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**STANDARD MASTER PARTNER RESELLER AGREEMENT (MAY 2018)**

This Master Partner Reseller Agreement (the “MPR Agreement”) is entered into on the date of last signature below (the “Effective Date”)

**BY:**

- 1 **TBC** registered in **England and Wales** under Company Registration Number **TBC** and referred to hereafter as “Partner”; and
- 2 **Exponential-e Limited** registered in England and Wales under Company Registration Number 04499567 and referred to hereafter as “Exponential-e”

each being singularly a “Party” and collectively the “Parties”.

**WHEREAS:**

- A: The Partner wishes to become a channel reseller partner of Exponential-e; and
- B: Exponential-e is prepared to accept the Partner as a channel reseller partner; and
- C: The Parties are entering into this MPR Agreement to give effect to the above.

**STRUCTURE OF THIS MPR AGREEMENT:**

This MPR Agreement comprises the following sections:

Main Body

Schedule 1: General Terms

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. ORDERING NEW SERVICES**

- 1.1 The Partner may, at any time during the currency of this MPR Agreement, request a quotation from Exponential-e for the provision of Exponential-e services, which shall include full details of service required and expected delivery dates. If Exponential-e is technically capable of providing the required services to the Partner, Exponential-e shall supply a quotation for the same. If the Partner accepts Exponential-e’s quotation, the details of the agreement reached between the Parties shall be set out in an Exponential-e order form (the “Order Form”). Each Order Form shall be subject, amongst other things, to the general terms and conditions set out in Schedule 1 to this MPR Agreement (the “General Terms”) and the additional terms and conditions set out in the applicable Service Document (the “Additional Terms”). Upon signature of each Order Form, the Parties shall be bound under it. For the avoidance of doubt, each Order Form executed pursuant to this MPR Agreement shall constitute a separate and independent contract between the Partner and Exponential-e.
- 1.2 Alternatively, for certain Exponential-e Services, the Partner may, at any time during the currency of this MPR Agreement, obtain pricing via Exponential-e’s Cloudport online portal. If the Partner accepts Exponential-e’s pricing, the Partner may place an order for such Services via the Cloudport online portal (the “Online Order”). Each Online Order placed by the Partner via the Cloudport online portal shall be subject to the General Terms and the Additional Terms. A submitted Online Order shall constitute acceptance of Exponential-e’s offer to supply the Services at the prices quoted subject to the terms of this MPR Agreement. Upon submission of each Online Order by the Partner, the Parties shall be bound under it. For the avoidance of doubt, each Online Order submitted by the Partner via the Cloudport online portal pursuant to this MPR Agreement shall constitute a separate and independent contract

between the Partner and Exponential-e. Where a Service can be ordered by way of an Online Order, this will be stated in the relevant Service Definition in the relevant Service Document.

- 1.3 If no agreement is reached following either the procedure outlined in Clause 1.1 or Clause 1.2 above, then Exponential-e shall be under no obligation to provide the requested services to the Partner.

**2. DURATION AND TERMINATION OF THIS MPR AGREEMENT**

- 2.1 This MPR Agreement shall come into force on the Effective Date and shall continue in force until terminated by either Party serving 30 days written notice on the other Party. Termination of this MPR Agreement shall not affect any Order Forms executed or Online Orders placed prior to such termination. As severable contracts, all Order Forms and Online Orders and the terms and conditions applicable thereto shall survive termination of this MPR Agreement.

**3. ASSIGNMENT**

- 3.1 Neither Party shall at any time assign or transfer (or purport to assign or transfer) this MPR Agreement and/or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), save that Exponential-e may at any time assign or transfer this MPR Agreement and/or any of its rights or obligations hereunder, in whole or in part to any Affiliate of Exponential-e; or to any successor to Exponential-e following a re-organisation or merger of Exponential-e with another organisation; upon notice but without consent.

**4. MODIFICATION**

- 4.1 This MPR Agreement may only be modified if such modification is in writing and signed by a duly-authorised representative of each Party.

**5. SERVICE OF NOTICE**

- 5.1 Any notice or other communication required to be given to a Party under this MPR Agreement, shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Working Day after transmission, or otherwise at 9.00 am on the second Working Day after posting (or at the time recorded by the delivery service).

**6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 6.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this MPR Agreement and unless specifically herein provided no person other than the Parties shall have any rights under it nor shall it be enforceable by any other person.

**7. GOVERNING LAW**

- 7.1 This MPR Agreement shall be governed by, construed and interpreted in accordance with the Laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English and Welsh Courts.

**8. GENERAL**

- 8.1 Failure by either Party to enforce any of its rights hereunder shall not be taken as, or deemed to be, a waiver of such right.
- 8.2 If any provision of this MPR Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not

- affect the other provisions of this MPR Agreement which shall remain in full force and effect.
- 8.3 This MPR Agreement contains the entire agreement between the Parties and supersedes all previous understandings, commitments, (and subject to Clause 9 below) agreements or representations whatsoever, whether oral or written, in relation to the subject matter of this MPR Agreement other than any fraudulent misrepresentation. No terms and conditions set out on any Partner paperwork submitted to Exponential-e pursuant to this MPR Agreement shall have any force or effect.
- 8.4 The Parties agree and accept that the MPR Agreement and all information disclosed pursuant to this MPR Agreement is confidential in nature. Neither Party shall use information disclosed pursuant to this MPR Agreement for any purpose other than a purpose envisaged by this MPR Agreement or disclose such information to any third party without the prior written consent of the other Party. Each Party shall treat the other Party's information with the same degree of care that it uses for its own information of a similar nature, which in any event shall be not less than reasonable care.
- 8.4.1 Clause 8.4 above shall not apply to information that was (i) in the receiving Party's possession before such disclosure was made by the other Party, (ii) independently developed by the receiving Party (iii) in, or subsequently comes into, the public domain other than as a result of breach of this MPR Agreement, or (iv) received from a third party free to disclose the same.
- 8.4.2 Each Party agrees that the other Party may disclose the confidential information belonging to the first party, required to be disclosed pursuant to any applicable law, court or regulatory authority. Each Party shall promptly notify the other Party of any such disclosure requirement to the extent that it is legally permissible to do so.
- 8.4.3 Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 8.4 and accordingly, without prejudice to any other rights or remedies available, each Party shall be entitled to seek injunctive or other equitable relief to prevent any breach or threatened breach of Clause 8.4 by the other Party.
- 8.4.4 Clause 8.4 shall survive the termination of this MPR Agreement for a period of 5 years.
- 8.5 Upon termination of this MPR Agreement, if requested to do so by the other Party, a Party shall promptly return or certify destroyed all of the other Party's confidential information.
- 8.6 Neither Party shall make, or permit any person to make, any public announcement concerning this MPR Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **9. PREVIOUS AGREEMENTS**

- 9.1 In the event that, prior to entering into this MPR Agreement, the Partner has entered into a previous Master Partner Reseller Agreement or Partner Standard Terms of Business agreement with Exponential-e (the "Previous Reseller Agreement"), the Parties agree that the Previous Reseller Agreement shall remain in full force and effect and continue to apply to all orders entered into under it, to date. The Parties agree that this MPR Agreement shall apply to all Order Forms executed and Online Orders placed after the Effective Date of this MPR Agreement, unless the Order Form or Online Order specifically references the Previous Reseller Agreement by the inclusion of the Previous Reseller Agreement's reference number and/or date of signature and clearly states that it applies to the Order Form or Online Order to the exclusion of this MPR Agreement.

Signed for and on behalf of **Partner**:

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Name: .....

Title: .....

Date: .....

Signed for and on behalf of **Exponential-e**:

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Name: .....

Title: .....

Date: .....

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**SCHEDULE 1: GENERAL TERMS**

Exponential-e and the Partner hereby agree as follows:

**1. DEFINITIONS**

1.1 In the Contract, the following terms shall have the meanings assigned to them below:

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| <b>“Acceptable Use Policy”</b>              | the acceptable use policy document of Exponential-e (to the extent applicable to a Service) as current from time to time (copy available from Exponential-e upon request, including via <a href="mailto:sales@exponential-e.com">sales@exponential-e.com</a> and/or at URL <a href="http://www.exponential-e.com/reseller-terms">http://www.exponential-e.com/reseller-terms</a> ; |
| <b>“Acceptance Date”</b>                    | the date on which the Partner signs or is deemed to have signed the acceptance test certificate as set out in Clause 2.2.1 (if applicable);  |
| <b>“Acceptance Test Period”</b>             | five (5) Working Days from the date that the Partner is notified by Exponential-e in writing that the Service is ready for use (if applicable);  |
| <b>“Acceptance Tests”</b>                   | the tests to be carried out by the Partner / End User following handover of the Service(s) during the Acceptance Test Period as set out in the relevant Service Document (if applicable) and <u>“Acceptance Testing”</u> shall be construed accordingly;   |
| <b>“Affiliate”</b>                          | an entity that directly or indirectly controls, is controlled by or is under common control with a Party. For the purposes of the foregoing, <u>“control”</u> shall mean the ownership of more than fifty percent (50%) of the (i) voting power to elect the directors of the said entity, or (ii) ownership interest in the said entity;  |
| <b>“Annual Charge”</b>                      | the on-going fee for the provision of the Service(s), where applicable, as detailed on the Order Form/within the Online Order (and, if applicable, as amended in line with the Contract);  |
| <b>“Change Management Process”</b>          | the process of requesting and recording changes to the Service(s) and/or the Contract detailed in the Exponential-e Change Management Process Document;  |
| <b>“Change Management Process Document”</b> | the Exponential-e change management process document as current from time-to-time, copy available upon request including via <a href="mailto:sales@exponential-e.com">sales@exponential-e.com</a> and/or at URL <a href="http://www.exponential-e.com/reseller-terms">http://www.exponential-e.com/reseller-terms</a>  |
| <b>“Change Order”</b>                       | the change order agreement prepared in accordance with Exponential-e’s Change Management Process;  |
| <b>“Charges”</b>                            | the charges payable for the Service(s) as detailed in the Contract which shall include any Annual Charge (where applicable), any Usage Charges (if applicable), any Non-Recurring Charges (if applicable) and any other charges set out in the Contract;   |
| <b>“Confidential Information”</b>           | any information concerning the business, accounts, finance, contractual dealings, customers, pricing, transactions or affairs of a Party which are designated as, or which should reasonably be considered as being, confidential but shall not include those bytes  |

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|                               | of Stored Data or End User Content that Exponential-e has had no visibility of which happen to be confidential;   |
| <b>“Connectivity Service”</b> | a service set out in Exponential-e’s Service Document for Connectivity Services, as current from time-to-time, copy available upon request including via <a href="mailto:sales@exponential-e.com">sales@exponential-e.com</a> and/or at URL <a href="http://www.exponential-e.com/reseller-terms">http://www.exponential-e.com/reseller-terms</a> ;   |
| <b>“Contract”</b>             | means:<br>(a) where an Order Form is signed, the Order Form together with (i) any commercial offer terms referenced on the Order Form, (ii) any special terms incorporated by reference on the Order Form and signed by the Parties; and/or (iii) these General Terms; and (iv) the applicable Service Document(s); and (v) any additional documents that are expressly stated to form part of the Contract in the Contract; and<br>(b) where an Online Order is placed, the submitted Online Order together with (i) these General Terms (including any documents incorporated by reference herein); and (iii) the Service Document;   |
| <b>“Data Controller”</b>      | shall have the meaning given to it in the DP Laws;  |
| <b>“Data Processor”</b>       | shall have the meaning given to it in the DP Laws;  |
| <b>“Documentation”</b>        | any documentation provided to the Partner by Exponential-e for the purpose of providing the Service(s);   |
| <b>“DP Laws”</b>              | (i) the Data Protection Act 1998 (and any re-enactment or replacement thereof) and (ii) the GDPR as from 25 <sup>th</sup> May 2018;   |
| <b>“Due Date”</b>             | the due date for payment of an invoice for the Charges as set out in Clause 5.6;  |
| <b>“Electronic Signature”</b> | a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with a human readable electronic version of the Contract documents using Exponential-e’s designated electronic signature software;  |
| <b>“End User”</b>             | the end user of the Services, being the entity which contracts with the Partner for receipt of the Service(s) and/or products provided by Exponential-e to the Partner under the Contract, and whose details are set out on the Order Form/Online Order;  |
| <b>“End User Content”</b>     | the works of authorship, marks, data, information, materials and other content that is sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Service(s), including (without limitation) names, domain names, logos, designs, computer software, recorded visual imagery (including video recordings and photographs), sounds, audio materials (including master recordings), musical compositions (including arrangements and lyrics), graphics (including animation), textual matter, and any combination of the above. For the avoidance of doubt, End User Content does not include Materials. All End User Content is and will remain the property of the End User; |
| <b>“End User Site(s)”</b>     | the End User locations at which the Service(s) will be provided (if   |

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| <b>“Exponential-e”</b>           | applicable), as specified on the Order Form/in the Online Order, which shall include any Partner/End User co-location rack(s) within Exponential-e data centres (if applicable);<br>Exponential-e Limited, registered in England and Wales under company registration number 04499567;  |
| <b>“Exponential-e Equipment”</b> | the equipment (if any) owned by Exponential-e and/or its suppliers, which is located either at the End User Site(s) or the Exponential-e Site(s) (as applicable) in order to provide the Service(s). Unless stated explicitly otherwise in Contract, all equipment to be provided under the Contract is Exponential-e Equipment;  |
| <b>“Exponential-e Personnel”</b> | the staff and contractors of (i) Exponential-e and (ii) Exponential-e’s contractors and suppliers engaged in the provision of the Service(s);   |
| <b>“Exponential-e Site”</b>      | the location(s) where the Service(s) will be provided from (where applicable to a particular Service) including any data centres owned and operated by Exponential-e or its suppliers;  |
| <b>“Force Majeure Event”</b>     | any circumstance beyond a Party’s reasonable control (including, without limitation, act of God, the act or omission of the other Party, labour dispute (but not involving the claiming Party’s own employees), act or omission of government or other appropriate authority, act of terrorism, war, technological attack (including, but not limited to denial of service attacks, attacks involving Malicious Code and computer hacking), and regulatory and legal changes);  |
| <b>“GDPR”</b>                    | European Union’s General Data Protection Regulations (EU)2016/679;  |
| <b>“Initial Term”</b>            | the initial term for which each Service shall be provided to the Partner (if applicable), as set out on the Order Form/in the Online Order and calculated from the Service Commencement Date for that Service or as otherwise specified in the applicable Service Document. The Initial Term is not applicable to Pay As You Go Services;   |
| <b>“Insolvent”</b>               | (i) the appointment of, or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver; or (ii) entering into a scheme of arrangement or composition with or for the benefit of creditors generally or any class of creditors; or (iii) any reorganisation, moratorium or other administration involving its creditors or any class of creditors; or (iv) a resolution, or proposed resolution, to wind it up or strike it off; or (v) becoming unable to pay debts as and when they become due or becoming deemed to become unable to pay debts as and when they become due within the meaning of Section 123 of the Insolvency Act 1986; |
| <b>“Intellectual Property”</b>   | patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights,  |

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|                                       | rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| <b>“Laws”</b>                         | all treaties and applicable statutory enactments (as amended, replaced, or re-enacted from time to time) and any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made, required or granted thereunder and any condition attaching thereto, including any specific laws mentioned by name herein having force and effect in England and Wales;  |
| <b>“Licensors”</b>                    | shall have the meaning given to it in Clause 10.1;   |
| <b>“Malicious Code”</b>               | viruses, logic bombs, worms, trojan horses or other types of destructive, disruptive or nuisance programs;   |
| <b>“Materials”</b>                    | all literary works or other works of authorship (such as computer programs, program listings, programming tools, Documentation, reports, drawings and similar works) that are developed or provided by Exponential-e to the Partner pursuant to the Contract or otherwise in connection with the Service(s). For the avoidance of doubt, Materials do not include End User Content;  |
| <b>“Non-Recurring Charges”</b>        | the one-off charges (if any) for the Service(s) or Purchased Equipment, including any installation fees or purchase fees, as detailed on the Order Form/in the Online Order (and, if applicable, as amended in line with the Contract);  |
| <b>“Normal Business Hours”</b>        | 9 a.m. to 5.30 p.m. on any Working Day;  |
| <b>“Parties”</b>                      | the Partner and Exponential-e and <u>“Party”</u> shall be construed accordingly;   |
| <b>“Partner”</b>                      | the entity purchasing Exponential-e’s products and/or services as detailed on the Order Form/in the Online Order;  |
| <b>“Partner Contact”</b>              | the Partner’s authorised representative (if any) specified as such in the Contract, nominated to liaise and work with Exponential-e in connection with the Service(s);   |
| <b>“Partner / End User Equipment”</b> | items of equipment owned or leased by the Partner or End User located either at the End User Site(s) or at an Exponential-e Site (as applicable to the particular Service(s)) and used in order to provide and/or receive the Service(s);  |
| <b>“Partner Personal Data”</b>        | any Personal Data in respect of which, for the purpose of this Contract, the Partner/End User is the Data Controller;  |
| <b>“Pay As You Go Services”</b>       | services described as such in the applicable Service Document, and designated as such on the Order Form/in the Online Order, which are provided on the basis that there is no fixed Initial Term and no commitment to paying an Annual Charge;   |
| <b>“Personal Data”</b>                | shall have the meaning set out in the DP Laws;   |



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| <b>“Portal Terms of Use”</b>       | the terms of use applicable to, and accessible via, any portal provided by Exponential-e to the Partner for use with the Service(s) or otherwise pursuant to the Contract;   |
| <b>“Process”</b>                   | shall have the meaning given to it in the DP Laws and <u>“Processing”</u> and <u>“Processed”</u> shall be construed accordingly;   |
| <b>“Professional Services”</b>     | the services described in Exponential-e’s Service Document for Professional Services as current from time to time, copy available upon request including via <a href="mailto:sales@exponential-e.com">sales@exponential-e.com</a> and/or at URL <a href="http://www.exponential-e.com/reseller-terms">http://www.exponential-e.com/reseller-terms</a> ;  |
| <b>“Purchased Equipment”</b>       | the equipment (if any) purchased by the Partner and sold by Exponential-e in conjunction with the provision of a Service, as specified in the Order Form / in the Online Order and clarified in the Service Document;  |
| <b>“Rate Card”</b>                 | the then-current rate card setting out the Usage Charges (if applicable) to a particular Service, as provided to the Partner by Exponential-e from time to time in accordance with the applicable Service Document;  |
| <b>“RIPA Notice”</b>               | a notice issued by an investigative authority pursuant to the Regulation of Investigatory Powers Act 2016;   |
| <b>“Service(s)”</b>                | the service(s) to be provided by Exponential-e to the Partner as set out on the Order Form/in an Online Order and further explained in the applicable Service Document;  |
| <b>“Service Commencement Date”</b> | the earlier of (i) where a Service is subject to Acceptance Tests the Acceptance Date of that Service and (ii) where a Service is not subject to Acceptance Tests, the date that the Partner is notified by Exponential-e in writing that the Service is ready for use; or the date that the Partner or End User actually starts using the Service, unless otherwise agreed in writing between the Parties or otherwise specified in the applicable Service Document;  |
| <b>“Service Delivery Form”</b>     | the form provided to the Partner by Exponential-e (if any) requiring technical contact details and relevant technical information such as (where applicable) rack and comms room locations, PSTN DDI numbers, server names, applicable number/IP ranges and features;  |
| <b>“Service Document”</b>          | Exponential-e’s service document current at the time of entering into the Contract and referenced on the Order Form/advised to the Partner at the time of Online Order placement, containing details of the service(s) Exponential-e offers (or the component parts thereof) and the Additional Terms applicable thereto, which are available from Exponential-e upon request (including via <a href="mailto:sales@exponential-e.com">sales@exponential-e.com</a> and/or at URL <a href="http://www.exponential-e.com/reseller-terms">http://www.exponential-e.com/reseller-terms</a> ); |
| <b>“Software”</b>                  | any software to which the Partner / End User is provided with access pursuant to the Contract, or any third party software which the Partner purchases through Exponential-e including any software embedded in the Exponential-e Equipment and/or Partner / End User Equipment;   |
| <b>“Stored Data”</b>               | the End User Content that is stored by the Partner/End User within   |

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|                                    | Exponential-e’s virtualised storage environments (including but not limited to its virtual data centre and online backup environments) within an Exponential-e data centre (if applicable);   |
| “Target Service Commencement Date” | the date by which Exponential-e shall use reasonable endeavours to handover the Service(s) (if applicable), as detailed in the applicable Service Document;   |
| “Usage Charges”                    | the fees (if any) for the use of a Service, calculated as set out in the relevant Rate Card and the applicable Service Document and in accordance with the usage information collected by Exponential-e’s monitoring and reporting systems; and |
| “Working Day”                      | Monday to Friday (inclusive), excluding all public and bank holidays in England and Wales.  |
- 1.2 In the event of any conflict, in the case of a signed Order Form between (i) the Order Form, (ii) any commercial offer terms referenced on the Order Form, (iii) any special terms incorporated by reference on the Order Form and signed by the Parties, (iv) these General Terms, (v) the applicable Service Document(s), and (vi) any additional documents that are expressly stated to form part of the Contract in the Contract, the hierarchy of precedence shall be as stated here (with the Order Form having the highest precedence).
- 1.3 In the event of any conflict, in the case of an Online Order between (i) the Online Order, (ii) these General Terms (including any documents incorporated by reference herein) and (iii) the Service Document, the hierarchy of precedence shall be as stated here (with the Online Order having the highest precedence).
- 1.4 The headings in these General Terms are for ease of reference only and shall not be taken into account in the construction or interpretation of these General Terms.
- 2. ORDERING, SERVICE PROVISION & ACCEPTANCE**
- 2.1 Where a Service has a Target Service Commencement Date, Exponential-e will notify the Partner in writing when it is ready to hand-over that Service to the Partner. Where a Service does not have a Target Service Commencement Date (such as Professional Services) Exponential-e shall inform the Partner in writing when it is ready to commence performance of such Services. The following acceptance clauses shall apply where Acceptance Tests apply to a Service (as detailed in the applicable Service Document):
- 2.1.1 The Partner shall have the Acceptance Test Period in which to carry out (or allow the End User to carry out) the Acceptance Tests. The Partner shall sign Exponential-e’s standard acceptance test certificate upon successful passing of the Acceptance Tests and promptly return it to Exponential-e. In the event that the Services do not pass the Acceptance Tests, the Partner shall serve written notice to this effect on Exponential-e. In the event that the Partner has not (i) signed and returned the acceptance test certificate or (ii) served notice that the Service(s) have failed to pass the Acceptance Tests, by the expiry of the Acceptance Test Period, the Partner shall be deemed to have signed the acceptance test certificate upon expiry of the Acceptance Test Period. If the Partner has served notice that the Service(s) have failed to pass the Acceptance Tests before the expiry of the Acceptance Test Period then Exponential-e shall remedy any defect in the Service(s) as soon as reasonably possible and re-submit the Service(s) to the Partner for Acceptance Testing. Exponential-e shall have the right, but not the obligation, to be present during the carrying out of any Acceptance Tests and to that end, the Partner shall provide Exponential-e with not less than two (2) Working Days’ notice of the carrying out of the Acceptance Tests.
- 2.2 Where Exponential-e agrees to delay the Service Commencement Date following the Partner’s written request, or the Target Service Commencement Date is not met as a result of the Partner’s delay or failure to fulfil its obligations under the Contract, the Annual Charges for that Service shall

- be payable from the Target Service Commencement Date for that Service, unless otherwise agreed in writing by the Parties. Nothing in this clause shall oblige Exponential-e to agree to any delayed handover of the Service(s).
- 2.3 Exponential-e reserves the right, at any time, to make any modification, change or addition to, or replacement of, any Service (or part thereof) or the Exponential-e Equipment, where this is required to conform with any applicable safety requirements or Laws.
- 2.4 Subject to Clause 2.3 above and any specific provisions in the applicable Service Document(s), all requested changes to the Service(s) shall be dealt with in accordance with Exponential-e's Change Management Process.
- 2.5 Exponential-e reserves the right to carry out planned and emergency works in respect of the Service(s) in accordance with the applicable Service Document(s). The Partner acknowledges that this may result in non-availability of, or other impact to, their Services whilst such works are carried out.
- 3. END USER SITE ACCESS**
- 3.1 Where necessary to enable Exponential-e to carry out its obligations and exercise its rights under the Contract, the Partner shall provide (or shall procure that the End User shall provide) Exponential-e Personnel with such access to the End User Site(s) as Exponential-e shall reasonably require, subject to reasonable advance notice. Any period of delay in providing Exponential-e Personnel with access to the End User Site(s) shall be excluded from any service level calculations.
- 3.2 The Partner shall ensure (or shall procure that the End User shall ensure) that Exponential-e Personnel have a safe working environment at the End User Site(s). Exponential-e Personnel will comply with all reasonable health and safety and security policies applicable to the End User Site, provided in writing prior to, or at the time of entry to, the End User Site(s).
- 4. FAULT MANAGEMENT**
- 4.1 Exponential-e will support the Service(s) and deal with faults as per the provisions of the applicable Service Document(s). The Service(s) (or the component parts thereof) will be subject to the service levels (if any) set out in the applicable Service Document(s).
- 4.2 The Partner shall notify Exponential-e of any material non-conformity or fault with the Service(s) as per the Service Document.
- 4.3 Any time incurred by Exponential-e in investigating alleged faults or non-conformities with the Service(s) notified to it by the Partner, which are later found not to have existed, may be charged to the Partner in accordance with Exponential-e's then-current standard rates together with any third party supplier costs incurred in investigating the same. The Partner shall be entitled to see reasonable documentary evidence attesting to such third party costs.
- 5. FEES AND PAYMENT**
- 5.1 The Non-Recurring Charges shall become invoiceable upon the Service Commencement Date or, where such Non-Recurring Charges apply after the Service Commencement Date, they shall become invoiceable upon signature of the Order Form/placement of the Online Order and/or Change Order as applicable.
- 5.2 Subject to Clause 2.3, the Annual Charge (where applicable) shall be payable in advance from the Service Commencement Date in accordance with the payment frequency set out on the Order Form /specified within the Online Order. The first payment (being for the remainder of the month in which the Service Commencement Date occurs, calculated on a pro-rata temporis basis, plus the following month / quarter / year, as applicable) shall be invoiceable by Exponential-e on or following the relevant Service Commencement Date. Subsequent payments shall become invoiceable at the start of the month immediately preceding the month / quarter / year being invoiced.
- 5.3 Usage Charges (if applicable) shall be invoiceable monthly in arrears.

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- 5.4 As from the Service Commencement Date, the Annual Charge shall, subject to anything contrary in the applicable Service Document, be firm and fixed for the duration of the Initial Term. With effect from the expiry of the Initial Term, Exponential-e shall be entitled to revise the Annual Charge to reflect Exponential-e's then current standard rates, by giving the Partner not less than ninety (90) days prior written notice.
- 5.5 All Charges are payable in sterling and are exclusive of Value Added Tax and any other applicable taxes which shall be payable by the Partner in addition, in the manner prescribed by law.
- 5.6 Invoices for the Charges (save where specified otherwise herein) shall be paid by the Partner within thirty (30) days of the date of the invoice. Invoices will normally be submitted by email to the Partner's nominated email address for invoices. The Partner shall pay all invoiced amounts without any deductions, with-holdings, counter-claims and/or set-offs (sums subject to reasonable and notified dispute in accordance with Clause 5.7 below excepted).
- 5.7 In the event that the Partner has a bona fide dispute as to sums invoiced, the Partner shall serve notice to this effect on Exponential-e as soon as reasonably practicable and in any event prior to the Due Date for payment thereof, detailing the sums disputed and the reason for the dispute. All non-disputed sums shall be paid by the Due Date. The Parties shall use all reasonable good faith endeavours to resolve any billing dispute prior to the Due Date for payment. In the event that a billing dispute remains outstanding 45 days after the date of notice of the same to Exponential-e, either Party may refer the matter for resolution in accordance with Clauses 15.1 and 15.2. Any disputes not raised within six (6) months of the date of the invoice are irrevocably waived.
- 5.8 If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date for payment thereof, then without prejudice to Exponential-e's other rights and remedies Exponential-e reserves the right to:
- 5.8.1 charge interest on the outstanding sum on a daily basis (before as well as after any judgement) until the date of payment, at Barclays Bank base rate plus four percent (4%); and/or
- 5.8.2 suspend the Service(s) (or any part thereof) in accordance with Clause 11; and/or
- 5.8.3 use any deposit given by the Partner under Clause 5.9 below, to pay any outstanding sum.
- 5.9 Exponential-e may require the Partner to pay a deposit and/or require the Partner to procure that the Partner's parent company or related company guarantees the payment of the Charges due under the Contract. The Partner agrees to enter into (and/or procure the execution of) any reasonable agreement or deed Exponential-e submits for such purpose.
- 6. EXPONENTIAL-E'S OBLIGATIONS AND WARRANTIES**
- 6.1 Subject to any service description in the Contract, Exponential-e is free to determine how the Service(s) shall be provided.
- 6.2 Exponential-e's obligation to provide the Service(s) is limited to an obligation to use all reasonable endeavours to provide the same. The Partner acknowledges and agrees that Exponential-e cannot (and does not) guarantee, represent or warrant that the Service(s) will be error-free or uninterrupted.
- 6.3 Exponential-e shall use all reasonable endeavours to meet the Target Service Commencement Date and any other dates or timescales set out in the Contract, but time shall not be the essence of the Contract.
- 6.4 Exponential-e shall use the reasonable care and skill expected of a competent information technology and telecommunications provider in exercising its rights, and carrying out its obligations, under the Contract.
- 6.5 Subject to any further description in the Service Document(s) and the Partner performing its obligations, Exponential-e shall install and configure the Software (if applicable) if it is specified in the Contract that Exponential-e is responsible for installing the Software or (where not so specified) Exponential-e shall provide limited remote support to the Partner to enable the Partner to install
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and configure the Software if such remote support is required.

- 6.6 Exponential-e warrants that it has the legal capacity and authority to enter into the Contract.
- 6.7 Exponential-e warrants that the Service(s) shall be provided in compliance with all applicable Laws.
- 6.8 Exponential-e is not responsible to the Partner for unauthorised access to End User Content or the unauthorised access to, or use of, the Service(s) unless the unauthorised access or use results from Exponential-e's failure to meet any security obligations stated in the Contract.

**7. PARTNER OBLIGATIONS AND WARRANTIES**

- 7.1 The Partner shall (at its cost):
  - 7.1.1 follow Exponential-e's reasonable instructions and guidelines in relation to the Service(s), including any set out in the Documentation; and
  - 7.1.2 provide Exponential-e with such up-to-date information, co-operation and support as Exponential-e may reasonably require pursuant to the Contract; and
  - 7.1.3 appoint the Partner Contact and designate suitably knowledgeable, qualified and authorised employees, who have access rights to all of the Partner's/ End User's relevant systems and Partner / End User Equipment to provide co-ordination and assistance to Exponential-e. The Partner agrees and warrants that the Partner Contact and any additional or replacement nominated employees have the appropriate level of authority to make decisions relating to the Service(s). The Partner shall notify Exponential-e in writing of any updates required to such authorised personnel. Exponential-e shall have no liability for failure to deal with requests or respond to instructions from persons not appropriately authorised by the Partner in writing; and
  - 7.1.4 maintain (or procure the maintenance by the End User of) any Partner / End User Equipment to a safe standard; and
  - 7.1.5 ensure that any Partner / End User Equipment located at an Exponential-e Site(s) is clearly labelled as belonging to the Partner; and
  - 7.1.6 inform Exponential-e forthwith if the Partner / End User Equipment is subject to interference or malfunctioning and it may, or is reasonably likely to, affect the Service(s); and
  - 7.1.7 promptly provide sufficient technology to enable Exponential-e to provide remote support where it is necessary to do so; and
  - 7.1.8 promptly install and configure (or procure that the End User installs and configures) the Software, if (as specified in the Contract or as otherwise notified to the Partner) the Partner/End User is responsible for installing the Software; and
  - 7.1.9 ensure that, where applicable, the Partner's / End User's systems comply with the reasonable hardware and software requirements notified to the Partner by Exponential-e or detailed in the applicable Service Document; and
  - 7.1.10 ensure that the Software (where applicable) is compatible with the Partner's / End User's systems; and
  - 7.1.11 comply with the Portal Terms of Use; and
  - 7.1.12 only use (and procure the End User only uses) the Service(s) (where applicable) in accordance with the Acceptable Use Policy; and
  - 7.1.13 use any Partner / End User Equipment, Exponential-e Equipment and/or Software in a skilful and proper manner by properly trained personnel; and
  - 7.1.14 to the extent that the Service(s) is reliant upon the continued provision of other Exponential-e services (such as Connectivity Services), ensure that the Partner continues to contract with Exponential-e for those other services for the duration of the Service(s); and
  - 7.1.15 be responsible for the accuracy of information provided on the Service Delivery Form and promptly complete and return the same to Exponential-e; and
  - 7.1.16 take all reasonable steps (including testing with the latest commercially available detection software) to ensure that any software used with or in conjunction with the Service(s) is not infected

- by Malicious Code; and
- 7.1.17 undertake any work required to be carried out by the Partner (and procure that the End User undertakes any work required to be carried out by the End User) as specified in the applicable Service Document(s), in a timely manner; and
- 7.1.18 provide suitable space and environment for the Partner / End User Equipment and the Exponential-e Equipment (other than when located at Exponential-e Sites) in a timely manner.
- 7.2 The Partner shall not (and shall procure that all users of the Service(s) for whom it is responsible pursuant to Clause 7.8 below shall not):
- 7.2.1 use the Service(s), Software, Exponential-e Site, or Exponential-e Equipment in any way that violates any Laws, or act or omit to act in any way which will place Exponential-e in breach of any Laws including but not limited to the Communications Act 2003; and/or
- 7.2.2 use the Service(s), Software, Exponential-e Site or Exponential-e Equipment in any way that would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction); and/or
- 7.2.3 allow any unauthorised user or third party access to, or use of the Partner / End User Equipment, the Exponential-e Equipment, the Exponential-e Site(s) (if applicable) or the Service(s) and shall take all reasonable security measures to prevent the same; and/or
- 7.2.4 add to, modify or interfere in any way with the Software, Exponential-e Equipment (if applicable), any equipment which is not Partner / End User Equipment, or the Service(s); and/or
- 7.2.5 use the Software, Exponential-e Site, the Exponential-e Equipment, the Partner / End User Equipment, or the Service(s) in any way that:
- 7.2.5.1 would or may be harmful, or would or may be harmful or detrimental to the reputation of Exponential-e and/or its suppliers; and/or
- 7.2.5.2 do anything that may be dangerous or a nuisance or inconvenience to other users of Exponential-e's service(s) or the Exponential-e Site(s).
- 7.3 The Partner warrants that any material and/or communication received, transmitted, hosted or otherwise processed using the Service(s) (other than entirely unsolicited communications) will not be menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, be otherwise actionable or in violation of any Laws to which the use of the Service(s) is subject, or infringe the Intellectual Property rights of Exponential-e.
- 7.4 The Partner shall indemnify and keep Exponential-e indemnified and hold Exponential-e harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Partner (including any user of the Service(s) for whom the Partner is responsible pursuant to Clause 7.8 below) of the provisions of Clauses 7.1.12, 7.2.1, 7.2.2 and/or 7.3 above.
- 7.5 The Partner agrees to use the Service(s) (and shall procure that the End User agrees to use the Service(s)) solely in connection with its and/or the End User's general business purposes. The Partner acknowledges that the Service(s) are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service(s) or the failure of the Service(s), could lead to death, personal injury, or severe physical or environmental damage. Unless expressly authorized by Exponential-e in the Contract, the Partner agrees not to use (or allow the End User to use) the Service(s) for any such purpose.
- 7.6 The Partner warrants that it has the legal capacity and authority to enter into the Contract.
- 7.7 The Partner warrants it shall comply with all applicable Laws and any relevant licences and permits to operate the Partner / End User Equipment and to provide the End User Content to the extent required under the Contract.
- 7.8 The Partner is responsible for (and shall be liable to Exponential-e in respect of) the use of the



Service(s) (including any incurred charges) by any of its or the End User's employees and any other person who has been given access to the Service(s) by the Partner/End User or who has obtained access to the Services which is not due to Exponential-e's breach of the Contract and/or negligence, even if such use was not authorised by the Partner.

7.9 The Partner shall include and maintain in its agreement with the End User terms and conditions equivalent to those contained in Clauses 7.1.12, 7.2, 7.3, 7.5, 7.7, 7.8, 9.2 and 10.5. The Partner shall notify Exponential-e of any breach of those provisions by the End User and shall take all actions reasonably within its control to ensure the End User remedies any default and complies with the provisions moving forward.

## **8. STAFF AND CONTRACTORS**

8.1 Exponential-e shall ensure that Exponential-e Personnel possess appropriate skills and experience. Exponential-e reserves the right to replace any Exponential-e Personnel at any time without the Partner's consent.

8.2 Neither Party shall, without the other Party's prior written consent, actively initiate recruitment of any staff of the other Party directly involved in the provision and/or support of the Service(s) during the currency of the Contract and for a period of 12 months following termination.

## **9. RISK, TITLE AND WARRANTY**

9.1 On delivery of each item of the Purchased Equipment and/or the Exponential-e Equipment (if applicable), full risk of damage to, or loss of, such equipment shall pass to the Partner. The Partner shall be responsible to Exponential-e for the safety, safe custody and safe use of the Purchased Equipment and/or the Exponential-e Equipment whilst it is in the Partner's / End User's custody and the Partner shall be liable to Exponential-e for any loss or damage to the Exponential-e Equipment except for (i) fair wear and tear and (ii) any loss or damage caused by the negligent act or omission of Exponential-e, its employees, contractors or agents.

9.2 On full payment of the Non-Recurring Charges, title in the Purchased Equipment shall pass to the Partner. If the Non-Recurring Charges are not paid in full, then title in the Purchased Equipment shall not pass to the Partner and without prejudice to Exponential-e's other rights and remedies, Exponential-e reserves the right to recover and resell the Purchased Equipment and, for that purpose, the Partner grants to Exponential-e an irrevocable licence to enter the premises where the Purchased Equipment is located during Normal Business Hours following two (2) Working Days' notice. The Partner shall keep (and shall procure that the End User keeps) the Purchased Equipment wholly identifiable and distinguishable from other goods until such time that title passes to the Partner. For the avoidance of doubt, nothing in the Contract shall act to transfer ownership of any Exponential-e Equipment to the Partner.

9.3 Purchased Equipment which is subject to a maintenance service by Exponential-e shall be maintained as per the applicable Service Document.

9.4 Where a manufacturers' warranty applicable to items of Purchased Equipment does not automatically transfer to the Partner upon the sale of the Purchased Equipment, Exponential-e shall use all reasonable endeavours to assign to the Partner the benefit of any such manufacturers' warranty. Exponential-e does not provide any additional warranty for items of Purchased Equipment.

## **10. INTELLECTUAL PROPERTY & LICENSING, END USER CONTENT, DATA PROTECTION AND CONFIDENTIALITY**

### **Intellectual Property and Licensing**

10.1 Title to the Software and the Intellectual Property within the Service(s), the Software and the Documentation is held by Exponential-e or its third party licensors ("Licensors").

10.2 In the event that the Partner/End User is provided with access to, or use of, third party Software, the Partner agrees to abide (and shall procure that the End User agrees to abide) by any third party

- software conditions of use as set out in any relevant End User License Agreements (EULA) provided or made available to the Partner/End User by Exponential-e (whether via the portal, the Software or otherwise). The Partner shall (and shall procure that all users of the Software shall) only use the Software in accordance with such EULA applicable to the Software.
- 10.3 Exponential-e shall only be liable in respect of such Software to the extent liability is limited in accordance with the terms of the applicable EULA.
- 10.4 The Partner agrees that Exponential-e may provide the Licensors with information regarding use of their software, including information on the number of licenses required for the Partner's / End User's use or access of the software, the country in which the Partner/ End User is located and the Partner's/End User's name and address.
- 10.5 Exponential-e and/or a Licensor (or its nominated representatives), may at Exponential-e's expense, access the End User Site and End User systems and records relevant to usage of the Software, to ascertain compliance with any EULA, during Normal Business Hours and subject to reasonable prior notice.
- 10.6 If the Partner and/or End User uses software it has purchased for itself in conjunction with the Service(s), the Partner shall acquire permission (and shall procure that the End User acquires permission) to use the software from the person with the rights to the software and shall comply (and shall procure the End User complies) with any restrictions regarding license mobility where applicable.
- 10.7 The Partner shall ensure that it promptly (and no later than reasonably required by Exponential-e) installs (or procures that the End User installs) all Modifications to the Software that Exponential-e makes available to the Partner (unless the Contract stipulates that Exponential-e is responsible for installing such Modifications).
- 10.8 Exponential-e shall indemnify the Partner in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, the Partner as the result of a claim by a third party that the provision of the Service(s) and/or Software by Exponential-e to the Partner, infringes the Intellectual Property rights of any third party. Exponential-e shall only be liable to indemnify pursuant to this Clause provided that: (i) Exponential-e is promptly notified of any such claim; (ii) Exponential-e is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) the Partner provides all reasonable assistance to Exponential-e at Exponential-e's cost in respect of the claim; (iv) the Partner makes no statements or admits any liability in respect of the claim; (v) the claim does not arise from the use of the Service(s) otherwise than as permitted under the Contract; (vi) the claim does not arise from the combining of the Service(s) with any services or equipment not supplied by Exponential-e; (vii) the claim does not arise from any modification to the Service(s) or Software not carried out or authorised in writing by Exponential-e; and (viii) the claim does not arise from the use of the Software other than in accordance with the applicable software licence.
- 10.9 Unless expressly stipulated otherwise, the Partner shall not (and shall procure that the End User shall not) (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing is permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, "frame" or "mirror" any content available on the Software on any other server or wireless Internet-based device, (iii) re-distribute or sublicense the Software, or any part thereof, to any third party, (iv) operate the Software for use by third parties or otherwise operate the Software on a service bureau basis, without Exponential-e's express prior written consent, (v) copy, or reproduce the Software in any way, in whole or in part, (vi) modify or create any derivative work based on the Software, or (vii) allow, permit or assist any third party to do any of the foregoing.

**End User Content**

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- 10.10 The Partner grants (or shall procure that the End User grants) Exponential-e a worldwide, irrevocable (except on Contract termination), royalty-free, non-exclusive, sub-licensable (to Exponential-e's authorised subcontractors only) right for the duration of the Contract to process the End User Content to the extent reasonably necessary to perform its obligations under the Contract. This provision does not apply where the Service is a Connectivity Service, as Exponential-e acts as a mere conduit for End User Content.
- 10.11 The Partner shall indemnify and hold harmless Exponential-e in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, Exponential-e as a result of a claim by a third party that (i) Exponential-e's installation, use, transmission, storage, possession or accessing of the Partner / End User Equipment, End User Content, material or third party software provided by the Partner / End User in connection with the Service(s) infringes the Intellectual Property or other rights of a third party and/or (ii) the Partner / End User is using the Services to infringe third party Intellectual Property rights. The Partner shall only be liable to indemnify pursuant to this Clause provided that: (i) the Partner is promptly notified of any such claim; (ii) the Partner is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) Exponential-e provides all reasonable assistance to the Partner at the Partner's cost in respect of the claim; (iv) Exponential-e makes no statements or admits any liability in respect of the claim.
- 10.12 Without prejudice to Exponential-e suspension and termination rights, and although Exponential-e cannot routinely access any End User Content, Exponential-e will notify the Partner if it becomes aware of (or aware of any allegation of) End User Content that violates the terms of the Contract ("Prohibited Content") and such Prohibited Content shall promptly be removed from the Service(s). If the Partner fails to promptly remove (or fails to promptly procure the removal by the End User of) the Prohibited Content, Exponential-e may (without liability) remove the Prohibited Content from the Service(s) or disable access to the Prohibited Content. Notwithstanding the foregoing, Exponential-e may (without liability) remove or disable access to the Prohibited Content without prior notice as required by applicable legislation or to comply with any judicial, regulatory or other governmental order or request or order of any law enforcement office. If Exponential-e removes Prohibited Content without prior notice, it will promptly notify the Partner thereafter, unless prohibited from doing so by law.
- 10.13 Exponential-e maintains certain security procedures for the End User Content while it is stored on or transmitted over equipment and facilities Exponential-e controls. As between Exponential-e and the Partner, the Partner is responsible for management of the End User Content stored on, or transmitted by means of, the Service(s), including selection and use of the security features and options that Exponential-e provides as Service(s). Except to the extent included in the Service(s), as identified in the Contract, the Partner (and the End User where appropriate) is responsible for developing and maintaining data management and security procedures the Partner/End User deems appropriate, such as application logon security, encryption of data and Malicious Code protection, and retaining source documents and maintaining a procedure that will allow the Partner/End User to recover lost or damaged data. EXPONENTIAL-E DOES NOT GUARANTEE THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, END USER CONTENT.
- Data Protection**
- 10.14 In relation to Partner Personal Data Processed by Exponential-e on behalf of the Partner pursuant to the Contract (if any), Exponential-e shall at all times be the Data Processor and the Reseller shall at all times be the Data Controller.
- 10.15 In its capacity as a Data Processor (if applicable) under the Contract, Exponential-e will:  
(i) only Process Partner Personal Data (a) to the extent reasonably necessary in order to provide
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the relevant Service(s) and exercise its rights and fulfil its obligations under, and in accordance with, the Contract and (b) in accordance with any lawful written instructions regarding Processing of Partner Personal Data received by it from the Reseller (if any) and (c) as required by applicable Laws;

(ii) subject to the service-specific data processing provisions set out in the relevant Service Document (to the extent applicable to the Processing), apply appropriate organisational and technical measures to protect Partner Personal Data against any unauthorised access, theft, use or disclosure;

(iii) ensure that all of its personnel having access to the Partner Personal Data Processed by Exponential-e are subject to a duty to keep the Partner Personal Data confidential;

(iv) only engage a sub-processor with respect to the Partner Personal Data with the prior written consent of the Reseller and pursuant to a written contract containing materially similar terms as set out in this Clause 10.15;

(v) promptly notify the Reseller about any legally-binding request for disclosure of Partner Personal Data by a DP Authority or other relevant authority unless otherwise prohibited;

(vi) notify the Reseller of any accidental or unauthorised access to, or transfer of, Partner Personal Data without undue delay after becoming aware of the breach;

(vii) promptly notify the Reseller of any request received directly from a data subject;

(viii) subject to the service-specific data processing provisions set out in the relevant Service Document (to the extent applicable to the Processing), at the Reseller's written request, either return or delete (as specified by the Reseller) all Partner Personal Data and any copies of it (unless required otherwise by applicable Laws) and Exponential-e shall, upon written request by the Reseller, confirm in writing that this sub-clause (viii) of Clause 10.15 has been complied with in full;

(ix) maintain complete and accurate records of its Processing activities under the Contract in accordance with the DP Laws and make such records available for inspection by the Reseller as soon as reasonably practicable following written request by the Reseller;

(x) as soon as reasonably practicable after written request by the Reseller, provide the Reseller with such information as it may reasonably require for the purposes of verifying that the Parties' are complying with their obligations under Article 28 of the GDPR in respect of their activities under the Contract; and

(xi) permit the Reseller to carry out an audit in accordance with Clause 10.16 below for the purpose of verifying that the Parties are complying with their obligations under Article 28 of the GDPR in respect of their activities under the Contract.

10.16 Subject to the remaining provisions of this Clause 10.16, the Reseller may, at a mutually agreed time, conduct an audit to verify Exponential-e's compliance with its Processing obligations under the Contract. The Parties shall use all reasonable endeavours to schedule the audit within one (1) calendar month of request.

10.16.1 Subject to the remaining provisions of this Clause 10.16, Exponential-e shall provide the Reseller with all reasonable assistance to carry out the audit, including access to relevant premises, systems, records and personnel. Access to records and systems shall be strictly limited to those areas solely containing data relating to the Processing of Partner Personal Data under the Contract. No access to (i) data pertaining to other customers and/or (ii) any other information that is covered by a confidentiality obligation to a third party and/or (iii) any financial or commercially-sensitive information pertaining to the Reseller will be provided.

10.16.2 Any audit shall be carried out during Normal Business Hours and no more frequently than once in any twelve (12) month period unless stipulated otherwise by the DP Laws.

- 10.16.3 The Reseller shall (and shall procure that all auditing personnel shall) comply with the reasonable (i) site security and health and safety policies and procedures applicable to Exponential-e's premises and (ii) instructions of any supervising Exponential-e personnel, whilst carrying out the audit.
- 10.16.4 The Reseller shall (and shall procure that all auditing personnel shall) ensure that the audit is carried out in such a manner so as not to unreasonably disrupt the normal business operations of Exponential-e and is carried out in an expeditious and professional manner by suitably qualified personnel.
- 10.16.5 Exponential-e reserves the right, at all times, to refuse entry to its premises and/or systems, and/or records or to remove from its premises to, and/or remove system and/or records access rights for, any person who in the reasonable opinion of Exponential-e is not fit to have such access or is causing the Reseller to be in breach of this Clause 10.16.
- 10.16.6 Each Party shall bear its own costs associated with audit.
- 10.17 Exponential-e will (at the Reseller's cost) and following the Reseller's written request:
- (i) assist the Reseller in responding to any request from a data subject;
  - (ii) assist the Reseller with ensuring the Reseller's compliance with the Reseller's obligations under the DP Laws with respect to security, breach notifications and data protection impact assessments; and
  - (iii) assist the Reseller in its consultations with a supervisory authority and obtaining any required approvals from a supervisory authority.
- 10.18 Any Partner Personal Data Processed by Exponential-e under the Contract shall only be Processed by Exponential-e for as long as Exponential-e (i) provides the relevant Service to the Reseller and thereafter for as long as Exponential-e is required to continue to Process the Partner Personal Data pursuant to the terms of the Contract or, if longer, for as long as is reasonably required for the exercise of Exponential-e's rights and/or fulfilment of its obligations under the Contract and (ii) is required to continue Processing the Partner Personal Data pursuant to applicable Laws.
- 10.19 Exponential-e shall not transfer any Partner Personal Data outside of the UK and EEA without:
- (i) a finding of adequacy by the European Commission in respect of that country;
  - (ii) having appropriate safeguards in place (such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority); or
  - (iii) the prior written consent of the Reseller.
- 10.20 The Reseller warrants, represents and undertakes that it has and shall continue to maintain for the duration of Exponential-e's Processing, a lawful basis for the Processing of Partner Personal Data by Exponential-e under the Contract.
- 10.21 Where Exponential-e considers itself to be a Processor of Partner Personal Data through the provision of a particular Service, service-specific Processing details (including the subject-matter and nature of the processing) are set out within the relevant Service Definition within the relevant Service Document.
- 10.22 Terms used in Clauses 10.14 to 10.21 which are not defined herein but which are defined in the DP Laws shall be given the meaning ascribed to them in the DP Laws.
- Confidentiality**
- 10.23 Subject to Clauses 10.23.1 and 10.23.2 below, neither the Partner nor Exponential-e shall, without the other Party's prior written consent, disclose to any third party any Confidential Information of the other Party which comes to that Party's attention pursuant to the Contract. Each Party shall only use the Confidential Information of the other Party as reasonably required to exercise its rights and/or perform its obligations under the Contract and shall only disclose it to those of its

- employees, agents and contractors having a reasonable need to know pursuant to the Contract. Each Party shall use no lesser degree of care in respect of the other Party's Confidential Information than it uses in respect of its own Confidential Information and which in any event shall be not less than reasonable care. Upon termination of the Contract, if requested to do so by the other Party, a Party shall promptly return or certify destroyed all of the other Party's Confidential Information.
- 10.23.1 The Partner agrees that Exponential-e may disclose relevant information pertaining to the Contract and the Service(s), to any relevant third party (including but not limited to its suppliers and the End User's landlords at the End User Site(s)) to the extent reasonably required by such third party in order to allow provision of the Service(s). The Partner's/End User's name and address may be divulged by Exponential-e to the relevant investigative authority pursuant to a RIPA Notice without any such notification requirement applying.
- 10.23.2 Each Party agrees that the other Party may disclose the Confidential Information belonging to the first party, required to be disclosed pursuant to any applicable law, court or regulatory authority. Each Party shall promptly notify the other Party of any such disclosure requirement to the extent that it is legally permissible to do so.
- 10.24 Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 10.23 and accordingly, without prejudice to any other rights or remedies available, each Party shall be entitled to seek injunctive or other equitable relief to prevent any breach or threatened breach of Clause 10.23 by the other Party.
- 10.25 Neither Party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11. SUSPENSION**
- 11.1 Exponential-e may, without terminating the Service(s) or the Contract, suspend provision of any Service(s) or any part thereof, in whole or in part:
- 11.1.1 with immediate effect if the Partner is in breach of Clause 7.1.12, 7.2.1, 7.2.2 and/or Clause 7.3; and/or
- 11.1.2 immediately upon written notice if the Partner is in breach of any other material obligation under the Contract and, in the case of remediable breach, the Partner fails to remedy that breach within five (5) Working Days of written notice of the breach; and/or
- 11.1.3 immediately upon written notice if the Partner becomes Insolvent; and/or
- 11.1.4 with immediate effect if the Partner's / End User's use of the Service(s) is damaging or disrupting the proper functioning of the infrastructure and/or equipment used to provide services to Exponential-e's other customers; and/or
- 11.1.5 with immediate effect if Exponential-e is obliged to comply with the order, instruction or request of a court, government, emergency services organisation or other competent judicial, governmental, administrative or regulatory authority; and/or
- 11.1.6 where (i) Exponential-e receives notice from a third party alleging that the Customer is using the Service(s) to infringe third party Intellectual Property rights and (ii) Exponential-e has reasonable grounds to believe that the third party's claim has merit or (iii) Exponential-e, acting reasonably, considers it necessary to suspend the Service(s) in order to avoid or mitigate its own liability in respect of the alleged infringement.
- 11.2 Exponential-e's right to suspend a Service(s) pursuant to Clause 11.1 above is without prejudice to Exponential-e's termination rights under Clause 12 below, or any other right under the Contract or at law.
- 11.3 Where Exponential-e has suspended the Service(s) pursuant to Clause 11.1.1, 11.1.4, 11.1.5 or

11.1.6 above and it has not been practicable to provide written notice prior to such suspension, Exponential-e shall inform the Partner as soon as is reasonably practicable thereafter.

- 11.4 Exponential-e shall reinstate any suspended Services as soon as reasonably possible once the circumstances giving rise to the suspension right no longer exist.

## **12. TERM AND TERMINATION**

- 12.1 Subject to earlier termination of the Contract in accordance with its terms, the Contract shall continue in force:

12.1.1 until the expiry of all of the Initial Terms (where Initial Terms apply) and thereafter unless or until terminated by either Party giving to the other Party not less than three (3) months' prior written notice to expire no earlier than the end of all of the Initial Terms or at any time thereafter (unless specified otherwise for a particular Service, or part thereof, in the applicable Service Document); or

12.1.2 for the period stated on the Order Form / within the Online Order where it relates to a project or a specific number of days; or

12.1.3 where the Services are purely Pay As You Go Services, for the period such Service(s) are in use by the Partner / End User.

12.2 In the event that the Partner wishes to cancel a Service, the Partner shall send an email to [cancellations@exponential-e.com](mailto:cancellations@exponential-e.com) specifying the Partner's name, the site (including postcode) at which the relevant Service(s) is provided, what the Service(s) is and any applicable service reference numbers. Exponential-e shall confirm such cancellation, and any relevant Termination Payment (defined below) to the Partner within ten (10) Working Days of receipt of such request.

12.3 Each Party shall have the right on immediate notice to the other Party, to terminate the Contract at any time in the event that the other Party:

12.3.1 has committed a material breach of the Contract (other than a failure on the part of the Partner to make payment of sums when due) and fails to remedy such breach within twenty-eight (28) days of notice from the other Party requiring the breach to be remedied. The aforementioned twenty-eight (28) day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, the Contract shall be terminable by immediate written notice; or

12.3.2 becomes Insolvent.

12.4 Exponential-e shall have the right on immediate notice to the Partner, to terminate the Contract at any time in the event that the Partner fails to make payment of any undisputed Charges by the Due Date and fails to remedy such breach within fourteen (14) days of notice from Exponential-e requiring the breach to be remedied.

12.5 Exponential-e shall have the right to terminate any Service and/or the Contract immediately upon written notice if instructed to do so by a court of law, regulator or other appropriate authority.

12.6 Except in the event of termination of the Contract by the Partner pursuant to Clauses 12.3.1 or 12.3.2 above, or by Exponential-e pursuant to Clause 12.5 above, where a Service is terminated or otherwise brought to an end by the Partner, without cause, the Termination Payment shall be payable by the Partner as a one-off lump sum upon termination..

For the purpose of this Clause, the Termination Payment shall mean:

- (a) where an Initial Term applies and termination occurs after the Service Commencement Date:  
(i) all arrears of Charges payable under the Contract up to the date of termination plus (ii) all remaining Charges not yet paid which would otherwise have been payable for the greater of the remainder of the Initial Term or the required three (3) month notice period;
- (b) where an Initial Term applies but the Service Commencement Date has not yet occurred: (i) the Non-Recurring Charges, plus (ii) 50% of the first year's Annual Charge plus (iii) all charges incurred or committed to by Exponential-e with third party suppliers, plus (iv) any charges identified in the relevant Service Document as being recoverable pursuant to this sub-Clause.

provided always that the Termination Payment to be paid pursuant to this part (b) does not exceed the total Charges which would otherwise be payable by the Partner in respect of the Initial Term;

- (c) where the Service is a Pay As You Go Service: there shall be no Termination Payment; and/or
- (d) where the Service is a Professional Service: as set out in the Service Document for Professional Services.

The Partner acknowledges and agrees that the Termination Payment is based upon Exponential-e's revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty or unconscionable.

- 12.7 Termination of a Service and/or the Contract shall be without prejudice to the accrued rights and liabilities of either Party subsisting under the Contract prior to termination.
- 12.8 Upon termination of a Service and/or the Contract for any reason:
  - 12.8.1 the Partner shall (and shall procure that the End User shall) immediately cease to make use of the relevant Service(s) and the Exponential-e Equipment (if applicable); and
  - 12.8.2 the Partner shall (and shall procure that the End User shall), if required by Exponential-e, allow Exponential-e Personnel to enter the End User Site(s) during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any Exponential-e Equipment and de-installing the Service(s); and
  - 12.8.3 the Partner shall, within five (5) Working Days of termination of the Contract, return (or procure that the End User returns) to Exponential-e (or Exponential-e's designated recipient) by same day courier any Exponential-e Equipment (if applicable) or pay Exponential-e for the Exponential-e Equipment at its then-current new purchase price if not so returned; and
  - 12.8.4 licences granted to the Partner/ End User by Exponential-e pursuant to the Contract shall immediately terminate.
- 12.9 Following termination of the Contract (other than by Exponential-e pursuant to Clause 12.3.1, Clause 12.3.2 or Clause 12.4 above) and provided that the Partner's account is fully paid-up, Exponential-e will:
  - 12.9.1 following the Partner's written request, provide reasonable assistance to the Partner as regards migrating the Partner/End User to an alternative service provider, at Exponential-e's then-current standard charges; and
  - 12.9.2 promptly refund to the Partner any Annual Charges paid in advance relating to the period after the effective date of termination, calculated on a pro-rata temporis basis.
- 12.10 Clause 5 (Fees and Payment), Clause 7 (Partner Obligations), Clause 8.2 (non-solicitation), Clause 10 (Intellectual Property and Licensing, End User Content, Data Protection and Confidentiality), Clauses 12.8 and 12.9 (actions following termination) Clause 13 (Force Majeure, Warranties and Limitation of Liability) and Clause 15 (Disputes, Jurisdiction and Governing Law) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

### **13. FORCE MAJEURE, WARRANTIES AND LIMITATION OF LIABILITY**

- 13.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Contract caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same.
- 13.2 THE PARTNER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 13.3 TO 13.9 INCLUSIVE.
- 13.3 ALL WARRANTIES, CONDITIONS, OBLIGATIONS AND TERMS WHICH WOULD OTHERWISE BE IMPLIED INTO THE CONTRACT BY STATUTE, CUSTOM OR LAW (INCLUDING, WITHOUT LIMITATION,



IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY, FITNESS FOR PURPOSE AND SATISFACTORY QUALITY), ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

13.4 NEITHER PARTY EXCLUDES OR LIMITS THEIR LIABILITY UNDER THE CONTRACT:

13.4.1 FOR DEATH OR PERSONAL INJURY CAUSED BY ITS (OR ITS EMPLOYEES', AGENTS' OR CONTRACTORS') NEGLIGENCE; AND

13.4.2 FOR FRAUDULENT MISREPRESENTATION; AND

13.4.3 FOR BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET OUT IN CLAUSE 10.23; AND

13.4.4 TO INDEMNIFY THE OTHER PARTY PURSUANT TO THE CONTRACT; AND

13.4.5 TO MAKE ANY TERMINATION PAYMENT DUE PURSUANT TO CLAUSE 12.6 ABOVE.

13.5 WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, EACH PARTY'S ENTIRE LIABILITY FOR DAMAGE TO THE TANGIBLE PROPERTY OF THE OTHER PARTY, CAUSED BY ITS NEGLIGENCE (OR THE NEGLIGENCE OF ITS EMPLOYEES', AGENTS' AND CONTRACTORS), SHALL NOT IN ANY EVENT EXCEED ONE MILLION POUNDS (£1,000,000) PER EVENT OR SERIES OF CONNECTED EVENTS AND TWO MILLION POUNDS (£2,000,000) IN THE AGGREGATE FOR ALL EVENTS IN ANY 12 MONTH PERIOD.

13.6 WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY

- LOSS OF PROFITS;
- LOSS OF BUSINESS OPPORTUNITY;
- LOSS OF REVENUE;
- LOSS OF ANTICIPATED SAVINGS;
- WASTED EXPENDITURE;
- DEPLETION OF GOODWILL;
- LOSS OF USE;
- LOSS AND/OR CORRUPTION OF DATA OR INFORMATION (UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THE APPLICABLE SERVICE DOCUMENT); AND/OR
- ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COST, DAMAGE, CHARGE OR EXPENSE.

13.7 EXPONENTIAL-E'S ENTIRE LIABILITY FOR ANY LOSS OR DAMAGE CAUSED BY THIRD PARTY SOFTWARE SHALL BE LIMITED TO THE SAME EXTENT AS THE RELEVANT LICENSOR'S LIABILITY IS LIMITED.

13.8 ANY LIABILITY OF EITHER PARTY TO THE OTHER PARTY UNDER OR PURSUANT TO THE CONTRACT WHICH IS (I) NOT UNLIMITED UNDER CLAUSE 13.4 ABOVE, (II) NOT CAPPED UNDER CLAUSE 13.5 OR 13.7 ABOVE OR SUBJECT TO A CAP IN THE APPLICABLE SERVICE DOCUMENT AND (III) NOT EXCLUDED UNDER CLAUSE 13.6 ABOVE, SHALL NOT IN ANY EVENT EXCEED IN THE AGGREGATE THE GREATER OF (I) 150% OF THE TOTAL CHARGES PAID BY THE PARTNER UNDER THE CONTRACT IN THE 12 MONTHS PRECEDING THE DATE OF THE RELEVANT CLAIM; AND (II) FIVE THOUSAND POUNDS (£5,000) REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A BREACH OF CONTRACT, IN TORT OR OTHERWISE.

13.9 THE PARTNER ACKNOWLEDGES AND AGREES THAT THE CHARGES REFLECT THE LEVEL OF LIABILITY UNDERTAKEN BY EXPONENTIAL-E AND THAT THE EXCLUSIONS AND LIMITATIONS CONTAINED IN THIS CLAUSE 13 ARE REASONABLE GIVEN THE CHARGES THAT ARE PAYABLE.

#### **14. GENERAL**

14.1 Unless otherwise stated in the Contract, the Contract may only be modified by the written and signed agreement of the Parties.

14.2 Exponential-e shall have the right, by serving notice to the Partner, to amend the Contract at any time when this is required to comply with any applicable statutory or regulatory requirements.

14.3 Exponential-e may enter into subcontracts for the performance of its obligations under the

- Contract. Exponential-e shall be liable for the acts and omissions of its contractors acting in the course of their engagement by Exponential-e to the same extent as Exponential-e would be had those acts and/or omissions been committed by Exponential-e.
- 14.4 Neither Party shall at any time assign or transfer (or purport to assign or transfer) the Contract and/or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), save that Exponential-e may at any time assign or transfer the Contract and/or any of its rights or obligations thereunder, in whole or in part to any Affiliate of Exponential-e; or to any successor to Exponential-e following a re-organisation or merger of Exponential-e with another organisation; upon notice but without consent.
- 14.5 No delay, neglect or forbearance by either Party in enforcing its rights under the Contract shall be deemed to be a waiver of, or prejudice, such rights.
- 14.6 Any notice or other communication required to be given to a Party under, or in connection with, this Contract, shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Working Day after transmission, or otherwise at 9.00 am on the second Working Day after posting (or at the time recorded by the delivery service).
- 14.7 If any part of the Contract is held by the courts to be unlawful, invalid or unenforceable, that part shall be considered struck-out and the remainder of the Contract shall remain in full force and effect. Exponential-e and the Partner shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.
- 14.8 The Contract supersedes any prior contracts, arrangements and undertakings between the Parties in relation to the subject-matter thereof and constitutes the entire agreement of the Parties relating to the subject-matter thereof. No terms and conditions set out on any Partner paperwork submitted to Exponential-e pursuant to the Contract shall have any force or effect. The Partner shall have no remedy in respect of any statement made to it upon which it relied when entering into the Contract, unless such statement was made fraudulently by Exponential-e.
- 14.9 The Parties agree that signed Contract documents delivered by electronic means shall have the same force and effect as signed originals.
- 14.10 The Parties expressly acknowledge and agree: (i) a human readable electronic version of the Contract documents containing the Parties' Electronic Signatures, or containing a mix of physical signatures and Electronic Signatures, shall constitute an original version of such Contract documents; (ii) a Party's use of a key pad, mouse or other device to select an item, button, icon or similar act/action, to otherwise insert their Electronic Signature into Contract documents constitutes that Party's signature as if it had manually signed the same; and (iii) Exponential-e's chosen Electronic Signature software shall be accepted as a valid and the solely-required authentication technology.
- 15. DISPUTES, JURISDICTION AND GOVERNING LAW**
- 15.1 Following written notice of a dispute under the Contract, the Parties shall attempt to resolve any such dispute through negotiations between senior executives of the Parties who have authority to settle the same.
- 15.2 If the dispute has not been resolved by such senior executives within thirty (30) days of the initiation of that procedure, the dispute may be referred by either Party to the English courts and the Parties hereby submit to the exclusive jurisdiction of the courts of England.
- 15.3 The Contract shall be governed by, and interpreted in accordance with, the laws of England and
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Wales.

- 15.4 The Contract is personal to the Partner and Exponential-e. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and unless specifically provided for in the Contract, no entity other than the Partner and Exponential-e shall have any rights or obligations under the Contract and no entity other than the Partner and Exponential-e shall have the right to enforce the Contract or have it enforced against them.
- 15.5 Both Parties shall:
- 15.5.1 comply with the Bribery Act 2010 at all times and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 15.5.2 promptly report to the other Party any request or demand which if complied with would amount to a breach of this Clause 15.5.1 or would not be compliant with the Bribery Act 2010.
- 15.6 Breach of Clause 15.5 shall be deemed a material breach of the Contract which is not capable of remedy.