



TERMS AND CONDITIONS

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Please read these Terms and Conditions carefully. All contracts that 3B may enter into from time to time for the provision of the Subscription Services and related Services shall be governed by these Terms and Conditions.

1. DEFINITIONS

1.1. Except to the extent expressly provided otherwise, in these Terms and Conditions:

"Account" means an account enabling a person to access and use the Subscription Services, including both administrator accounts and user accounts;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreed User Number" means the number of Users that may access and use the Subscription Services on behalf of the Client via a User's Account, as stated in the Subscription Services Specification (subject to Clause 12.3), but does not include individuals permitted by the Client or an Affiliate of the Client to use the 3B app;

"Agreed Worker Number" means the Worker Number as stated in the Subscription Services Specification (subject to Clause 12.3);

"Aggregated Data" means any non-personally identifiable, technical, statistical or analytical data gathered or generated directly by use of the Subscription Services, and which 3B collects, gathers and aggregates periodically as part of its services. For the avoidance of doubt, Aggregated Data will exclude any Client Personal Data and 3B will collect and use this information in accordance with its privacy policies and in accordance with applicable Data Protection Laws;

"Agreement" means a contract between the parties created by the Client executing an Order Form and comprising the Order Form, any Statement of Work, these Terms and Conditions, the Data Processing Addendum, the 3B SLA and the SFDC Service Agreement and any amendments to that contract from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Client" means the person or entity identified as such in Section 1 of the Order Form;

"Client Data" means all data, works and materials: uploaded to or stored on the Platform by the Client; transmitted by the Platform at the instigation of the Client; supplied by the Client to 3B for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Subscription Services by the Client (but excluding Aggregated Data);

"Client Indemnity Event" has the meaning given to it in Clause 18.3;

"Client Personal Data" means any Client Data comprising Personal Data and that is processed by 3B on behalf of the Client in the course of performing the Services, as described in more detail in the Data Processing Addendum;

"Client 3B Expert" means a member of the Client's staff designated by the Client to support the Client's staff with 3B-related needs and questions, as set out in section 1 of the Order Form (as may be updated by notice from the Client to 3B from time to time);

"Confidential Information" means any information disclosed by or on behalf of one party to the other at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been reasonably understood by the receiving party to be confidential; in the case of the Client, the Confidential Information includes the Client Data; in the case of 3B, Confidential Information includes the Platform, Subscription Services and the Documentation;

"Contract Year" means the 12 month period beginning on the Effective Date and on each anniversary of the Effective Date;

"Data Processing Addendum" means the data processing addendum located at [DPA with Salesforce] (if Client has a pre-existing Salesforce org or [DPA without Salesforce] (if Client does not have a pre-existing Salesforce org) and agreed to by the Client in the course of executing the Order Form, which sets out the data processing terms applicable to the Client Personal Data and the detail of the processing of Client Personal Data in connection with the Agreement and which includes the Standard Contractual Clauses;

"Data Protection Laws" means all laws relating to the processing of Client Personal Data that are applicable to the processing of Client Personal Data in connection with this Agreement during the Term, including the UK GDPR and, if the Client is established in a European Union or European Economic Area member state, the EU GDPR;

"Documentation" means the documentation for the Subscription Services produced by 3B and delivered or made available through the 3B Knowhow;

"Effective Date" means the date recorded on the Order Form;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) as may be updated, amended and superseded from time to time;

"Expenses" means expenses incurred by 3B consultants in the course of providing the Professional Services or Training Services;

"Fees" means the following amounts:

- (a) the amounts specified in Section 5 of the Order Form or as may be described elsewhere in these Terms and Conditions;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying 3B's standard time-based charging rates (as notified by 3B to the Client before the date of the Agreement) by the time spent by 3B's personnel performing the Support Services, Training Services or Professional Services;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Go Live Date" means the date on which the Subscription Services are scheduled to become available for use by the Client, as specified in the Statement of Work, or as amended in accordance with Clause 3.3 or Clause 3.4;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Subscription Services, and the application of Updates and Upgrades;

"Minimum Term" means one Contract Year or such other period specified in the Order Form;

"Mobile App" means the mobile application known as "3B Mobile App & Portals" that is made available by 3B through a direct download (Progressive Web App);

"Order Form" means an order form signed or otherwise agreed by or on behalf of each party, incorporating by reference these Terms and Conditions, the Statement of Work and other related documentation;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Platform" means the cloud-based workforce management platform managed by 3B and used by 3B to provide the Subscription Services, including the application and database software for the Subscription Services, the system and server software used to provide the Subscription Services; in the absence of any separate terms and conditions specifically governing the Mobile App, references to "Platform" will also include the Mobile App where the context permits;

"Professional Services" means the services related to the configuration, implementation and integration of the Subscription Services in accordance with the Statement of Work;

"Salesforce.org" means the virtual IT environment known as an "org" ordered by 3B from SFDC and provisioned for the Client's use (and for which 3B holds the rights and licence from SFDC) but unless expressly stated otherwise excludes any org provisioned by SFDC directly for the Client outside of these Terms and Conditions; for clarity, in either case, Client Data located on the Salesforce. org remains owned by the Client;

"SFDC" means Salesforce UK Limited (f/k/a salesforce.com EMEA Limited) or such other Salesforce group company from whom 3B orders the Salesforce.org (depending on server location);

"Services" means any services that 3B provides to the Client, or has an obligation to provide to the Client, under the Agreement, including Subscription Services, Professional Services, Training Services and Support Services;

"SFDC Service Agreement" means the terms and conditions pertaining to the use of the Salesforce.org(s) incorporated into the Order Form and as may be updated by Salesforce from time to time; Public link to the SFDC Agreement can be found on the address: https://www.salesforce.com/content/dam/web/en_us/www/documents/legal/salesforce_MSA.pdf

"3B" means 3B Limited, a private limited company incorporated in England and Wales with company number 14179565 whose registered office is at 3B Soft Ltd, 3rd Floor, 86-90 Paul Street, London, EC2A 4NE;

"3B Indemnity Event" has the meaning given to it in Clause 18.1;

"3B SLA" means the document delivered or made available to the Client setting out 3B's commitments regarding availability of the Subscription Services and the provision of Support Services and Maintenance Services for the Subscription Services;

"3B Training Manager" means a 3B consultant designated by 3B to act as a training manager for the purposes of delivering the Training Services, as set out in section 1 of the Order Form;

"3B Knowhow" means the online resources relating to the Services made available by 3B at https://3bknowhow.com/wiki/Main_Page as updated from time to time;

"Standard Contractual Clauses" means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, adopted by the European Commission pursuant to Commission Decision C(2010)593, completed with processing information relevant to the provision of the Services, and which are incorporated into the Data Processing Addendum;

"Statement of Work" or **"SOW"** means any statement of work incorporated by reference into the Order Form which details any configuration, implementation, integration and training services to be carried out by 3B and the timetable for such services;

"Subscription Services" means the 3B enterprise modules as specified in the Subscription Services Specification, which will be made available by 3B to the Client as a service via the internet in accordance with these Terms and Conditions;

"Subscription Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Subscription Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Client or any User;
- (b) any use of the Platform or Subscription Services contrary to the Documentation, whether by the Client or by any User;
- (c) a failure of the Client to perform or observe any of its obligations in the Agreement;
- (d) the Client choosing not to apply an Upgrade or Update to its production system through which the Subscription Services are accessed; and/or
- (e) an incompatibility between the Platform or Subscription Services and any other system, network, application, program, hardware or software not specified as compatible in the Subscription Services Specification;

"Subscription Services Specification" means the specification for the Platform and Subscription Services set out in Section 2 of the Order Form and in the Documentation;

"Supported Web Browser" means a browser specified as compatible in the Subscription Services Specification, or any other web browser that 3B agrees in writing shall be supported;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Subscription Services as set out in section 3 of the Order Form, and shall not include the provision of Training Services or the application of Updates or Upgrades;

"Term" means the term of the Agreement as described in Clause 2.1;

"Terms and Conditions" means the main body of these Terms and Conditions and the Schedules, including any amendments to either from time to time;

"Third Party Provider" means any third party providing products or services which are made available to the Client as part of the Subscription Services and which are identified in the Documentation or SOW;

"Training Services" means the provision of training to the Client's staff in relation to the use of the Subscription Services, as set out in the Statement of Work;

"UAT Date" means the date on which 3B is scheduled to make the Subscription Services available to the Client for user acceptance testing, as set out in the Statement of Work or any later date as notified by 3B pursuant to Clause 3.6;

"UK GDPR" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019), as may be updated, amended and superseded from time to time;

"Update" means a hotfix, patch or minor version update to any Platform software;

"Upgrade" means a major version upgrade of any Platform software;

"Users" means individuals authorised by the Client or an Affiliate of the Client or the Client's clients or their affiliates to access and use the Platform and Subscription Services;

"Worker" means any individual person who has had one shift or more assigned to him/her on the 3B Platform in a month; and

"Worker Number" means the average number of Workers per month as calculated by 3B at 6 months' intervals under Clause 12.3.

- 1.2. In these Terms and Conditions:
 - 1.2.1. a reference to a statute or statutory provision includes a reference to that statute or statutory provision as modified, consolidated and/or re-enacted from time to time and any subordinate legislation made under that statute or statutory provision;
 - 1.2.2. the Clause headings do not affect the interpretation of these Terms and Conditions;
 - 1.2.3. References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
 - 1.2.4. general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.
- 1.3. In the event of any conflict or inconsistency between the various documents comprising the Agreement, then the following order of precedence will apply to the extent necessary to resolve such conflict or inconsistency (highest to lowest):
 - 1.3.1. the Order Form;
 - 1.3.2. the Statement of Work;
 - 1.3.3. these Terms and Conditions;
 - 1.3.4. the 3B SLA;
 - 1.3.5. the DPA; and
 - 1.3.6. the SFDC Service Agreement.

2. TERM

- 2.1. The Agreement shall come into force upon the Effective Date and shall continue in force indefinitely, subject to termination in accordance with the Terms and Conditions.
- 2.2. Unless the parties expressly agree otherwise in writing, each Order Form shall create a distinct contract under these Terms and Conditions.

3. PROFESSIONAL SERVICES

- 3.1. 3B shall provide the Professional Services to the Client with reasonable skill and care.
- 3.2. 3B shall use all reasonable endeavours to ensure that the Professional Services are provided in accordance with the timetable set out in the Statement of Work.
- 3.3. The Client shall ensure that any delays to the Go-Live Date of which the Client becomes aware are promptly notified to 3B and in any event within 7 days of the Client becoming aware of the delay or the possibility of the delay. The Go-Live Date shall be extended to the extent that 3B is responsible for any delay to the Professional Services.
- 3.4. In the event that the Client is responsible for any delay to the Professional Services, 3B may determine (acting reasonably): (i) any extension to the Go-Live Date, provided that the Fees shall remain payable on the original due date; and (ii) any additional resources required for the Professional Services, for which the Client shall be charged at applicable Professional Services rates (on a time and materials basis).
- 3.5. The Client acknowledges that a delay in the Client performing its obligations under the Agreement may result in a delay in the performance of the Professional Services; and subject to Clause 19.1 3B will not be liable to the Client in respect of any failure to meet the Professional Services timetable to the extent that that failure arises out of a delay in the Client performing its obligations under the Agreement.
- 3.6. The Client may accept or reject the Professional Services in writing within 10 Business Days of the UAT Date. The Client shall be deemed to have accepted the Professional Services after 10 Business Days of the UAT Date if the Client has not confirmed its acceptance or rejection of the Professional Services in writing to 3B.

4. **SUBSCRIPTION SERVICES**
 - 4.1. 3B shall provide the Subscription Services to the Client from the Go-Live Date for the remainder of the Term with reasonable skill and care and in accordance with the Subscription Services Specification.
 - 4.2. 3B shall provide to the Client login details for the Accounts enabling Users to access the Platform and Subscription Services on or before the Go-Live Date.
 - 4.3. 3B hereby grants to the Client a worldwide, non-exclusive, non-transferable licence to use the Platform and Subscription Services by means of a Supported Web Browser in accordance with the Documentation for the following purposes:
 - 4.3.1. if the Client is contracting with 3B under the Agreement in its capacity as an employment agency, for the business purposes of the Client and its Affiliates, being the provision of workforce management services to its and its Affiliates' clients;
 - 4.3.2. if the Client is contracting with 3B under the Agreement in its capacity as an employer, for the internal workforce management purposes of the Client and its Affiliates.
 - 4.4. if the Client is contracting with 3B under the Agreement in its capacity as an employer, for the internal workforce management purposes of the Client and its Affiliates.
 - 4.4.1. subject to Clause 4.4.2, the Subscription Services may only be used by the officers, employees, agents and subcontractors of either the Client or an Affiliate of the Client;
 - 4.4.2. subject always to Clause 4.4.3, 3B may, on a case by case basis and subject to such terms and conditions that 3B may require from time to time, allow the Client's (or the Client's Affiliates') client access to the certain limited functionality of the Subscription Services;
 - 4.4.3. Accounts must not be shared or used by more than one individual User, provided that the Client may reassign Users' Accounts to new Users replacing former Users who no longer need to use the Subscription Services by using the Salesforce user management tools; the Client will be solely responsible for any User act or omission carried out through any Account and 3B will have no liability for any security breach which occurs as a result of such act or omission.
 - 4.5. Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by 3B to the Client under Clause 4.3 is subject to the following prohibitions:
 - 4.5.1. the Client must not sub-license its right to access and use the Subscription Services;
 - 4.5.2. the Client must not permit any unauthorised person to access or use the Subscription Services;
 - 4.5.3. the Client must not use the Subscription Services to provide services to third parties except to the extent permitted under Clause 4.3.1;
 - 4.5.4. the Client must not copy, republish, redistribute or create derivative works based on any content or material from the Subscription Services;
 - 4.5.5. the Client must not make any alteration to the Platform, except as permitted by the Documentation; and
 - 4.5.6. the Client must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Subscription Services without the prior written consent of 3B.
 - 4.6. The Client shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Subscription Services using an administrator Account.
 - 4.7. The parties acknowledge and agree that 3B SLA shall govern the availability of the Subscription Services.

- 4.8. The Client must comply with the SFDC Service Agreement, the Salesforce acceptable use policy and all other Salesforce terms of use applicable to the Client's use of the Platform ("Salesforce Terms") and ensure that Users comply with the Salesforce Terms.
- 4.9. The Client must not use the Subscription Services in any way that causes, or may cause, damage to the Subscription Services or Platform or impairment of the availability or accessibility of the Subscription Services.
- 4.10. The Client must not use the Subscription Services:
 - 4.10.1. in any way that is unlawful, illegal, fraudulent or harmful; or
 - 4.10.2. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.11. The Client has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.12. The Client shall be responsible for ensuring that all Users comply with the Documentation and the Terms and Conditions in connection with their access to and use of the Subscription Services and shall be liable to 3B for the acts and omissions of the Users in connection with their access to and use of the Subscription Services.
- 4.13. 3B may suspend the provision of the Subscription Services if any amount due to be paid by the Client to 3B under the Agreement is overdue, and 3B has given to the Client at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Subscription Services on this basis.

5. TRAINING SERVICES

- 5.1. 3B shall provide the Training Services to the Client with reasonable skill and care.
- 5.2. Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Training Services by 3B shall be the exclusive property of 3B.

6. MAINTENANCE SERVICES

- 6.1. 3B shall provide the Maintenance Services to the Client during the Term with reasonable skill and care and in accordance with the 3B SLA.
- 6.2. 3B may suspend the provision of the Maintenance Services if any amount due to be paid by the Client to 3B under the Agreement is overdue, and 3B has given to the Client at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

7. SUPPORT SERVICES

- 7.1. 3B shall provide the Support Services to the Client during the Term with reasonable skill and care and in accordance with the 3B SLA.
- 7.2. 3B may suspend the provision of the Support Services if any amount due to be paid by the Client to 3B under the Agreement is overdue, and 3B has given to the Client at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

8. CLIENT OBLIGATIONS

- 8.1. Save to the extent that the parties have agreed otherwise in writing, the Client must provide to 3B, or procure for 3B, such:
 - 8.1.1. co-operation, support and advice;
 - 8.1.2. staff time;
 - 8.1.3. information, materials and documentation; and
 - 8.1.4. governmental, legal and regulatory licences, consents and permits, as are reasonably necessary to enable 3B to perform its obligations under the Agreement.
- 8.2. Without prejudice to the generality of Clause 8.1, the Client shall:

- 8.2.1. following receipt of 'Train the Trainer' Training Services, be responsible for internal onward training of its staff in accordance with the standards set out in that training and ensure that the trainer meets the learning objectives set out in that training and allocates appropriate time to carry out onward training exercises;
- 8.2.2. designate a Client 3B Expert and ensure that the Client 3B Expert communicates and cooperates with the 3B Training Manager in order to effectively implement the Training Services within the Client's business;
- 8.2.3. ensure that the compatibility requirements set out in the Subscription Services Specification are complied with;
- 8.2.4. provide 3B with continuous administrative access to its salesforce.com production and sandbox environments by way of at least one admin licence (the rights to which will be within 3B's control); for clarity, this applies whether the Services use a pre-existing org or not;
- 8.2.5. provide project management, functional business analysts and technical developers to assist with the design and subsequent implementation of the system;
- 8.2.6. provide business stakeholders with knowledge of the various scheduling processes and the authority to make decisions around standardisation in business processes, security and configuration and ensure that decisions are made in a timely manner by these stakeholders to adhere to the project timelines and budget;
- 8.2.7. complete the tasks for which it is responsible in accordance with the timetable set out in Section 3 of the Order Form;
- 8.2.8. provide any Client branding materials as required (e.g. email template headers);
- 8.2.9. make available sufficient resources to complete user acceptance testing in accordance with the timetable set out in the Statement of Work; and
- 8.2.10. provide timely updates on any information relevant to the provision of the Services.

- 8.3. The Client must provide to 3B, or procure for 3B, such access to the Client's computer hardware, software, networks and systems as may be reasonably required by 3B to enable 3B to perform its obligations under the Agreement.
- 8.4. Where requested by 3B, the Client shall ensure a representative of at least operations director (or equivalent) level attends a management review meeting either in person at either party's offices, or by telephone conference or using internet-based conferencing facilities. Such meetings may take place at least twice per month unless required otherwise by 3B.

9. CLIENT DATA

- 9.1. The Client hereby grants to 3B a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required for the performance of 3B's obligations and the exercise of 3B's rights under the Agreement. The Client also grants to 3B the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of 3B's obligations and the exercise of 3B's rights under the Agreement, subject to any express restrictions elsewhere in the Agreement.
- 9.2. The Client warrants to 3B that the Client Data when used by 3B in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

9.3. The Client shall be responsible for backing-up the Client Data. The Services shall not include the backing-up of Client Data or storage of back-up files of Client Data and 3B shall have no responsibility or liability to the Client in respect of the back-up of Client Data.

10. MOBILE APP

10.1. The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App may be subject to separate terms and conditions, and accordingly where this is the case, these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from 3B to the Client, or from the Client to 3B.

11.2. Without prejudice to Clause 11.1:

- 11.2.1. The Client shall own any Intellectual Property Rights in the Client Data; and
- 11.2.2. Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Professional Services, Support Services or Maintenance Services by 3B shall be the exclusive property of 3B. Without prejudice to the foregoing, any enhancements or modifications to the Platform or the Subscription Services which may arise out of such performance will be owned exclusively by 3B. 3B shall be entitled to demonstrate such enhancements or modifications to other clients or prospects, subject always to its obligations under Clause 14 and the Data Processing Addendum.

11.3. The Client shall not, and shall ensure that its employees, contractors, or agents do not:

- 11.3.1. Copy, reproduce, modify, distribute, transmit, display, perform, publish, license, create derivative works from, transfer, or sell any part of the Platform, Subscription Services, or any software or content provided by 3B, except as expressly permitted under this Agreement;
- 11.3.2. Disassemble, decompile, reverse engineer, or otherwise attempt to derive source code or underlying structure, ideas, or algorithms of any software provided by 3B, except to the limited extent such restrictions are prohibited by applicable law;
- 11.3.3. Use the Platform or Subscription Services to build a competing product or service, or to copy any features, functions, or graphics;

11.4. Any unauthorized use of the Platform, Subscription Services, or any software or materials provided by 3B will be deemed a material breach of this Agreement and may result in immediate termination of access to the services, without prejudice to any other rights or remedies available to 3B under law or in equity.

11.5. Client acknowledges and agrees that 3B may compile anonymous Aggregated Data. To the extent necessary, Client hereby grants 3B a royalty-free, nonexclusive, irrevocable right and license (with the right to sublicense) to develop anonymous Aggregated Data. Aggregated Data, once developed, will be owned by 3B and shall be considered 3B's Confidential Information. 3B may use Aggregated Data for its own business purposes, including monitoring and improving its products and services or developing new offerings.

12. FEES AND EXPENSES

12.1. The Client shall pay the Fees and Expenses to 3B in accordance with these Terms and Conditions.

12.2. If the Fees are based in whole or part upon the time spent by 3B performing the Services, 3B must obtain the Client's written consent before performing Services that result in any estimate of time-based Fees given to the Client being

exceeded or any budget for time-based Fees agreed by the parties being exceeded; and unless the Client agrees otherwise in writing, the Client shall not be liable to pay to 3B any Fees in respect of Services performed in breach of this Clause 12.2.

- 12.3. If the Client's usage of any of the Services exceeds the Agreed User Number or Agreed Worker Number (as the case may be), 3B may charge the Client for such excess at the then-prevailing rate applicable to that Service. In the event of any dispute between 3B and the Client on whether or not excess use has occurred, the records on 3B's system will be conclusive. 3B will invoice the Client in respect of such excess usage retrospectively at the mid-point and then at the end of each Contract Year, or following expiry or termination of this Agreement, however caused. The Agreed User Number or Agreed Worker Number (as the case may be) will be increased automatically to reflect the most recent usage in respect of the following Contract Year as part of the Fee for the relevant Service for that year.
- 12.4. All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to 3B.
- 12.5. 3B may elect to vary any element of the Fees with effect from the end of the then-current Contract Year by giving to the Client not less than 60 days' written notice of the variation in advance of the end of the then-Contract Year.
- 12.6. Unless the Client has elected to terminate this Agreement at the end of the Minimum Term or then-current Contract Year under Clause 21.1, then the Fees payable for the immediately following Contract Year will be based on the Client's usage of the Services in the then-current Contract Year, subject to any variations notified to the Client under Clause 12.5.
- 12.7. Expenses shall be charged in accordance with Schedule 1.

13. PAYMENTS

- 13.1. 3B shall issue invoices for the Fees to the Client on or after the invoicing dates set out in Section 5 of the Order Form. 3B shall invoice the Client for Expenses following the Expense being incurred by 3B.
- 13.2. The Client must pay the Fees and Expenses to 3B within the period of 30 days following the issue of an invoice in accordance with this Clause 13.
- 13.3. The Client must pay the Fees and Expenses by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by 3B to the Client from time to time).
- 13.4. If the Client does not pay any amount properly due to 3B under these Terms and Conditions, 3B may:
 - 13.4.1. charge the Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - 13.4.2. claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

- 13.5. 3B shall be entitled to set off or withhold any amount it owes to the Client under the Agreement against any amount payable by the Client to 3B.

14. CONFIDENTIALITY

- 14.1. Each party must:
 - 14.1.1. keep the Confidential Information of the other party strictly confidential;
 - 14.1.2. not disclose the Confidential Information of the other party to any person without the other party's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
 - 14.1.3. use the same degree of care to protect the confidentiality of the Confidential Information of the other party as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care;

- 14.1.4. act in good faith at all times in relation to the Confidential Information of the other party; and
- 14.1.5. not use any of the Confidential Information of the other

14.2. Notwithstanding Clause 14.1, the parties may disclose the Confidential Information of the other party to such of its officers, employees, professional advisers, insurers, agents and subcontractors that have a need to access the Confidential Information for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.

14.3. This Clause 14 imposes no obligations upon a party with respect to Confidential Information that:

- 14.3.1. is known to it before disclosure under the Agreement and is not subject to any other obligation of confidentiality;
- 14.3.2. is or becomes publicly known other than through its act or default; or
- 14.3.3. is obtained by it from a third party in circumstances where it has no reason to believe that there has been a breach of an obligation of confidentiality.

14.4. The restrictions in this Clause 14 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the receiving party on any recognised stock exchange.

14.5. The provisions of this Clause 14 shall continue in force following the termination of the Agreement.

14.6. The Client acknowledges and agrees that where the Client's Confidential Information includes Client Personal Data, if there is any conflict or contradiction between this Clause 14 and the Data Processing Addendum, then the Data Processing Addendum shall take precedence.

15. [DATA PROTECTION](#)

15.1. The Data Processing Addendum shall govern each party's obligations in respect of the Processing of Personnel Data.

16. [WARRANTIES](#)

16.1. 3B warrants to the Client that:

- 16.1.1. 3B has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- 16.1.2. 3B will comply with all applicable legal and regulatory requirements applying to the exercise of 3B's rights and the fulfilment of 3B's obligations under these Terms and Conditions; and
- 16.1.3. 3B has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

16.2. 3B warrants to the Client that:

- 16.2.1. any enhancements or modifications to the Platform or the Subscription Services which may arise out of the performance of the Professional Services will conform in all material respects with any specifications contained in the Statement of Work for 90 days from acceptance in accordance with Clause 3.6, subject to Clause 16.4.
- 16.2.2. the Platform and Subscription Services will conform in all material respects with the Subscription Services Specification;
- 16.2.3. the Subscription Services will be free from Subscription Services Defects;
- 16.2.4. the application of Updates and Upgrades by 3B will not introduce any Subscription Services Defects into the Subscription Services;
- 16.2.5. the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- 16.2.6. the Platform will incorporate security features reflecting the requirements of good industry practice.

16.3. 3B warrants to the Client that the Subscription Services, when used by the Client in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

16.4. The warranty in Clause 16.2.1 in respect of the Professional Services will be deemed subject to the exclusions and limitations set out in paragraph 4 of the 3B SLA as if the same were repeated in full in these Terms and Conditions. Further, the Client's exclusive remedy for breach of this warranty will be re-performance of the Professional Services by 3B and such re-performance will be 3B's only liability in respect of such breach.

16.5. 3B warrants to the Client that the Subscription Services, when used by the Client in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

16.6. If 3B reasonably determines, or any third party alleges, that the use of the Subscription Services by the Client in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, 3B may at its own cost and expense:

- 16.6.1. modify the Subscription Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- 16.6.2. procure for the Client the right to use the Subscription Services in accordance with these Terms and Conditions.

16.7. All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

17. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

17.1. The Client acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, 3B gives no warranty or representation that the Subscription Services will be wholly free from defects, errors and bugs.

17.2. The Client acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, 3B gives no warranty or representation that the Subscription Services will be entirely secure.

17.3. The Client acknowledges that the Subscription Services are designed to be compatible only with that software and those systems specified as compatible in the Subscription Services Specification; and 3B does not warrant or represent that the Subscription Services will be compatible with any other software or systems.

17.4. The Client acknowledges that 3B will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Subscription Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, 3B does not warrant or represent that the Subscription Services or the use of the Subscription Services by the Client will not give rise to any legal liability on the part of the Client or any other person. Without prejudice to the foregoing, the Client acknowledges that it has the responsibility for ensuring that the Subscription Services are fit for the Client's purpose and compliant with any applicable legal and regulatory requirements specific to the Client's industry and/or jurisdiction.

18. INDEMNITIES

18.1. 3B shall indemnify and shall keep indemnified the Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Client and arising directly or indirectly as a result of any claim by a third party that the Subscription Services infringe the Intellectual Property Rights of any person (a "3B Indemnity Event").

18.2. The Client must:

- 18.2.1. upon becoming aware of an actual or potential 3B Indemnity Event, notify 3B;
- 18.2.2. provide to 3B all such assistance as may be reasonably requested by 3B in relation to 3B Indemnity Event;
- 18.2.3. allow 3B the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to 3B Indemnity Event; and
- 18.2.4. not admit liability to any third party in connection with 3B Indemnity Event or settle any disputes or proceedings involving a third party and relating to 3B Indemnity Event without the prior written consent of 3B,

and 3B's obligation to indemnify the Client under Clause 18.1 shall not apply unless the Client complies with the requirements of this Clause 18.2.

18.3. The Client shall indemnify and shall keep indemnified 3B against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by 3B and arising directly or indirectly as a result of any a claim by a third party that the Client Data infringes the Intellectual Property Rights or other legal rights of any person, or breaches the provisions of any law, statute or regulation (a "Client Indemnity Event").

18.4. 3B must:

- 18.4.1. upon becoming aware of an actual or potential Client Indemnity Event, notify the Client;
- 18.4.2. provide to the Client all such assistance as may be reasonably requested by the Client in relation to the Client Indemnity Event;
- 18.4.3. allow the Client the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Client Indemnity Event; and
- 18.4.4. not admit liability to any third party in connection with the Client Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Client Indemnity Event without the prior written consent of the Client,
- 18.4.5. and the Client's obligation to indemnify 3B under Clause 18.3 shall not apply unless 3B complies with the requirements of this Clause 18.4.

18.5. The indemnity protection set out in this Clause 18 shall be subject to the limitations and exclusions of liability set out in the Agreement.

19. LIMITATIONS AND EXCLUSIONS OF LIABILITY

19.1. Nothing in these Terms and Conditions will limit or exclude any liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation, limit any liabilities in any way that is not permitted under applicable law or exclude any liabilities that may not be excluded under applicable law.

19.2. The limitations and exclusions of liability set out in this Clause 19 and elsewhere in these Terms and Conditions are subject to Clause 19.1 and govern all liabilities arising under the Agreement or relating to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

19.3. 3B shall not be liable to the Client in respect of any loss or damage arising as a result of the Client's failure or delay in performing its obligations under the Agreement.

19.4. 3B shall not be liable to the Client in respect of any loss or damage arising as a result of:

- 19.4.1. any breach by Salesforce of any direct contract between Salesforce and the Client; and

19.4.2. any failure or delay caused by the product or services made available by 3B in the course of the Subscription Services which originates from any Third Party Provider;

19.5. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

19.6. Neither party shall be liable to the other party in respect of any loss of profits, revenue, income, anticipated savings, business, contracts or opportunities, use or production, provided that this exclusion shall not apply to the Client's obligation to pay the Fees.

19.7. Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 19.7 shall not protect a party unless it has fully complied with its respective obligations under the Data Processing Addendum.

19.8. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

19.9. Subject to Clause 19.10, the aggregate liability of each party to the other party under the Agreement shall not exceed the total amount of the Fees payable by the Client in respect of the Subscription Services to 3B under the Agreement in the 12 month period preceding the commencement of the event or events giving rise to the liability, provided that the limitation of liability in this Clause 19.9 shall not apply to the Client's obligations to pay the Fees under the Agreement.

19.10. The aggregate liability of each party to the other party under the Agreement in respect of liability under the indemnity in Clause 18.1 or any breach of its obligations under the Data Processing Addendum or Clause 14 (Confidentiality) shall not exceed £250,000 (two hundred and fifty thousand GBP).

20. FORCE MAJEURE EVENT

20.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

20.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:

- 20.2.1. promptly notify the other; and
- 20.2.2. inform the other of the period for which it is estimated that such failure or delay will continue.

20.3. A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

20.4. If a Force Majeure Event continues for more than two months, the party not affected by the Force Majeure Event may terminate the Agreement by giving written notice to the affected party.

21. TERMINATION

21.1. Either party may terminate the Agreement with effect from the end of the Minimum Term or the end of any Contract Year thereafter by giving to the other party not less than 45 days' written notice of termination.

21.2. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- 21.2.1. the other party commits any material breach of the Agreement, and the breach is not remediable;
- 21.2.2. the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- 21.2.3. the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).

21.3. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- 21.3.1. the other party is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- 21.3.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- 21.3.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
- 21.3.4. if that other party is an individual, that other party dies, becomes incapable of managing his or her own affairs as a result of illness or incapacity or is the subject of a bankruptcy petition or order.

21.4. 3B may terminate the Agreement immediately by giving written notice to the Client if:

- 21.4.1. any amount due to be paid by the Client to 3B under the Agreement is unpaid by the due date;
- 21.4.2. 3B has given the Client notice of the late payment; and
- 21.4.3. the overdue amount remains unpaid 30 days after 3B's notice is given.

21.5. The Agreement may only be terminated in accordance with its express provisions.

[22. EFFECTS OF TERMINATION](#)

22.1. Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.11, 13.2, 14, 15, 17, 19 and 22-24.

22.2. Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

22.3. Subject to Clause 22.4, within 30 days following the termination of the Agreement for any reason:

- 22.3.1. the Client must pay to 3B any Fees payable in respect of the period up to the effective date of termination of the Agreement; and
- 22.3.2. 3B must refund to the Client any Fees paid by the Client to 3B in respect of Services that were to be provided to the Client after the effective date of termination of the Agreement,

without prejudice to the parties' other legal rights

22.4. Within 30 days following the termination of the Agreement by 3B under Clauses 21.2, 21.3 or 21.4:

- 22.4.1. the Client must pay to 3B any Fees payable in respect of the Minimum Term or then-current Contract Year; and
- 22.4.2. 3B shall not be obliged to refund to the Client any Fees paid by the Client to 3B in respect of Services that were to be provided to the Client after the effective date of termination of the Agreement,

without prejudice to the parties' other legal rights.

22.5. Upon termination of the Agreement the following Client Data deletion provisions shall apply:

- 22.5.1. 3B will permit the Client to access Client Data held within the Subscription Services for a period of 30 days from termination or, if earlier, when termination or expiry of the licence for the relevant Salesforce.org (which for these purposes includes where the Client has its own pre-existing org from SFDC) (the "Access Period"). The Client acknowledges that it is its own responsibility to find out (by request to 3B) the relevant Salesforce.org licence is scheduled to terminate or expire. During the Access Period, the Client may obtain, copy and delete that Client Data itself. Following Client request, 3B will assist the Client with obtaining, copying or deleting that Client Data, provided that if the Client is able to

do this itself using tools made available by 3B via the Subscription Services, 3B may charge the Client for such assistance at its standard time- based charging rates;

22.5.2. After the end of the Access Period, the Client will no longer be able to access or use the Subscription Services but will be able to export the Client Data using its admin Account for as long as the Client has an active Salesforce org.

23. [NOTICES](#)

23.1. Any notice from one party to the other party under the Agreement must be given by one of the following methods (using the relevant contact details set out in the Order Form for the Client and Clause 23.2 for 3B):

- 23.1.1. delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;
- 23.1.2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or
- 23.1.3. sent by email, in which case the notice shall be deemed to be received at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent),

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

23.2. 3B's contact details for notices under this Clause 23 are as follows: James Ridge; Chief Executive Officer, (james@3bonboarding.com) 3B Soft Ltd, 3rd Floor, 86-90 Paul Street, London, EC2A 4NE

23.3. The addressee and contact details set out in Section 1 of the Order Form and Clause 23.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 23.

24. [GENERAL](#)

24.1. Subcontracting: 3B may subcontract any of its obligations under the Agreement subject to its obligations under Clauses the Data Processing Addendum. 3B shall remain responsible to the Client for the performance of any subcontracted obligations.

24.2. Assignment: 3B may assign, transfer or otherwise deal with 3B's contractual rights and obligations under the Agreement. The Client must not assign, transfer or otherwise deal with the Client's contractual rights and/or obligations under the Agreement without the prior written consent of 3B, such consent not to be unreasonably withheld or delayed, providing that the Client may assign the entirety of its rights and obligations under the Agreement to any Affiliate of the Client or to any successor to all or a substantial part of the business of the Client from time to time.

24.3. Non-solicitation: during the Term, neither party shall solicit for employment or engagement any person employed or engaged by the other party.

24.4. No waivers: No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach. No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

24.5. Severability: If a provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision of the Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

24.6. Third party rights:

24.6.1. Subject to Clause 24.6.2, the Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party. The exercise of the parties' rights under the Agreement is not subject to the consent of any third party;

24.6.2. SFDC will have the right to benefit from or enforce its rights directly against the Client in respect of the SFDC Service Agreement only.

24.7. Variation: The Agreement may not be varied except in accordance with this Clause 24.7. The Agreement may be varied by means of a written document signed by or on behalf of each party. 3B may vary the Agreement (other than the 3B SLA) by giving to the Client at least 30 days' written notice of the proposed variation, providing that if 3B gives to the Client a notice under this Clause 24.7, the Client shall have the right to terminate the Agreement by giving written notice of termination to 3B at any time during the period of 14 days following receipt of 3B's notice. 3B may vary the 3B SLA by giving the Client at least 60 days' written notice of the proposed variation.

24.8. Entire agreement: The Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter. Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement, subject to Clause 19.1.

24.9. Law and jurisdiction: These Terms and Conditions shall be governed by and construed in accordance with English law. Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

SCHEDULE 1

EXPENSES POLICY

Unless otherwise notified by 3B, the following policies exist for 3B consultants' travel and expenses incurred in the course of providing the Professional Services or Training Services described in the Order Form:

- (a) General: All travel and subsistence expenses are billed against the actual costs incurred. Receipts are retained for all expenses greater than £50.00.
- (b) Airfare/Train Fare: Airfare is the cost of one round trip economy fare; If travel originates and ends at the same location, the Client pays the total fare; If travel is between Client sites, each Client pays one half of the fare between the two sites.
- (c) Reservations: Reservations and ticketing are made as early as possible, using discounted, advance bookings, in order to obtain the most reasonable fare. Client assumes the risk of the cost of any penalties due to cancellations as a result of Client's changes in consultants' schedules. 3B assumes the cost for any penalties arising from 3B requested schedule changes.
- (d) Accommodation: Accommodation is generally acquired near Client's offices at a price agreed with Client and consistent with rates for the area. Consultants may use the Client's corporate rate at designated hotels whenever possible.
- (e) Car Rental: Car rental is for a four-door mid-sized car and consultants attempt to share transportation whenever possible.
- (f) Taxis/Trains: Client is billed for the cost of taxi, bus, shuttle, or train fare to Client's offices. Consultants attempt to use the most cost and time effective means for commuting to Client's site.
- (g) Parking/Tolls/Mileage: Client is billed for the cost of parking and tolls associated with transportation to the Client's site, as well as airport parking and mileage to and from the airport. Mileage is billed at the current

published Automobile Association (AA) mileage rate (currently 45p per mile if personal vehicle is used, or fuel costs if a hire car is used).