

**TEK**enable

# MASTER SERVICES CONTRACT

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May 2024



16/05/2024

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### Version Control

VERSION	Date	Comments
1	20 <sup>th</sup> oct 2021	Moved from old format (later updated in brand/logo etc only)
2	5 <sup>th</sup> May 2023	Added AI considerations (definition and specific clause)
3	29 <sup>th</sup> May 2023	TEKenable's address changed.
4	16 <sup>th</sup> May 2024	Added Dispute Resolution Process (Section 21) and Miscellaneous provisions (Section 22).  Renamed Master Services Agreement to Master Services Contract. Standardised interchangeable references to "Agreement", "Terms and Conditions" and "Contract" to just "Contract".



## CONTRACT TERMS AND CONDITIONS

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### TEKENABLE LTD.

### TERMS & CONDITIONS

The following Terms and Conditions of TEKenable Limited (“**TEKenable**”) shall constitute the entire agreement (the “**Contract**”) between TEKenable and The Customer the ‘**Customer**’. The Contract shall not be amended, substituted or superseded by any other terms and conditions of any other party. The only amendments to the Contract shall be contained in the Statement of Work Document(s) and the Proposal Document.

#### Parties

- (1) **TEKenable Limited** incorporated and registered in Ireland with company number 353921 whose registered office is at 17 Clanwilliam Terrace, Grand Canal Quay, Dublin 2, Republic of Ireland ( “**TEKenable**”)
- (2) **XXXXXXXXXX** incorporated and registered in **XXXXXXXXXX** with company number **XXXXXX** whose registered office is at **XXXXXXXXXX** ( “**Customer**”)

#### Background

- (A) TEKenable has expertise in the provision of services including but not limited to software consulting, development, support and digital transformation services.
- (B) In reliance on that expertise, Customer wishes to appoint TEKenable on the terms and subject to the conditions set out in this Master Services Contract to provide, subject to the entering into of applicable Statements of Work, agreed Services.
- (C) When Customer requests such Services from TEKenable the relevant parties will enter into a separate Statement of Work in accordance with this Contract.
- (D) Each Statement of Work will incorporate the terms and conditions set out in this Contract and constitute a separate sub-agreement under and subject to this Contract.



## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Contract (unless the context requires otherwise):

**“Acceptance Tests”** means (where applicable) the tests agreed between the Customer and TEKenable and performed by TEKenable and the Customer in order to evidence that the Services operate in accordance with the Statement of Work Document(s).

**“Artificial Intelligence” and “AI”** means Software that is or has been taught or learnt by example to achieve an intended outcome rather than having a defined algorithm that can achieve that outcome without teaching including but not limited to Machine Learning, Deep Learning, Generative Deep Learning and Neural Networks of any form or implementation;

**“Completion”** means the Services and Software (if any) have successfully passed the Acceptance Tests in accordance with Clause 7.1;

**“Customer”** means the company, companies, person or persons named in the Statement of Work Document(s) and if more than one party is named, each party named shall have a joint and several liability under the terms of this Contract;

**“Customer Group”** means the Customer and each Customer Group Affiliate;

**“Customer Group Affiliate”** means an entity that Controls, is Controlled by, or is under common Control with the Customer, where “Control” means the legal power to control (directly or indirectly) the management of an entity (and “Controlled” should be construed accordingly);

**“EURIBOR”** means the rate at which euro interbank term deposits within the euro zone are offered by one prime bank to another prime bank as defined by Euribor FBE;

**“Final Documentation”** means the report and/or representation and/or software that is delivered to the Customer by TEKenable when it has completed its performance of the Services;

**“Statement Of Work”** means the document supplied to the Customer by TEKenable containing details of the Services and Software (if any) to be supplied by TEKenable to the Customer.

**“Services”** means the business, technical, development and creative consultancy services, the project management, application development, functional specifications and system testing services, support and maintenance services to be provided by



TEKenable to the Customer, the details of which are set out in the Statement of Works to be agreed from time to time with the customer;

**“Software”** means the computer software, all programmes and all associated media, any printed materials and any outline or electronic documentation in a reproducible form which are listed in the Statement of Work;

**“TEKenable Group”** means the TEKenable and each TEKenable Group Affiliate;

**“TEKenable Group Affiliate”** means an entity that Controls, is Controlled by, or is under common Control of TEKenable, where "Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" should be construed accordingly) and any Subsidiary of a TEKenable Group entity;

**“Subsidiary”** has the same meaning as in Section 155 of the Companies Act, 1963.

## 1.2 Interpretation

In this Contract unless the context requires otherwise, any reference to:

- (a) This Contract shall include the Proposal Document and this Contract;
- (b) TEKenable or the Customer includes any assignee or transferee as permitted by this Contract or any successor in title to any thereof;

## 2 PROVISION OF SERVICES

- 2.1 TEKenable agrees to provide the Services and the Software (if any) to the Customer subject to the provisions of this Contract.
- 2.2 The Customer acknowledges that the dates and timeframes set out in the Statement of Work Document(s) are estimates only of the dates and timescales required for the provision of the Services. However TEKenable will use its reasonable efforts and commit such resources as may be required in order to try and achieve the dates and timescales set out.
- 2.3 TEKenable shall provide the Services to the Customer and the Customer may use the Services itself and for the benefit of any and all of the Customer Affiliates, and the Customer may make available the Services for direct use by the Customer Affiliates. TEKenable accordingly acknowledges that the Services are provided for the benefit of the Customer Affiliates as well as the Customer.
- 2.4 The Customer shall be responsible for compliance by the Customer Affiliates with the Contract.



- 2.5 Any references in the Contract to the Customer receiving and using Services and to Customer systems, business, suppliers, customers and similar, shall be deemed to be also a reference to each of the Customer Affiliates receiving and using the Services and to each of the Customer Affiliates' systems, business, suppliers, customers and similar, if and to the extent that a Customer Affiliate is using the Services.
- 2.6 If a Customer Affiliate no longer qualifies as a Customer Affiliate, that Affiliate shall no longer have any right to use the Services and the Customer shall ensure that such former Affiliate ceases to use the Services (including deleting any software and/or licenses or any other consequences of terminations required by the Contract).
- 2.7 TEKenable acknowledges that each of the Customer Affiliates may act as data controller and/or data exporter and that any provisions in the Contract relating to Customer as data controller or data exporter shall be directly applicable as between the relevant data controller and/or data exporter and TEKenable as data processor and/or data importer.
- 2.8 The Customer may itself, on behalf of each or any of the Customer Affiliates, enforce any term of the Contract which is expressly or impliedly intended to benefit the Customer Affiliates. The Customer shall be entitled to recover losses on behalf of each or any of the Customer Affiliates as if the relevant losses had been suffered by the Customer itself under the Contract, subject to the exclusions and limitations set out in the Contract which shall apply in the aggregate to any losses suffered by the Customer and/or any of the Customer Affiliates). None of the Customer Affiliates shall have a right to enforce any term of the Contract directly.
- 2.9 Notwithstanding article 2.8, the exercise of the parties' rights under this Contract is not subject to the consent of any third party.

### 3 CUSTOMER'S OBLIGATIONS

- 3.1 The Customer undertakes to provide TEKenable with access to the facilities and offices of the Customer, a suitable place(s) of work, all necessary information, support and co-operation (including ensuring that employees and independent contractors of the Customer co-operate fully with TEKenable), appropriate machine configuration and software products and appropriate access to relevant computers and systems and all other reasonably required supplies, resources and amenities.



- 3.2 The Customer will, where necessary, secure for TEKenable a non-exclusive licence to use, copy, modify and create derivative works of any software in the possession of the Customer to the extent that such software needs to be used, copied, modified and/or derivative works need to be created by TEKenable in order to provide the Services.

## 4 OWNERSHIP, LICENCE AND USE

The parties acknowledge and agree that:

- 4.1 the Customer shall follow all reasonable instructions given by TEKenable from time to time with regard to the use of trade marks owned by TEKenable and/or third party licensors and other indications of the property and rights of TEKenable and/or third party licensors;
- 4.2 title, copyright and all other proprietary rights, interest and benefit in and to the Software (if any) supplied by TEKenable to the Customer and all parts and copies of such Software is and shall be owned by, and shall remain at all times vested in, TEKenable and/or third party licensor(s) until and subject to the Customer having discharged all fees and expenses owing to TEKenable, title, copyright and all other proprietary rights, interest and benefit in and to the Final Documentation shall pass to, and shall remain at all times vested in the Customer.
- 4.3 in circumstances where a third party is the owner/licensor of the intellectual property rights in any Software supplied under this Contract, TEKenable shall (i) grant to the Customer a sub-licence to use such computer programs in accordance with the provisions of the licence agreement between TEKenable and the third party licensor, or (where applicable) (ii) furnish the Customer with the end-user licence issued by the third party licensor;
- 4.4 the Customer is solely responsible for instituting and operating all necessary back-up procedures on its own systems to ensure that data integrity can be maintained in the event of loss of data for any reason; and
- 4.5 A complete copy of the Software and all required libraries can be provided to the Customer after each software release and on demand.

## 5 ACCEPTANCE AND COMPLETION

- 5.1 Where there is provision for the delivery of Software by TEKenable to the Customer, the Customer shall accept (and in default shall be deemed to accept) the Services to be supplied pursuant to this Contract on the date that such Software passes the Acceptance Tests.



- 5.2 Where there is provision for consultancy services (without any provision for the delivery of Software) as the Services being provided by TEKenable to the Customer, the Customer shall accept (and in default shall be deemed to accept) the Services to be supplied pursuant to this Contract on the date that TEKenable delivers the Final Documentation to the Customer.
- 5.3 Where the Customer fails to accept the Final Documentation within one month of delivery and resolution of any reported and agreed faults the software will be deemed to have been accepted and payment will fall due.

## 6 PAYMENT

- 6.1 The Customer shall pay to TEKenable the fees and charges and any associated Value Added Tax on the due date/time for payment set out in the various Statement of Work document(s).
- 6.2 The Customer shall be responsible for discharging all reasonable expenses incurred by TEKenable in connection with the provision of the Services including, but not limited to, travel to and from the Customer's sites, hotel charges, couriers, freight, data connection charges and any other expenses reasonably incurred in connection with the provision of the Services and this Contract. Expenses shall be billed to the Customer monthly in arrears and shall be paid by the Customer within thirty days of the date of invoice. TEKenable shall obtain the customers prior agreement before incurring expenses exceeding €100.
- 6.3 If the payment of any sum due under this Contract shall not be paid by its due date, TEKenable shall be entitled to charge interest at 2% above EURIBOR on the amount of the delayed payment for the period of delay. Notwithstanding any other provision of this Contract, in the event that any sum due by the Customer under or in connection with this Contract is not paid within 7 business days of the due date, TEKenable may, at its option and without prejudice to any rights it may have under this Contract or otherwise, suspend performance of its obligations under this Contract.
- 6.4 TEKenable reserves the right to increase its charges for providing the Services and Software (if any) to reflect any increase in costs to TEKenable which is due to changes in delivery dates, quantities or specifications requested by the Customer or any variations agreed in respect of the Statement of Work Document(s) in accordance with Clause 15 or any delays caused by any instructions of the Customer or the Customer's failure to perform its obligations under this Contract or to give adequate information or instructions to TEKenable. The Customer agrees to pay all increased charges levied on it in accordance with this clause 6.4.





- 6.5 If the Customer terminates the Contract in advance of Completion, except by virtue of a termination of the Contract by the Customer by reliance on the provisions of Clause 12 (b) – (e) inclusive, the Customer shall be obliged to pay TEKenable for all TEKenable’s fees,
- 6.6 charges and expenses arising in respect of Services undertaken and Software provided by TEKenable to the date of termination. To calculate fees and charges for the purpose of this Clause, TEKenable shall provide the Customer with details of the rates it charges for TEKenable’s personnel per each day of work in the Statement of Work Document(s) and its charges shall be calculated accordingly. The Customer must arrange for payment to TEKenable within 15 days of the date of the invoice.

## 7 WARRANTIES AND REPRESENTATIONS

- 7.1 Subject to the limitations on liability set out in clauses 8 and 20, TEKenable warrants to the Customer that for a period of thirty (30) days after Completion, when used correctly the Software shall perform in substantial conformity with any specifications or performance criteria published in any documentation provided by TEKenable to the Customer with the Software. The warranty set out in this clause shall not apply in circumstances where the Customer has varied, amended or added to the Software or the source code contained therein.
- 7.2 Subject to the limitations on liability set out in clause 8, TEKenable represents and warrants that all services to be provided by TEKenable under this Contract shall be provided by appropriately qualified and trained personnel and such services shall be rendered with reasonable care and skill.
- 7.3 The Customer shall give notice to TEKenable as soon as practicable upon becoming aware of any breach of warranty set out in Clauses 7.1 and 7.2. TEKenable shall after receipt of notice of a breach of warranty use all reasonable endeavours to remedy the same by the correction of any errors or defects. The Customer’s exclusive remedy for breach of warranties in Clauses 7.1 and 7.2 is set out in this Clause.
- 7.4 TEKenable does not warrant that the operation of the Software or any Services to be supplied under this Contract will achieve any intended result or will be uninterrupted or error free, but subject to this, TEKenable does warrant that they will comply with the Statement of Work Document(s).
- 7.5 The warranties set out in this Clause 7 shall not apply to any third party software (either separate from the Software or contained within the Software) that is supplied under or in connection with this Contract. Any warranty that is provided by the third party, unless restricted by the third party, will be passed to the benefit of the Customer.



- 7.6 Except as expressly set forth in this Contract, all warranties, conditions, representations, statement, terms and provisions express or implied by statute, common law or otherwise are excluded to the greatest extent permitted by law.

## 8 INDEMNITIES

- 8.1 TEKenable shall indemnify the Customer against all reasonable damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any third party intellectual property rights in consequence of the authorised use or possession of the Software and/or Final Documentation supplied by TEKenable under this Contract, subject to the following:-

- i. The Customer shall promptly notify TEKenable in writing of any alleged infringement of which it has notice;
- ii. the Customer gives TEKenable full and complete information and assistance to enable TEKenable to defend any claim or proceeding;
- iii. the Customer must make no admissions without TEKenable's prior written consent;
- iv. the Customer, at TEKenable's request and expense, shall permit TEKenable to conduct any negotiations or litigation and/or settle any claim and will give TEKenable all reasonable assistance in this regard. The costs incurred or recovered in such negotiations or settled claim shall be for TEKenable's account.

- 8.2 If at any time an allegation of infringement of intellectual property rights is made in respect of the Software and/or Final Documentation or, if in TEKenable's reasonable opinion such an allegation is likely to be made, TEKenable shall have the right at its own expense to modify or replace the Software and/or Final Documentation so as to avoid the infringement, without detracting from overall performance.

- 8.3 The indemnity set out in paragraph 8.1 shall not apply, and TEKenable shall have no liability thereunder:

- (a) in respect of any intellectual property infringement which results from the use of any third party software or hardware (excluding, without limitation, any third party software and hardware supplied by TEKenable pursuant to this Contract);
- (b) in respect of any intellectual property infringement which results from any amendments and/or modifications and/or derivative works made by the Customer (or any person other than TEKenable) to the Software (or the source code contained therein) or any other deliverables; or



- (c) to the extent that the alleged infringement arises from (i) the combination of the Software with any other software or hardware not supplied by TEKenable, where the Software would itself not infringe absent such combination, or (ii) the use of the Software in an application or environment, or for a purpose, not described in the Statement of Work Document(s); or
- (d) in circumstances where paragraph 8.5 applies.
- 8.4 Each party agrees to pay, assume liability for, and indemnify, protect, defend, save and keep harmless the other party, its successors, assigns, shareholders, subsidiaries, directors, employees, servants and agents (collectively **"Indemnitees"**, and each an **"Indemnitee"**) from and against any and all liabilities, obligations, damages, losses, settlements, claims, actions, suits, penalties, costs and expenses or indemnity payments required to be made by an indemnity of whatsoever kind and nature (any of the foregoing being referred to as a **"Claim"**) which may from time to time be imposed on, incurred by or asserted against an Indemnitee (whether or not any such Claim is also indemnified or insured against by any other person) resulting from or which may arise out of the act, default or negligence of the Customer or TEKenable (as appropriate), its successors, assigns, shareholders, subsidiaries, directors, employees, servants and agents or a breach or default by the Customer or TEKenable under this Contract provided that the foregoing indemnity shall not extend to any Claim made by an Indemnitee to the extent that such Claim is caused by the wilful or fraudulent misconduct or gross negligence of the Indemnitee.
- 8.5 Separate to the indemnity in paragraph 8.4, the Customer shall indemnify the Indemnitees against all damages, costs, charges and expenses arising from or incurred by reason of any work done by the Indemnitees in accordance with the Customer's specifications or instructions or the use by the Indemnitees of any information, data or material supplied by the Customer which infringes third party intellectual property rights subject to the provision of paragraph 8.1 (i) – (iv) applying parri passu for the benefit of the customer.

## 9 TEKenable - LIMITATION OF LIABILITY

- 9.1 Save in respect of death or personal injury caused by the gross negligence of TEKenable, TEKenable's maximum aggregate liability for all claims whether in contract, tort (including negligence) or otherwise, for any loss or damage, arising out of or in connection with this Contract or otherwise shall not exceed the sums paid by the Customer under this Contract in the proceeding twelve months.



- 9.2 In no event shall TEKenable be liable for special, incidental, punitive, exemplary, indirect or consequential damages of any kind including, without limitation, damages or costs incurred as a result of loss of time, loss of savings, loss of data or loss of profits.
- 9.3 If TEKenable, at the Customer's request, provides details of other service providers to the Customer, TEKenable makes no representation whatsoever in respect of any such third party service provider's ability to undertake the work required by the Customer or in respect of that third party service provider's reliability, trustworthiness or otherwise. TEKenable shall have no liability whatsoever (contractual or otherwise) to the Customer in respect of the third party service provider's delivery or failure to deliver any work or services required by the Customer.

## 10 CONFIDENTIALITY

- 10.1 TEKenable and the Customer shall keep confidential any information relating to the business, affairs, plans or products of the other party designated as "confidential" or which ought reasonably to be regarded as confidential which is obtained under or in connection with this Contract ("**Confidential Information**") and shall not divulge the same to any third party without the prior written consent of the other party.
- 10.2 The provisions of this Clause shall not apply to
- (a) any information in the public domain otherwise than by breach of this Contract; or
  - (b) information in the possession of the receiving party before disclosure as aforesaid; or
  - (c) information obtained from a third party who is free to divulge the same; or
  - (d) information which is deemed by law to constitute the acquired skill, knowledge and know-how of TEKenable; or
  - (e) information which is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory authority.
- 10.3 TEKenable and the Customer agree that the Confidential Information will be used by each of them exclusively for the purpose of the provision of Services under this Contract provided, however, that part or parts of the Confidential Information may be disclosed to such of their respective directors, officers and legal, financial and other advisers who need to have such information for the said purpose (it being further agreed that the parties will inform such directors, officers and advisors of the confidential nature of such information.)



10.4 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Contract.

## 11 TEKenable – FREEDOM OF IDEAS AND FREEDOM TO CONTRACT

11.1 Subject to the confidentiality obligation set out in Clause 10, nothing in this Contract will operate to prevent TEKenable from engaging in other consultancy or project management activities or from developing and providing materials or services to others that are similar to those developed and provided to the Customer hereunder.

11.2 Subject to the confidentiality obligations set out in Clause 10, nothing in this Contract shall prevent TEKenable from developing and using any techniques, ideas, concepts, information or know-how in the provision of services to other parties (including, without limitation, the techniques, ideas, concepts, information or know-how utilised by it in the provision of the Services).

## 12 TERMINATION

12.1 The obligations of the parties under this Contract shall terminate on Completion. Notwithstanding the last sentence, this Contract may be terminated by either party in accordance with paragraph 12.2 (but without prejudice to the continuation of the indemnities set out in Clause 8 and of the obligation of confidentiality in Clause 10).

12.2 This Contract may be terminated forthwith by either party (save in the case of (a) below, when TEKenable only may terminate), on notice in writing to the other party stating that the Contract is thereby terminated, if and to the extent only that the material breach is continuing, unremedied or unwaived:

(a) *non-payment*: any sum due by the Customer under or in connection with this Contract is not paid within 7 business days of the due date,

(b) *breach of obligations*: a party fails to comply to a material extent with any of its obligations or undertakings hereunder (but excluding for this purpose non-payment by the Customer which falls within (a) above) and, in the case of a failure capable of being remedied, the non-defaulting party does not determine, within 21 days of the non-defaulting party giving notice to the defaulting party or the defaulting party becoming aware of such non-compliance, that it has been remedied to the non defaulting party's satisfaction;



- (c) *misrepresentation*: any representation, warranty or statement made or deemed to be made by a party in this Contract is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;
  - (d) *insolvency proceedings*: any corporate action, legal proceedings or other procedure or step is taken in relation to (i) a suspension of payments, a moratorium of any indebtedness, examination, winding-up, dissolution, administration or reorganisation of TEKenable or the Customer, or (ii) a composition, assignment or arrangements with any creditor of TEKenable or the Customer [or a Customer Group Affiliate], or (iii) the appointment of an examiner, liquidator, receiver, trustee or other insolvency or similar officer in respect of TEKenable or the Customer [or a Customer Group Affiliate] or any of its or their assets, or (iv) any analogous procedure or step is taken in any jurisdiction;
  - (e) *enforcement proceedings*: a distress, attachment, execution, sequestration or other legal process is levied, issued, enforced or sued out on or against any asset or assets of the relevant party having an aggregate value of €100,000 and the same is not discharged or stayed within seven (7) days;
- 12.3 Termination of this Contract shall not prejudice any rights of either party which may have arisen on or before the date of termination.
- 12.4 Notwithstanding any other right of TEKenable under this Contract, if TEKenable terminates this Contract, TEKenable may, at its absolute discretion, and without prejudice to any rights it may have under this Contract or otherwise, send a notice in writing to the Customer declaring all sums (and interest thereon) then payable under this Contract to be immediately due and payable, whereupon they shall become so due and payable.
- 12.5 If TEKenable terminates this Contract, by reliance on the provisions of Clause 12 (a) – (e) inclusive then, within seven days following the date of termination, the Customer shall at the option of TEKenable return or destroy all copies, forms and parts of the Software, and other deliverables supplied pursuant to this Contract for which payment has not been made in full and shall certify to TEKenable in writing that this has been done.
- 12.6 Where a minimum term of engagement is specified in the Statement of Work Document(s), termination of this Contract before completion of that term shall entitle TEKenable to receive from the Customer a fee equal to 25% of the fees relating to the incomplete term save where terminated under clause 12.2 parts (b), (c), (d) or (e).



- 12.7 On the request of the Customer TEKenable will facilitate the transfer of responsibility for the Software either to the Customer or another third party. TEKenable will facilitate this through provision of all reasonable resources and documentation the provision of which will be subject to payment at the agreed payment rates prevailing.

### 13 FORCE MAJEURE

- 13.1 If and to the extent that either party (the **"Affected Party"**) is hindered or prevented by circumstances not within its reasonable ability to control, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, trade disputes, strikes, lockouts, pandemic, acts or omissions of Governments or other competent authority, acts of terrorism, war, military operations, acts or omissions of third parties for whom the Affected Party is not responsible (**"Force Majeure"**) from performing any of its obligations under this Contract, the Affected Party shall be relieved of liability for failure to perform such obligations.
- 13.2 The Affected Party shall promptly notify the other party (the **"Other Party"**) of the estimated extent and duration of such inability to perform its obligations (the **"Force Majeure Notification"**) and, upon the cessation of the event of Force Majeure, the Affected Party shall notify the Customer of such cessation.
- 13.3 If the event of Force Majeure shall continue for more than 45 days, then either party shall have a right to terminate this Contract on written notice to the other party.

### 14 NON-SOLICITATION OF EMPLOYEES

- 14.1 During the term of this Contract and for a period of one (1) year thereafter, both parties agree not to solicit, induce, attempt to hire or hire any employee or subcontractor of the other party involved in performing this Contract, or assist in such hiring by any other person or business entity or encourage any such employee to terminate his or her employment with the other party, without prior written consent of the other party. If the Customer breaches this Clause, it shall pay to TEKenable compensation equal to 200% of the annual remuneration paid or agreed to be paid to any such employee or sub-contractor by TEKenable. The Customer acknowledges that (a) TEKenable has a valid interest in maintaining a stable workforce; (b) this provision is reasonably tailored to that purpose; and (c) the liquidated damages amount is a reasonable approximation of the costs and damages that TEKenable would incur as a result of such action by the Customer.





## 15 VARIATIONS

- 15.1 If the Customer wishes to make a variation to the Statement of Work Document(s) before Completion by TEKenable, then the Customer shall promptly arrange a meeting with TEKenable to discuss such variation.
- 15.2 TEKenable shall then submit to the Customer as soon as reasonably practicable, a written quotation for such variations, additions or modifications specifying the changes (if any) which will be required to the charges set out in the Terms & Conditions and the adjustments which will be required to the Statement of Work Document(s) (including, without limitation, to the time frames for the carrying out and completion of the Services).
- 15.3 Within fourteen days of such quotation, the Customer may elect by notice in writing to TEKenable either:
- (a) to accept such quotation in which case this Contract shall be amended accordingly; or
  - (b) to withdraw the proposed variations in which case this Contract shall continue in force unchanged.
- 15.4 TEKenable reserves the right, as it may deem necessary or appropriate, to modify or change the specifications of any Services ordered by the Customer prior to delivery, provided that such modifications or changes do not materially and adversely affect the performance of the Services.

## 16 WAIVER

- 16.1 No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of this Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract.

## 17 NOTICES

- 17.1 Any notice served under this Contract shall be sufficiently served if sent by post or facsimile to the usual or last known place of business of the addressee and proof of despatch in the case of a letter, and receipt of a successful transmission report in the case of a facsimile transmission, shall be conclusive evidence of receipt by the addressee in due course of transmission.

## 18 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

- 18.1 The Customer shall not be entitled to assign or transfer any of its rights and/or obligations under this Contract without the prior written consent of TEKenable, save that TEKenable acknowledges that the Customer may exercise its rights and fulfil its obligations under this Contract through any other associated company within the Customer Group.





- 18.2 TEKenable shall be entitled to assign and/or sub-contract any of its rights and/or obligations under this Contract subject to approval by the Customer.

## 19 DATA PROTECTION

- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and TEKenable is the processor. Each Statement of Work Document sets out the scope, nature and purpose of processing by TEKenable, the duration of the processing and the types of personal data and categories of data subject.

### 19.3 Processing of Personal Data

- 19.3.1 Processor shall:
- (a) comply with all applicable Data Protection Laws in the Processing of Personal Data; and
  - (b) not Process Personal Data other than on the relevant Customer's documented instructions.
- 19.3.2 The Customer instructs Processor to process Personal Data.

### 19.4 Processor Personnel

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Contract, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

### 19.5 Security

- 19.5.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to the Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 19.5.2 In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.



**19.6 Data Subject Rights**

19.6.1 Taking into account the nature of the Processing, Processor shall assist the Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

19.6.2 Processor shall:

- (a) promptly notify Customer if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and
- (b) ensure that it does not respond to that request except on the documented instructions of Customer or as required by Applicable Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Applicable Laws inform Customer of that legal requirement before the Contracted Processor responds to the request.

**19.7 Personal Data Breach**

19.7.1 Processor shall notify Customer without undue delay upon Processor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

19.7.2 Processor shall co-operate with the Customer and take reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

**19.8 Data Protection Impact Assessment and Prior Consultation**

19.8.1 Processor shall provide reasonable assistance to the Customer with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors

**19.9 Deletion or return of Customer Personal Data**

19.9.1 Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Customer Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Customer Personal Data save as may be held in systems of data backup where removal is not practical.



19.9.2 Processor shall provide written certification to Customer that it has fully complied with this section 19.9 within 10 business days of the Cessation Date.

#### **19.10 Audit Rights**

19.10.1 Subject to this section 19.10 Processor shall make available to the Customer on request all information necessary to demonstrate compliance with this Contract, and shall allow for and contribute to audits, including inspections, by the Customer or an auditor mandated by the Customer in relation to the Processing of the Customer Personal Data by the Contracted Processors.

19.10.2 Information and audit rights of the Customer only arise under section 19.10.1 to the extent that the Contract does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

#### **19.11 Data Transfer**

19.11.1 The Processor may not transfer or authorize the transfer of Data to countries outside the EU and/or the European Economic Area (EEA) without the prior written consent of the Customer. If personal data processed under this Contract is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU approved standard contractual clauses for the transfer of personal data.

19.11.2 The Customer hereby gives consent for access to data and the processing of that data by TEKenable Group from countries outside of the EU and/or the EEA on the understanding that TEKenable will ensure the adequate protection of that data per the EU approved standard contractual clauses, that the processing is for the purposes of data migration, reporting, data analytics, operational support, business user support, fault investigation or any other activity requested by the Customer or necessary for the smooth operation of the Software and that the systems on which the data is held and processed for its primary function are located in the EU or EEA.

#### **19.12 General Terms**

19.12.1 The Processor shall indemnify the Customer against any loss, damage, costs (including legal costs), expenses and/or losses suffered or incurred by the Customer in relation to, or arising from, any breach by TEKenable of its obligations under this clause 19 or under the Data Protection Legislation. Subject to clause 9, the liability of TEKenable under this clause 19.12.1 shall be limited to the total amount of Fees paid pursuant to this Contract for the twelve month period immediately prior to the date of the event giving rise to the claim.



## 20 USE OF ARTIFICIAL INTELLIGENCE

- 20.1 The Customer accepts that Artificial Intelligence is not guaranteed to achieve the desired or any specific outcome in all circumstances and that the Artificial Intelligence can be expected to generate incorrect or undesirable results from time to time. This is not a failure of the Software but a characteristic of Artificial Intelligence, the model and algorithms used and the training data applied.
- 20.2 TEKenable excludes liability to the greatest extent possible in law for any undesirable consequences arising from the operation, incorrect operation or non-operation of Artificial Intelligence in our Software.
- 20.3 The Customer accepts that the use of any Artificial Intelligence in the Software must be undertaken in an ethical, non-discriminatory manner and in particular will not be used to deliberately cause harm or offense and will be designed and operated in a fair and unbiased manner to prevent discrimination on the basis of race, gender, age, or other protected characteristics.
- 20.4 The Customer accepts that where there is potential to cause harm or offense the Artificial Intelligence in the Software must be subject to human oversight and not permitted to operate autonomously.

## 21 DISPUTE RESOLUTION

- 21.1 All disputes between the parties arising out of or in any way relating to this Contract shall in the first instance be referred by either Party to their representatives listed in the Proposal. Wherever possible, the Parties shall attempt to resolve all disputes which may arise from time to time expeditiously and informally. When a dispute arises, the Parties agree that, unless stated otherwise in this Contract, they shall continue to perform their obligations under this Contract until such time as the dispute has been resolved or adjudicated or such obligation has expired by reason of the termination or expiry of this Contract
- 21.2 If the procedure referred to in clause 21.1 does not achieve a resolution of the dispute within ten (10) Business Days from the referral of the dispute to the respective nominated representatives, either Party may give notice to the other Party requesting that the dispute be resolved by mediation (the "Mediation Request"). In the event the Parties do not agree upon the mediator within [seven] days of the Mediation Request, the mediator will be selected by the Chair for the time being of the Chartered Institute of Arbitrators – Irish Branch. The fees of the mediator shall be borne equally by the parties.



- 21.3 In the event the Dispute is not resolved through the process identified at clause 21.2 above within ten (10) Business Days of the Mediation Request, the Parties agree that the dispute shall be resolved by arbitration in accordance with the Arbitration Act 2010, before a single arbitrator to be selected by the Parties. In the event the Parties do not agree upon the arbitrator within [seven] days of the first Party's nomination, the arbitrator will be selected by the Chair for the time being of the Chartered Institute of Arbitrators – Irish Branch.
- 21.4 No Party may commence any court proceedings in relation to the dispute until it has completed the dispute resolution process set out in this clause 21 (Dispute Resolution) provided that nothing in this clause shall prevent a Party from seeking urgent interlocutory relief before the courts.
- 21.5 This Contract shall be governed by the laws of Ireland. The Parties submit to the non-exclusive jurisdiction of the courts of Ireland.
- 21.6 Wherever possible, the Parties shall attempt to resolve all disputes which may arise from time to time expeditiously and informally. For this purpose, disputes shall be addressed to each Party's Contact for discussion and resolution. When a dispute arises, the Parties agree that, unless stated otherwise in this Contract, they shall continue to perform their obligations under this Contract until such time as the dispute has been resolved or adjudicated or such obligation has expired by reason of the termination or expiry of this Contract.

## 22 MISCELLANEOUS

- 22.1 The captions and headings throughout this Contract are solely for the convenience of the Parties and are not to be used as an aid in the interpretation of this Contract.
- 22.2 Words in the singular shall be held to include the plural, and vice versa, unless the context otherwise requires.
- 22.3 All monetary amounts described in this Contract and all payments made under it shall be in Euro.
- 22.4 This Contract shall be binding upon and endure to the benefit of both Parties and their respective legal successors and assigns, as permitted under this Contract.
- 22.5 This Contract may be executed in counterparts, all of which counterparts when taken together shall constitute one single and duly executed Contract between the Parties.



## CONTRACT SIGNATORIES

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We appreciate the opportunity to deliver this contract. Please sign below and return to initiate the engagement.

SUBMITTED ON BEHALF OF **TEKENABLE LTD:**

Name: XXXXXXXXX

Signed:

Date: XXXXXXXX

**TEKenable Ltd.**

AGREED TO ON BEHALF OF **THE CUSTOMER,**

Name: .....

Signed:..... Date:.....

