;
- 1.34 **"Late Payment Notice"** has the meaning given to it in clause 12.5;
- 1.35 **"Other Vendors"** means (i) any third party engaged by one or more Customer Parties; or (ii) (a) any third party not directly engaged by essensys or an essensys Company or (b) any carrier or telecommunications company (including BT or Openreach) that is engaged to perform services in respect of a Service Order whether or not engaged by an essensys Company;
- 1.36 **"Premises"** means the site(s) set out in the applicable Service Order where the Consumer has instructed Customer or where Customer operate(s) flexible workspace and where essensys shall provide the Solution and Services;
- 1.37 **"Ready for Service"** means when the Services are ready for full operational use at the Premises in a live environment in accordance with this Agreement and an "In Service Notification" has been issued by essensys to Customer;
- 1.38 **"Schedules"** means the schedule(s) forming part of this Agreement. A Schedule is identified by numerical sequence;
- 1.39 **"Service Level Failure"** means a failure to achieve a Service Level;
- 1.40 **"Service Levels"** means the service levels in respect of the applicable Solution and Services ordered under each Service Order, as set out in [Schedule 2 \(Service Levels\)](#);
- 1.41 **"Service Order"** means each order form detailing the Services to be provided by essensys under this Agreement, substantially in the form set out in Schedule 6 (Template Service Order) ([Schedule 6A](#)) ([Schedule 6B](#)) and signed by both Customer and essensys or any purchase order for Hardware that is issued by Customer from time to time and accepted by essensys in writing;

- 1.42 **"Service Order Effective Date"** means, in relation to each Service Order, the date on which such Service Order becomes effective, as specified in the relevant Service Order;
- 1.43 **"Service Order Term"** means, in respect of each Service Order, the period specified as such in that Service Order, including any renewal of that term;
- 1.44 **"Services"** means the services to be provided by essensys pursuant to a Service Order,
- 1.45 **"Site Facilities"** means all facilities and services including (but not limited to) power, structured cabling, cooling, and Customer Parties' owned or leased equipment;
- 1.46 **"Solution"** means software applications and any other software developed and telecommunications and IT services used by essensys for the provision of the Services and including any Hardware during the Term;
- 1.47 **"Tax"** any tax (including but not limited to sales or value added), levy, impost, duty, or similar charges other than on essensys' net income;
- 1.48 **"Term"** has the meaning given to it in clause 3.1;
- 1.49 **"Travel Fees"** means all reasonable travel and subsistence expenses incurred by essensys (or its employees, subcontractors or agents) in performing its obligations under this Agreement;
- 1.50 **"Updates"** means any new or updated applications services or tools (including any software programmes) made available by essensys as part of Solution or Services during Term; and
- 1.51 **"Users"** means employees, workers, agents, consultants, guests, visitors, and/or contractors who access Solution or Services.

## 2. Interpretation

- 2.1 In this Agreement, unless the context requires otherwise or as otherwise expressly stated in this Agreement: (a) the definitions set out in Clause 1 shall apply; (b) references to this Agreement or any other document include references to this Agreement or such other document as varied, supplemented and/or replaced in accordance with its terms or as otherwise expressly agreed between the parties; (c) references to any party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective lawful successors, assigns or transferees; (d) if any obligation, including an obligation to make payment, falls on any day which is not a Business Day, the obligation shall be performed on the next succeeding Business Day; (e) references in this Agreement to "recitals", "clauses" or "Schedules" are to recitals, clauses, or schedules of this Agreement, and any reference to a "Paragraph", "Appendix" or "Annex" is to the relevant paragraph of or appendix or annex to the Schedule in which it appears; (f) references to any legislation (which includes legislation in any jurisdiction) is a reference to such legislation as amended, extended, re-enacted, consolidated or superseded from time to time, and includes all statutory instruments or orders made pursuant to it; (g) references to a "person" shall include any individual, company, corporation, firm, partnership, association, organisation, institution, trust or agency, whether or not having a separate legal personality; (h) references to the one gender include all genders, and references to the singular shall include the plural and vice versa; (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; (j) Clause, Schedule and paragraph headings, are for ease of reference only and shall not affect the interpretation of this Agreement; (k) any obligation of the Customer not to do anything includes an obligation not to permit or suffer that thing to be done by another person; and (l) any positive obligation of the Customer shall be construed as if it were also an obligation of the Customer to procure that the act or thing in question be done.
- 2.2 Subject to clause 2.3, if there is any conflict between the terms of the main body of this agreement (including the recitals) clauses 1 to 29 and those contained in any Schedule or

Service Order, to the extent of that conflict, the documents shall have the following order of precedence: (a) any terms identified in the "Special Terms" section of the Service Order; (b) the main body of this agreement (including the recitals); the (c) Schedules; and (d) all other terms of that Service Order save that where a document with a lower order of precedence expressly amends the terms of a document with a higher order, effect shall be given to that amendment.

2.3 If there is a conflict between the terms and conditions in any of the Service Orders and any annex or other attachment to that Service Order, then the terms and conditions of such Service Order shall prevail.

2.4 Any references in this Agreement to: "writing" shall include communication by e-mail (unless otherwise expressly stated in this Agreement); and a "month" shall mean a calendar month.

### 3. **Term**

3.1 This Agreement commences on the Effective Date and shall continue, unless terminated earlier in accordance with clause 11, until after the last Service Order made under it is terminated or expires (the "**Term**"). Neither party may terminate this Agreement without cause. Termination of any individual Service Order shall not affect the Term of this Agreement which shall continue unaffected unless terminated sooner or on expiry).

3.2 Each Service Order shall commence on its Service Order Effective Date and shall, unless terminated earlier in accordance with the terms of this Agreement or the relevant Service Order, continue in full force and effect for the applicable Service Order Term.

### 4. **Service Orders**

4.1 This Agreement governs the overall relationship between Customer and essensys and essensys agrees to provide from time to time the Solution, Services and Documentation to Customer on a non-exclusive basis in accordance with its terms and pursuant to an agreed Service Order.

4.2 From the Effective Date, Customer may request Services from essensys by completing a Service Order.

4.3 A Service Order shall not enter into force, be legally binding or have any other effect unless: (a) the Service Order has been signed by the authorised representatives of both parties to it; and (b) as at the date the Service Order is signed, this Agreement has not been terminated.

4.4 Each Service Order shall be subject to the terms of this Agreement and the provisions set out in the Service Order in question. Each Service Order shall form part of this Agreement once such Service Order has been signed in accordance with clause 4.3 and references to this Agreement shall be construed accordingly. A Service Order shall not form a separate contract.

4.5 Both parties shall act reasonably and in good faith in discussing, negotiating, and agreeing a Service Order for the purposes of this clause 4.

### 5. **Services and Solutions**

5.1 essensys shall provide the Solution and Services to Customer in accordance with the terms of this Agreement.

5.2 essensys shall: (a) ensure that the Solution and Services materially conform to their relevant descriptions set out in [Schedule 1 \(Service Description\)](#); (b) devote such time and resource as is reasonably necessary for the provision of the Solution and Services in accordance with this Agreement; (c) ensure that a sufficient number of suitably skilled, experienced, and qualified personnel are available to provide the Solution and Services in accordance with this Agreement; and (d) comply with all Applicable Laws relating to essensys in its provision of the Solution and Services to Customer.

- 5.3 Customer shall: (a) allow all employees, agents and representatives of essensys access to Premises as is reasonably necessary for provision of the Solution and Services; (b) provide access to all information, resources, facilities, software, data, databases and/or materials which are reasonably necessary to enable essensys to supply the Solution and Services in accordance with the terms of this Agreement; (c) obtain and maintain in full force all other necessary consents, approvals, authorisations, licences and permissions which are reasonably required for it to perform its obligations under this Agreement and which are required of it to enable essensys to perform its obligations under this Agreement; and (d) comply with all Applicable Laws relating to Customer in its receipt of the Solution and Services from essensys.
- 5.4 essensys shall use its reasonable endeavours to provide the Solution and Services in accordance with any timeframes agreed pursuant to a Service Order. However, time for performance shall not be of the essence.
- 5.5 In respect of each Service Order:
- (a) essensys and the Customer shall ensure such Service Order contains a target date for when the Services will be Ready for Service ("**Expected Commencement Date**");
  - (b) The Customer shall provide essensys with the opportunity to undertake reasonable due diligence in respect of each Premises in order to scope out, which may include reasonably necessary site survey(s) and/or inspection(s) of the Premises either by itself or a third-party contractor at date(s) and time(s) to be agreed between the parties (each acting reasonably and in good faith) (the Fees (if any) in respect of such due diligence to be stated on each Service Order); and
  - (c) essensys shall use its reasonable endeavours to ensure that the Actual Commencement Date is the same as the Expected Commencement Date but will have no liability to the Customer in the event that this is not achieved.
- 5.6 If essensys' performance of its obligations under this Agreement is prevented or delayed by one or more of the Customer Parties, essensys shall be allowed an extension of time equal to the delay caused by the Customer Parties within which to perform its obligations.
- 5.7 Where relevant Services are procured, Product Specific Terms set out in [Schedule 7 \(Product Specific Terms\)](#) shall apply and be incorporated into this Agreement.

## 6. **Hardware**

- 6.1 Any Hardware to be provided by essensys to Customer pursuant to a Service Order shall be delivered to the Premises set out in the Service Order. Delivery of the Hardware shall be complete (i) where essensys is not providing installation services in respect of the Hardware, on the completion of unloading of the Hardware at the relevant Premises and receipt of delivery; or (ii) where essensys is providing installation services in respect of the Hardware, on the installation of the Hardware.
- 6.2 All risk of damage to, damage arising from, or loss of the Hardware shall pass to Customer at the time when essensys has completed delivery of the Hardware in accordance with clause 6.1.
- 6.3 Notwithstanding delivery and the passing of risk in the Hardware, Customer shall acquire legal ownership of the Hardware only when essensys has received cleared funds in full payment of the price of that Hardware due to it under the relevant Service Order.
- 6.4 Until such time as the title in the Hardware is given to Customer, Customer shall hold the Hardware as bailee for essensys and shall keep the Hardware properly stored and insured. Until that time, Customer shall have the right to sell or otherwise dispose of the Hardware, in the ordinary course of its business, but shall hold as bailee and shall account to essensys for the proceeds of sale or otherwise of the Hardware including insurance proceeds (if any) and, in the case of tangible proceeds, shall keep those tangible proceeds properly stored and insured. Until

such time as the title in the Hardware is given to Customer, the Customer agrees to keep the Hardware separate and identifiable as being owned by essensys and essensys shall have the right to require the Customer to deliver the Hardware to essensys (and the right to enter upon the Premises to recover the Hardware in the event that the Customer does not do so).

- 6.5 essensys shall use its reasonable commercial endeavours to extend to Customer the benefit of any warranty and product liability protections concerning the Hardware (subject to any limitations and restrictions thereof) as given to essensys by its supplier if pursuant to its contract with its supplier the benefit is so extendable by, and at no cost to, essensys.
- 6.6 Other than those warranties and protections that cannot be excluded by Applicable Law and subject to clause 6.5, essensys makes no warranty in respect of the Hardware.

## 7. **Service Levels**

- 7.1 essensys shall use its reasonable commercial endeavours to:
- (a) investigate the causes of the Service Level Failure within any applicable timescales set out in [Schedule 2 \(Service Levels\)](#) or, if there are no such timescales, promptly;
  - (b) take such action as is reasonably necessary to minimise the impact of the Service Level Failure and to remedy the causes of the Service Level Failure and to minimise the likelihood of the Service Level Failure recurring; and
  - (c) notwithstanding sub-clauses 7.1(a) and 7.1(b) essensys' sole liability and Customer's sole remedy for a Service Level Failure shall be the service credits set out in [Schedule 2 \(Service Levels\)](#).
- 7.2 The Solution, Services and the Documentation are provided on an "as is" basis.

## 8. **License to use the Solution and Services**

- 8.1 Subject to Customer's payment of the Fees Customer is granted a non-exclusive, non-transferable licence to use, and to permit Customer Parties to use, the Solution and Services included in each Service Order for its Service Order Term solely for the Customer's internal business purposes of operating the Solution and Services at the Premises in accordance with this Agreement including, for the avoidance of doubt [Schedule 3 \(the End User Policy\)](#). Such licence permits Customer and other Customer Parties to make temporary cache copies of software or other information necessary for Customer to receive Solution and Services via the Internet. No rights are granted beyond those specifically stated in this clause 8.1 and to the extent permissible under Applicable Laws all implied rights are expressly excluded. Any rights not granted herein to Customer are expressly reserved for essensys.
- 8.2 Without prejudice to any statutory rights, (i) no right to modify, adapt, or translate Solution or Services or create derivative works from Solution or Services is granted to the Customer or, for the avoidance of doubt, any other Customer Parties, and (ii) the Customer shall not, and shall procure that all other Customer Parties shall not, modify, adapt, or translate Solution or Services or create derivative works from Solution or Services.
- 8.3 Nothing in the Agreement shall be construed to mean, by implication or otherwise, that Customer Parties have any right to obtain source code for software comprised within Solution or Services. The Customer agrees that it shall not and shall procure that all other Customer Parties shall not disassemble, de-compile, reverse engineer or conduct source code derivation of software comprised within Solution or Services. To the extent Customer Parties are granted the right by law to render Solution or Services interoperable with other software, essensys will provide a relevant application programming interface provided Customer, for itself and, if relevant, on behalf of other Customer Parties, makes a written request identifying relevant details of Solution or Services to which operability is sought and the nature of the information



needed. essensys may impose reasonable conditions and may charge the Customer additional reasonable fees for providing such access and information.

- 8.4 Unless otherwise specified in the Agreement or otherwise agreed in writing, the Solution may only be used to access the Services and Documentation.
- 8.5 Customer shall not and shall procure that all other Customer Parties shall not lease, loan, resell, assign, licence, distribute or otherwise permit access to Solution and Services; or permit access to or use of Solution or Services by or on behalf of any third party, except as permitted in this Agreement or as otherwise agreed in writing.
- 8.6 Customer shall:
- (a) subject to clause 8.7, obtain and maintain (or use all reasonable endeavours to procure the same from all other Customer Parties or any relevant third party) all necessary licences and consents in respect of the Premises (including for access to the Premises) which are reasonably required to enable essensys to provide the Solution and the Services at the Premises (including obtaining any necessary wayleaves, superior landlord consents, planning permissions and building regulation consents), as soon as reasonably possible; and
  - (b) keep and maintain any essensys Equipment in good condition (subject to reasonable wear and tear) and not dispose of or use any essensys Equipment other than in accordance with essensys' instructions or authorisation.
- 8.7 In the event that Customer is unable to obtain or maintain a necessary licence or consent pursuant to clause 8.6(a) and that prevents or materially hinders essensys from providing the Solution and/or Services at the Premises, the parties shall use their commercially reasonable endeavours to work together to resolve the issues and essensys shall be relieved of its obligation to provide the Solution and/or Services unless and until such necessary licences and consents have been secured and maintained.
- 8.8 essensys reserves the right to electronically monitor use of Solution and Services subject to compliance at all times with Applicable Laws.
- 8.9 Customer shall at its own cost provide all reasonably necessary Site Facilities required by essensys to deliver the Solution and/or Services.
9. **Changes**
- 9.1 Save where otherwise specified in this Agreement, all Changes shall be agreed by the parties in writing.
- 9.2 essensys shall be entitled to make technical changes to the Solution and Services which do not have a material impact upon the functionality or performance of the Services without the written consent of Customer.
- 9.3 Nothing in this Agreement shall require essensys to act in contravention of any Applicable Laws.
10. **Intellectual Property Rights**
- 10.1 All IPR and title to Solution, Services and Documentation (save to the extent these incorporate any Customer Data, Customer IPR or third party owned item) shall remain with essensys and/or its licensors and subcontractors. The name "essensys", all essensys logos, and product names associated with the Solution and Services, as they may change from time to time but excluding the Customer Marks are trademarks of essensys or third parties. No interest or ownership in Solution, Services, Documentation, IPR or otherwise is transferred to Customer, or for the avoidance of doubt, any other Customer Parties, under this Agreement.



- 10.2 Customer shall not, and shall procure that all other Customer Parties shall not, make any use of essensys' name, logos and/or trademarks ("**essensys Marks**") in any way without the prior written consent of essensys, except that Customer shall be entitled to refer to essensys as its technology partner and to make reference to essensys in discussions with its clients or potential clients, and Customer may provide the Documentation and other materials provided by essensys which contain essensys Marks to other Customer Parties for the sole purpose of fulfilling this Agreement. Where Customer is permitted any such use, such use shall be limited to the form and manner stipulated by essensys from time to time and the permitted user shall observe any reasonable directions given by essensys as to colours and size of representations of the essensys Marks and their manner and disposition. Any permitted use of the essensys Marks shall at all times accrue for the benefit of essensys and/or its licensors.
- 10.3 Subject to Clause 14.7, Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
- 10.4 Customer shall not and shall procure that all other Customer Parties shall not remove any proprietary marks or copyright notices from Solution or Services.
- 10.5 Customer grants (and will use all reasonable endeavours to procure the grant from all other relevant Customer Parties) essensys a non-exclusive, non-transferable, revocable licence to display Customer's (and/or other Customer Parties' as the case may be) name, logo and/or trademarks ("**Customer Marks**"), as designated and/or amended by Customer (or other Customer Parties as the case may be) from time to time and as reasonably required in the creation of correspondence, documentation and website front ends necessary in the provision of Solution and Services under this Agreement. In respect of the Customer Marks, all use of the Customer Marks by essensys shall be in the form and manner stipulated from time to time by Customer (or Customer Parties as the case may be) to essensys and essensys shall observe any reasonable directions given by Customer (or Customer Parties as the case may be) as to colours and size of representations of the Customer Marks and their manner and disposition, including any brand manual or equivalent that is issued by Customer (or Customer Parties as the case may be) from time to time;
- 10.6 Customer assigns and shall procure the assignment by all other Customer Parties of all rights, title and interest in any Feedback to essensys. If for any reason such assignment is ineffective, Customer shall grant essensys, and shall procure the grant to essensys from all other Customer Parties of, a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction, save that such assignment or licence shall not extend to any statement made by Customer about essensys, the Solution and/or Services which essensys wants to include in any statement, press release or other public announcement which shall, at all times, remain in the ownership of Customer and may not be used by essensys without the prior written consent of Customer (which consent is not to be unreasonably withheld or delayed).
- 10.7 essensys and Customer shall take and maintain commercially reasonable technical precautions on a continuing and ongoing basis to protect Solution and Services from improper or unauthorised use, distribution or copying.

## 11. **Termination**

- 11.1 Either party may terminate this Agreement and/or any Service Orders immediately, by giving written notice to the other party, if the other party suffers one or more of the following events: (a) ceases or threatens to cease to carry on business; or (b) is unable to pay its debts as they fall due; or (c) enters into compulsory insolvency or voluntary liquidation; or (d) convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or (e) has an administrator, receiver, manager or similar official appointed; or (f) is affected by a similar event under the law of any other jurisdiction.

- 11.2 If the Customer fails to pay sums within 30 days of their due date, essensys may terminate the Agreement and/or any individual Service Order(s).
- 11.3 essensys may terminate an affected Service Order or the provision of any affected Services under that affected Service Order with immediate effect if:
- (a) All or any of the Customer Parties have materially misused or permitted the material misuse of Solution and/or Services placing the Customer in breach of the Agreement and, if such breach is remediable, Customer has failed to remedy that breach within 30 days of receipt of a written notice to do so from essensys, provided that, in the first instance, essensys shall only suspend the provision of the Solution and/or Services in relation to the affected Service Order whilst it investigates such alleged misuse of the Solution and/or Services and has provided Customer with reasonable advance notice of such suspension having regard to the severity of such misuse (and, if remediable, such breach has not been remedied within such notice period). essensys shall only be permitted to terminate under this clause 11.3(a) where the results of such investigation confirm such misuse of the Solution and/or Services. Where such material misuse has been caused by a User, essensys shall follow the same procedure as set out in this clause 11.3 (a), save that any resulting suspension or termination shall be in respect of that User's account only and shall not affect other User accounts or the Service Order itself; or
  - (b) essensys is prohibited under Applicable Law from providing Solution or Services (as demonstrated by evidence to Customer's reasonable satisfaction Customer acting in good faith), provided that, in the first instance, essensys uses its reasonable endeavours to provide a workaround and shall only be permitted to terminate under clause 11.3 (b) where a viable alternative cannot be provided.
- 11.4 If essensys persistently or for a material amount of time fails to supply the Solution and/or Services in accordance with terms of this Agreement, before serving notice to terminate the affected Service Order for material breach under clause 11.5, Customer must give essensys written notification of breach(es) and a reasonable opportunity to remedy such breach(es), where such breaches are capable of remedy. If 30 days after its receipt of the notice essensys fails to remedy the breach(es), Customer may terminate the affected Service Order for material breach in accordance with clause 11.5 below as a material breach incapable of remedy.
- 11.5 Customer may terminate a Service Order for material breach by giving essensys written notice, provided, where such breach is capable of remedy, essensys fails to remedy such breach within 30 days of receipt of a written notice to do so from Customer.
- 11.6 essensys may terminate a Service Order for material breach by giving Customer written notice, provided, where such breach is capable of remedy, Customer fails to remedy such breach within 30 days of receipt of a written notice to do so from essensys.
- 11.7 essensys may terminate any Service Order affected by a Force Majeure Event in accordance with clause 20.
- 11.8 Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement or any Service Order which existed at or before the date of termination or expiry shall not be affected or prejudiced by termination or expiry. Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.
- 11.9 Upon termination of the Agreement all Service Orders under this Agreement shall automatically terminate.
- 11.10 Unless the Customer has effectively terminated a Service Order for essensys material breach, the Customer shall remain liable to pay all Fees set out in that Service Order for the remainder of the Service Order Term, regardless of any early termination.

- 11.11 Upon expiry or termination of the Agreement and/or a Service Order, all licences granted to the Customer under the terminated or expired Agreement or Service Order shall terminate on the effective date of termination or expiry and essensys shall:
- (a) cease providing the relevant Solution and Services to Customer and immediately deactivate all relevant accounts; and
  - (b) provided this Agreement or the relevant Service Order has not been terminated for fault by essensys (in which instance essensys will provide such assistance and information as required by Applicable Law). provide such other reasonable assistance and information to enable Customer Data to be transitioned to a new platform.
- 11.12 The Customer shall pay essensys' reasonable charges and any costs incurred in fulfilling its obligations under clause 11.11(a) and 11.11(b).
- 11.13 Following termination of the Agreement or a Service Order, Customer shall permit (and shall procure that all other Customer Parties shall so permit) essensys to access the relevant Premises to recover the essensys Equipment.
- 11.14 Termination or expiry of any individual Service Order(s) shall not affect the term of the Agreement or any Service Orders which have not expired or terminated and the Agreement and remaining Service Order(s) shall continue unaffected. Subject to clause 3.1, the Agreement will continue in force for so long as any Service Orders remain unexpired or not terminated.
12. **Fees and Invoicing**
- 12.1 Customer shall pay essensys, using the bank account specified on each invoice, the Fees.
- 12.2 All Fees are stated exclusive of any Tax. The Customer agrees to pay any Tax (including any interest and penalties thereon or in connection therewith) which are payable upon or in connection with the Agreement. All payments made by the Customer shall be made free and clear of, and without withholding or deduction for, Tax unless such withholding or deduction is required by Applicable Law. In that event, the Customer shall pay such additional amounts as will result in essensys receiving such amounts as would have been received by it if no such withholding or deduction had been required. If essensys has the legal obligation to pay or collect Tax for which the Customer is responsible the appropriate amount shall be invoiced to and paid by the Customer unless the Customer provides essensys with a valid tax exemption certificate authorised by the appropriate authority.
- 12.3 Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise provided they have been pre-approved by Customer.
- 12.4 Payment of all Fees (not in bona fide dispute) is due in full without set-off or deduction within 30 days of the invoice date and shall be without prejudice to any claims or rights of either party.
- 12.5 Where payment of any Fees under a Service Order (which is not in bona fide dispute) is not received on or before the due payment date, essensys may serve on Customer a written late payment notice requesting immediate payment ("**Late Payment Notice**"). If Customer has not paid such outstanding fee within 30 days' receipt of the Late Payment Notice, essensys may, without limiting any other remedies set forth herein, suspend Customer's password, account and access to all or any part of the Solution and Services under that Service Order. essensys shall be under no obligation to provide any or all of Solution or Services under that Service Order during such suspension.
- 12.6 essensys shall be entitled to recover from the Customer its costs and reasonable legal fees (which in each case are not in bona fide dispute) it incurs in seeking to recover and recovering any overdue payments whether before or after judgment. Additionally, essensys shall be entitled to recover interest at a rate of 3% per annum above the base rate of the Bank of England on any late payment.

- 12.7 Any Fees agreed under a Service Order shall be in respect of that Service Order only and for the period stated for the Service Order Term in that Service Order. For the avoidance of doubt, any renewal shall be subject to essensys current price list at the time of renewal.
- 12.8 essensys may on each anniversary of the Effective Date, increase the Fees by 3% or a CPI adjustment (in which instance CPI shall mean the latest CPI 'all items' then published by ONS) whichever is the greater.
13. **Confidential Information**
- 13.1 Each party may use the Confidential Information of the other only for the purposes set out in the Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject or the regulations of any recognised investment, stock or securities exchange on which that party's securities are traded or other regulatory organisation.
- 13.2 Each party may disclose the Confidential Information of the other party to those of its employees, advisors and agents who need to know the Confidential Information for the purposes of the Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in the Agreement and the disclosing party ensures that such employees, advisors and agents comply with the terms of this clause as if it were a party to this Agreement. The disclosing party shall be responsible for the acts and omissions of all such individuals or entities as if they were the acts or omissions of that party to the extent that party would be liable to the other party under or in connection with this Agreement for those acts and omissions.
- 13.3 Notwithstanding the provisions of this Clause 13, for the purpose of efficient enhanced global account management, each party may disclose, orally and/or in writing, information related to the other party's existing and/or prospective contractual relationships with that party and/or its group companies and/or affiliates and this no matter the location of the Premises and/or extent of the Services concerned, to officers, directors or employees of the other party's and or of its group companies or affiliates, and essensys may disclose the Agreement to its subcontractor(s). This information will be considered Confidential Information subject to the requirements in this clause 13.
- 13.4 Upon request both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to the disclosing party without delay upon completion of the Services or termination or expiry of the Agreement or relevant Service Order.
- 13.5 The obligations of confidentiality under the Agreement do not extend to information that: (a) was in the other party's lawful possession before negotiations leading to the Agreement; or (b) is, or after the Effective Date, becomes publicly known other than through any act or omission of the receiving party; or (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (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 or the regulations of any recognised investment, stock or securities exchange on which that party's securities are traded or other regulatory organisation.
- 13.6 If either party is required to disclose any Confidential Information pursuant to clause 13.5 such party shall, where lawfully permitted to do so (a) promptly consult with and take into account any comments from the other party prior to making any disclosure; and (b) work with the other party to ensure any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 13.7 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 13 and without limitation, all information falling within the definition of Confidential Information as set out in the Agreement and any information which is supplied by

the disclosing party to the receiving party pursuant to the Agreement or the negotiation thereof: (a) is Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or (b) may also constitute a trade secret (as further defined in Directive (EU) 2016/943) of the disclosing party; and (c) is information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person. Accordingly, in the event of a breach of this clause 13 the parties shall be entitled to seek equitable remedies.

#### 14. **Data Protection**

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing, and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.2 The parties acknowledge and agree that for the purposes of the Data Protection Legislation, the Customer is the Controller and essensys is the Processor. [Schedule 4 \(Processing, Personal Data and Data Subjects\)](#) sets out the scope, nature, and purpose of processing by essensys, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 14.3 Without prejudice to the generality of clause 14, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to, lawful collection of, and processing of the Personal Data by essensys and/or third-party processors for the purposes of and in accordance with this Agreement.
- 14.4 Without prejudice to clause 14.1, essensys shall, in relation to any Personal Data processed in connection with the performance of this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless essensys is required by Domestic Law or EU Law to otherwise process that Personal Data. Where essensys is relying on Domestic Law or EU Law as the basis for processing Personal Data, essensys shall promptly notify the Customer of this before performing the processing required by Domestic Law or EU Law unless Domestic Law or EU Law prohibits essensys from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it) and the Customer has read and approves as adequate and appropriate those technical and organisational measures appended hereto at [Schedule 5 \(Technical and Organisational Measures\)](#);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained, and which consent is hereby given, subject only to the following conditions being fulfilled:

- (i) the Customer or essensys has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) essensys complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) essensys complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Domestic Law or EU Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of essensys, an instruction infringes the Data Protection Legislation. The aforementioned right of audit may be exercised once every twelve months of the Term only, any physical audit must be conducted during normal working hours and is subject to the approval by essensys of an audit plan proposed by the Customer, an audit may be conducted only to the extent that the costs of the audit are borne solely by the Customer and nothing shall require essensys to breach its pre-existing confidentiality obligations.
- 14.5 The Customer consents to essensys appointing third-party processors of Personal Data under this Agreement. essensys confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which reflects and will continue to reflect the requirements of the Data Protection Legislation.
- 14.6 essensys may, at any time on not less than 30 (thirty) days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when notified to the Customer).
- 14.7 To the extent permissible under Data Protection Legislation essensys shall be entitled to anonymise and aggregate Customer Data ("Anonymised Data") and shall be entitled to use such Anonymised Data within its sole discretion.
15. **Representations and Warranties**
- 15.1 Each party warrants and represents that: (a) it has full corporate power and authority to enter into the Agreement and to perform the obligations required hereunder; (b) the execution and performance of its obligations under the Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any Applicable Laws; and (c) it shall comply with all Applicable Laws, which relate to the Agreement.
- 15.2 essensys warrants to Customer that it has the right to licence the Solution and Services.

- 15.3 essensys warrants to Customer that the Solution will operate to provide in all material respects the facilities and functions as set out in [Schedule 1 \(Service Description\)](#). If there is a breach of this warranty, essensys shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Solution. In respect of any breach of this warranty: (a) Customer shall promptly notify essensys in writing upon discovering a purported defect; (b) if essensys becomes aware of any breach of this warranty it shall promptly notify Customer in writing upon discovering the defect; and (c) essensys shall investigate the purported defect in the Solution and if it is established that such a defect exists, the parties shall discuss in good faith how to resolve that defect.
- 15.4 essensys shall, on a continuing basis, ensure that current and up to date industry standard commercial anti-malware software together with updated anti-virus definitions from a reputable software company are deployed in respect of the Solution and the Services. essensys' obligations under this clause 15.4 will not apply to any underlying systems or software not owned by or licensed to essensys. Customer acknowledges and agrees that it should also maintain (and shall procure that all other Customer Parties maintain) current and up to date industry standard commercial anti-malware software together with updated anti-virus definitions from a reputable software company to detect and protect its systems from computer viruses and that essensys' obligations under this clause do not release Customer from the need for it to do so on a continuing basis.
- 15.5 Warranties provided by essensys shall not cover deficiencies or damages deriving from: (a) any third party components not provided by or on behalf of essensys; or (b) any fixed line telecommunication provider or Internet Service Provider; or (c) compliance with third party software or products, non-essensys programs or data used in combination with the Solution or Services not provided by or on behalf of essensys except as specifically agreed and included in the Agreement; or (d) a failure of the Solution or Services to conform with the description of the Solution or Services as set out in [Schedule 1 \(Service Description\)](#) caused by the use or operation of the Solution or Services with an application or in an environment other than that set out in the Agreement; or (e) modifications made to the Solution or Services not carried out by or on behalf of essensys.
- 15.6 No warranty is made that the Solution and Services will operate entirely uninterrupted or error free or that the Solution and Services will meet the requirements or expectations of the Customer or any person.
- 15.7 Customer warrants that it rightfully owns or has licensed the necessary user rights, copyrights and other IPRs and permits required for it to fulfil its obligations under the Agreement.
- 15.8 Customer warrants that it shall and shall procure that all other Customer Parties shall maintain reasonable security measures (as may change over time) covering confidentiality, authenticity and integrity to ensure that the access to Solution and Services granted under this Agreement is limited as set out under the terms of this Agreement. In particular Customer, shall, and shall procure that all other Customer Parties shall, treat any identification, password or username or other security device for use of Solution and Services with due diligence and care and take all reasonable steps to keep them confidential, secure and ensure that they are used properly and are not disclosed to unauthorised persons. Upon becoming aware of any breach of the above, Customer shall promptly notify essensys in writing. Customer shall be liable for any act or omission of any one or more of the Customer Parties that place the Customer in breach of this Agreement.
- 15.9 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.



**16. Liability**

- 16.1 Nothing in this Agreement shall limit or exclude a party's liability for: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by their negligent act; and (c) any liability that may not otherwise be limited or excluded by law.
- 16.2 The Customer assumes sole responsibility for results obtained from access to the Solution and use of the Services and the Documentation by all Customer Parties and for conclusions drawn from such access and use.
- 16.3 essensys shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to essensys by the Customer in connection with the Solution or Services, or any actions taken by essensys at the Customer's direction.
- 16.4 Subject to clause 16.1 essensys shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) any loss of profits, (ii) loss of sales (iii) loss of anticipated savings, (iv) loss of business, (v) depletion of goodwill and/or similar losses (vi) loss or corruption of data or information, (vii) pure economic loss, or for any (viii) special, (ix) indirect or (x) consequential loss, costs, damages, charges or expenses however arising under or from the Agreement even if essensys was advised of the possibility of such damages.
- 16.5 Subject to clause 16.1, essensys' total aggregate liability in contract (including under any indemnity) tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance, non-performance or contemplated performance of a Service Order shall be limited to the total Fees (excluding Tax and any Fees paid for Hardware) paid by the Customer to essensys in respect of that Service Order in the 12 months immediately following the Actual Commencement Date.
- 16.6 Nothing in the Agreement excludes or limits the liability of the Customer for any breach, infringement, or misappropriation of essensys' IPRs.
- 16.7 Nothing in the Agreement excludes or limits the liability of the Customer to pay any Fees or charges payable under the Agreement.
- 16.8 The Customer shall be liable for any breaches of the Agreement caused by the acts, and/or omissions, of one or more of the Customer Parties as if such acts, or omissions had been committed by the Customer itself.
- 16.9 It is acknowledged and agreed by the parties that essensys shall be deemed not to be in breach of Agreement and shall have no other liability (including, for the avoidance of doubt, in negligence) where that breach of contract or other liability would not have arisen but for the fault of one or more Customer Parties or Other Vendors.
- 16.10 The Customer shall not raise any claim under the Agreement more than 1 (one) year after: (i) the discovery of the circumstances giving rise to a claim; or (ii) termination or expiry of the Agreement, whichever of (i) and (ii) is sooner.
- 16.11 Except as expressly set out in this Agreement, the parties acknowledge and agree that in entering into the Agreement, each had recourse to its own skill and judgement and has not relied on any representation made by the other, their employees or agents.
- 16.12 The Customer shall pay the Fees for such period as essensys is precluded from providing the Solution and/or Services through a failure of the Customer to perform its obligations under Agreement.
- 16.13 If essensys has incurred loss or expense in connection with the Agreement as a result of one or more of the Customer Parties' fault, essensys shall be entitled to compensation from the Customer to place essensys in the position it would have been in, had the fault not occurred.

essensys shall provide the Customer with information the Customer may reasonably require to assess the validity of any claim to compensation made by essensys. essensys agrees that it shall use its reasonable commercial endeavours to mitigate its losses under this provision.

## 17. **Indemnities**

- 17.1 Subject to clauses 17.6 and 16, essensys shall indemnify Customer against any costs, losses, liabilities and expenses, including reasonable legal costs, incurred or suffered by Customer, arising in connection with any actual or alleged claim by a third party resulting directly or indirectly from the infringement of any IPRs by Solution or Services (excluding any claim deriving from any Customer Parties provided item).
- 17.2 If all or part of Solution or Services becomes, or in the reasonable opinion of essensys may become, the subject of a claim or suit of infringement, essensys shall at its own expense and sole discretion: (a) procure for Customer the right to continue to use Solution or Services or affected part thereof; (b) replace Solution or Services or affected part with another suitable non-infringing service or software; and (c) modify Solution or Services or affected part to make the same non-infringing, provided that for each of (a), (b) and (c) in doing so, the scope, functionality and performance of that Solution or Services is not materially adversely affected.
- 17.3 essensys shall have no obligations under clauses 17.1 and 17.2 above to the extent that a claim is based on: (a) a modification of Solution or Services by anyone other than essensys or an agent or contractor of essensys; (b) the combination, operation or use of Solution or Services with other services or software not provided by essensys if such infringement would have been avoided in the absence of such combination, operation or use; (c) the use of Solution or Services in any manner inconsistent with terms of the Agreement; or (d) the negligence or misconduct of Customer Parties.
- 17.4 Clauses 17.1 to 17.3 state Customer's sole and exclusive rights and remedies and essensys' entire obligations and liability for any claims made in respect of the subject matter contemplated by these clauses.
- 17.5 Subject to clause 17.6, Customer shall defend, indemnify, keep indemnified and hold essensys and its directors, employees, sub-contractors and agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs to the extent arising from: (a) any third-party claim relating to or resulting directly or indirectly from any infringement or alleged infringement by a third party on the basis of infringement of any IPRs by the Solution or Services arising out of or in connection with any use of the Solution or Services by the Customer Parties outside of the permitted scope of the terms of the Agreement; or (b) any claim by a Consumer or User against any party or third party arising out of or in connection with the Agreement; or (c) any third-party claim relating to or resulting directly or indirectly from any use in accordance with the terms of this Agreement by essensys of any Customer Data or Customer Parties provided item, in particular storage or publication on the Internet of any Illegal Content (and essensys shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet or breaches of third party rights from continuing); or (d) any claim against any party or third party arising out of or in connection with the performance, defective performance or non-performance of Other Vendors.
- 17.6 Any indemnities, defence and/or hold harmless given in this Agreement are subject to (but not conditional upon) (a) the indemnified party using its reasonable endeavours to mitigate any losses, damages, liabilities, claims, expenses, and costs; and (b) the indemnified party giving the indemnifying party prompt notice, in writing, of the details of the claim; and (c) the indemnifying party having sole conduct and control of any claim or action which is within the scope of the indemnity including any related settlement negotiations to the extent that it does not require the indemnified party to pay any amounts or admit wrongdoing; and (d) the indemnified party not making any statement prejudicial to the indemnifying party; and (e) the indemnified party giving the indemnifying party all reasonable help in connection with the claim or action (in which case, the indemnifying party shall pay the indemnified party's reasonable

costs); and (f) the indemnified party, and in the case of the Customer all other Customer Parties, not causing the events which gave rise to the claim or action under the indemnity.

**18. Insurance**

The Customer shall maintain at its own expense such general policies of insurance as may be necessary to cover all its liability, or potential liability, arising out of or in connection with the Agreement or the performance of its obligations under the Agreement (including in relation to any indemnity).

**19. Customer Security Obligations**

19.1 essensys permits Customer to specify which Customer Parties may access Services and Solution through its standard application security options.

19.2 Customer will promptly notify essensys if Customer becomes aware of any unauthorised use of Customer's account, Customer's passwords or breach of security known to Customer. essensys shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements.

19.3 essensys may suspend access to Solution and Services, or portion thereof, at any time, if in essensys' sole reasonable discretion, the integrity or security of Services or Solution is materially in danger of being compromised by acts of one or more of the Customer Parties. essensys shall, where reasonably practicable considering the nature and severity of the incident, give Customer 24 hours' prior written notice, before suspending access to the Solution or use of the Services, giving specific details of its reasons and shall not suspend access if, and shall remove any suspension when, the threat has been rectified or has passed.

**20. Force Majeure**

Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under the Agreement due to Force Majeure Event, then that party's obligation to perform in accordance with the terms of the Agreement will be suspended for the duration of the Force Majeure Event. As soon as reasonably practicable after a Force Majeure Event arises, the party affected thereby must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement. Where the Force Majeure Event subsists for 60 days or more essensys shall be entitled (but shall not be obliged) to terminate the Agreement or all or any affected Service Orders within its discretion.

**21. Assignment and subcontractors**

21.1 No party may assign or transfer its rights under the Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed, however essensys shall be entitled to assign, transfer or novate the Agreement or any part of it to any company within its group of companies (and on request the Customer shall enter into a novation in reasonable form).

21.2 essensys shall be entitled to subcontract the whole or any part of this Agreement within its absolute discretion.

**22. Relationship between the Parties**

22.1 essensys and Customer are independent contractors and nothing in the Agreement will be construed as creating either a partnership between the parties, an agency relationship, or an employer-employee relationship.

**23. Contacts**

- 23.1 Customer shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions from relevant Customer Parties.
- 23.2 Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding Services.

**24. Miscellaneous**

- 24.1 Should a provision of the Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.
- 24.2 This Agreement and any documents referred to in it constitutes the whole agreement and understanding between the parties and supersedes all prior agreement, representations, negotiations and discussions between the parties relating to the subject matter thereof. Each party acknowledges to and agrees with the other that (save in relation to fraudulent statements or representations) in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 24.3 Notices to be sent under the Agreement, shall be in writing and shall be deemed to have been duly given if (i) delivered personally; (ii) sent by prepaid first-class post or prepaid recorded delivery post to the address given for that party in the Agreement; or (iii) sent by email to each of the email addresses given for that party in the Agreement.
- 24.4 Notices shall be deemed served (i) in the case of a notice delivered by hand, at the time of delivery; (ii) in the case of a notice sent by post, on the second Business Day after the day of posting; and (iii) in the case of a notice sent by email, one hour after transmission or, if not sent on a Business Day, on the next Business Day.
- 24.5 Nothing contained in this Agreement is intended to be enforceable by any third party pursuant to any rights that a Party may have under applicable law, in particular the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, no Customer Party other than the Customer shall be entitled to enforce this Agreement or has any rights under it.
- 24.6 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 24.7 essensys may amend the terms and conditions of this Agreement upon giving Customer 30 days' written notice (which notice may be effected by essensys Company uploading new terms and conditions to the essensys website). Unless Customer provides to essensys within 30 days of the aforesaid notice, written notice that it does not accept the amendments, such amendments shall be deemed accepted by Customer and shall vary this Agreement accordingly.
- 24.8 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy unless expressed to be so. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

24.9 This Agreement (including any Service Order) may be executed electronically and in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

25. **Non-Solicitation**

25.1 During each Service Order Term and for a period of 6 months after its expiry or termination, neither party shall solicit for employment, employ or engage the services of any person who performed services on behalf of the other party in connection with, or was otherwise involved in the performance of the Services provided under that Service Order, without prior written consent of the other party.

25.2 Clause 25.1 shall not restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other party, or if the employee of one party was in discussions with the other party regarding seeking employment at that other party prior to the date of a Service Order (except where such discussions constitute a breach of clause 25.1) and under such circumstances, for the other party to hire such employee.

26. **Dispute Resolution**

26.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to the Agreement and any breach of it.

26.2 If any such dispute cannot be settled amicably through ordinary negotiations of the representatives of each party, the dispute shall be escalated in writing to the Chief Operating Officer of essensys and the Chief Financial Officer of Customer who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with this Agreement.

26.3 Nothing in this clause 26 shall preclude or delay either party from seeking appropriate equitable relief at any time.

27. **Governing Law and Jurisdiction**

Each party agrees that:

(i) the Agreement and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales; and

(ii) the courts of England and Wales sitting in London, England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Agreement, its subject matter or formation.

28. **Export Restrictions**

The Solution, Services, content, and other technology that essensys makes available, and derivatives thereof may be subject to export laws and regulations of the United Kingdom, the United States and other jurisdictions. Each party represents that it is not named on any government sanctions list. Customer shall not knowingly permit Customer Parties to access or use the Solution, Services, content, and other technology in breach of any applicable export law or regulation or in any countries subject to UK or United States embargoes or trade control restrictions.

29. **Compliance**

- 29.1 **Anti-bribery.** Neither party nor any of its officers, employees, or representatives ("Associated parties") shall, directly or indirectly offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of the Agreement which would violate anti-corruption or bribery legislation in the UK, European Union or the US, including the Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977.
- 29.2 **OFAC.** Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: are not, and will not become (during the duration of the parties' relationship), a person or entity with whom a party is prohibited from doing business under: (i) regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list), the United Kingdom, the European Union, the United Nations, or (ii) under any statute or (iii) executive order or other governmental action; are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in this clause.

**This Agreement** has been signed on the date appearing at the head of page 1.

**Signed** for and on behalf of  
**essensys (UK) Limited**

Signature: .....

Name:

Position:

Date: .....

**Signed** for and on behalf of  
**Customer**

Signature: .....

Name:

Position:

Date: .....