



Developing World Systems Limited (“**DWS**”) develops, hosts and supplies specialised business software applications which assist businesses to optimise business processes and tasks, and associated services. The Client wishes to procure the DWS Dimension SwifTest product as a service and DWS agrees to supply such service on the terms and conditions set out below.

1 Definitions

1.1 In this Agreement the following expressions have the following meanings:

“**Application Modules**” means application modules produced by Oracle Corporation for JD Edwards EnterpriseOne or Oracle Cloud Applications software which have been deployed in the Instance;

“**Breach of Security**” means (i) unauthorised or unlawful access, alteration or disclosure of Client Materials, and/or (ii) any material security incident which adversely affects Client Materials;

“**Business Hours**” means between the hours of 08.00 and 17.30 London time on weekdays and excluding UK public holidays;

“**Client**” means the legal person named in the Services Order;

“**Client Branding**” means the name, trade marks, trade names and logos of the Client;

“**Client Materials**” means software, templates, screen designs, database structures, databases, literary works, artistic works, Confidential Information, data, or other materials owned by any of the Client and/or either of their third party licensors, provided to DWS for the purposes of this Agreement and the Services;

“**Command Line**” means a user interface that is navigated by typing commands at prompts.

“**Command Line User**” means a Full User capable of initiating tests from the Command Line. Any Full User or Lite User can initiate tests from the Command Line if the Client has a Command Line User.

“**Confidential Information**” means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers, suppliers and personnel of the either party which the other may receive or obtain in connection with the operation of this Agreement or otherwise and which is expressly identified as confidential or which ought reasonably to be regarded as confidential;

“**Deliverables**” means outputs produced by the Solution as may be varied, enhanced and/or replaced by DWS from time to time;

“**Documentation**” means documentation which describes the functionality of the Solution, which may also including its capabilities and limitations;

“**DWS Branding**” means the name, trade marks, trade names and logos of DWS;

“**DWS Materials**” means without limit, software, templates, screen designs, database structures, databases, literary works, artistic works, Confidential Information, data of DWS,



which is owned, used or licensed by DWS and used to deliver the Services, and excludes Client Materials.

"Fees" means the fees, costs, expenses and charges payable by the Client to DWS in accordance with this Agreement;

"Full Users" means individuals employed by the Client and authorised by the Client and DWS to use the Solution from time to time;

"Good Industry Practice" means the exercise of the degree of care, diligence and skill which would reasonably be expected from an experienced, skilled and professional person tasked with interpreting and assessing Deliverables for the relevant industry, engaged in the same type of business as the Client;

"Force Majeure" means an event within the meaning of clause 14;

"Instance" means the Client's installation of Oracle JD Edwards EnterpriseOne or Oracle Cloud Applications.

"Intellectual Property Rights" means all intellectual property rights of any sort whatsoever, including patents, trademarks, service marks, trade names, design rights, copyright, confidential information, rights in know-how, design rights and database related rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which subsist anywhere in the world;

"Named Users" means individuals employed by the Client and authorised by the Client and Oracle Corporation to use the Instance from time to time, Named Users do not include casual or self-service users meaning that the number of Named Users equates to what is sometimes referred to as a count of professional users;

"Lite Users" means individuals employed by the Client and authorised by the Client and DWS to use the particular components of the Solution from time to time;

"Platform Requirements" means a computer of the Client which satisfies any minimum software, hardware, disk space, processing speed or other IT requirements whatsoever specified by DWS at <https://www.dwsdimension.com/Download>, as may be amended from time to time.

"Prohibited Content" means any material in any media that does not comply with applicable law or regulation or industry code or which the Client or DWS is not entitled to receive; is offensive or indecent, depicts violence or is otherwise threatening or abusive; is for any organisation whose principal business includes the sale of tobacco related products or pornographic material; or in which in the opinion of a reasonable person encourages, in whatever manner, behaviour which promotes disparaging views or behaviour relating to an



individual or groups' colour, race nationality, ethnic or national origins, sex, sexual orientation, marital status, religion, age or disability;

"Reseller" means an organisation appointed and authorised by DWS to resell DWS Products as per the terms of the DWS Reseller Agreement in force on the date of any Service Order;

"Services" means services to be supplied pursuant to this Agreement as set out in the Service Order, including those matters set out in the Service Description;

"Solution" means the software and its constituent components which operate to deliver the functionality offered by the software product(s) named in the Services Order;

"System" means the hardware and software used by DWS to supply the Solution to the Client via the Internet;

"Term" has the meaning given in clause 2.1;

"Territory" means the UK and any other geographical areas specified in the Services Order;

1.2 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and the Services Order, the provision in the body of this Agreement shall take precedence to the extent of the conflict or ambiguity.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 Unless the context otherwise requires:

- a. words in the singular shall include the plural and in the plural shall include the singular;
- b. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- c. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT

2.1 The Client appoints DWS as the provider of the Services during the Term and DWS agrees to supply such Services, subject to the terms and conditions of this Agreement.

2.2 This Agreement shall commence on the Commencement Date and unless otherwise agreed in writing, shall continue in force for the duration set out in the Services Order and thereafter automatically renew for continuous consecutive periods of one (1) year duration, unless terminated earlier in accordance with this Agreement. Either Party may terminate this Agreement by providing notice in writing to expire on the last day of the current Term, given not less than 3 months before the end of the current Term.



- 2.3 Each Services Order shall form a separate Agreement between the parties in respect of the Services and the Solution and shall be deemed to incorporate and be subject to these terms unless otherwise expressly stated in writing. No further terms or conditions of any purchase order shall form part of or vary these terms in the absence of written agreement signed by each Party.

3 SERVICES

3.1 DWS shall during the Term:

- a. be responsible for support for the Solution, which may be performed by a subcontractor of DWS, with a response time of 4 hours and:
 - i. email support shall be available 24/7; and
 - ii. telephone support shall be available during Business Hours;
- b. be required to liaise with up to two named and agreed support personnel of the Client to provide second line support for the Solution, Services and Deliverables;
- c. exercise reasonable skill, care and diligence in the delivery of the Solution and the Services;
- d. make the Solution available to the number of Full and Lite Users as specified in the Service Order in the Territory, commencing on the Launch Date;
- e. perform such maintenance and other actions as are reasonably required to maintain the Solution in working order;
- f. perform significant maintenance of the hardware and software infrastructure on which the Solution is situated and/or connectivity to the Solution outside of Business Hours where circumstances permit. However, DWS reserves the right to carry out any emergency maintenance work at any time or any maintenance where reasonably required, giving to the Client as much warning as reasonably possible;
- g. update the Solution as it sees fit from time to time to enhance, amend and/or vary the capacities of the Solution;
- h. provide the Services in accordance with all applicable laws and regulations and the codes of practice or other requirements of any national or local agency, authority, department, inspectorate, minister, ministry official, parliament or public statutory person (whether autonomous or not) of any government or professional body having jurisdiction over either all or any of the activities contemplated by the Agreement and notified by the Client in advance of this Agreement in writing;
- i. notify the Client of each and every incorporated subcontractor presently engaged to perform DWS obligations under this Agreement, as may be reasonably requested, within 6 Business Days of a request made in writing.



- 3.2 DWS reserves the right at all times to deny access to any Full User Full and or Lite User without notice in the event that DWS identifies or suspects abuse of the Services or Solution by the Full User, Lite User, or any third party. The Client shall remain liable to DWS for misuse of the Services or Solution by Full and Lite Users.
- 3.3 DWS shall notify the Client within 3 business days after DWS becomes aware of a Breach of Security.
- 3.4 DWS warrants that it has obtained all necessary consents, approvals and licenses for the use of any third-party property contained in DWS Materials and the use of such third-party property will not infringe any Intellectual Property Rights belonging to any third-party. DWS agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client is liable, with respect to infringement of any UK Intellectual Property Right.
- 3.5 DWS shall not be responsible for loss or damage caused by the Client failing to keep regular and secure backups of Client Materials.

4 CLIENT

- 4.1 The Client shall during the Term and in accordance with the provisions of this Agreement:
 - a. use the Solution in accordance with any usage requirements issued by DWS from time to time;
 - b. use the most up to date version of the Solution made available by DWS;
 - c. make available two support personnel to liaise with the appointed support personnel of DWS. Such personnel shall be suitably qualified, and experienced to perform first line support;
 - d. analyse and assess the Deliverables in accordance with Good Industry Practice;
 - e. use the Solution for its own internal business purposes and not further or otherwise;
 - f. supply Client Materials for processing by the Solution in the form, format and method specified by DWS;
 - g. remain responsible for Client Materials which it causes to be processed;
 - h. assume responsibility for management of the storage space it requires as part of the Services;
 - i. ensure that Full and Lite Users are suitably qualified, and experienced to use and understand the outputs of the the Solution and interpret the same using Good Industry Practice;
 - j. any usernames and passwords provided by DWS to the Client shall be used by the Full User or Lite User for whom they are created, be kept securely and not disclosed to any



other person or caused to be utilised by any other person. The Client shall indemnify DWS for all loss and damage caused to the Solution by misuse of the usernames issued to it;

- k. use the Services in accordance with all applicable laws and regulations and the codes of practice or other requirements of any national or local agency, authority, department, inspectorate, minister, ministry official, parliament or public statutory person of any government or professional body having jurisdiction over either all or any of the activities contemplated by the Agreement or the parties;
- l. notify DWS forthwith of any attack or any attempted attack on the Solution by a third-party of which it becomes aware, whether or not (1) the same amounts to a Breach of Security, or (2) caused by an attempt to modify the data on the Solution or by increased access to the Solution so as to deny or interfere with legitimate Full and User access to the Solution;
- m. provide such reasonable assistance to DWS as may be necessary to enable DWS to take action against any such third-party attacking or attempting to attack the Solution;
- n. not rely upon the information provided by the Solution and/or the Services for resourcing, investment or financial decisions;
- o. not use or cause Prohibited Content to be used with or in association with the Solution;
- p. provide such assistance as reasonable or necessary to assist DWS with its obligations under this Agreement;
- q. disclose results of any services or program benchmark tests without DWS's prior written consent; and
- r. maintain and use up to date and appropriate virus-protection procedures on computers accessing the Solution and shall indemnify DWS in relation to any viruses which may be introduced to the Solution.

4.2 Under no circumstances will the Client, including any of its personnel, contractors or retained consultants or temporary personnel including those who negotiated the terms herein, in part or in full provide details to any third-party or any other person who is indirectly or directly involved with this Agreement with pricing information disclosed herein. Disclosure in any form will constitute a material breach of contract, entitling DWS to terminate this Agreement without notice. The pricing information herein is strictly confidential and must be preserved accordingly.

4.3 The Client represents, warrants and undertakes that it has obtained all necessary consents, approvals and licenses to lawfully use and permit Full and Lite Users to use the Solution and any third-party materials, including Client Materials used or to be used with the Solution. The use of such third-party materials will not infringe any Intellectual Property Rights belonging to any third-party. The Client agrees to hold harmless and to indemnify DWS and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by DWS, or for which DWS may become liable, with respect to any intellectual property

infringement claim or other claim relating to Client Material. In the event of allegations of an infringement, or if DWS reasonably suspects such an infringement has occurred, DWS may, giving notice to the Client and without liability, suspend availability of the Services and/or the Solution in whole or in part, pending clarification of such allegations or suspicion and thereafter irretrievably delete any Client Material and terminate this Agreement on 7 days' notice in writing.

5 WARRANTIES

- 5.1 Each party represents, warrants and undertakes that it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that this Agreement is executed by its duly authorised representative and represents a binding commitment on it.
- 5.2 The Solution is designed to identify subject matter for interpretation and review by skilled and experienced human operators, prior to investing time or any other resource to achieve the ends which it desires. The Solution is provided "as is" and without warranty. DWS gives no warranty that:
 - a. the Solution will work as expected or produce any particular result or improvement to the business, processes, efficiency or otherwise of the Client;
 - b. any improvements, savings or benefit will be obtained by use of the Services or the Solution;
 - c. the Solution will operate error-free, continuously or without interruption.
- 5.3 Without prejudice to the generality of clause 5.2:
 - a. the Solution will perform the functions described by the Documentation;
 - b. deliver the Services in accordance with clause 3.1(c) and (e);
- 5.4 Where DWS determines in its sole discretion that it is reasonable for the purposes of repair, maintenance or improvement of the Solution or any part it, DWS reserves the right to suspend provision of the Solution and/or any part thereof for the purpose of carrying out or implementing such repair, maintenance or improvement, provided that in the event of such suspension DWS will use its reasonable endeavours to ensure that reasonable notice is given to Client and minimum disruption to the Service is caused.
- 5.5 If the Solution no longer performs in accordance with then current Documentation, the Client shall have the right to terminate this Agreement in accordance with clause 10.1(a), and the Client shall further be reimbursed pro rata for any unused services, assessed by time relevant functionality is not available.



- 5.6 DWS shall not be in breach of this Agreement or otherwise liable to the Client as a result of any delay or other failure in the performance of its obligations under this Agreement where such delay or other failure is caused by or arises from:
- a. the Client's non-performance or delayed performance;
 - b. data supplied to DWS is not in a form and format required by DWS;
 - c. Client Materials are defective, damaged or incorrectly prepared;
 - d. delayed arrival or non-arrival of Client Materials;
 - e. errors in programs, coding information or operating instructions and any failure of or defect in the Client's systems;
 - f. any failure by the Client to obtain all necessary rights and licences;
 - g. failures to pay Fees by their due date(s);
 - h. urgent or scheduled downtime of servers and/or connectivity for maintenance, upgrades and patching of the Solution for its continued proper functioning;
 - i. any act or omission of the Client which has a material adverse effect upon the performance by DWS of its obligations under this Agreement;
 - j. breach of the obligations of the Client under this Agreement; or
 - k. Force Majeure.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Client agrees that Intellectual Property Rights in DWS Materials, the Solution, and any modifications thereto shall be and remain vested in DWS and its third party licensors, and to the extent that those form part of the Services and/or the Solution, the Client shall have a licence to use them in accordance with clause 6.3 below and not further or otherwise.
- 6.2 Intellectual Property Rights in DWS Materials and Deliverables if created in the future shall vest and remain vested in DWS.
- 6.3 DWS grants to the Client for the Term a non-exclusive, non-transferable license to use the Solution, solely as a service managed by DWS for the purposes of receiving the benefit of the Services and the Solution and to use the Deliverables for its own internal business purposes.
- 6.4 Subject to the terms of this Agreement the Client grants to DWS during the Term a non-exclusive, non-transferable and non-assignable royalty-free licence to use the Client Materials and Client Branding solely as necessary in relation to the configuration and operation of the Solution and supplying the Services.
- 6.5 The Client shall not remove or modify the trade marks or trade names from the Deliverables or make the same available in any manner to any third party in any form for use in the third party's business unless otherwise agreed in writing and subject to such conditions as DWS sees fit.



- 6.6 The Client shall not do or omit to do or permit there to be done any act which may damage the DWS Materials or DWS Branding.
- 6.7 If the Client shall become aware of any infringement of DWS Materials or DWS Branding or actual or threatened claim, action or proceeding in connection with the same then the Client shall promptly give written notice to DWS, and give such assistance to DWS as DWS may require in relation to such claim or action.
- 6.8 If the Client shall become aware of any claim that the Client Materials or any part of them infringe the rights any of third party, or actual or threatened claim, action or proceeding in connection with the same then the Client shall promptly give written notice of this to DWS, and give such assistance to DWS as DWS may require in relation to such claim or action. DWS may in any event cease to process any data or information which it suspects infringes the rights of any third party any time without notice to the Client. The Client shall indemnify DWS on demand and keep DWS indemnified against any and all reasonable costs, expenses (including, without limitation, legal costs), liabilities, losses, damages, claims, demands and judgments which DWS incurs or suffers as a result.
- 6.9 The Client agrees that all existing and/or future goodwill in and to DWS Materials and DWS Branding belong and shall belong to DWS absolutely and that nothing contained in this Agreement shall imply any transfer of ownership or creation of any licence, right, title or interest in respect of such. All use by the Client of DWS Materials and DWS Branding shall inure for the benefit of DWS. The rights of the Client shall be limited to use of DWS Materials and DWS Branding in a manner approved in writing by DWS.
- 6.10 DWS reserves the right to use in any way it sees fit any programming, tools, skills, ideas and techniques acquired during the performance of the Services.
- 6.11 Other than expressly granted under this Agreement, neither party grants any licence or right in respect of any Intellectual Property Rights of the other party.

7 FEES AND PAYMENT

- 7.1 In consideration of the provision of the Services, DWS shall be entitled to invoice the Client, and the Client shall make payment of the sums set out in the Services Order in accordance with clause 7.3 unless otherwise specified in writing.
- 7.2 Where the Services Order forms part of an agreement between a Reseller and the Client, the Reseller shall, with DWS' prior written agreement, be entitled to invoice the Client as per the payment terms of the Reseller's agreement with the Client and in accordance with Reseller's agreement with DWS.
- 7.3 The Client shall pay any invoice submitted to it by DWS within 30 days of receipt unless otherwise agreed in writing to a bank account nominated by DWS in writing. All Fees shall be



payable via electronic funds transfer only without right of deduction or set-off and at all times in advance of receiving the Services and/or access to the Solution.

- 7.4 Fees are exclusive of Value Added Tax and any other tax duty or levy for which the Client is legally liable which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.
- 7.5 DWS may on three months' notice in writing increase any Fee charged hereunder once per calendar year after the duration set out in the Service Order. The maximum increase in any one year is 5%. If any Fee charged hereunder is not increased in a year the Fee increase amount can be carried forward, when this is done the maximum aggregate increase in a year cannot exceed 10%.
- 7.6 If the Client fails to pay any amount payable by it under this Agreement, the Client shall pay interest on the overdue amount from the date the amount fell due, at a rate of 4% per annum above the base rate from time to time of Barclays Bank Plc. DWS shall be entitled to suspend the whole or any part(s) of the Services and/or the Solution at any time and from time to time while such sums remain outstanding without notice to the Client of its intention to do so, and at any time thereafter terminate this Agreement while any part of the said sums remain unpaid.

8 DATA PROTECTION

- 8.1 The Parties acknowledge (1) that on 25 May 2018, the General Data Protection Regulation, (EU) 2016/679 ("**GDPR**") came into force in the Member States of the European Union, and (2) Article 28 of the GDPR.
- 8.2 The Parties hereby agree that:
- the meanings of the terms "*controller*", "*processor*" and "*personal data*" shall be as defined by the GDPR;
 - the Client will be the controller to the extent that it transfers personal data into the possession or control of DWS;
 - DWS will be the processor of such personal data; and
 - their obligations to one another under the GDPR shall be governed by a separate agreement entitled, "*Data Processing Agreement*" entered into on or about the date hereof.
- 8.3 This agreement is conditional upon entry by the Parties to the terms of the Data Processing Agreement. DWS shall not be liable for any delay, cost or expense caused by delay by the Parties to enter the said Data Processing Agreement. The Parties agree to the Data Processing Terms at [DWS-Standard-Data-Processing-Agreement-May-2018.pdf \(netdna-ssl.com\)](#).

9 CONFIDENTIALITY

- 9.1 Each party shall treat as confidential all Confidential Information and shall not divulge such Confidential Information to any person (except to such party's own employees and then only to those employees who need to know the same for the purposes of carrying out its obligations under this Agreement) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Agreement and was not provided under an obligation of confidentiality, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or is required by law, court order or any governmental or regulatory authority.
- 9.2 Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If a party shall appoint any subcontractor and that party discloses Confidential Information to such subcontractor, the party disclosing the Confidential Information to such subcontractor shall be responsible for any breach of the obligations of confidentiality contained in this clause by such subcontractor (subject to the agreement of the other party for such disclosure). The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

10 TERMINATION

- 10.1 Either party may terminate this Agreement if:
- a. the other party is in material breach of this Agreement and fails to remedy the breach (if capable of remedy) within 28 days of notice in writing of the breach being given by the party not in breach;
 - b. the other party is in repeated or persistent breach of the terms of this Agreement;
 - c. the other party ceases to conduct business in the normal course, becomes subject to a voluntary arrangement under Section 1 of the Insolvency Act 1986, becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, passes a resolution for its winding up (other than for the purpose of a bona fide reconstruction) or has a petition presented to any court for its winding up or for any administration order, or likewise in accordance with similar laws anywhere in the world;
 - d. the other party enters into any composition or arrangement (whether formal or informal) with its creditors;
 - e. in the event of Force Majeure.
- 10.2 DWS may terminate this Agreement without notice where:



- a. a Full User or Lite User abuses the Services or the Solution;
- b. the Client exceeds its licence entitlements to use the Solution;
- c. any third party service upon which the Solution relies is terminated or suspended; or
- d. any third party licensor of DWS terminate licence(s) to DWS with the effect that DWS is no longer entitled to continue to license use of the Solution to the Client.

In the event of termination for 10.2(c) or (d) above, the Client shall be entitled to a pro-rata refund of sums paid for the unused proportion of the Services.

- 10.3 Upon the expiry or termination of this Agreement for whatever reason (1) DWS shall immediately cease supplying the Solution and any information or material supplied or associated with it, (2) the Client shall pay DWS in full for all Services provided up to the date of termination, and (3) all licences hereunder shall terminate.
- 10.4 Termination of this Agreement for whatever reason shall not affect the rights and obligations of the parties which have accrued prior to the date of termination, including the right to claim damages. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

11 EXCLUSION AND LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of DWS, including acts and omissions on the part of its employees, agents and subcontractors to the Client arising under or in connection with this Agreement in respect of any use made by the Client of the Services, the Solution, the Deliverables or any part of them; and in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 DWS and its licensors exclude all representations, misrepresentations, warranties and terms of any kind whatsoever (whether by statute or otherwise) to the fullest extent permitted by applicable law.
- 11.3 Except as expressly provided in this Agreement the Client assumes sole responsibility for results obtained from the use of the Solution and the Services by the Client, and for conclusions drawn from such use. DWS shall have no liability for any damage caused by errors or omissions in any information, instructions, scripts or software produced or used by DWS in connection with the Services or Solution, or any actions taken by DWS (automated or otherwise) at the Client's direction. 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.



- 11.4 Nothing in this clause 11 shall limit either party's liability for death or personal injury resulting from negligence or for fraud, fraudulent misstatement or fraudulent misrepresentation or for any indemnity given under this Agreement.
- 11.5 Neither party shall be liable, (in contract, tort (including negligence) or for breach of statutory duty or in any other way) for any loss of revenue, profits, business, contracts, anticipated savings or profits, any loss of use of facilities, loss of goodwill or reputation, similar losses or corruption of data or information, pure economic loss and/or any indirect, special or consequential loss, costs, damages, charges or expenses suffered or incurred by the other party arising out of or in connection with the use or provision of the Solution or the Services, or any other matter under this Agreement.
- 11.6 The aggregate liability of DWS in respect of any loss or damage suffered by Client arising out or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty shall not exceed the Fees incurred by the Client in the 12 months preceding the date upon which the claim arose.
- 11.7 The total liability of DWS, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or otherwise, shall in no circumstances exceed the sum of £500,000.
- 11.8 The provisions of this clause 11 shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason.

12 EXPORT CONTROL

Neither party shall export, directly or indirectly, any technical data or information acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including the Export Control Act and United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

13 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. Neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties. The parties confirm that this Agreement contains all matter upon which they have relied to enter this

Agreement and they have not relied on any matter not contained herein. No variation to the provisions of this Agreement shall be of any effect unless made in writing and agreed and signed by both parties.

14 FORCE MAJEURE

If the performance by either party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than 1 month, either party may terminate this Agreement with immediate effect by giving written notice.

15 NO PARTNERSHIP OR AGENCY

15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party as agent of the other nor authorise any party to make or enter into any commitments for or on behalf of any other party.

16 WAIVER

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

17 LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

18 SEVERABILITY

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

19 THIRD PARTIES

The parties confirm their intent not to confer any rights on any third-parties by virtue of this Agreement and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to this Agreement.



20 ASSIGNMENT

Save as expressly provided in this Agreement, neither party shall assign or transfer or make available the benefit of this Agreement or any of its rights, obligations or licences granted hereunder whether in whole or in part.

21 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original, but all of which when taken together shall constitute one and the same Agreement.

22 NOTICES

Any notice required to be given to either party under this Agreement shall be in writing and shall be deemed duly served if delivered personally or by email whose receipt is confirmed by the receiving party or by prepaid registered post to the addressee at the address of that party as notified in writing from time to time or its registered address.