

**XIATECH CONSULTING LTD
MASTER SERVICES AGREEMENT & WORK ORDER**

This agreement is between the Customer (as defined below) and Xiatech Consulting Ltd, a private limited company, incorporated in England and Wales with company number 08677559 and whose registered office is at **71 Queen Victoria Street, London, United Kingdom, EC4V 4BE (Xiatech)** and is made up of this Initial Work Order (including its Appendix) and the Legal Terms, as well as any subsequent Work Orders (including their Appendices) that are entered into by the parties (the **Agreement**).

CUSTOMER INFORMATION	
Customer:	Name: <i>[insert full name of Customer]</i> Company Number (if applicable): <i>[insert company number]</i> Registered Office: <i>[insert address of Customer]</i>
Customer Representative:	Name: <i>[insert details for Customer's authorised representative]</i> . Email address: <i>[insert contact email address]</i> .
TERM	
Agreement Start Date	<i>[insert start date of the overall MSA. Note: this will be the date on which the first Work Order is entered into and should not change from Work Order to Work Order]</i> .
Work Order Start Date:	<i>[insert start date]</i>
Work Order Initial Term	<i>[insert number of months]</i> from the Work Order Start Date.
Work Order Renewal Period	<i>[12 months]</i> from the expiration of the Work Order Initial Term.
SERVICES	
Discovery and Consultancy Services	<input type="checkbox"/> Applicable - as set out in Appendix Part A (Consultancy Services). <input type="checkbox"/> Not applicable as at the Work Order Start Date.
Platform Implementation Services	<input type="checkbox"/> Applicable - as set out in Appendix Part B (Platform Implementation Services). <input type="checkbox"/> Not applicable as at the Work Order Start Date.
Retained Services	<input type="checkbox"/> Applicable - as set out in Appendix Part C (Retained Services). <input type="checkbox"/> Not applicable as at the Work Order Start Date.
Subscription Services	<input type="checkbox"/> Applicable - as set out in Appendix Part D (Subscription Services).

	<input type="checkbox"/> Not applicable as at the Work Order Start Date.
Hosting	<input type="checkbox"/> Applicable (<i>please tick one box below</i>) <input type="checkbox"/> The Platform shall be hosted by Xiatech's third party suppliers using cloud native services from Amazon Web Services and/or the Google Cloud Platform (or such other Third Party Provider as designated by Xiatech from time to time). <input type="checkbox"/> The Customer shall host the Platform pursuant to clause 6 in accordance with the terms of this Agreement. <input type="checkbox"/> Not applicable as at the Work Order Start Date.
Support Services	<input type="checkbox"/> Applicable - as set out in Appendix Part E (Support Services). (<i>Please tick one box below</i>): <input type="checkbox"/> Bronze Package: Support Services made available between 09:00-17:30 on Business Days. <input type="checkbox"/> Silver Package: Support Services made available between 09:00-17:30 on Business Days and weekends. <input type="checkbox"/> Gold Package: Support Services made available 24 hours a day, 365 days a year. <input type="checkbox"/> Not applicable as at the Work Order Start Date.
CHARGES	
<p>In consideration of the provision of the Services, the Customer shall pay the following Charges:</p> <p><i>[Note to Xiatech: please delete any Charges that are not applicable to this particular engagement/ Work Order].</i></p> <p><i>Discovery and Consultancy Services</i></p> <p>In respect of the Discovery and Consultancy Services, the Charges shall accrue on a time and materials basis in accordance with Xiatech's Rate Card, calculated as <i>[insert amount]</i> (plus any applicable Taxes and expenses incurred).</p> <p><i>Platform Implementation Services</i></p> <p>In respect of the Platform Implementation Services, the Customer shall pay a recurring monthly amount equal to <i>[insert amount]</i> (plus any applicable Taxes and expenses incurred).</p> <p><i>Retained Services</i></p> <p>In respect of the Retained Services, the Customer shall pay a recurring minimum monthly fee equal to <i>[insert amount]</i> (plus any applicable Taxes and expenses incurred).</p>	

Subscription Services

The Customer shall pay a monthly amount broken down as follows:

From [insert date] until [insert date], [insert amount] (plus any applicable Taxes and expenses incurred);

From [insert date] until [insert date], [insert amount] (plus any applicable Taxes and expenses incurred);

From [insert date] until [insert date], [insert amount] (plus any applicable Taxes and expenses incurred);

From [insert date] until [insert date], [insert amount] (plus any applicable Taxes and expenses incurred); and

From [insert date] until [insert date], [insert amount] (plus any applicable Taxes and expenses incurred).

In respect of each year after [insert date], Xiatech shall be entitled to increase the Charges in respect of the Subscription Services on an annual basis by up a maximum of [insert] % each year.

Support Services

Where the Customer receives the Bronze Package, no additional Charges shall be payable in respect of the Support Services unless additional out of hours support is required, which (where agreed by Xiatech) shall be charged in accordance with the Rate Card.

Where the Customer receives the Silver Package, the Customer shall pay an additional £1,000 per month (plus applicable Taxes and expenses incurred).

Where the Customer receives the Gold Package, the Customer shall pay an additional £1,500 per month (plus applicable Taxes and expenses incurred).

Third Party Charges

[The Hosting charges, which as at the Start Date are [insert amount] (plus any applicable Taxes and expenses incurred) per month]

[Xiatech to include details of any other applicable third party charges e.g. in respect of AWS, GCP, Google Big Query or others (if applicable)]

For clarity, where a Third Party Provider increases its own charges then, provided Xiatech has used reasonable endeavours to keep such increases to a minimum, Xiatech shall be free to pass on the additional increases on to the Customer by increasing the Third Party Charges that are payable.

GENERAL

Xiatech Contact Email	[insert contact email address for Xiatech]
Third Party Agreements	[please insert details of any third party agreements that may apply for example, AWS or GCP terms or end-user licence terms of service support agreements in respect of Couchbase, Tableau and others]
Special Conditions	[please insert details of any special conditions that are to prevail over the Legal Terms] [Without affecting any other right or remedy available to it, either party may terminate a Work Order in respect of Discovery and Consultancy Services]

	<p>only on giving the other written notice before completion of the Discovery and Consultancy Services (such notice to take effect on completion of the Discovery and Consultancy Services as determined by Xiatech (acting reasonably)).]</p> <p>[The Customer shall be entitled to terminate this Work Order for convenience by providing Xiatech with 30 days' written notice (such notice to take effect no earlier than the date falling eight years from the Work Order Start Date).]</p> <p>[The Customer shall be entitled to request a reduction in the scope of the Retained Services by providing Xiatech with at least 30 days' written notice. Xiatech shall consider the Customer's request and confirm the impact on the Charges and any agreed timetable for delivery. Once agreed between the parties, the requested change in the scope of the Retained Services shall be effective from the date of Xiatech's confirmation.]</p>
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By signing below or by agreeing to receive the Services (including by email), the relevant person warrants and represents that they accept the terms set out in the Agreement and have the power and authority to enter into the Agreement on behalf of the relevant party.

This Agreement and the Initial Work Order has been entered into on the Start Date between the following entities (together the **parties**):

SIGNED on behalf of **[NAME OF CUSTOMER]**

<i>Signature</i>	Authorised person
<i>Print name</i>	

SIGNED on behalf of **XIATECH CONSULTING LTD**

<i>Signature</i>	Authorised person
<i>Print name</i>	

APPENDIX – THE SERVICES

PART A – DISCOVERY AND CONSULTANCY SERVICES

1. *[Note to Xiatech: please insert a description of the Discovery and Consultancy Services to be provided or state "Not being provided pursuant to this Work Order" if not applicable to the relevant Work Order. We understand that this is intended to include professional services/ program assurance services]*

PART B – PLATFORM IMPLEMENTATION SERVICES

1. *[Note to Xiatech: please insert a description of the Platform Implementation Services to be provided or state "Not being provided pursuant to this Work Order" if not applicable to the relevant Work Order]*

PART C – RETAINED SERVICES

1. *[Note to Xiatech: please insert a description of the Retained Services to be provided or state "Not being provided pursuant to this Work Order" if not applicable to the relevant Work Order]*

PART D – SUBSCRIPTION SERVICES

1. *[Note to Xiatech: please insert a description of the Subscription Services to be provided or state "Not being provided pursuant to this Work Order" if not applicable to the relevant Work Order.*

This should include a description of the SDV Platform. We understand that this comprises: (i) System integration via the SDV Digital Integration Hub; (ii) Single view of data - a consolidated store of operational and reference data for a client of their key data elements – e.g. Products, Sales, Inventory, Customers; and (iii) real-time analytics and insight using a data lake plus dashboards and reports]

PART E – SUPPORT SERVICES

1. *[Note to Xiatech: please insert a description of the Support Services to be provided or state "Not being provided pursuant to this Work Order" if not applicable to the relevant Work Order. We have included some general wording but please let us know if you would like to expand on this].*

[Xiatech will provide the Customer's authorised representative with the Support Services provided that the Customer ensures that all support requests are channelled through the Customer's Representative and that the Customer will provide Authorised Users with first line support including:

- 1.1 the provision of necessary and useful assistance and consultation on the use of the Platform;
 - 1.2 timely responses to Authorised Users' general questions concerning use of the Platform; and
 - 1.3 initial assistance to the Authorised Users in the diagnosis and correction of problems encountered in using the Platform.
2. Xiatech shall categorise, respond to and resolve faults according to their severity and the materiality of their impact on the Authorised Users' ability to use the Platform (as determined by Xiatech acting

reasonably). Xiatech shall have no obligation to provide support or resolution for any error, malfunction, failure or other performance or operational problems of the Services that is not directly caused by Xiatech.

3. If the Customer requests, Xiatech may provide remote or on premises training on the Platform to the Customer and the Authorised Users. Any training may be subject to a separate charge to the Customer which shall be notified by Xiatech in advance to the Customer.
4. Xiatech may amend the Support Services in its sole and absolute discretion from time to time.
5. Xiatech shall provide the Support Services in a professional and workmanlike manner.
6. Where the Customer:
 - 6.1 receives the Bronze Package (as indicated in a Work Order), the Support Services will be made available to the Customer's Representative from 09:00-17:30 on Business Days;
 - 6.2 receives the Silver Package (as indicated in a Work Order), the Support Services will be made available to the Customer's Representative from 09:00-17:30 on Business Days and weekends; or
 - 6.3 receives the Gold Package (as indicated in a Work Order), the Support Services will be made available to the Customer's Representative 24 hours a day, 365 days a year]

LEGAL TERMS

I. INTERPRETATION

I.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Additional Work: means any additional services provided by or on behalf of Xiatech to the Customer that is not expressly set out within the scope of an appropriate Work Order.

Affiliate: means any business entity from time to time Controlling, Controlled by, or under common Control with, either Party.

Applicable Law: means all applicable laws, orders, regulations, legal requirements, codes (including the applicable and relevant codes, regulations and standards of all relevant regulatory authorities) in force at the relevant time.

Authorised User: means the employees, workers and independent contractors of the Customer who are authorised by the Customer to access the Platform to support the Customer's internal business purposes.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: means the charges to be paid by the Customer for the Services pursuant to a Work Order and any charges for any Additional Work (in each case, to the extent applicable) and any other amounts due to Xiatech pursuant to this Agreement.

Confidential Information: information in any form which is expressed to be confidential or which might reasonably be regarded as confidential in nature, not including information to the extent it: (i) was already lawfully known to the receiving party at the time of the disclosure; (ii) became lawfully known to the receiving party independently; or (iii) is in, or comes into, the public domain other than by wrongful use of or disclosure by the receiving party.

Connection Point: means the site hosted on behalf of Xiatech where the Platform is made available for access by the Customer.

Contract Year: means the 12 month period from the Agreement Start Date and every 12 month period thereafter.

Control: has the meaning given to it in section 1124 of the Corporation Tax Act 2010, and the terms

Controlling, Controlled or change of Control shall be construed accordingly.

Controller, Processor, data subject, Personal Data, Personal Data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by the Customer, the Authorised Users or Xiatech on the Customer's behalf for the purpose of the Customer and the Authorised Users using and receiving the Services or facilitating the Customer's and Authorised Users' use and receipt of the Services.

Customer Equipment: means any equipment, including tools, systems, cabling or facilities, provided by or on behalf of the Customer that is used by Xiatech to provide the Services or used to facilitate the Customer's receipt of the Services.

Customer Materials: all documents, information, software, equipment, systems, items and materials in any form, whether owned by the Customer or a third party, which are provided by or on behalf of the Customer to Xiatech in connection with the Agreement (including the Customer Underlying IPR).

Customer Personnel: the employees, staff, workers, agents, consultants and sub-contractors of the Customer or its Affiliates from time to time.

Customer Underlying IPR: means all Intellectual Property Rights of the Customer which have been developed by the Customer independently of the Agreement.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation: the UK GDPR (as defined in the Data Protection Act 2018); the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); the General Data Protection Regulation ((EU) 2016/679) (to the extent applicable) as updated and amended from time to time.

Deliverable: means any specific output of the Services to be provided by Xiatech to the Customer as specified in the Agreement, but excluding Xiatech Underlying IPR.

Developed Materials: mean any materials developed by Xiatech as part of the Services (including the Platform Implementation Services) excluding any Xiatech Underlying IPR, Customer Underlying IPR and Third Party IPR.

Discovery and Consultancy Services: means the discovery and/or consultancy services to be provided by Xiatech in accordance with a Work Order and Appendix Part B (Discovery and Consultancy Services) of a relevant Work Order.

Documentation: means such user guides, manuals, instructions, terms of use, privacy notices or other documents or materials that Xiatech provides or makes available to Customer, as updated by Xiatech from time to time, which sets out a description of the Platform and its features (including as set out at Appendix Part E (Subscription Services) of a relevant Work Order.

Force Majeure Event: has the meaning set out in clause 20.4.

Platform Implementation Services: means the platform implementation services to be provided by Xiatech in accordance with a Work Order and clauses 3 and 4, and as further described in Appendix Part B (Platform Implementation Services) of a relevant Work Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, 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.

Losses: means claims, demands, actions, awards, costs, expenses, damages and losses (including any interest, fines and reasonable legal and other professional costs and expenses incurred).

Maintenance: means any maintenance that Xiatech carries out to improve or correct any defects with the Platform.

New Features: mean any new features or functionality of the Platform, in addition to those described in the Documentation.

Platform: means the Xiatech Single Data View platform (including all new versions, updates, revisions, improvements and modifications) to which Xiatech provides remote access via the Connection Point and use of as part of the Subscription Services (as is further described in the Documentation).

Rate Card means the table outlining Xiatech's applicable time (in hourly or day rates) and materials as updated by Xiatech and provided to the Customer from time to time.

Retained Services: means the retained services to be provided by Xiatech in accordance with a Work Order and Appendix Part C (Retained Services) of a relevant Work Order.

Security Event: means (i) any unauthorised third party access to or use of the Services; or (ii) any use of the Services by the Customer or any Authorised User that is in breach of this Agreement.

Services: means the services (including the Discovery and Consultancy Services, the Platform Implementation Services, the Retained Services, the Subscription Services and/or the Support Services and any Additional Work) to be provided by Xiatech to the Customer under this Agreement, as may be more particularly described in the Appendix of a relevant Work Order.

Sprints: means a fixed period, as agreed between the parties from time to time, during which individual Deliverables or other requirements for the Platform are designed, built, tested (in accordance with agreed acceptance criteria) and delivered to the Customer (as applicable).

Subscription Services: means the provision (and, where indicated in a Work Order, the Hosting) of the Platform as a service by, or on behalf of, Xiatech, to the Customer and made available at the Connection Point (as further described in the Documentation).

Support Services: the support services to be provided by Xiatech in accordance with a Work Order, as further set out in clause 8 and in Appendix Part E (Support Services). For the avoidance of doubt, the Support Services shall not include any Platform Implementation Services and/or Retained Services or otherwise require Xiatech to provide any further development work.

Third Party Agreements: means any third party agreements that are set out in a Work Order, or the relevant terms and conditions of any Third Party Providers that otherwise apply to the provision of the Services (including all relevant end-user licensing agreements or service support agreements that may need to be entered into by the Customer in order to use the Platform).

Third Party IPR: all Intellectual Property Rights in any Services that are not Xiatech-branded or owned by Xiatech;

Third Party Providers: mean any third party provider that provides any element of the Platform and/or the Services (including pursuant to a Third Party Agreements).

Virus: any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, or adversely affect the user experience.

Vulnerability: a weakness in the computational logic (for example, code) found in software or hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

Work Order: means the Initial Work Order and an agreed further order for Services that incorporate the Legal Terms as may be substantially the form of the template work order set out in Schedule I (Template Work Order).

Work Order Term: means the Work Order Initial Term together with any subsequent Work Order Renewal Periods.

Xiatech Underlying IPR: means all Intellectual Property Rights owned or controlled by Xiatech and its licensors, including in the Platform and Xiatech's pre-existing processes and procedures, general concepts, ideas, methodologies, processes, techniques or algorithms, which have been developed independently of the Agreement (including any additions, modification and/or improvements made to such items, irrespective of whether these have arisen from any proposal or ideas provided by the Customer or the Customer Personnel and/or the provision of the Services).

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. The Schedules form part of Legal Terms and shall have effect as if set out in full in the body of the Legal Terms. Any reference to the "Agreement" includes the Schedules and any Work Orders entered into by the parties (unless stated otherwise).
- 1.3 Any words following the terms: including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 Any reference to the requirement for something to be given, received or similar in "writing" or "written" shall include and permit this to be done by e-mail provided such e-mail is sent to an authorised representative of that party.
- 1.6 Capitalised but undefined terms used in a Work Order and the Legal Terms shall have the meaning given to them in a Work Order or the Legal Terms (as the case may be).

2. THE SERVICES

- 2.1 These Legal Terms establish the contractual framework for the supply of Services by Xiatech to the Customer pursuant to Work Orders executed between the parties.
- 2.2 These Legal Terms shall be incorporated into all Work Orders agreed between the parties and their Affiliates.

2.3 Each Work Order shall be deemed to be a separate independent agreement which is governed by the Legal Terms but creates a legally binding contract between Xiatech and Customer or their respective Affiliates as applicable which applies to the relevant purchase.

2.4 Where Additional Work is to be provided to the Customer such Additional Work shall be provided in accordance with a Work Order.

3. ACCEPTANCE

3.1 This clause 3 shall only apply where Xiatech provides Platform Implementation Services pursuant to a Work Order or where Xiatech provides other Services or Deliverables pursuant to a Work Order that the parties agree shall be subject to formal acceptance testing before the relevant services have been formally accepted (**Relevant Services**).

3.2 Subject to the application of the process set out in clause 4 applying to a relevant Deliverable, Xiatech will notify the Customer on completion of the final Deliverable in respect of the Relevant Services (as reasonably determined by Xiatech) (the **Final Deliverable**). The Customer shall promptly (and in any event within [5] days of completion of the Final Deliverable) notify Xiatech of any defects in the Final Deliverable. If the Customer does not notify Xiatech of any defects (or otherwise uses the Final Deliverable in a live environment) within the [5] day period, the Customer will be deemed to have accepted the Relevant Services in their entirety.

3.3 If the Customer notifies Xiatech of any defects in the Final Deliverable within the period specified in clause 3.2, Xiatech will re-test the Final Deliverable and notify the Customer of the results. If Xiatech agrees that the Final Deliverable does not substantially conform with the description and any agreed specification, Xiatech shall apply such time, attention and resources to remedy such defects within a reasonable time and the process in clause 3.2 shall then be repeated.

4. AGILE PROCESS

4.1 This clause 4 shall only apply where Xiatech provides Platform Implementation Services pursuant to a Work Order or where Xiatech provides other Services or Deliverables pursuant to a Work Order that the parties agree shall be provided subject to the agile methodology (**Agile Services**).

4.2 Xiatech shall provide the Deliverables pursuant to the Agile Services using agile methodologies via iterative Sprints (as agreed between the parties from time to time).

4.3 The parties shall meet on a regular basis and in any event within [5] Business Days on completion of a Sprint (as determined by Xiatech, acting reasonably) to agree:

4.3.1 in respect of future Sprints:

- (a) the estimated resource requirements and the cost for each future Sprint;
- (b) a breakdown of each Sprint item into specific tasks, sorted in terms of priority and allocation of these tasks to specific team members, provided that once

agreed between the parties, no alterations or additions may be made to those items during the Sprint; and

(c) any relevant acceptance criteria for each Sprint item; and

4.3.2 in respect of current or completed Sprints (as determined by Xiatech, acting reasonably):

(a) whether the results of the current or completed Sprint meet their respective acceptance criteria in all material respects; and

(b) whether any Sprint items that have not been developed during the current Sprint and/or any results that have not been materially delivered to the standard required by this Agreement should be designated to be completed in a future Sprint;

4.3.3 the present status of the relevant project and its compliance with the goals, targeted benefits and overall focus agreed between the parties; and

4.3.4 potential improvements to their practices, teamwork, environment, or organisation for implementation in future Sprints.

4.4 Xiatech shall:

4.4.1 use reasonable endeavours to achieve any agreed results of software development work carried out during the relevant Sprint within the agreed timeframes (provided that any such dates shall be estimates only); and

4.4.2 from time to time, review the estimated required resources for any Sprint items and determine in its discretion whether and, if so, what changes are reasonably required based upon the experience of the Sprint(s) at that point.

5. LICENCE TERMS

5.1 Subject to the Customer complying with its obligations under this Agreement and only where indicated pursuant to a Work Order, Xiatech grants to the Customer's Authorised Users a non-exclusive, non-transferable, non-sublicenseable right to receive the Subscription Services during the relevant Work Order Term in accordance with the terms of this Agreement.

5.2 The Customer undertakes, on behalf of itself and each Authorised User, that:

5.2.1 it will procure that each Authorised User uses the Services in accordance with the Documentation;

5.2.2 it will use the Services solely for its own internal business purposes;

5.2.3 it shall, at its sole cost and expense, acquire, install and maintain all Customer Equipment and all other hardware, equipment, software and other technology necessary to access and use the Services; and

- 5.2.4 it shall procure that each Authorised User shall register for their own account, keep a secure password or pin for their use of the Subscription Services, keep their password confidential and not share their account or password with any other person.
- 5.3 The Customer shall not, and shall procure that any Authorised User shall not:
- 5.3.1 copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute, de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any portion of the Platform or the Services in any way;
 - 5.3.2 access all or any part of the Platform or the Services to build a product or service which competes with the Platform or the Services;
 - 5.3.3 knowingly input, upload or transmit any Virus through the Platform, the Services or the systems of Xiatech, or do anything which may damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm the Service or the systems of Xiatech;
 - 5.3.4 not access, store, distribute or transmit any material during the course of its use of the Platform and the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.3.5 use the Platform or the Services in a way which infringes or otherwise violates the Intellectual Property Rights of a third party or Applicable Law;
 - 5.3.6 lease, lend, transfer, sell, share, licence or provide the Platform or the Services to any third party without Xiatech's (and any relevant third party's) prior written consent; or
 - 5.3.7 breach any security device or protection used by the Platform or Services or attempt to obtain, or assist third parties in obtaining, access to the Platform, the Services and/or the Documentation.
- 5.4 Without prejudice to any other rights or remedies available to it, if Xiatech reasonably considers that any Authorised User is causing the Customer to be in breach of this Agreement (or otherwise where required by Applicable Law to do so), Xiatech may, at its sole discretion, suspend the use of the Platform and/or Services by such Authorised User on a permanent or temporary basis, in addition to any other rights or remedies provided under this Agreement or under Applicable Law.
- 5.5 Xiatech shall be free to use and incorporate any feedback, suggestions or enhancement requests provided by the Customer (or any Authorised User) to Xiatech into the Services and Xiatech's services or software offerings to other parties.

6. CUSTOMER HOSTING

- 6.1 This clause 6 shall only apply where indicated on a Work Order that Customer shall host the Platform, or otherwise where agreed by Xiatech in writing.
- 6.2 The Customer shall be solely responsible for hosting the Platform in accordance with the terms of this Agreement (including complying with the restrictions at clause 5 and remaining responsible for all costs and other liabilities arising from such hosting). Subject to any relevant Support Services being

provided pursuant to the Agreement, Xiatech shall have no liability or responsibility for the availability of the Platform.

6.3 The Customer shall have in place, and shall maintain throughout the term of this Agreement, appropriate technical and organisational measures to mitigate against the unauthorised or unlawful access to the Platform and against the accidental loss or destruction of or damage to the Platform.

6.4 The Customer shall, in the event of:

6.4.1 any unauthorised or unlawful access to the Platform, promptly notify Xiatech of this and take such reasonable steps to mitigate the effect of such access and prevent such access from recurring; and

6.4.2 any loss, destruction or damage to all or part of the Platform, promptly notify Xiatech of this and take such reasonable steps to prevent such loss, destruction or damage from recurring.

7. SERVICE STANDARDS

7.1 Xiatech undertakes that:

7.1.1 the Services will be performed with reasonable skill and care; and

7.1.2 (where indicated as being provided by Xiatech pursuant to a Work Order), the Subscription Services will substantially conform with the Documentation.

7.2 The undertaking at clause 7.1, shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Xiatech's instructions, or modification or alterations to any element of the Services by any party other than Xiatech or Xiatech's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Xiatech will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Except as expressly provided otherwise, such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 Xiatech does not warrant that:

7.3.1 the Customer's use of the Services will be uninterrupted or error-free;

7.3.2 the Services, the Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or

7.3.3 the Platform will be free from Vulnerabilities or Viruses;

7.4 Xiatech is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.5 Notwithstanding any other provision in this Agreement, if there is a Security Event, Xiatech may, without liability or prejudice to its other rights and without prior notice to the Customer:

7.5.1 suspend any Authorised User's access to the Services;

7.5.2 suspend the Services; and/or

7.5.3 take any other reasonable steps Xiatech deems appropriate,

until the relevant Security Event has been resolved.

7.6 Subject to clause 7.7, Xiatech shall release updates, upgrades and new versions of the Platform from time to time as it reasonably considers necessary. The Customer shall request and procure that the Authorised Users promptly install any updates, upgrades and new versions of the Platform released by Xiatech, where it is necessary for Authorised Users to take such action.

7.7 Where the updates, upgrades and/or new versions of the Platform include New Features (or Xiatech otherwise makes available to the Customer the New Features), the New Features may be subject to an additional charge to be paid by the Customer to be agreed by the parties (acting reasonably) from time to time. Xiatech will also notify the Customer if the provision of the New Features is subject to the entry by the parties into a separate agreement.

8. SUPPORT SERVICES

8.1 This clause 8 shall only apply:

8.1.1 in respect of the Subscription Services (where indicated in a Work Order); and

8.1.2 where indicated in a Work Order, or otherwise agreed by Xiatech in writing.

8.2 The Support Services will substantially conform with Appendix Part E (Support Services). For clarity, in order to enable Xiatech to provide the Support Services, the Customer shall provide Xiatech with access to such systems and personnel that Xiatech reasonably require access to from time to time.

9. CUSTOMER DATA

9.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9.2 The Customer shall be solely responsible for regularly backing-up all Customer Data. Xiatech shall have no liability for any loss or damage to the Customer Data.

9.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

9.4 The parties acknowledge that if Xiatech processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the Controller and Xiatech is the Processor for the purposes of the Data Protection Legislation. Subsections 9.4.1 to 9.4.5 of this clause 9.4 describes the subject matter, duration, nature and purpose of the processing and the

Personal Data categories and data subject types in respect of which Xiatech may process Personal Data:

9.4.1 the subject matter of the processing is the provision of the Services by Xiatech to the Customer;

9.4.2 the duration of the processing is the shorter of the duration of time that Xiatech has the rights to make use of such Personal Data pursuant to: (a) this Agreement; or (b) Applicable Law (including the Data Protection Legislation);

9.4.3 the nature and purpose of the processing is to enable Xiatech to perform its obligations under this Agreement (including the provision of the Services to the Customer and any Authorised Users);

9.4.4 the type of Personal Data processed includes:

- (a) [Contact details including: names, email addresses, addresses, telephone numbers and customer numbers];
- (b) [Personal information, including dates of birth and gender]; and
- (c) [Technical information including: account and log-in details, survey data, customer preferences/ profiles, IP addresses, log data].

9.4.5 the categories of data subject include:

- (a) [Visitors of the Customer's website]
- (b) [Potential, current and former customers of the Customer]
- (c) [Potential, current and former employees and staff of the Customer (including job applicants)]
- (d) [Debtors and creditors of the Customer]
- (e) [Current or potential suppliers, providers and vendors of the Customer]

9.5 Without prejudice to the generality of clause 9.3, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Personal Data to Xiatech for the duration and purposes of this Agreement so that Xiatech may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf. The Customer consents to Xiatech transferring Personal Data to, and engaging, the Third Party Providers (as sub-processors) to assist in the delivery of the Services.

9.6 In relation to any Personal Data processed in connection with the performance by Xiatech of its obligations under this Agreement, Xiatech shall:

9.6.1 process such Personal Data only in accordance with the Customer's written instructions (as set out in this Agreement) unless Xiatech is otherwise required by the Data Protection Legislation. For clarity, where Customer changes its instructions, such changes are to be agreed by the parties in accordance with clause 18;

- 9.6.2 ensure that it has in place appropriate and reasonably proportionate technical and organisational measures, to help protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 9.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 9.6.4 use reasonable endeavours to assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.6.5 use reasonable endeavours to notify the Customer without undue delay on becoming aware of a Personal Data breach and assist the Customer, at the Customer's cost, in ensuring compliance with the Customer's obligations under the Data Protection Legislation in relation to any Personal Data breach;
 - 9.6.6 at the written direction and cost of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless otherwise required by Data Protection Legislation; and
 - 9.6.7 make available to the Customer all information necessary to demonstrate its compliance with its obligations under this clause and permit the Customer, during normal business hours and on at least 10 days' prior written notice, to undertake an audit to confirm Xiatech's compliance with its obligations under this clause.
- 9.7 The Customer Data may be transferred to, stored and/or processed in any country or territory where one or more of Xiatech's Third Party Providers are located or maintain facilities, including countries outside the United Kingdom (**UK**) or European Economic Area (**EEA**). Where such Personal Data is transferred to a country outside of the UK or EEA, Xiatech shall take reasonable steps to ensure such Personal Data is treated securely and in accordance with the Data Protection Legislation.
- 9.8 The Customer warrants that it has all necessary and appropriate rights, consents and notices to enable the lawful transfer and provision of the Customer Data to Xiatech for this Agreement so that Xiatech may lawfully use, process and transfer the Customer Data in accordance with this Agreement on the Customer's behalf.
- 9.9 The Customer shall ensure that it has in place appropriate and reasonable technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, in accordance with Article 32 of the UK GDPR.
- 9.10 The Customer grants Xiatech and its Affiliates an irrevocable, perpetual, non-exclusive licence to use any Customer Data (including, without limitation, performance metrics and metadata), collected by the Customer or Xiatech pursuant to the Services, whether from an Authorised User or otherwise,

provided that Customer Data is only used on an anonymised and aggregated basis. The licence granted under this clause 9.10 shall survive termination of this Agreement.

10. THIRD PARTY AGREEMENTS

10.1 Xiatech shall use its reasonable endeavours to:

10.1.1 promptly bring all relevant Third Party Agreements to the Customer's attention in advance;

10.1.2 pass on the benefit to the Customer of any third party warranties that it receives in respect of the Platform and the Services. The Customer acknowledges that the Platform and the Services may be subject to their own warranty terms; and

10.2 The Customer acknowledges that the Services may contain elements provided by the Third Party Providers. Xiatech makes no representation, warranty or commitment, and shall have no liability or obligation whatsoever, in relation to the elements provided by the Third Party Providers or for any loss or liability suffered by the Customer arising out of, or in connection with, the elements provided by the Third Party Providers.

10.3 The Customer understands and agrees the Services may be provided to the Customer subject to the Third Party Agreements and that in such instances, the Customer's use, enjoyment and receipt of the Platform and the Services will be subject to the Third Party Agreements. Notwithstanding clause 10.1.1, the Customer will always be required to comply with such Third Party Agreements and might need to enter into a Third Party Agreement directly before it is able to use and receive the Platform and the Services.

11. CUSTOMER'S OBLIGATIONS

11.1 The Customer shall:

11.1.1 provide Xiatech with all necessary co-operation in relation to this Agreement in order to provide the Services;

11.1.2 provide such time, attention and resources and ensure that its personnel engaged in the Services have sufficient power, authority, skill and expertise, to enable Xiatech to perform the Services in a timely and efficient manner;

11.1.3 use all reasonable endeavours to prevent any unauthorised access to, or use of the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Xiatech;

11.1.4 be fully responsible and liable for ensuring that it (and that the Customer's receipt of the Services (including specifically, where applicable, use of the Platform) complies with Applicable Law;

11.1.5 ensure that its network and systems are in good repair and comply with the relevant specifications provided by Xiatech from time to time, including ensuring that the Services are not blocked by the Customer's firewalls;

11.1.6 obtain and shall maintain all necessary licences, consents, equipment, software, systems and permissions for Xiatech to perform its obligations under this Agreement, including without limitation, providing the Services; and

- 11.1.7 except as otherwise expressly provided in this Agreement, be solely responsible for procuring, maintaining and securing its network connections and links from its systems to Xiatech's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 11.2 Customer warrants that the Customer has and will have the necessary rights and consents in and relating to the Customer Materials so that any use of such Customer Materials for and on behalf of Xiatech shall not infringe any third party's rights (including Intellectual Property Rights), or violate any Applicable Law.
- 11.3 Without prejudice to any other right or remedy Xiatech may have, if Xiatech's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or Customer Personnel (including a failure to comply with any of its obligations under the Agreement) (a **Customer Default**) then:
 - 11.3.1 Xiatech shall use reasonable endeavours to mitigate the impact of the Customer Default;
 - 11.3.2 Xiatech shall not be responsible for any failure to carry out the relevant obligations and shall be allowed an extension of time to perform its obligations; and
 - 11.3.3 the Customer shall reimburse Xiatech for all reasonable additional amounts incurred by Xiatech as a result of the Customer Default.

12. **CHARGES AND PAYMENT**

- 12.1 Unless stated otherwise in a Work Order or otherwise agreed by Xiatech in writing, Xiatech shall invoice the Customer for the Charges monthly in advance where the relevant amount is known or otherwise agreed in advance, and monthly in arrears in all other cases. The Customer acknowledges that the Third Party Charges are estimates and are not intended to be fixed or capped.
- 12.2 Any estimates provided by the Xiatech (including the amounts specified in a Work Order) are an estimate of the likely amount payable in respect of the Services and are not intended to be fixed or capped.
- 12.3 The Customer shall pay all invoices submitted to it by Xiatech within 30 days of receipt to a bank account nominated in writing by Xiatech from time to time.
- 12.4 All Charges payable by the Customer to Xiatech under this Agreement:
 - 12.4.1 are exclusive of value added tax, any locally applicable sales tax and all other duties, charges, and levies (including import/ export, withholding and other taxes as may be applicable) which may become payable as a result of the provision of the Services (but excluding any employment or income taxes) (**Taxes**), and the Customer shall in addition pay an amount equal to any Taxes chargeable on those sums; and
 - 12.4.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). If any such withholding or

deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to Xiatech such additional amount as will ensure that Xiatech receives the same total amount that it would have received if no such withholding or deduction had been required.

- 12.5 If Xiatech has not received payment of any undisputed amounts due within [7 days] after the due date, without prejudice to any other rights and remedies of Xiatech (including charging interest from the invoice due date on the overdue sum at the rate of 4% per annum above [Barclays Bank PLC's] base rate from time to time), Xiatech may, without liability to the Customer, disable and suspend the Customer's (and its Authorised Users') access to the Services until the Customer has paid all outstanding amounts due.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 Unless stated otherwise, nothing in the Agreement shall provide the Customer with any right, title or interest in or to the Intellectual Property Rights of Xiatech, its licensors or any manufacturer or provider of any of the Platform, the Services, or the Documentation.
- 13.2 Save to the extent that it comprises Customer Underlying IPR or Third Party IPR, ownership of all Intellectual Property Rights in the Deliverables (including any Developed Materials) shall vest in Xiatech.
- 13.3 Subject to the Customer complying with its obligations under this Agreement, including payment of the Charges, Xiatech grants to the Customer a royalty-free, non-exclusive, non-sublicensable licence to use the Deliverables (including any Developed Materials) (where applicable) to the extent necessary to receive the benefit of the relevant Services for the term of the relevant Work Order for its internal business purposes but subject to the other restrictions on and obligations of Customer set out in this Agreement. For the avoidance of doubt, the restrictions and obligations of the Customer under clause 5.3 in respect of the Platform and the Services shall also apply to the Customer's use of the Deliverables (including any Developed Materials) (where applicable).
- 13.4 Xiatech grants to the Customer a royalty-free, non-exclusive, non-sublicensable licence during the term of the Agreement to use any Xiatech Underlying IPR provided to the Customer solely to the extent necessary to receive the Services.
- 13.5 Ownership of the Customer Materials shall remain vested and be the property of the Customer or its licensors.
- 13.6 Except as expressly provided otherwise, the Customer grants Xiatech a royalty free, non-exclusive licence to use the Customer Equipment and the Customer Materials to the extent necessary to provide the Services in accordance with the terms of the Agreement.
- 13.7 The Customer grants Xiatech the right to use its company name, logos and emblems for the purpose of the provision of the Services and in connection with its marketing campaigns and PR activities (including the right for Xiatech to describe the nature of the Services provided to the Customer under the Agreement on Xiatech's website and in other publications).
- 13.8 The Customer shall provide Xiatech with reasonable assistance in respect of its marketing campaigns and PR activities. In particular:
- 13.8.1 within one month of the Work Order Start Date, the Customer shall provide reasonable assistance to Xiatech in producing a joint press-release, which, at first instance, shall be

drafted by Xiatech for the Customer's review and approval. The press release will be published on Xiatech's website and will feature the Customer's logo and a quote from an executive of the Customer;

13.8.2 within three months of the Work Order Start Date, the Customer shall participate in a joint webinar which shall be organised and hosted by Xiatech. The webinar shall focus on the reasons why the Customer chose to work with Xiatech and the Customer's expected business value from using Xiatech's technology solutions;

13.8.3 within six months of the Work Order Start Date, the Customer shall provide reasonable assistance to Xiatech in producing a joint case study, which, at first instance, shall be drafted by Xiatech for the Customer's review and approval. The press release will be published on Xiatech's website and will be used in Xiatech's marketing campaigns and PR activities; and

13.8.4 within 12 months of the Work Order Start Date, the Customer shall provide reasonable assistance to Xiatech in producing an updated joint case study, which, at first instance, shall be drafted by Xiatech for the Customer's review and approval. The press release will be published on Xiatech's website and will be used in Xiatech's marketing campaigns and PR activities.

14. IP INFRINGEMENT

14.1 If the Customer receives a claim (or Xiatech reasonable considers that the Customer may receive such a claim) that Customer's receipt of the Services in accordance with this Agreement infringes any third party's Intellectual Property Rights, then Xiatech may procure the right for the Customer to continue to receive the Services or replace or modify the Services so that they become non-infringing.

14.2 If the remedies at clause 14.1 are not reasonably available, Xiatech shall be entitled to promptly terminate this Agreement and refund the Customer the unused pro-rata share of the Charges for the period from the date of effective termination until the end of the relevant Work Order Initial Term or the then applicable Work Order Renewal Period (as applicable). For clarity, subject to clause 14.4, the remedies outlined in this clause represents the Customer's sole and exclusive remedy for any such actual or potential issues relating to infringement of any third party's Intellectual Property Rights.

14.3 In no event shall Xiatech be liable to the Customer to the extent that the alleged infringement of a third party's Intellectual Property Rights is based on:

14.3.1 a modification of the Platform, the Services or the Documentation (as applicable) by anyone other than Xiatech or anyone under Xiatech's instruction; or

14.3.2 the combination, operation or use of the Platform, the Services or the Documentation (as applicable) with any equipment, device, data, technology or software not provided by Xiatech; or

14.3.3 the Customer's delay in implementing an update, upgrade or new version that would have avoided infringement; or

- 14.3.4 the Customer's use of the Platform, the Services or the Documentation (as applicable) in a manner contrary to this Agreement or the instructions given to the Customer by Xiatech; or
 - 14.3.5 any unreasonable delay in the Customer notifying Xiatech of the claim; or
 - 14.3.6 the Customer's use of the Platform, the Services or the Documentation (as applicable) after notice of the alleged or actual infringement from Xiatech or any appropriate authority; or
 - 14.3.7 Xiatech's compliance with specifications provided by or instructions of the Customer or the Customer Materials,

(together the **Exclusions**).
- 14.4 Xiatech shall indemnify the Customer from and against all Losses incurred by the Customer arising out any claim, demand or action alleging that the Platform has infringed the Intellectual Property Rights of a third party (a **Claim**), provided that:
- 14.4.1 the Claim has not arisen from any of the Exclusions;
 - 14.4.2 the Customer promptly notifies Xiatech of the Claim, specifying in reasonable detail the:
 - (a) nature of the Claim;
 - (b) grounds on which it is based; and
 - (c) circumstances that give rise to the Claim.
 - 14.4.3 Xiatech having the sole conduct of all negotiations and litigation and settlement arising from the Claim;
 - 14.4.4 the Customer providing Xiatech with all information and assistance reasonably required by Xiatech; and
 - 14.4.5 the Customer making no admission in respect of the Claim.
- 14.5 Clauses 14.1 and 14.4 states the Customer's sole and exclusive rights and remedies, and Xiatech's entire obligations and liability, for infringement or alleged infringement of any third party's Intellectual Property Rights.
- 14.6 The Customer shall indemnify Xiatech and each of the directors, officers and agents of Xiatech (each being a **Supplier Indemnified Party**) from and against any and all Losses of a Supplier Indemnified Party arising out of or in any way connected with any actions, claims and/or demands brought against any Supplier Indemnified Party arising from the use of the Customer Materials by or on behalf of Xiatech.

15. CONFIDENTIALITY

- 15.1 Each party undertakes that it shall not at any time during the term of the Agreement, and for a period of five years after termination of the Agreement, disclose the other party's Confidential Information, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's Confidential Information:
- 15.2.1 to its employees, officers, representatives 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 provided that the disclosing party has ensured that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information complies with this clause 15; and
 - 15.2.2 as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority provided that the disclosing party notifies the other party as far in advance as reasonably possible (unless prevented from doing so by Applicable Law).
- 15.3 Neither party shall use the 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.

16. LIMITATION OF LIABILITY

- 16.1 Subject to clause 16.2, except as expressly and specifically provided in this Agreement:
- 16.1.1 the Customer assumes sole responsibility for results obtained from the receipt and use of the Services, and for conclusions or inferences drawn from such use;
 - 16.1.2 save where expressly stated otherwise, the Services are provided to the Customer on an "as is" basis; and
 - 16.1.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 16.2 Nothing in this Agreement shall exclude either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation or for any other matter that cannot be limited or excluded by Applicable Law.
- 16.3 Subject to clauses 16.1 and 16.2:
- 16.3.1 neither party shall be liable to the other whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any indirect or consequential loss arising out of, or in connection with, this Agreement (except in respect of, and under, any indemnity provided by either party); and
 - 16.3.2 Xiatech shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any indirect or consequential loss, loss of profits or revenue, loss of sales or business, loss of agreements

or contracts, loss of anticipated savings, loss of opportunity, loss of use, corruption or recovery of software, data or information, loss of savings, wasted expenditure, any costs of substitute goods, services or deliverables, or depletion of goodwill however arising under this Agreement (in each case, whether direct or indirect).

16.4 Subject to clauses 16.1, 16.2 and 16.3 Xiatech's total aggregate liability in each Contract Year in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection the Agreement, shall be limited to the total Charges actually received by Xiatech from the Customer in that Contract Year.

17. TERM AND TERMINATION

17.1 These Legal Terms will come into effect on the Agreement Start Date and will remain in force until the date falling 180 days from the date on which the last remaining Work Order has been lawfully terminated or otherwise has expired, at which point the Agreement will terminate automatically, subject to clause 17.7.2.

17.2 Unless terminated earlier as provided in this clause 17, each Work Order will come into effect on the Work Order Start Date specified in the applicable Work Order and remain in force for the Work Order Initial Term applicable to that Work Order. Thereafter, a Work Order shall be automatically renewed for successive Work Order Renewal Periods at the end of the applicable Work Order Initial Term and each Work Order Renewal Period.

17.3 Without affecting any other right or remedy available to it, either party may terminate a Work Order by giving to the other written notice, at least [60] days before the end of the applicable Work Order Initial Term or the relevant Work Order Renewal Period. If terminated under this clause 17.3, a Work Order shall then terminate upon the expiry of the applicable Work Order Initial Term or the relevant Work Order Renewal Period (as the case may be). If either party fails to terminate a Work Order in accordance with this clause 17, the Work Order shall automatically renew further to clause 17.2.

17.4 Without affecting any other right or remedy available to it, Xiatech may terminate a Work Order with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under such Work Order or any other agreement in place between the parties (or their respective Affiliates) on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

17.5 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of this Agreement (other than non payment by the Customer which is covered by clause 17.4) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.

17.6 Without affecting any other right or remedy available to it, either party may terminate this Agreement (including all Work Orders under it) with immediate effect by giving written notice to the other party if:

17.6.1 the other party is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 17.6.2 the other party takes any step in connection with its inability to pay debts or its winding up;
 - 17.6.3 the other party is the subject of the appointment of a receiver or administrator or administrative receiver; or
 - 17.6.4 the other party commences negotiations with all or any of its creditors.
- 17.7 On termination or expiry of this Agreement for any reason:
- 17.7.1 all licences and rights granted to the Customer under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
 - 17.7.2 any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after its termination shall remain in full force and effect;
 - 17.7.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination shall not be affected or prejudiced;
 - 17.7.4 the Customer shall immediately pay to Xiatech all of Xiatech's outstanding unpaid invoices and interest and (in respect of any Services supplied but for which no invoice has been submitted), Xiatech may submit an invoice, which shall be payable by the Customer immediately on receipt. In addition, in the event Xiatech terminates the Agreement in accordance with clauses 17.4 or 17.5, all other amounts that would otherwise have become payable through to the conclusion of the Term shall become due immediately; and
 - 17.7.5 (should the Customer require any reasonable support or assistance) then such support and assistance shall be provided by Xiatech under an Work Order and chargeable on a time and materials basis in accordance with Xiatech's then applicable Rate Card, provided that Xiatech shall not be obliged to provide such support and assistance if any amounts are owed to Xiatech on termination or for more than 180 days after the date the Agreement terminates.
- 17.8 Where Xiatech has a right to terminate this Agreement or a Work Order, it may instead elect to terminate the entire Agreement (including all Work Orders under it), or any one or more Work Orders.

18. CHANGE CONTROL

- 18.1 Either Party may propose changes to the scope of the Agreement but, except as provided for otherwise in the Agreement, no proposed changes shall come into effect until a relevant change document has been signed by both parties (a **Change Order**). A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- 18.1.1 the provision of the relevant Services;
 - 18.1.2 the Charges;
 - 18.1.3 any agreed timetable for delivery; and
 - 18.1.4 any other relevant terms of the Agreement.

- 18.2 If the parties:
- 18.2.1 agree to a Change Order, they shall sign it and that Change Order shall amend the relevant part of the Agreement; or
 - 18.2.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 20.16.
- 18.3 The parties shall act reasonably and promptly when considering any change that is required as a result of a change in Applicable Law and Xiatech shall be free to adjust the Charges to reflect any reasonable and demonstrable increase in its own costs resulting from the change in Applicable Law.

19. GENERAL

- 19.1 Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- 19.2 If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. For clarity, in such instances, 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.
- 19.3 Except as provided for otherwise, no variation of this Agreement shall be effective unless it is in writing and signed by the parties.
- 19.4 Xiatech shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Xiatech or any other party), epidemics, pandemics or government restrictions, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (including any Third Party Providers) but excludes any circumstance that may impact the Customer's ability to pay the Charges and/or retain any minimum order quantities (**Force Majeure Event**).
- 19.5 Any notice given under or in connection with this Agreement shall be in writing and shall be sent to the relevant email addresses provided by each party in a Work Order. Any email notices shall be deemed to have been received at the time of transmission. This clause does not apply to the service of any proceedings or other documents in any legal action which will be sent to the registered address of each party.
- 19.6 This Agreement and any documents referred to in it constitute the entire agreement and understanding of the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 19.7 The parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of the Agreement other than those that are expressly stated in the Agreement.
- 19.8 Neither party shall have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement, unless the statement was made fraudulently.
- 19.9 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.
- 19.10 This Agreement is personal to the Customer and the Customer shall not assign, subcontract or deal with any right or obligation under this Agreement to any person.
- 19.11 Xiatech may at any time:
- 19.11.1 assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Agreement. For clarity, the Customer shall provide Xiatech with all assistance reasonably requested by Xiatech to ensure that Xiatech takes full benefit of this clause; and/or
 - 19.11.2 sub-contract any of its obligations under the Agreement provided that it remains responsible for the acts or omissions of the subcontractors as if they were acts or omissions of Xiatech.
- 19.12 This Agreement is not intended give rise to any rights under the Contracts (Rights of Third parties) Act 1999. The rights of the parties to rescind or vary this Agreement is not subject to the consent of any other person.
- 19.13 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.14 The Agreement shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to it any documentation submitted by the Customer, or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing, unless specifically excluded or varied in writing by a director or other authorised representative of both parties.
- 19.15 If there is any conflict or inconsistency between any of the provisions of the Agreement, then the conflict or inconsistency shall be resolved by giving the documents the following order of precedence (with the earlier mentioned documents taking priority):
- 19.15.1 any terms contained within a Third Party Agreement that impact upon rights or obligations under the Agreement;
 - 19.15.2 any Special Conditions in a Work Order;
 - 19.15.3 the Legal Terms; and
 - 19.15.4 any Work Orders entered into by the parties.

- 19.16 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- 19.16.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, suitably senior representatives of the Customer and of Xiatech shall attempt in good faith to resolve the Dispute;
- 19.16.2 if such representatives are for any reason unable to resolve the Dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive Officer of the Customer and [Chief Executive Officer] of Xiatech (or their appointed deputies) who shall attempt in good faith to resolve it; and
- 19.16.3 if for any reason they are unable to resolve the Dispute within 10 days of it being referred to them, the matter shall be referred to in the courts in accordance with clause 20.18, provided that nothing shall prevent Xiatech from commencing or continuing court proceedings in relation to any Dispute where Xiatech considers it is reasonable to do so despite not completing the process set out in this clause 20.16.
- 19.17 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.18 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement.