

ICEFLO Limited SUBSCRIPTION TERMS AND CONDITIONS FOR RUNBOOK MANAGEMENT APPLICATIONS

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PLEASE READ THESE TERMS OF SERVICE CAREFULLY.

These terms and conditions apply to the use of ICEFLO'S Runbook Management Applications which we made available for purchase as a subscription service on the online store provided by ServiceNow Inc. ("**ServiceNow**") which is currently located at <http://store.servicenow.com>, (the "**ServiceNow Store**"). These terms also apply to any Professional Services (as defined below) which we provide to you.

These terms and conditions, together with each Statement of Work (as defined below), form the agreement ("**Agreement**") between you (the "**Customer**") and us, ICEFLO Limited ("**ICEFLO**") for the Services (as defined below).

Agreed Terms.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Application: the online software applications known as Runbook Management hosted on the ServiceNow Platform through which the Services are provided.

Apportioned Rights: those services and rights to receive and use of the Subscription Services which are apportioned to the Separating Entity.

Application Data: data uploaded by the Customer's agents, employees or contractors that is processed through the Subscription Services.

Business Day: a day other than a Saturday, Sunday, or public holiday in Scotland, as defined [here](#).

Business Hours: the period from 9.00 am to 6.00 pm on any Business Day.

Components: the software components made available by ICEFLO from the ServiceNow Platform which are required in order to use the Subscription Services.

Confidential Information: all information provided by the Customer or ICEFLO (“Discloser”) to the other (“Receiver”), whether orally or in writing that is designated as confidential. Confidential Information will include information about the Discloser’s business plans, technical data, and the terms of applicable Statement of Work. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser or (ii) was known to the Receiver before receipt from the Discloser.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010.

Customer Group: means collectively all Affiliates of the Customer.

Customer Support Addendum: the information relating to the provision of Customer Support services which is found [here](#).

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.

Documentation: the Installation Guide, User Guide, and any additional documents ICEFLO may provide as a part of the Subscription Services.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

Installation Guide: the installation guide provided by ICEFLO to assist with the installation and configuration of the Application for use within the ServiceNow Platform.

Principal SOW: means the first SOW under the Agreement.

Professional Services: the professional services which may be provided to the Customer by ICEFLO, which may include consultancy, training services, engineering, integration, data migration or other professional services.

Services: the Subscription Services and the Professional Services.

ServiceNow Platform: the Customer instance of the platform-as-a-service provided by ServiceNow to the Customer on which the Application is made available and through which ICEFLO provides the Subscription Services.

ServiceNow Release Family: a complete solution/new version of the ServiceNow Platform. More information about ServiceNow Release Families can be found in ServiceNow's Upgrade and Update Policy.

ServiceNow Solutions: means ServiceNow products which are available on the ServiceNow Store and can be used via the ServiceNow Platform.

Source Code: the source code of the Application, and all technical information and documentation required to enable the Customer to modify and operate it.

Statement of Work or SOW: a statement of work for Subscription Services and/or Professional Services, agreed to by the Parties in writing.

Subscription Services: the Application made available by ICEFLO on the ServiceNow Platform via applicable logins, and associated support services, all as described in the applicable SOW.

Subscription Term: means the period of authorised access to and use of the applicable Subscription Services, as specified in the applicable Statement of Work.

Third-Party Products: non-embedded products and professional services that are provided by third parties to the Customer and which interoperate with or are used in connection with the Subscription Services.

Third-Party Sites: third-party websites linked to from within the Subscription Services, including support and education services, for example HubSpot, ScreenSteps, Loom and other links made available through the Subscription Services.

User: any individual who has been granted access to the Subscription Services and is authorised to use the Subscription Services for the Customer's benefit.

User Guide: the user guide provided by ICEFLO to explain the functionality and use of the Application.

1.2 In the case of conflict or ambiguity between any provision contained in these terms and conditions and a Statement of Work, the Statement of Work shall take precedence.

1.3 A reference to writing or written excludes fax but not email.

2. Subscription Services

2.1 Subject to the terms of the Agreement and payment by the Customer of all applicable fees, ICEFLO authorises the Customer and its Affiliates to access and use the Subscription Services during the Subscription Term as set out in the Principal Statement of Work.

2.2 Unless otherwise agreed in writing:

- (a) Customer usage may not exceed the applicable use and access rights ordered and paid for;

- (b) the Customer may assign roles to individual Users;
 - (c) a User identification may be reassigned by Customer to a new individual replacing one who no longer requires ongoing use of the Subscription Services.
- 2.3 Customer will reasonably cooperate with any ICEFLO audit of the Customer's use of the Subscription Services.
- 2.4 If ICEFLO determines that the Customer has exceeded its permitted use of the Subscription Services, ICEFLO will notify the Customer and within 30 days from the date ICEFLO becomes aware of such excess use. The Customer shall either:
 - (a) disable any unpermitted use; or
 - (b) purchase additional subscriptions commensurate with the Customer's actual use.
- 2.5 Provided that ICEFLO does not materially change the functionality of the Subscription Services, during the applicable Subscription Term ICEFLO may modify the systems and environment used to provide the Subscription Services. Any updates, upgrades, enhancements to the Subscription Services which are made generally available to all subscribing customers will be made available to the Customer at no additional charge. The Customer's purchase of the Subscription Services is not contingent on the delivery of any future functionality or features. New features, functionality or enhancements to the Subscription Services may be marketed separately by ICEFLO and may require an additional subscription and the payment of additional fees. ICEFLO will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require such additional subscription or fees.
- 2.6 In relation to the Subscription Services, the Customer will:
 - (a) Comply at all times with Runbook Management's Acceptable Use Policy;
 - (b) be responsible for Users' compliance with the Agreement;
 - (c) be responsible for User's compliance with the Customer's own Information Security Management policies and related procedures;
 - (d) be responsible for the accuracy, quality and legality of Application Data;
 - (e) use commercially reasonable efforts to prevent unauthorized access to or use of Subscription Services, and notify ICEFLO promptly of any unauthorized access or use;
 - (f) use the Subscription Services only in accordance with the Agreement and the Principal Statement of Work;
 - (g) perform any assurance and non-production environment testing needed to satisfy itself that the Subscription Service can be used compatibly with the Customer ServiceNow instance;

- (h) perform any assurance and non-production environment testing needed to satisfy itself that the ServiceNow Solutions can be used compatibly with the Subscription Services;
 - (i) take commercially reasonable steps to ensure the security and compliance of the controls used by the Customer in accessing the Subscription Services; and
 - (j) comply with all legal and regulatory requirements in its use of any Subscription Services and the means by which Customer acquired all Application Data.
- 2.7 Customer will not and will not permit any third party to do the following with respect to the Subscription Services:
- (a) use it or any external programs in a manner that intentionally circumvents usage restrictions;
 - (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any of it available for access by third parties except as expressly provided herein;
 - (c) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Application in whole or in part;
 - (d) use it to reproduce, distribute, display, transmit or use illegal material or material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner;
 - (e) use it to create, use, send, store or run code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation; or
 - (f) access or disable any ICEFLO or third party data, software or network.
- 2.8 In support of the Customer's use of the Subscription Services, ICEFLO may provide URL links, interconnectivity or interconnectivity within the Subscription Services to facilitate the Customer's use of Third-Party Products. Notwithstanding the foregoing, any use or procurement of Third-Party Products are solely at the Customer's discretion and between the Customer and the applicable third party. ICEFLO shall have no liability for such Third-Party Products.
- 2.9 For all Subscription Services, ICEFLO will provide a multi-channel service desk ("**Service Desk**") as part of the subscription, with no additional fees. The Service Desk will be provided during Business Hours. ICEFLO may also provide a premium support offering ("**Enhanced Service**"), provided for at an additional hourly rate.

- 2.10 ICEFLO will use reasonable endeavours to release a new version of the Application every quarter. ICEFLO recommends that the Customer use the latest version of the Application for the Subscription Services.
- 2.11 The Customer acknowledges that only the latest version of the Application and the immediately preceding version of the Application are supported by ICEFLO. Use by the Customer of any earlier version of the Application is entirely at the Customer's own risk and ICEFLO have no liability in relation to any loss arising from the use by the Customer of such earlier version.
- 2.12 Within 30 days of any new ServiceNow Release Family being made available to the Customer, ICEFLO will release a certified version of the Application on that Release Family.
- 2.13 ICEFLO shall use all reasonable endeavours to meet the service levels set out in the applicable Statement of Work and the Customer Support Addendum.

3. ServiceNow Platform

- 3.1 The Subscription Services is offered through and operates on the ServiceNow Platform. The Customer must subscribe separately to one or more ServiceNow products in order to use and access the Subscription Services. No license is granted to the Customer under the Agreement to use or access the ServiceNow Platform. Access to the ServiceNow Platform must be separately purchased from ServiceNow.
- 3.2 In order for the Customer to be able to access the Subscription Services, the Customer must download the required Components from the ServiceNow Store, as explained in the Installation Guide.
- 3.3 The Customer must be operating on a supported ServiceNow subscription release in accordance with its ServiceNow agreement.
- 3.4 The Customer acknowledges that if ServiceNow is inoperable and/or terminates services to the Customer pursuant to the agreement between Customer and ServiceNow, any Subscription Services on the affected ServiceNow instance will be inaccessible and ICEFLO will not thereby be deemed to be in breach of the Agreement, and all applicable amounts shall remain due and owing to ICEFLO in full.
- 3.5 The Customer acknowledges that ICEFLO operates and is responsible for the Application, and ServiceNow operates and is responsible for the ServiceNow Platform, through which the Application is offered. ICEFLO shall have no liability to the Customer for any inability to provide the Subscription Services or Application that arise as a result of a problem with the ServiceNow Platform. ICEFLO shall have no liability to Customer for any losses or harm caused by Customer's use of the ServiceNow Platform.

4. Professional Services:

- 4.1 The Customer may purchase Professional Services, in addition to those which may be included in the Principal SOW, by agreeing an applicable Statement of Work with ICEFLO.
- 4.2 Unless otherwise agreed in writing, fees for the Professional Services provided to the Customer by ICEFLO are in addition to the fees for the Subscription Services.
- 4.3 By default, all Professional Services are performed remotely, unless the Parties otherwise agree.
- 4.4 For Professional Services performed on-site, the Customer shall reimburse ICEFLO for any reasonable expenses incurred in connection with the Professional Services.
- 4.5 Invoices for Professional Services will be raised at the end of each calendar month, supported by client confirmation of delivery. Any such invoices or other requests for reimbursements will be due and payable by the Customer within thirty (30) days of the date of the invoice.
- 4.6 ICEFLO reserves the right to provide some or all elements of the Professional Services through suitably qualified third-party service providers.

5. Fees

- 5.1 The Customer shall pay the applicable fees to ServiceNow as specified in the Principal Statement of Work. Fees under subsequent Statements of Work shall be payable to ICEFLO and otherwise stated in the applicable Statement of Work, such fees shall be payable within 30 days of the date of the invoice. All fees are non-refundable and non-cancellable except as expressly provided in the Agreement.
- 5.2 All fees are exclusive of taxes, which will be charged by ICEFLO to the Customer charge as applicable. The Customer agrees to pay any taxes applicable to it uses of the Subscription Services and performance of Professional Services. The Customer shall have no liability for any taxes based upon our gross revenues or net income. If the Customer is located in the European Union, all fees are exclusive of any VAT and the Customer represents that it is registered for VAT purposes in its member state. At ICEFLO's request, the Customer will provide ICEFLO with the VAT registration number under which the Customer is registered in its member state. If the Customer does not provide ICEFLO with a VAT registration number prior to a transaction being processed, ICEFLO will not issue refunds or credits for any VAT that was charged. If you are subject to GST, all fees are exclusive of GST. If the Customer is required to deduct or withhold any tax, the Customer must pay the amount deducted or withheld as required by law and pay ICEFLO an additional amount so that ICEFLO receives payment in full as if there were no deduction or withholding. and do not

include sales and use taxes, value-added taxes, goods and services taxes, excise, business, service, withholding tax, shipping, or customs duties and similar transactional taxes and fees, all of which the Customer are responsible for paying above and beyond the subscription fees due to ICEFLO.

- 5.3 Fees not paid when due will accrue interest at a rate of one and one-half percent (1.5%) per month or the legal maximum interest rate, whichever is lower, applied as of the date of invoice.
- 5.4 If any fees owed by the Customer to ServiceNow Inc for Subscription Services are overdue, these fees will be governed by the Standard ServiceNow Store Terms of Use.
- 5.5 If any fees owed by the Customer to ICEFLO limited in respect of Professional Services are 30 days or more overdue, ICEFLO may, without prejudice to any of its other rights and remedies under the Agreement, suspend the delivery of Professional Services until such amounts are paid in full, provided at least 10 days written notice of such suspension has been given.
- 5.6 Fees may be quoted to the Customer by ICEFLO in British pounds sterling, US dollars or Euros and shall be payable by the Customer in the currency quoted.
- 5.7 The price for the Subscription Services is published on 1 January of each year, with USD as the base currency and GBP and EU prices set based on the average exchange rate in the preceding 12 months. Such prices are fixed and applicable throughout that calendar year, irrespective of exchange rate fluctuations.
- 5.8 The price for range of the Professional Services is published on 1 January of each year and shall be updated no more than once per calendar year.

6. Security and Data Privacy

- 6.1 During the Subscription Term, ICEFLO will maintain a written Security Program that includes policies, procedures and controls aligned to ISO27001, or a substantially equivalent standard.
- 6.2 In providing the Subscription Services, ICEFLO will comply with ICEFLO's Privacy Policy, as amended from time to time.
- 6.3 The Customer acknowledges that ICEFLO does not process any personal data on behalf of the Customer. The Customer's instance of the Application made available through the ServiceNow Platform. ICEFLO does not have access to that instance and has no visibility of any data inputted by the Customer in using the Application. The only personal data ICEFLO obtain from the Customer in relation to the Agreement is limited contact detail from the

personnel involved in the purchase of the Application, for which ICEFLO is the controller under Data Protection Legislation.

7. Escrow

- 7.1 If requested by the Customer, and at the Customer's cost, ICEFLO shall within 30 Business Days, or such other period as the Parties may agree, enter into an escrow agreement covering the Application with the Customer to allow for the release of the Source Code for the Application to the Customer for use in accordance with the terms of the Agreement.
- 7.2 Following the execution of any escrow agreement, ICEFLO shall promptly deposit the Source Code for the Application and from time to time deposit updates, modifications, replacements or enhancements of such items in accordance with the terms of the escrow agreement. The Customer shall be liable for all fees payable under the escrow agreement.

8. Confidentiality and publicity

- 8.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or vendors of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 8.2.
- 8.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 8; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 8.4 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (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. ICEFLO's warranties and disclaimers

9.1 ICEFLO represents and warrants that:

- (a) it has the legal authority to enter into the Agreement;
- (b) the Subscription Services will materially conform to the Documentation and the Principal Statement of Work;
- (c) it has carried out appropriate screening for all employees involved in the Subscription Services and Professional Services; and
- (d) the functionality and security of the Subscription Services will not be materially decreased during the Subscription Term.

9.2 The Customer represents and warrants that:

- (a) it has the legal authority to enter into the Agreement; and
- (b) it will use the Services in accordance with the Agreement and in compliance with all applicable laws, rules and regulations.

9.3 Except as expressly provided in the Agreement, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions.

10. Limits of liability

10.1 Except as expressly stated in clause 10.2:

- (a) ICEFLO shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, delict (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) special damage even if ICEFLO was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill;
 - (vi) loss or corruption of data; or
 - (vii) wasted expenditure,

provided that this clause 10.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 10.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vii) inclusive of this clause 10.1(a);

- (b) ICEFLO'S total liability, whether in contract, delict (including negligence) or otherwise and whether in connection with the Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the fees paid in relation to the Agreement in any 12 month period.

10.2 The exclusions in clause 10.1 shall apply to the fullest extent permissible at law, but ICEFLO does not exclude liability for:

- (a) death or personal injury caused by the negligence of the ICEFLO, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

10.3 All dates supplied by ICEFLO for the provision of Services shall be treated as approximate only. ICEFLO shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

10.4 All references to "ICEFLO" in this clause 10 shall, for the purposes of this clause and clause 10 only, be treated as including all employees, subcontractors and vendors of ICEFLO and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 22.

10.5 The Customer shall be liable for the acts and omissions of its Affiliates as if these were the Customer's own acts or omissions under the Agreement.

11. Intellectual property rights

11.1 The Customer acknowledges that all Intellectual Property Rights in the Application and any maintenance releases belong and shall belong to ICEFLO, and the Customer shall have no rights in or to the Application other than the right to use it in accordance with the terms of the Agreement.

11.2 ICEFLO undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Application (or any part thereof) in accordance with the terms of the Agreement infringes the Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any

reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 11.2 shall not apply where the Claim in question is attributable to possession or use of the Application (or any part thereof) by the Customer other than in accordance with the terms of the Agreement, use of the Application in combination with any hardware or software not supplied or specified by ICEFLO if the infringement would have been avoided by the use of the Application not so combined, or use of a non-current release of the Application.

11.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, ICEFLO's obligations under clause 11.2 are conditional on the Customer:

- (a) as soon as reasonably practicable, giving written notice of the Claim to ICEFLO, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without ICEFLO's prior written consent (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving ICEFLO and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable ICEFLO and its professional advisers to examine them and to take copies (at ICEFLO's expense) for the purpose of assessing the Claim; and
- (d) subject to ICEFLO providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as ICEFLO may reasonably request to avoid, dispute, compromise or defend the Claim.

11.4 If any Claim is made, or in ICEFLO's reasonable opinion is likely to be made, against the Customer, ICEFLO may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Application (or any part thereof) in accordance with the terms of the Agreement;
- (b) modify the Application so that it ceases to be infringing;
- (c) replace the Application with non-infringing software; or
- (d) terminate the Agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Application to the date of termination) on return of the Application and all copies thereof,

provided that if ICEFLO modifies or replaces the Application, the modified or replacement Application must comply with the warranties contained in clause 9.1 and the Customer

shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of the Agreement been references to the date on which such modification or replacement was made.

- 11.5 Notwithstanding any other provision in the Agreement, clause 11.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Products by the Customer.
- 11.6 This clause 11 constitutes the Customer's exclusive remedy and ICEFLO's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.1.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified to do so;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(j) (inclusive);
 - (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.
- 12.2 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 12.3 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 12.4 On termination for any reason:
- (a) all rights granted to the Customer under the Agreement shall cease;
 - (b) the Customer shall cease all activities authorised by the Agreement; and
 - (c) the Customer shall immediately pay to ICEFLO any sums due to ICEFLO under the Agreement.
- 12.5 Any provision of the Agreement which expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

13. Termination Assistance

- 13.1 Without prejudice to any other rights and obligations in the agreement, ICEFLO shall co-operate and provide all assistance reasonably required by the Customer to ensure an

orderly transition of the Subscription Services to the Customer in the event of termination or expiry of this agreement.

- 13.2 Upon written request by the Customer within 45 days after termination or expiry of this Agreement, ICEFLO will provide Professional Services at the Customer's expense to support the extraction of any Customer data in or relating to the Subscription Services to the Customer in a standard database export format, such Professional Services being limited to 20 working days of effort.
- 13.3 The Supplier shall be entitled to reimbursement of its costs incurred in providing any other forms of termination assistance.

14. Insurance

- 14.1 During this agreement ICEFLO shall maintain in force the following insurance policies with reputable insurance companies:
- (a) general liability insurance with a limit of at least £10 million per claim;
 - (b) professional indemnity insurance with a limit of at least £10 million per claim;
 - (c) public liability insurance with a limit of at least £10 million per claim;
 - (d) product liability insurance with a limit of at least £10 million per claim and in all the period of insurance;
 - (e) pollution liability insurance with a limit of at least £10 million per claim and in all the period of insurance; and
 - (f) employer's liability insurance with a limit of at least £10 million per claim or £5 million per claim where that claim arises in respect of bodily injury related to terrorism or occurring offshore or arising out of exposure to asbestos.
- 14.2 ICEFLO's liabilities under this agreement shall not be deemed to be released or limited by ICEFLO's taking out the insurance policies referred to in clause 14.1.

15. Waiver

- 15.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 15.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16. Remedies

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Entire agreement

- 17.1 The Agreement, (comprised of these terms and all Statements of Work) and the documents referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all previous and contemporaneous agreements, arrangements and understandings between them, whether written or oral, relating to that subject matter.
- 17.2 Each party acknowledges that, in entering into the Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) ("**Representation**") other than as expressly set out in the Agreement or those documents.
- 17.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
- 17.4 Nothing in this clause shall limit or exclude any liability for fraud.

18. Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Severance

- 19.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.
- 19.2 If any provision or part-provision of the Agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21. Assignment

21.1 Other than to an Affiliate, the Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of the Agreement in whole or in part;
- (b) allow the Application to become the subject of any charge, lien or encumbrance; or
- (c) deal in any other manner with any or all of its rights and obligations under the Agreement

without ICEFLO'S prior written consent, such consent not to be unreasonably withheld or delayed.

21.2 ICEFLO may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

22. Third-party rights

A person who is not a party to the Agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) 2017 to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

23. No partnership or agency

23.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. Force majeure

Neither party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events,

circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for [4] weeks, the party not affected may terminate the Agreement by giving [14] [days'] written notice to the affected party.

25. Anti-bribery and corruption

25.1 ICEFLO shall during the term of the Agreement:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
- (b) notify the Customer (in writing) if it becomes aware of any breach of clause 25.1(a) or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of the Agreement;

25.2 ICEFLO shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of ICEFLO's obligations under the Agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on ICEFLO in this clause 25 ("**Relevant Terms**"). ICEFLO shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

25.3 Breach of this clause 25 shall be deemed a material breach of the Agreement.

26. Business continuity

26.1 ICEFLO shall ensure that at all times it has in place an appropriate business continuity and disaster recovery plan for its business which will ensure the continued performance and operational resilience of the Subscription Services by means of back-up and recovery facilities and services.

26.2 The business continuity and disaster recovery plan referred to in Clause 26.1 shall:

- (a) be developed and updated from time to time, and in any event annually, in accordance with good industry practice. ICEFLO shall promptly provide the Customer with a copy of such plan as updated from time to time;
- (b) if required by the Customer, explain how the procedures set out in it will interface with any business continuity and disaster recovery plans and procedures of the Customer notified to ICEFLO from time to time; and

- (c) be subject to a full test implementation at least once every 12 months, the results of which will be notified to the Customer within 30 days of the conduct of the implementation.
- 26.3 If the Customer considers (on reasonable grounds) that ICEFLO's business continuity and disaster recovery plan is insufficient to ensure the continued performance and operational resilience of the Subscription Services or fails to meet the requirements of any regulator then the Customer may require ICEFLO to modify its business continuity and disaster recovery plan to cure such insufficiency or failure and ICEFLO shall promptly make the modifications that the Customer requires to do so.

27. Customer Group Divestment and Resolution

- 27.1 ICEFLO acknowledges that the Customer and/or the Customer Group may, at any date in the future during the term of the Agreement ("**Separation Date**"), wish or be required, including
 - (a) by a regulatory body;
 - (b) in order to comply with applicable laws; orto procure for any nominated Affiliate or for all or part of the business, assets, shares or liabilities of any nominated Affiliate (each a "**Separating Entity**"), the ability to operate independently of the Customer (a "**Divestment**"), or to restructure all or any part of the Customer Group, including its corporate structure.
- 27.2 On the Customer's written request in connection with any such Divestment or restructuring, and providing that the Customer continues to pay for the Services, ICEFLO agrees to:
 - (a) allow any Affiliate to on-provide all or part of the Subscription Services to any Separating Entity, or provide such Subscription Services to the Separating Entity directly, including access or use remotely from a territory outside the UK (where applicable), in each case as the Affiliate may require in order to comply with the terms of any transitional services arrangement between the relevant entity within the Affiliate and the Separating Entity; and/or
 - (b) where the Customer elects or is required to make an apportionment, provide the benefit of the Apportioned Rights directly to such Separating Entity in accordance with such apportionment, in which case the ICEFLO shall (as specified by the Customer) with effect from the Separation Date, make a fair and equitable apportionment of the charges payable between the Separating Entity on the one hand and the remaining members of the Customer Group on the other; and/or
 - (c) enter into an agreement ("**Parallel Contract**") with the Separating Entity, to take effect from the Separation Date or such other date as specified by the Customer and under which (unless otherwise agreed in writing between the parties):

- (i) the Subscription Services to be provided to the Separating Entity in accordance with the apportionment are equivalent to the Subscription Services, varied only as reasonably necessary to reflect those services required by the Separating Entity as of the Separation Date;
- (ii) the term of the Parallel Contract will commence on the Separation Date or such other date as specified by the Customer and will continue (as specified in writing by the Customer or Separating Entity for a maximum period of one (1) year from the Separation.
- (iii) the charges under the Parallel Contract and all other terms are on the same terms as the Agreement, except where:
 - (A) required to comply with any applicable laws and/or directions from a regulatory body; and/or
 - (B) otherwise agreed in writing by the relevant Separating Entity,and the parties hereby agree that the Customer shall not be a party to the Parallel Contract and shall have no further liability in respect of the Separating with effect from the Separation Date or such other date as specified by the Customer.

27.3 ICEFLO irrevocably acknowledges that its agreement to this clause 27 is part of its consideration for entering into the Agreement and that the Customer would not otherwise have appointed ICEFLO to provide the Subscription Services.

28. Notices

28.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) ICEFLO: legals@iceflo.com
 - (ii) Customer: [ADDRESS]

28.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting;

- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

29. Dispute Resolution

29.1 In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution's Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place at such location agreed by the parties (or by the mediator in the event parties cannot agree). The mediation agreement referred to in the Model Mediation Procedure shall be governed by Scots law.

29.2 If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further period as the parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means subject always to clause 29.

30. Governing law and jurisdiction

30.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

30.2 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).