

FLOvate Solutions

LEAP MASTER LICENCE AND SERVICES AGREEMENT

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, the following definitions shall apply:

Agreement	the LEAP master licence and services agreement between FLOvate and the Client comprising the Statement of Work and these Terms and Conditions;
Authorised User	an individual authorised by the Client to access and use LEAP;
Business Day	any day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;
Client Configuration	the configuration code, testing and implementation of LEAP carried out by the Client, or by FLOvate on behalf of the Client pursuant to clause 3.4, including any or all of the elements referred to in paragraph 1.2 of 0 as may be agreed in any applicable SoW;
Client Data	any materials or data uploaded to LEAP by the Client and its Authorised Users in the course of its use of LEAP;
Client Plug-In	a software module developed or to be developed by FLOvate for the Client pursuant to clause 3.4 for use with LEAP as an independent plug-in component;
Client Solution	the Client Configuration and any Client Plug-In;
Documentation	the documentation made available to the Client by FLOvate from time to time (whether online or in hard copy) which sets out a description of, and user instructions for, LEAP, including any supplementary documentation provided by FLOvate for the Client pursuant to clause 2.2;
Effective Date	means the date of the Agreement;
FLOvate	FLOvate Solutions Limited (Registered Number: 06765584)
Go Live Date	means the date which is the earlier of: (a) the completion by FLOvate of the configuration, testing and implementation of

	LEAP; and (b) the date on which the Client first commences commercial use of LEAP;
Good Industry Practice	in relation to any undertaking and any circumstances, the exercise of that degree of care, and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;
Initial Term	the period of three (3) years from the Go Live Date unless otherwise stated in the Statement of Work
Intellectual Property Rights	patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of those rights, copyright (including all rights in software and any database rights), know-how, confidential information, trade or business names and any similar rights or obligations whether registrable or not in any country;
LEAP	FLOvate's process management software known as LEAP;
Licence Fees	the licence fees payable for use of LEAP in respect of the ULACs purchased by the Client for crediting to the Client's LEAP account;
Professional Services	any services to be provided by FLOvate to the Client in respect of the Client Configuration, the development of any Client Plug-In, or the provision of training in the use of LEAP, as described in 0 and any SoW;
Service Fees	the fees payable for the Services, as stated in the relevant SOW;
Services	(i) the Professional Services, (ii) the Support Services, and (iii) any other services to be provided by FLOvate under the Agreement;
Statement of Work (SoW)	Is a detailed specification of the work to be completed agreed by both parties including the commercial arrangements for payment of the work;
Special Conditions	The special conditions (if any) set out in the SoW;
Support Services	the provision of the helpdesk and error resolution services as set out in Schedule 2;
Terms of Use	FLOvate's terms of use for LEAP as in force from time to time, as accessible within LEAP, the current version of which is as set out at www.flovate.com/legal ;

UAT	User Acceptance Testing – the period of time that the Client is testing the solution delivered by FLOvate before it is finalised;
ULAC	a user licence activity credit, as further detailed in Section 3

- 1.2 Any of the foregoing definitions applies, as the context may require, to the singular or the plural form of the term used.
- 1.3 In these Terms and Conditions:
- 1.3.1 clause headings are inserted for ease of reference only and do not affect construction;
 - 1.3.2 references to “writing” or cognate expressions includes a reference to email, fax or comparable means of communication;
 - 1.3.3 words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing bodies corporate, corporations, unincorporated associations and partnerships and vice-versa, words importing the singular shall be treated as importing the plural and vice-versa, and words importing whole shall be treated as including a reference to any part thereof; and
 - 1.3.4 references to clauses are to the clauses of these Terms and Conditions.
- 1.4 If there is any conflict or inconsistency between terms set out in the Statement of Work and those set out in these Terms and Conditions or the Terms of Use, the priority in which the terms shall prevail is as follows:
- 1.4.1 the Special Conditions shall prevail over terms contained in these Terms and Conditions;
 - 1.4.2 subject to paragraph 1.4.1 above, the term in these Terms and Conditions shall take precedence over the term in the Statement of Work or the term in the Terms of Use.

2. LICENCE TO USE LEAP

- 2.1 In consideration of the Client’s payment of the Licence Fees in accordance with the Agreement, FLOvate grants to the Client, on and subject to the terms and conditions of the Agreement and the Terms of Use, with effect from the Go Live Date, for the Initial Term and any Renewal Terms, a non-exclusive, non-transferable licence to access and use, and allow the Client’s Authorised Users to access and use, LEAP for the Client’s own business purposes and not directly or indirectly for any other purpose.
- 2.2 In connection with the Client’s use of LEAP in accordance with the Agreement, the Client is also licensed to use the Documentation.

- 2.3 The Client acknowledges that the Documentation relates to the generic version of LEAP and does not contain any details relating to the Client Configuration or to any Client Plug-In.
- 2.4 Where FLOvate provides configuration services in respect of LEAP for the Client's use, or develops any Client Plug-In for the Client, then FLOvate shall provide the Client with a file that represents the Client Configuration and, if so required and agreed in the SoW, appropriate supplementary documentation on the use of LEAP as specifically configured for the Client and on the use of any Client Plug-In developed for the Client.

3. ULACS

- 3.1 Instead of paying a fee per user, clients purchase user licence activity credits (ULACs). ULACs will be purchased in advance and will be consumed as Authorised Users interact with LEAP. Once ULACs are depleted LEAP will cease to operate until more ULACs have been purchased.
- 3.2 We will provide warnings to client administrators when ULACs are getting low and also a short grace period once they are spent to allow them time to rectify
- 3.3 **How User Activity is Categorised.** Authorised Users fall into one of four categories depending on the amount of hours in a given calendar month in which they are actively using LEAP:

Full User	Active in more than 60 hours
Medium User	Active in between 25 and 60 hours
Low User	Active in between 11 and 24 hours
Ultra Low User	Active in at least one hour but fewer than 11 hours

An Authorised User will be 'Active' in an hour when performing one or more functions which generate an activity entry in LEAP in a given hour. For example, an Authorised User could carry out three tasks which generate an activity entry in LEAP from and including 09:00:00 up to 9:59:59 and this will count as being Active in 1 hour.

- 3.4 **ULAC Messaging Server usage.** The messaging server also uses ULACS to enable transitions. This is achieved by loading enabled Messaging Server ports with transaction Credits. The number of Credits for each ULAC will depend on the underlying service enabled. FLOvate periodically publish the current rates for these services annually.

Service	Transaction Credits per ULAC
Standard (other than those mentioned below and based on the underlying service having no additional cost)	300
PAF (post office address file)	100
SMS (short messaging service)	100
Email	Free
DCV (data collection wizard)	200

- 3.5 **How ULACS are consumed.** At the end of each calendar month, LEAP will identify how many Authorised Users have fallen into each user activity category during such calendar month and deduct the appropriate number of ULACs from the client account in accordance with the amount of ULACs consumed by the Authorised in such calendar month. The four categories consume the following number of ULACs:

Full User	10 ULACS
Medium User	5 ULACS
Low User	2 ULACS
Ultra Low User	1 ULAC

For example, if at the end of the calendar month, LEAP identifies 10 Full Users and 20 Medium Users then 200 ULACS will be deducted from the account.

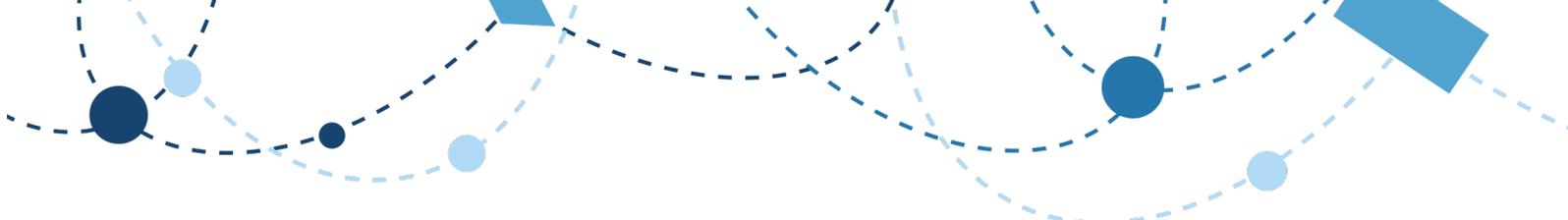
There is a minimum ULACS usage of 100 per month.
ULACS will be consumed from the beginning of UAT.

4. HOSTING

- 4.1 LEAP may be deployed and hosted in any of the following ways:
- 4.1.1 by way of Software as a Service (SaaS) on Microsoft Azure hosting engaged by FLOvate (Standard Service);
 - 4.1.2 installed on Microsoft Azure hosting engaged direct by the Client as a single set up (Advanced Service);
 - 4.1.3 installed on the Client's own servers or any multi-server configuration including cloud or cloud hybrid solutions (Enterprise Service).
- 4.2 The method of deployment for the Client's implementation of LEAP shall be as specified in the Statement of Work.
- 4.3 In the case of the Standard Service, the provisions of clause 5 shall apply.
- 4.4 In the case of the Advanced or Enterprise Service, the provisions of clause 6 shall apply.

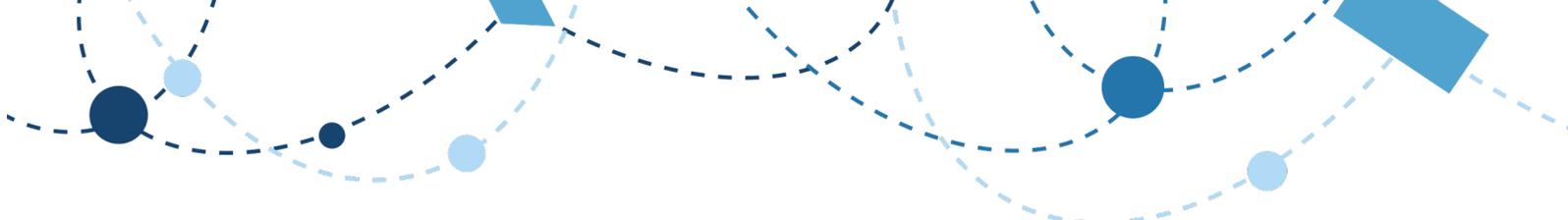
5. SAAS TERMS FOR THE STANDARD SERVICE

- 5.1 **SAAS terms.** The terms and conditions set out in this clause 5 apply if the method of deployment for the Client's implementation of LEAP Client is FLOvate's Standard Service.
- 5.2 **Portal.** In this clause 5, "Portal" shall mean the server and/or web portal made available to the Client for gaining access to LEAP.
- 5.3 **Licence.** In consideration of the Client's payment of the Licence Fees in accordance with the Agreement, FLOvate grants to the Client, on and subject to the terms and conditions of the Agreement and the Terms of Use, with effect from the Go Live Date, for the Initial



Term and any Renewal Terms, a non-exclusive, non-transferable licence to access and use, and allow the Client's Authorised Users to access and use, LEAP (in object code form) via the Portal, for the Client's own business purposes and not directly or indirectly for any other purpose.

- 5.4 **Hosting.** The Client acknowledges that FLOvate is not the provider of the cloud or hosting services. FLOvate will host using Microsoft Azure and the Client shall at all times adhere to Microsoft Azure terms and conditions from time to time in force. FLOvate shall not have any responsibility or liability in respect of such cloud or hosting services, their performance or for any defect in or unavailability of such services.
- 5.5 **Hosting disclaimer.** It is the responsibility of the Client to ensure that it has a suitable internet service and that it has the hardware, telecommunications services and software necessary to access LEAP over the internet as recommended by FLOvate from time to time. FLOvate takes no responsibility for the performance of any such hardware, telecommunications services, software or internet service, or for the performance or availability of the internet itself.
- 5.6 **Hosting costs.** The Client agrees that, in addition to the Services Fees, the Client shall pay, or reimburse to FLOvate, the Microsoft Azure hosting costs.
- 5.7 **Authorised Users.** The Client shall not permit any person other than an Authorised User to access and use LEAP and the Client shall not, and shall procure that no Authorised User shall, save for the allocation of Authorised User accounts, license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party LEAP in any way.
- 5.8 **Confidentiality of usernames and passwords.** The Client is responsible for maintaining the confidentiality of its usernames and passwords and is fully responsible for all activities that occur under the Client's account.
- 5.9 **Terms of Use.** The Client shall comply with, and shall ensure that all Authorised Users comply with, the Terms of Use. Any breach by an Authorised User of the Terms of Use shall be deemed to be a breach by the Client of the Agreement.
- 5.10 **No unauthorised access.** The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, LEAP and, in the event of any such unauthorised access or use, shall promptly notify FLOvate.
- 5.11 **Changes to LEAP.** FLOvate may, for technical, legal or operational reasons, change the specification of LEAP (but not so as to materially adversely affect the performance of LEAP) or temporarily suspend access to LEAP (such as for maintenance or in the event of an emergency). Before changing or suspending any part of LEAP, FLOvate will give the Client as much notice as is reasonably possible in the circumstances. FLOvate shall not be liable to the Client or any third party for any such change or suspension of LEAP. Without prejudice to any other remedy it may pursue FLOvate may suspend access to LEAP where FLOvate reasonably suspects that the security of its systems is or is about to be compromised by the Client or any third party having access to the Client's equipment or credentials.

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- 5.12 **Licence of Client Data.** The Client grants to FLOvate a non-exclusive licence to host, use, copy, store, transmit, publish and display Client Data to the extent necessary or reasonable for the purposes of the provision of LEAP to the Client and Authorized Users.
- 5.13 **Backup of Client Data.** FLOvate shall follow its backup procedures for Client Data as described in the Documentation. In the event of any loss of or damage to any Client Data, the Client's sole and exclusive remedy shall be for FLOvate to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up maintained by FLOvate.
- 5.14 **Data processing.** To the extent that FLOvate processes any personal data on the Client's behalf when performing its obligations under the Agreement, the data processing terms set out in clause 18 shall apply.
- 5.15 **Storage limitation.** The Client's data storage is limited to 0.1Gb per ULAC utilised in a calendar month. The Client may purchase additional space according to FLOvate's standard rates in force at the time.
- 5.16 **Restrictions.** The Client warrants to and undertakes with FLOvate that it shall not, and shall procure that no Authorised User shall:
- 5.16.1 interfere or attempt to interfere with the proper working of LEAP or disrupt LEAP or the Portal or any network connected to the Portal;
 - 5.16.2 take any action which imposes an unreasonable or disproportionately large load on LEAP's infrastructure; or
 - 5.16.3 gain or attempt to gain unauthorised access to any computer system or network connected to LEAP.
- 5.17 **Further restrictions.** The Client warrants to and undertakes with FLOvate that it shall not, and shall procure that no Authorised User shall, upload to LEAP any Client Data that:
- 5.17.1 contains any content that is libellous, defamatory, obscene, pornographic or sexually explicit, abusive or otherwise violates any law;
 - 5.17.2 infringes any patent, trademark, database right, trade secret, copyright or other proprietary right of any party;
 - 5.17.3 it does not have the right to transmit under any law or contractual relationship (such as confidential information);
 - 5.17.4 contains viruses or any other codes, files or programs designed to damage, interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment.
- 5.18 **Termination.** On termination of the Agreement however arising FLOvate shall, at the Client's written request, made within 30 days of termination of the Agreement, make available to the Client one backup copy of Client Data. The Client shall pay in advance FLOvate's reasonable fees and costs of providing such backups and agrees that FLOvate has no obligation to retain Client Data and may delete any Client Data at any time 60 days after termination.

6. LICENCE FOR ADVANCED AND ENTERPRISE SERVICES

- 6.1 The terms and conditions set out in this clause 6 apply if the method of deployment for the Client's implementation of LEAP Client is FLOvate's Advanced Service or its Enterprise Service.
- 6.2 In consideration of the Client's payment of the Licence Fees in accordance with the Agreement, FLOvate grants to the Client, on and subject to the terms and conditions of the Agreement and the Terms of Use, with effect from the Go Live Date, for the Initial Term and any Renewal Terms, a non-exclusive, non-transferable licence, to install and use the machine executable (object code) version of any software which is provided to the Client by FLOvate for installation on (depending on the method of deployment of the Client's implementation of LEAP (see clause 3.4)) the Client's own servers or the servers of the cloud service provider engaged by the Client to enable the Client to access and use LEAP.
- 6.3 Whatever the method of deployment of the Client's implementation of LEAP the Client shall procure that FLOvate is given access to the server(s) on which LEAP is installed for the purpose of provision of the Professional Services and Support Services.

7. SERVICES

- 7.1 In consideration of the Client's payment of the Service Fees in accordance with the Agreement, FLOvate shall provide the following services:
- 7.1.1 the Professional Services (if any) as set out in any agreed SoW; and
- 7.1.2 the Support Services as set out at Schedule 2.
- 7.2 FLOvate warrants to the Client that:
- 7.2.1 FLOvate will perform the Services with reasonable care and skill and in accordance with Good Industry Practice;
- 7.2.2 LEAP will conform to all descriptions and specifications provided in writing to the Client by FLOvate, including the Documentation.
- 7.3 Any dates or timeframes for provision of the Services, including any estimated Go Live Date set out in the Statement of Work, are estimates only and time shall not be of the essence in respect of FLOvate's obligations under the Agreement.

8. CHANGE CONTROL

- 8.1 If the Client requires FLOvate to perform any Professional Services from time to time the parties shall agree such Professional Services and an appropriate Statement of Work (SoW) and applicable Service Fees in writing in advance. Any such SoW shall be made under, and shall incorporate, the terms of the Agreement.
- 8.2 If either party wishes to change the scope of the Professional Services (including Client requests for additional services), it shall submit details of the requested change to the other party in writing.

8.3 If either party requests a change to the scope or terms of the Professional Services, FLOvate shall, within a reasonable time, provide a written estimate to the Client of:

8.3.1 the likely time required to implement the change;

8.3.2 any variations to the Service Fees arising from the change; and

8.3.3 any other impact of the change on the terms of the Agreement.

8.4 The estimate shall remain open for acceptance for a period of 10 Business Days from the date of issue and shall lapse if not accepted by the Client in writing within that time. Where the estimate is accepted by the Client in writing, it shall take effect on the terms and conditions of the Agreement.

9. CLIENT UNDERTAKINGS

9.1 The Client shall:

9.1.1 co-operate with FLOvate on all matters relating to the Agreement and appoint a duly authorised person, who shall have the authority to commit the Client on all matters relating to the Agreement;

9.1.2 provide, in a timely manner, such information as FLOvate may reasonably request in order to provide the Services and ensure that all information that the Client provides is accurate in all material respects.

10. FEES

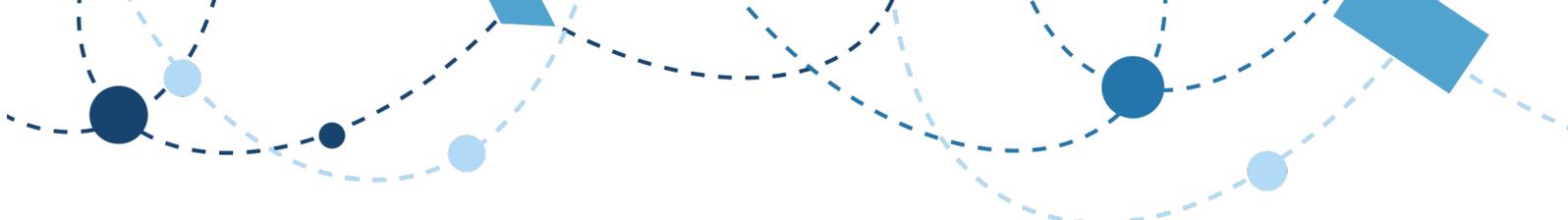
10.1 The Client shall pay to FLOvate the Licence Fees in respect of ULACS purchased by the Client and credited to the Client's LEAP account, in accordance with the fee rates set out in any and all SoWs.

10.2 If the Client wishes to purchase additional ULACs then it shall pay to FLOvate the additional Licence Fees in advance, in accordance with the fee rates set out in the pricing policy www.flovate.com/pricing.

10.3 On payment of the applicable Licence Fees, FLOvate shall credit the Client's LEAP account with the additional ULACs purchased and provide an encrypted licence key to the Client. The Client shall not be able to access and use, or continue to access and use, LEAP without a current encrypted licence key. This is automatic when using the FLOvate LEAP Licensing Portal.

10.4 The Client shall be able to use LEAP to access its LEAP account to check the current balance of ULACs on its account.

10.5 For any Professional Services which the Client requests, and which FLOvate in its sole discretion provides, the Client shall pay the Service Fees calculated at FLOvate's then-current billing rates or as otherwise agreed in writing between FLOvate and the Client pursuant to the SoW.

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- 10.6 The Licence Fees and Service Fees and all other amounts and fees stated or referred to in the Agreement are exclusive of value added tax, which where applicable shall be added to FLOvate's invoices at the prevailing rate from time to time.
- 10.7 FLOvate may increase the Licence Fees and Services Fees with effect from 1 January in each calendar year in line with the percentage increase in the Retail Prices Index (as published by the Office for National Statistics from time to time, or any official index replacing it) in the preceding calendar year.
- 10.8 The Client shall pay each invoice submitted by FLOvate within 15 days of the invoice date.
- 10.9 If the Client defaults in payment of any Services Fees or Transaction Fees and such Services Fees or Transaction Fees remain outstanding 30 days after the due date, then without prejudice to any other rights and remedies of FLOvate:
- 10.9.1 FLOvate may suspend provision of the Services while the Services Fees or Transaction Fees remain unpaid; and
- 10.9.2 interest shall accrue on such due amounts at an annual rate equal to 4% above the base rate from time to time of the Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment. Interest due shall be compounded quarterly and payable on demand.

11. RESTRICTIONS

- 11.1 The Client may only use LEAP for lawful purposes and must not use LEAP in any way that breaches any applicable local, national or international law or regulation or in any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- 11.2 The Client warrants to and undertakes with FLOvate that it shall not, and shall procure that no Authorised User shall:
- 11.2.1 copy or modify any part of or create any derivative works from, LEAP, save that the Client may make a backup copy of LEAP as necessary for the purposes of its lawful use;
- 11.2.2 reverse compile, disassemble or engineer LEAP (except as expressly permitted by law);
- 11.2.3 circumvent, or attempt to circumvent, the generation of activity entries or consumption of ULACs credited to the Client's LEAP account;
- 11.2.4 use or access LEAP in order to build a product or service which is the same as or similar to LEAP.
- 11.3 For the avoidance of doubt, nothing in the Agreement shall prevent the Client from carrying out its own Client Configuration as it sees fit.

12. SUSPENSION OF LEAP

- 12.1 Without prejudice to any other remedy it may pursue FLOvate may suspend access to LEAP (including by withholding or disabling the encrypted licence key):
- 12.1.1 if the Client is in material breach of any term of the Agreement and such breach (being capable of remedy) has not been remedied within 14 days of the Client being given notice specifying such breach;
 - 12.1.2 if any money is owed to FLOvate by the Client under an invoice raised in connection with the Agreement and remains unpaid for 14 days after it became due.
- 12.2 Should FLOvate invoke such suspension, it shall give the Client prior notice of the intended suspension (including the reasons for such suspension).

13. CONFIDENTIALITY

- 13.1 Each party will treat as confidential all information obtained from the other party under or in connection with the Agreement which is designated as confidential by the other party or which is by its nature clearly confidential.
- 13.2 The recipient party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information for purposes other than in connection with the Agreement without the other party's prior written consent.
- 13.3 This clause will not extend to information that:
- 13.3.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 13.3.2 was in the other party's lawful possession before the disclosure;
 - 13.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 13.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 13.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.4 Each party will ensure that all persons to whom it discloses any confidential information of the other party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other party.
- 13.5 These obligations of confidentiality will survive any termination of the Agreement.

14. INTELLECTUAL PROPERTY

- 14.1 All Intellectual Property Rights in and to LEAP and the Documentation shall be and remain vested in FLOvate.
- 14.2 All Intellectual Property Rights in and to the Client Configuration, in so far as carried out by the Client, shall be and remain vested in the Client.
- 14.3 FLOvate assigns to the Client all Intellectual Property Rights in and to the Client Solution (including, in respect of the Client Plug-In, the source and object code) specifically developed by FLOvate for the Client in the course of the Professional Services, subject to clauses 14.4 and 14.514.5.
- 14.4 The assignment under clause 14.3 excludes any software elements which form part of the generic functionality of LEAP and any programming tools, know-how, skills and techniques acquired or used by FLOvate in the performance of the Professional Services, and all Intellectual Property Rights in and to them shall remain the sole property of FLOvate and FLOvate may continue to use them in any way it thinks fit.
- 14.5 The Client acknowledges and agrees that, where another client of FLOvate provides FLOvate with requirements which are functionally similar to the Client's requirements, nothing in the Agreement prevents FLOvate from developing and implementing for such client a configuration or software plug-in component which is functionally similar to the Client Configuration or Client Plug-In Solution. Furthermore, nothing in the Agreement prevents the Client or any other user of LEAP from independently carrying out and implementing their own configuration which may be functionally similar to another user's configuration or the Client Configuration.
- 14.6 Except for the rights specifically granted under the Agreement, nothing in the Agreement shall be construed as transferring any right of ownership over any Intellectual Property Rights to the Client or any Authorised User and all rights in LEAP and Documentation not specifically granted in the Agreement are reserved by FLOvate.

15. INTELLECTUAL PROPERTY INDEMNITY

- 15.1 FLOvate shall defend the Client against any claim that the Client's use of LEAP, the Documentation and the Client Solution infringes any Intellectual Property Right of any third party and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of any such claim, provided that:
- 15.1.1 FLOvate is given prompt notice of any such claim;
- 15.1.2 the Client provides reasonable co-operation to FLOvate in the defence and settlement of such claim, at FLOvate's expense; and
- 15.1.3 FLOvate is given sole authority to defend or settle the claim.
- 15.2 In the defence or settlement of the claim, FLOvate may obtain for the Client the right to continue using the infringing element in LEAP, the Documentation or the Client Solution, replace or modify the infringing element so that it becomes non-infringing or, if such

remedies are not reasonably available, terminate the Agreement without liability to the Client.

15.3 FLOvate shall have no liability if the alleged infringement is based on:

15.3.1 any Client Data;

15.3.2 the Client's or any Authorised User's use of LEAP in a manner contrary to the Agreement (including the Terms of Use), the Documentation or any instructions given to the Client by FLOvate;

15.3.3 the Client Solution in so far as specified by the Client;

15.3.4 the Client Configuration in so far as carried out by the Client;

15.3.5 the Client's use or any Authorised User's use of LEAP, the Documentation and the Client Solution after notice of the alleged or actual infringement from FLOvate or any appropriate authority;

15.3.6 changes or additions to LEAP, the Documentation or the Client Solution by the Client or any third party; or

15.3.7 combination, operation or use of LEAP or the Client Solution with any third-party program or equipment.

15.4 This clause sets out the Client's sole and exclusive rights and remedies, and FLOvate's entire obligations and liability, for infringement of Intellectual Property Rights.

15.5 The Client shall indemnify and keep indemnified FLOvate against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights to the extent based on any of the matters in clause 15.3.

16. CLIENT DATA

16.1 All Intellectual Property Rights in and to Client Data shall as between the Client and FLOvate remain the Client's property.

16.2 The Client acknowledges that FLOvate is not responsible for Client Data and that the Client is responsible for the legality, reliability, integrity, accuracy, completeness and quality of Client Data and acknowledges that FLOvate does not purport to monitor, and accepts no responsibility for monitoring, Client Data under the Agreement.

17. DATA PROTECTION

17.1 In this clause, terms such as "process", "data subject", "processor", "controller", and "personal data" have the same meaning as ascribed to them in the General Data Protection Regulation (EU) 2016/679 (GDPR).

- 17.2 Where LEAP is deployed by way of Software as a Service (SaaS) hosted by a cloud service provider nominated by FLOvate (Standard Service), to the extent that FLOvate processes any personal data on the Client's behalf when performing its obligations under the Agreement, the data processing provisions set out in clause 1818 shall apply.
- 17.3 Where LEAP is installed on the Client's own servers (Advanced or Enterprise Service), while FLOvate may have technical access to Client Data (including personal data) held by Client within LEAP for the purposes of provision of Support Services, FLOvate shall not access, use or process any such Client Data for any reason and as such is not a processor on behalf of the Client in relation to any such personal data.
- 17.4 However LEAP is deployed, the Client acknowledges that:
- 17.4.1 details of the Client's name, address and payment record may be submitted to a credit reference agency;
 - 17.4.2 FLOvate processes, as controller, personal data relating to Authorised Users, and other employees and representatives of the Client that are collected and used by FLOvate in order to enable FLOvate to deliver, administer or manage the Services, the Client's account, and for FLOvate's own business purposes;
 - 17.4.3 FLOvate also processes, as controller, personal data that FLOvate collects when the Client submits a request for Support Services, including information about hardware, software and other details related to the support incident, such as user authentication information, information about the condition of the service, and error-tracking files. FLOvate processes such data in order to respond to the request and solve the problem reported;
 - 17.4.4 FLOvate also processes, as controller, the name, email address and other contact details of FLOvate's contacts at the Client to communicate with the Client information about LEAP, the Services and any new products and services of FLOvate.
- 17.5 For further details regarding FLOvate's use of personal data, please see FLOvate's Privacy Policy which can be accessed at www.flovate.com/legal.

18. DATA PROCESSING TERMS

- 18.1 **Applicability.** Where LEAP is deployed by way of Software as a Service (SaaS) hosted by a cloud service provider nominated by FLOvate (Standard Service), to the extent that FLOvate processes any personal data on the Client's behalf when performing its obligations under the Agreement, the data processing provisions set out in this clause shall apply.
- 18.2 **Definitions.** The definitions in this clause 18.218.1 apply in this clause 1818.
- 18.2.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in Data Protection Legislation.

- 18.2.2 **Data Protection Legislation:** all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

18.3 Personal Data Types and Processing Purposes.

- 18.3.1 Client and FLOvate acknowledge that, for the purposes of the Data Protection Legislation, Client is the controller and FLOvate is the processor.
- 18.3.2 Client remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to FLOvate.
- 18.3.3 The processing to be carried out by FLOvate under the Agreement shall comprise the processing set out in the SoW, and such other processing as may be agreed by the parties in writing from time to time.

18.4 FLOvate's Data Processing Obligations.

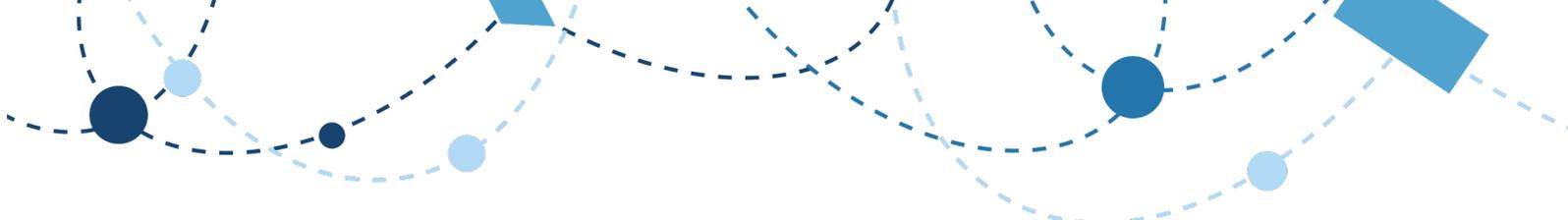
- 18.4.1 FLOvate will only process the Personal Data to the extent, and in such a manner, as is necessary for the purposes of the Agreement.
- 18.4.2 FLOvate shall promptly notify Client if, in its opinion, Client's instruction would not comply with the Data Protection Legislation.
- 18.4.3 FLOvate will reasonably assist Client, at the Client's cost, with meeting Client's compliance obligations under the Data Protection Legislation, taking into account the nature of FLOvate's processing and the information available to FLOvate, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with supervisory authorities under the Data Protection Legislation.

- 18.5 **FLOvate's Employees.** Without prejudice to clause 13 (Confidentiality), FLOvate shall ensure that all employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data.

- 18.6 **Security.** FLOvate shall at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.

18.7 Personal data breach.

- 18.7.1 FLOvate will without undue delay notify Client if it becomes aware of any Personal Data Breach.

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- 18.7.2 Where FLOvate becomes aware of a Personal Data Breach, it shall, without undue delay, also provide Client with the following information:
- (a) description of the nature of the Personal Data Breach, including the categories and approximate number of both Data Subjects and Personal Data records concerned;
 - (b) the likely consequences; and
 - (c) description of the measures taken or proposed to be taken to address the Personal Data Breach, including measures to mitigate its possible adverse effects.
- 18.7.3 Immediately following any Personal Data Breach, the parties will co-ordinate with each other to investigate the matter and FLOvate will reasonably co-operate with Client in Client's handling of the matter.
- 18.7.4 FLOvate will not inform any third party of any Personal Data Breach without first obtaining Client's prior written consent, except when required to do so by law.

18.8 Cross-border transfers of personal data

- 18.8.1 FLOvate will not transfer or otherwise process Personal Data outside the European Economic Area (EEA) (including the UK) without obtaining Client's prior written consent.

18.9 Sub-processors

- 18.9.1 FLOvate may appoint subcontractors to process the Personal Data.
- 18.9.2 FLOvate shall inform Client of any intended changes concerning the addition or replacement of other subcontractors, thereby giving Client the opportunity to object to such changes.
- 18.9.3 Where FLOvate authorises a subcontractor to process the Personal Data it shall enter into a written contract with the subcontractor that contains terms substantially the same as those set out in this clause 18.

18.10 Complaints, data subject requests and third party rights

- 18.10.1 FLOvate shall take such technical and organisational measures as may be appropriate, and promptly provide such information to Client as Client may reasonably require, to enable Client to comply with:
- (a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
 - (b) information or assessment notices served on Client by any supervisory authority under the Data Protection Legislation.

- 18.10.2 FLOvate shall notify Client immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 18.10.3 FLOvate shall notify Client within three Business Days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.
- 18.10.4 FLOvate will give Client its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
- 18.10.5 FLOvate shall not disclose the Personal Data to any Data Subject or to a third party other than at Client's request or instruction, as provided for in the Agreement or as required by law.

18.11 Data return and destruction

- 18.11.1 On termination of the Agreement for any reason, FLOvate will securely delete or destroy or, if directed in writing by Client, return and not retain, all or any Personal Data related to the Agreement in its possession or control, except for one copy that it may retain and use for audit purposes only.
- 18.11.2 If any law, regulation, or government or regulatory body requires FLOvate to retain any documents or materials that FLOvate would otherwise be required to return or destroy, it will notify Client in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

18.12 Records. FLOvate will keep written records regarding any processing of Personal Data it carries out for Client as necessary to demonstrate compliance with the obligations laid down in this Addendum, and FLOvate will provide Client with copies of the records upon request.

18.13 Audit Rights

- 18.13.1 No more than once annually, unless Client requests an audit in the event of FLOvate's breach of the Agreement or in response to a regulatory inquiry, either Client or its audit firm, may audit FLOvate's data processing practices for compliance with the Agreement.
- 18.13.2 Client will announce its intent to audit FLOvate by providing reasonable notice at least ten (10) business days in advance of the requested audit date. A scope document along with a request for audit deliverables will be provided at the time of notification of such audit.

18.14 Costs. The Client shall pay any reasonable costs and expenses incurred by FLOvate in meeting the Client's requests (including audits) made under this clause 1818 at FLOvate's Standard Billing Rates in accordance with the fee rates set out in the pricing policy www.flovate.com/pricing.

19. DISCLAIMER

- 19.1 While FLOvate shall use commercially reasonable endeavours to correct any errors in LEAP in accordance with the Documentation, FLOvate does not warrant:
- 19.1.1 that the operation or use of LEAP will be error-free or uninterrupted or that any defect will be corrected; or
 - 19.1.2 that LEAP, the Services, Documentation or the information or results obtained by the Client or Authorised Users through the use of LEAP will meet the Client's (or any Authorised User's) requirements.
- 19.2 Except as expressly and specifically provided in the Agreement the Client assumes sole responsibility for results obtained from the use of LEAP by the Client and its Authorised Users.
- 19.3 FLOvate shall have no liability for any loss or damage resulting from:
- 19.3.1 any error or omission in any Client Data;
 - 19.3.2 any Client Configuration in so far as carried out by the Client;
 - 19.3.3 FLOvate following any information or instructions provided by the Client;
 - 19.3.4 any defect in or failure of any hosting service or cloud platform provided by a third party.
- 19.4 Save as expressly set out in the Agreement, to the maximum extent permitted by law, FLOvate disclaims any and all representations, conditions and warranties whether express or implied by statute or common law or otherwise that LEAP, the Services or Documentation are or will be of satisfactory quality, fit for a particular purpose, provided with reasonable care and skill or non-infringing.

20. LIABILITY

- 20.1 Nothing in the Agreement shall be deemed to limit or exclude the liability of FLOvate for:
- 20.1.1 death or personal injury caused by its negligence;
 - 20.1.2 fraud or fraudulent misrepresentation; or
 - 20.1.3 any other liability that cannot by law be limited or excluded.
- 20.2 Subject to clause 20.120.1, FLOvate shall not in any event be liable whether in contract (including by way of indemnity), tort (including negligence), misrepresentation, restitution or otherwise under or in connection with the Agreement for:
- 20.2.1 any special, indirect or consequential loss or damage;

- 20.2.2 any direct or indirect loss of profit, turnover, business, revenue, contracts, goodwill, reputation, anticipated savings, management time or data;
- 20.2.3 loss of data.
- 20.3 Subject to clause 20.1 FLOvate's total aggregate liability to the Client in any calendar year under or in connection with the Agreement whether in contract (including by way of indemnity), tort (including negligence), misrepresentation, restitution or otherwise will be limited to a sum equivalent to the total Licence Fees and Services Fees paid by the Client under the Agreement in the relevant calendar year.
- 20.4 The Client shall indemnify and hold FLOvate harmless from any claims (including third party claims), losses, damages, demands, costs, expenses (including legal costs and expenses) fines and any other liabilities whatsoever arising from:
 - 20.4.1 any breach by the Client of the Agreement;
 - 20.4.2 any access to or use of LEAP by any Authorised User or any other person authorised by, or for whom, the Client is responsible; or
 - 20.4.3 any breach by any Authorised User or other such person of the Terms of Use.

21. ESCROW

- 21.1 If the Client so requests the parties shall enter into a source code escrow agreement in respect of the LEAP software with an escrow agent and on terms to be agreed between the parties.
- 21.2 All fees payable in respect of the escrow agreement shall be payable by the Client.

22. BRANDING

- 22.1 FLOvate may use the LEAP and 'Powered by FLOvate' branding in LEAP.
- 22.2 FLOvate may list the Client as a user of LEAP in its advertising and marketing materials and on its website.

23. NON-SOLICITATION

- 23.1 Neither party shall directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Client) in the receipt of the Services at any time during, or for a further period of 12 months after the termination of, the Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 23.2 If either party commits any breach of clause 23.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

24. TERM AND TERMINATION

- 24.1 The Agreement will commence on the Effective Date and shall continue for the Initial Term and automatically thereafter for consecutive 12 month periods (a “**Renewal Term**”) unless or until terminated by either party giving at least three months’ notice in writing to the other to expire at the end of the Initial Term or any Renewal Term, subject to the termination provisions of clauses 24.1 and 24.2.
- 24.2 Either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 24.2.1 the other commits a material breach of any of its obligations under the Agreement which (if the breach is capable of remedy) it has failed to remedy within 30 days after the receipt of a notice in writing from the terminating party requiring the defaulting party to do so;
 - 24.2.2 a provisional liquidator is appointed to the other or the other goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;
 - 24.2.3 a receiver is appointed in respect of the whole or any part of the assets of the other;
 - 24.2.4 an administration order is made in respect of the other; or
 - 24.2.5 the other enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors.
- 24.3 FLOvate may terminate the Agreement by notice in writing to the Client having immediate effect if the Client:
- 24.3.1 defaults in payment of any FLOvate invoice and such invoice remains outstanding fourteen (14) days after FLOvate has issued a demand in writing for payment;
 - 24.3.2 infringes FLOvate’s or its third-party licensor's Intellectual Property Rights;
 - 24.3.3 continues or attempts to continue its use of LEAP without having ULACs to the credit of its LEAP account.

25. CONSEQUENCES OF TERMINATION

- 25.1 On termination of the Agreement however arising:
- 25.1.1 FLOvate shall be entitled to receive from the Client all Licence Fees, Service Fees and any other fees and expenses accrued or incurred under the Agreement up to the date of termination;
 - 25.1.2 FLOvate may discontinue provision of the Services;

25.1.3 the Client shall not be entitled to any credit or refund in respect of unused ULACs on its LEAP account;

25.1.4 the Client shall, and shall procure that all Authorised Users shall, cease all use of LEAP and the Documentation and FLOvate may remotely disable the Client's and Authorised Users' access to LEAP;

25.1.5 the Client shall immediately uninstall LEAP from all servers and destroy or return to FLOvate (at FLOvate's option) all copies including backup copies of LEAP then in its possession, custody or control and, in the case of destruction, certify to FLOvate that it has done so.

25.2 Termination shall not affect or prejudice the accrued rights of the parties as at termination.

25.3 The provisions of clauses 13 (Confidentiality), 1414 (Intellectual Property Rights), 1918 (Disclaimer) and 2020 (Liability) shall survive termination of the Agreement for any reason.

26. ASSIGNMENT AND SUBCONTRACTING

26.1 The Client shall not assign, transfer, mortgage, charge, declare a trust of, subcontract or deal in any other manner with any or all of its rights or obligations under the Agreement, without the prior written consent of FLOvate (such consent not to be unreasonably withheld or delayed).

26.2 FLOvate may without the Client's prior written consent:

26.2.1 assign or transfer the benefit of, and any of its rights under, the Agreement together with any cause of action arising in connection with any of them to its successor in title, to any of its group companies or to any purchaser or transferee from it or any of them; or

26.2.2 sub-contract any or all of its obligations under the Agreement so long as FLOvate remains responsible for the obligations performed by any such subcontractor to the same extent as if such obligations were performed by FLOvate.

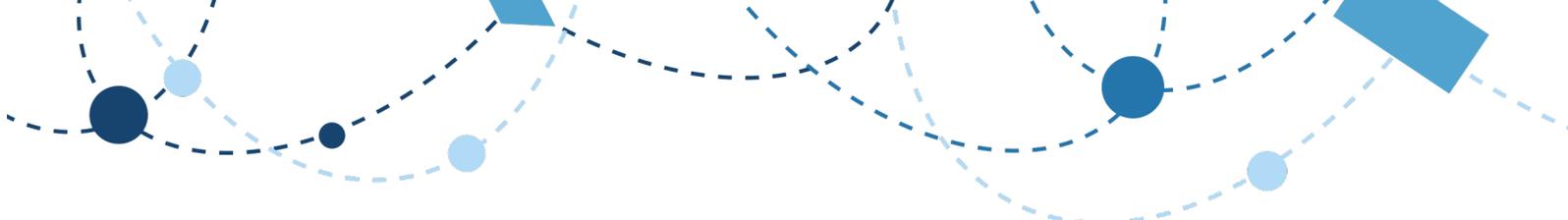
26.3 Any attempted assignment, transfer or other dealing in violation of this clause 26 will be void and without effect.

27. VARIATIONS

27.1 No amendment or variation of the Agreement shall be effective unless it is in writing, refers to the Agreement and is duly signed or executed by a duly authorised representative of each of the parties.

28. SEVERABILITY

28.1 If any provision or part of any provision of the Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then the provision or part shall be



severed and the remainder of the provision and all other provisions of the Agreement shall remain valid and in full force.

- 28.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

29. STATUS OF THE PARTIES

- 29.1 FLOvate is an independent contractor. Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

30. NOTICES AND COMMUNICATIONS

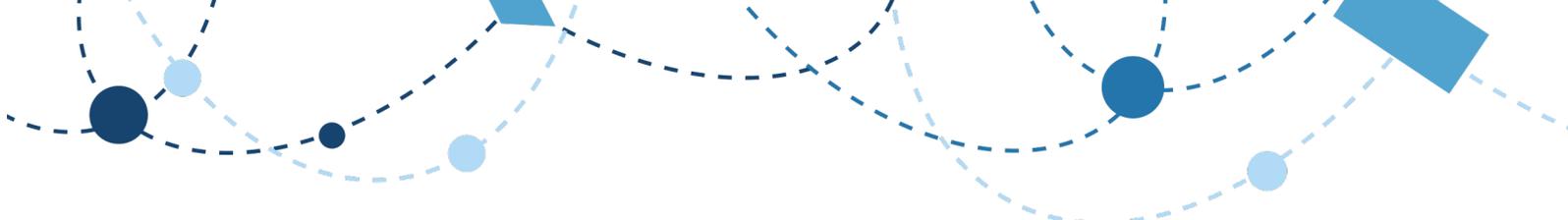
- 30.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 30.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 30.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 30.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

31. WAIVER

- 31.1 No delay in exercising or failure to exercise by any party of any of its rights under or in connection with the Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.

32. FORCE MAJEURE

- 32.1 FLOvate shall have no liability to the Client under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by any act, event, omission or accident beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of FLOvate or any other party), failure of a utility service or transport or telecommunications network, act of G-d, war, riot, civil commotion, act of terrorism,



malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

33. ENTIRE AGREEMENT

- 33.1 The Agreement represents the entire agreement between the parties in relation to the subject matter of the Agreement and supersedes any previous agreement whether written or oral between all or any of the parties in relation to that subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of the Agreement.
- 33.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement.

34. RIGHTS OF THIRD PARTIES

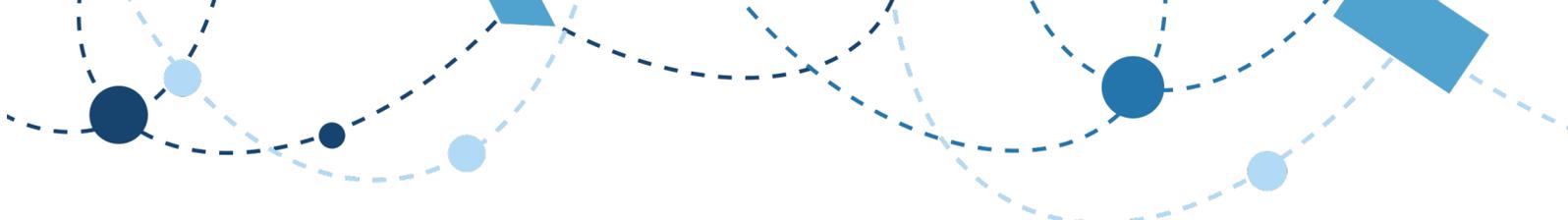
- 34.1 Except as otherwise expressly provided in the Agreement, none of the terms and conditions of the Agreement shall be enforceable by any person who is not a party to it, and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to the Agreement.

35. COUNTERPARTS

- 35.1 The Agreement may be executed in any number of counterparts and by the parties on different counterparts. Each counterpart shall constitute an original of the Agreement, but all the counterparts shall together constitute one and the same agreement.

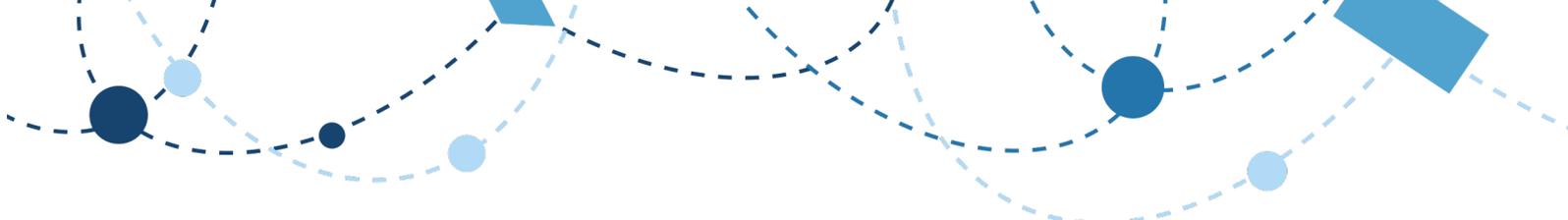
36. DISPUTE RESOLUTION

- 36.1 If any dispute arises in connection with the Agreement, a director or other senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 36.2 If the dispute is not wholly resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.
- 36.3 Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate mediation a party must give notice in writing ('ADR notice') to the other party(ies) to the dispute requesting mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.
- 36.4 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.



37. LAW AND JURISDICTION

- 37.1 The Agreement, and any non-contractual rights or obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English law.
- 37.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and determine or otherwise settle all and any claims, proceedings, suits or action (including arbitration) arising out of or in connection with the Agreement or its subject matter.



Schedule 1 - Professional Services

1. PROFESSIONAL SERVICES

- 1.1 FLOvate shall carry out the development, configuration and integration services set out in the Statement of Work (SoW) and shall use all reasonable endeavours to complete such services by the applicable date set out in the SoW.
- 1.2 Client Configuration may include any or all of the following elements:
- 1.2.1 Data: the data model documented to describe the structure of the Client Data;
 - 1.2.2 Workflow: the documented process stages and requirements that describe the work that is carried out to progress the process from stage to stage;
 - 1.2.3 Documents: the document templates and the requirements that describe how documents are linked to the client process;
 - 1.2.4 Financial Data: the financial data model documented to describe the structure of the client ledgers and financial transactions;
 - 1.2.5 Reporting: the reporting templates and requirements that describe the management information;
 - 1.2.6 Client and Supplier Interactions: the requirements that describe the different self-service points that provide the ability for third parties to interact with the system and take part in the process;
 - 1.2.7 The configuration code outputted by LEAP to meet the requirements described by the above.
- 1.3 FLOvate shall promptly inform the Client in writing if any circumstance arises which may cause delay to the completion of the services and FLOvate shall use all reasonable endeavours to mitigate against such delay.
- 1.4 Without prejudice to its obligations in clause 1.2, FLOvate shall have no liability if it is delayed or prevented from carrying out or completing the services by any act or omission of the Client or any third party contracted by the Client. FLOvate shall be entitled to charge the Client for any additional reasonable costs or expenses it incurs as a result of such delays or being so prevented from carrying out or completing the services.

2. CONFIGURATION FEES

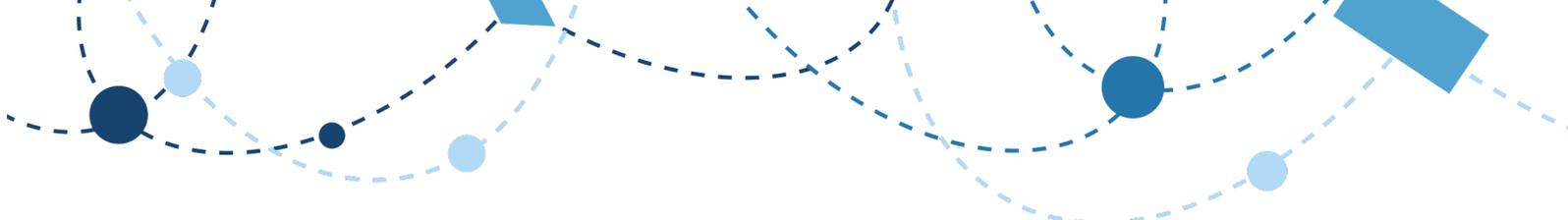
- 2.1 Configuration services are not included as part of the Support Services and the Client shall pay FLOvate separate Service Fees for Professional Services provided for or in connection with the configuration of the Client's system on a time and materials basis in accordance with FLOvate's standard billing rates from time to time. FLOvate's standard billing rates are set out in the pricing policy www.flovate.com/pricing.

3. CLIENT PLUG-IN - GLOBAL

- 3.1 FLOvate shall develop the Client Plug-In in accordance with the SoW or as agreed from time to time by the parties pursuant to clause 8.1.
- 3.2 Before installing or implementing any Client Plug-In, the parties shall agree proposed acceptance criteria and test data for acceptance tests for the Client Plug-In ("Acceptance Tests"). These criteria and data shall be such as are reasonably required to show that Client Plug-In complies with the SoW.
- 3.3 If the Client Plug-In fails to pass the Acceptance Tests, the Client shall provide a written notice to this effect, giving details of such failure. FLOvate shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 3.4 If the Client Plug-In fails in some material respect to pass any repeated Acceptance Tests, then the Client may, by written notice to FLOvate, choose at its sole discretion:
 - 3.4.1 to fix a new date for carrying out further tests on the Client Plug-In. If the Client Plug-In fails such further tests then the Client may request a repeat test under this clause 3.4.1;
 - 3.4.2 to permit installation or implementation of the Client Plug-In subject to such change of acceptance criteria, amendment of the SoW and/or reduction in the applicable Service Fees as, after taking into account all the relevant circumstances, is reasonable; or
 - 3.4.3 if FLOvate is unable to correct material defects within a period of three months from the commencement of Acceptance Tests, to reject the Client Plug-In as not being in conformity with the agreement in which event FLOvate shall refund to the Client any Service Fees paid by the Client in respect of the development of the Client Plug-In.
- 3.5 Acceptance of Client Plug-In shall be deemed to have occurred on whichever is the earliest of:
 - 3.5.1 the signing by the Client of an acceptance certificate;
 - 3.5.2 the expiry of five days after the completion of all the Acceptance Tests, unless the Client has given any written notice under clause 3.3;
 - 3.5.3 the use of the Client Plug-In by the Client in the normal course of its business.

4. TRAINING

- 4.1 FLOvate will provide training in the use of LEAP as set out in the SoW.
- 4.2 If FLOvate provides training other than that set out in the SoW such training shall be charged at FLOvate's then current charging rates.
- 4.3 The Client shall ensure that all Authorised Users are adequately trained in the proper use of LEAP. For Support Services provided to Authorised Users with inadequate training



FLOvate shall be entitled to charge a fee for such support at FLOvate's then current standard charging rates in force.

5. SERVICE FEES

5.1 Where Professional Services are provided on a time-and-materials basis:

5.1.1 the Service Fees payable for the Professional Services shall be calculated in accordance with FLOvate's then current standard charging rates in force;

5.1.2 FLOvate's standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

5.1.3 FLOvate shall ensure that the members of FLOvate's project team complete time sheets recording time spent on the project, and FLOvate shall use such time sheets to calculate the Service Fees covered by each invoice;

5.1.4 FLOvate shall allow the Client to inspect such time records at all reasonable times on request; and

5.1.5 FLOvate shall invoice the Service Fees to the Client monthly in arrears for time, expenses and materials (together with VAT, where appropriate) for the month concerned, calculated as provided in this clause. Each invoice shall set out the time spent by each member of FLOvate's project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.2 Where Professional Services are provided for a fixed price, the total price for the Professional Services shall be the amount set out in SoW. The total price shall be paid to FLOvate in instalments as set out in the SoW.

5.3 The Service Fees excludes:

5.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of FLOvate's team in connection with the Professional Services, and the cost of any materials or services reasonably and properly provided by third parties required by FLOvate for the supply of the Professional Services. Such expenses, materials and third-party services shall be invoiced by FLOvate at cost price; and

5.3.2 VAT, which FLOvate shall add to its invoices at the appropriate rate.

5.4 The Client shall pay each invoice submitted by FLOvate within 15 days of the invoice date.

Schedule 2 - Support Services

FLOvate shall provide the Support Services in accordance with the terms of this Schedule subject to payment by the Client of the Support Fees.

1. Definitions

1.1 In this Schedule, the following terms have the following meanings:

“Category 0 (Complete Failure)”	means a fault which completely prevents any use of LEAP by all Authorised Users;
“Category 1 (Urgent)”	means a fault which completely prevents the performance of an essential part of LEAP;
“Category 2 (High)”	means a fault which is not a Category 0 or Category 1 fault but which imposes serious limitations or restrictions on the performance of an important part of LEAP;
“Category 3 (Medium)”	means a fault which is not a Category 0, Category 1 or Category 2 fault but which prevents the faultless performance of an important or regularly used part of LEAP;
“Category 4 (Low)”	means a fault which is not a Category 0, Category 1, Category 2 or Category 3 fault, but which is of a relatively minor or intermittent nature and does not significantly affect the performance of LEAP;
“Category 5 (Standard Release)”	means a fault which is not a Category 0, Category 1, Category 2, Category 3 or Category 4 fault, and which is of a very minor or intermittent nature and does not significantly affect the performance of LEAP;
“Normal Working Hours”	means the hours of 9.00 to 17.00 Monday to Friday, excluding bank and public holidays in England.

2. Help Desk

2.1 FLOvate shall provide qualified personnel during Normal Working Hours to provide telephone advice, consultation and assistance to the Client and Authorised Users in relation to the use of LEAP and the reporting of faults.

2.2 The Client shall ensure an appropriate number of employees are trained to deal with the day to day support of LEAP. Where the Client trained employees are unable to resolve the problem they shall communicate this to FLOvate via email at technical.support@flovate.com.

3. Fault Reporting Procedure

- 3.1 All faults shall be reported by email, one fault per email. FLOvate engineers shall acknowledge receipt within 1 hour for category 1-5. Acknowledgement shall be made by telephone for category 0 faults.
- 3.2 In the event of a fault on the solution coming to the attention of the Client it shall:
- 3.2.1 Make reasonable preliminary unilateral assessment of the category (0-5) of the fault in question;
 - 3.2.2 Report such fault (and its category) to FLOvate as soon as reasonably practicable;
 - 3.2.3 Ensure that the fault is reproducible on more than one machine. A bug/fault will be common to all machines. If it can only be produced on one machine then the problem exists in the configuration of the individual workstation, support for which is not covered by the Agreement; and
 - 3.2.4 Provide full information concerning the fault in writing, including but not limited to the following:
 - (a) Full text of any message(s) displayed;
 - (b) All the steps required reproducing the fault;
 - (c) Computer hardware;
 - (d) Exact time(s) of fault manifestation(s); and
 - (e) Details of any data being accessed at the time of the fault (for example, any record reference that could identify the data being accessed).
- 3.3 In the event of a fault on LEAP coming to the attention of FLOvate, FLOvate shall:
- 3.3.1 Log the report of such fault upon discovery of such fault;
 - 3.3.2 Where possible agree with the Client the category and the nature of any such fault; and
 - 3.3.3 Provide telephone and/or email assistance to the Client in relation to such fault and if appropriate attempt to remedy such fault.

4. Remedy

- 4.1 Upon a fault being reported to FLOvate, FLOvate shall where possible suggest an immediate remedy for the fault, failing which FLOvate shall assign an internal log number to the fault and use reasonable endeavours to:
- 4.1.1 Remedy the fault if possible; or

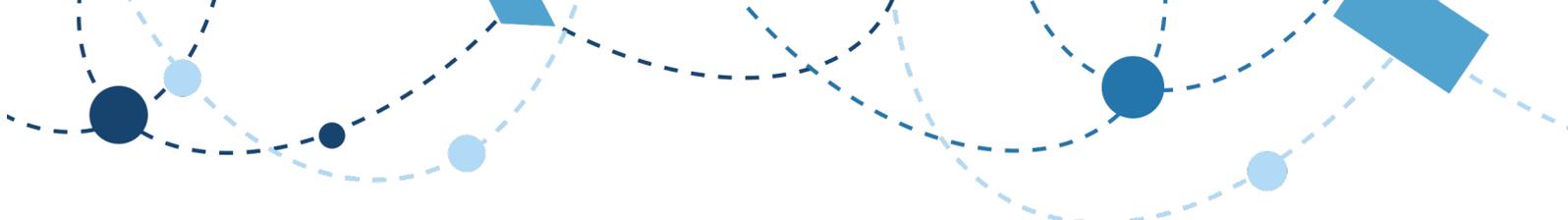
- 4.1.2 Implement a temporary solution for circumventing a fault (workaround) until a permanent remedy becomes possible within the following target periods calculated from the time when the fault first came to the attention of FLOvate:

Category	Temporary solution or workaround	Remedy
0 (Complete Failure)	4 Hours	16 Hours
1 (Urgent)	8 Hours	32 Hours
2 (High)	8 Hours	7 Days
3 (Medium)	2 Days	30 Days
4 (Low)	30 Days	60 Days
5 (Standard Release)	30 Days	90 Days

- 4.2 Hours refers to Normal Working Hours save that for Category 0, 1 and 2 faults reported during Normal Working Hours, FLOvate shall continue working on the temporary solution even after Normal Working Hours.
- 4.3 Any additional support provided to Authorised Users outside of category 0-5 will be provided on a time and materials basis at FLOvate's then current standard charging rates in force.
- 4.4 Enhancement requests will be considered but will not necessarily be included in future releases of LEAP.

5. Exclusions

- 5.1 Maintenance and support services are excluded from the Support Services to the extent that they are necessitated by:
- 5.1.1 Any fault of Authorised Users or the Client's agents or employees;
 - 5.1.2 Force majeure (as defined in clause 3232);
 - 5.1.3 Unauthorised acts of third parties;
 - 5.1.4 Failure or interruption of any electrical power, telephone or communication line or like cause;
 - 5.1.5 Faults in computer hardware belonging to or under the control of the Client, operating software or any other software used in conjunction with LEAP;
 - 5.1.6 Failure due to configuration on incorrectly installed workstations; and
 - 5.1.7 Any other cause external to LEAP except ordinary use.

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- 5.2 FLOvate may, at its discretion and the Client's request, provide maintenance and support services to the Client that would otherwise be excluded under the Agreement on a time and materials basis at FLOvate's then current charging rates.