

## TERMS AND CONDITIONS IN RELATION TO SUBSCRIPTION AND IMPLEMENTATION SERVICES TO BE SUPPLIED BY MY DIGITAL ACCOUNTS LIMITED (“MY DIGITAL”)

### 1. Interpretation

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

**Acceptable Use Policy:** MY DIGITAL's acceptable use policy as displayed on the Website from time to time.

**Active Contractor:** a Contractor User who has submitted at least one timesheet using MY DIGITAL Timesheets during a Billing Period.

**Affiliates:** any other company which is an associate of the Customer, including all subsidiaries, holding companies and subsidiaries of holding companies, and includes any other companies with whom the directors of the Customer are associated as either directors, employees or as shadow directors (such judgement to be made using reasonable judgement by MY DIGITAL).

**Agreed Go Live Date:** the date agreed by the parties for Go Live as set out in the Project Plan.

**App:** where requested by the Customer, the mobile application provided by MY DIGITAL to the Customer as part of the Services under the contract as more particularly described in the Documentation.

**App Fees:** the fees payable by the Customer to MY DIGITAL for the provision of the App as part of the Services as such fee is set out in the Order Form.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation for the Purpose and, in relation to MY DIGITAL Timesheets, a Contractor User and an End Client User.

**Back Up Policy:** MY DIGITAL's back-up policy as displayed on the Website from time to time.

**Billing Period:** a period running from the day after the first Friday of a calendar month to the first Friday of the next calendar month.

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

**Client:** a third party in relation to which the Customer provides services using the Services including, but not limited to, a Limited Company Client and **Clients** shall be construed accordingly.

**Consumer Prices Index:** the Consumer Prices Index (CPI)(all items)(United Kingdom).

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **Change of Control** shall be construed accordingly.

**Contractor User:** a person who is providing services to the Customer and in relation to such services that person will submit timesheets to the Customer using MY DIGITAL Timesheets.

**Customer:** as detailed in the Order Form.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5.

**Consultancy Services:** any services to be supplied by MY DIGITAL to the Customer pursuant to a Statement of Works.

**Contract Year:** each 12-month period commencing on: (i) the Effective Date; and, (ii) each anniversary of the Effective Date during the Subscription Term.

**Customer Data:** the data inputted by the Customer, Authorised Users, or MY DIGITAL on behalf of a Customer or, where applicable, direct by a Client, in each case using the Services for the Purpose.

**Data Migration Fees:** the fees payable by the Customer to MY DIGITAL in relation to the required data migration element (if any) of the Training, Implementation and Configuration Services as more particularly set out in the Order Form.

**Data Protection Law:** the EU General Data Protection Regulation (Regulation 2016/679) and the Data Protection Act 2018 or any applicable law which replaces, implements or transposes the same;

**Documentation:** the document(s) made available to the Customer by MY DIGITAL online which can be accessed at the Website which sets out a description of the Services and the user instructions for the Services.

**Due Date:** the date on which payment of any charges which are to be paid by the Customer under the contract must be paid to MY DIGITAL.

**Effective Date:** the date of the Order Form.

**End Client Users:** those clients of the Customer to which the Customer provides services and who are authorised by the Customer to use MY DIGITAL Timesheets via the Customer's MY DIGITAL Timesheets account in order to authorise relevant timesheets and payment in respect of those services.

**Fees:** the fees payable by the Customer for the Services and any other services to be provided by MY DIGITAL pursuant to the contract.

**Go Live:** the date on which the Services will be available for use by the Customer other than for testing and training purposes.

**Initial Order Form:** the order form attached to these Terms setting out details of the contract and containing the Customer's consent to these Terms and which includes, but is not limited to, details of the Platform Fee and Subscription Fees payable by the Customer in relation to each of the Services, details of the Services to be purchased by the Customer as at the Effective Date and any additional services to be provided by MY DIGITAL pursuant to the contract with associated Fees.

**Initial Subscription Term:** the initial term of the agreement as set out in the Order Form.

**Limited Company Client:** a company through which an individual operates as the single director and shareholder and which provides the services of that individual to third parties under a contract for services and which retains the services of the Customer in relation to the provision of accounting services.

**MY DIGITAL:** My Digital Accounts Limited (Company number: 09514480).

**MY DIGITAL Account:** an account with a unique username and password which is dedicated to the Customer or a Client and which enables the Customer for its own use or on behalf of a Client (as the case may be) or, where applicable, a Client directly to use MY DIGITAL Limited Company for the Purpose.

**MY DIGITAL TIMESHEET Account:** an account with a unique username and password which is dedicated to the Customer and which enables the Customer for its own use to use MY DIGITAL Timesheets for the Purpose.

**MY DIGITAL API:** the software interface developed by MY DIGITAL which enables the Services to interact with third party applications.

**MY DIGITAL Disaster Recovery Standby Services:** as part of MY DIGITAL Payroll and Accounting, the provision of a standby payroll and accounting account readily available for use by the Customer upon the giving of agreed notice to MY DIGITAL, to support the Customer's existing systems for a defined period as agreed by the parties and to be used when the Customer's existing system is unavailable for use for any reason.

**MY DIGITAL Limited Company:** the accounting subscription services specifically tailored for Limited Company Clients provided by MY DIGITAL from time to time as more particularly described in the Documentation.

**MY DIGITAL Payroll and Accounting:** the payroll and accounting subscription services provided by MY DIGITAL from time to time as more particularly described in the Documentation and as such services are packaged in relation to the Platform Plan purchased by the Customer pursuant to the contract as set out in the Order Form and including, but not limited to, the MY DIGITAL Disaster Recovery Standby Solution.

**MY DIGITAL Timesheets:** the timesheet and expenses approval subscription services provided by MY DIGITAL from time to time as more particularly described in the Documentation.

**Minimum Subscription Fee:** the minimum monthly Subscription Fees payable by the Customer to MY DIGITAL as such fee is set out in the Order Form.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Order Form:** means together the Initial Order Form and, if applicable, any Supplemental Order Forms.

**Platform Fee:** in relation to each of the Services, the platform fee applicable to that Service as such fee is set out in the Order Form.

**Platform Plan:** the platform plan setting out the package of services to be supplied by MY DIGITAL in relation to each platform of MY DIGITAL Payroll and Accounting as indicated on the Order Form and as such platform plan is more particularly described in the Documentation.

**Privacy Policy:** MY DIGITAL's privacy policy which is displayed on the Website from time to time and which confirms the categories of personal data which MY DIGITAL collects from the Customer, Clients and Authorised Users in connection with their use of the Service, the purposes for which such personal data is used by MY DIGITAL, the parties with whom MY DIGITAL shares such personal data, any transfers of such personal data outside the EEA and the security measures which MY DIGITAL has implemented and maintains in order to safeguard such personal data against unauthorised access and use.

**Project Plan:** the project plan agreed by the parties setting out the timetable for Go Live, the Agreed Go Live Date and the responsibilities of the parties in relation to Go Live.

**Purpose:** the use by the Customer (for itself and/or its Clients) to access the MY DIGITAL SOFTWARE on their internet enabled device and:

- (a) view real time financial information, raise invoices, receive and generate financial reports (including cash flow, profit and loss accounts and balance sheets) and calculate tax liabilities in relation to MY DIGITAL Payroll and Accounting and MY DIGITAL Limited Company; and
- (b) manage timesheets, invoices and expenses in relation to MY DIGITAL Timesheets.

**Quicksight Services:** the reporting functionality available through Amazon Quicksight as more particularly detailed at <https://aws.amazon.com/quicksight/>.

**Quicksight Fees:** the fees payable by the Customer to MY DIGITAL under the contract in relation to the Quicksight Services (if any) as more particularly set out in the Order Form.

**Relevant Services:** those Services made available by MY DIGITAL to the Customer pursuant to the contract during the Subscription Term.

**Relevant Fees:** the Subscription Fees payable by the Customer pursuant to the contract in relation to the Relevant Services.

**Renewal Period:** the period described in clause 17.1.

**Security Policy:** MY DIGITAL's security policy as displayed on the Website from time to time.

**Service Credit:** the service credit payable by MY DIGITAL for failing to meet a Service Level and as more particularly set at Schedule 1 and **Service Credits** shall be construed accordingly.

**Services:** means any or all of the following subscription services made available by MY DIGITAL to the Customer pursuant to this contract from time to time during the Subscription Term by accessing such services via the Customer's and/or its Client's unique user name and password combination:

- (a) MY DIGITAL Limited Company;
- (b) MY DIGITAL Payroll and Accounting; and
- (c) MY DIGITAL Timesheets.

**SLA:** the service level agreement which is set out in Schedule 1 and **Service Level** shall mean any of the service levels set out in the SLA.

**Software:** the online software applications provided by MY DIGITAL as part of the Services.

**Statement of Work:** each statement of work which is agreed in writing and signed by the parties from time to time for Consultancy Services or any other services or deliverables which are specified and agreed in such statement of work and **Statements of Works** shall be construed accordingly.

**Subscription Fees:** means the higher of:

- (a) the subscription fees payable by the Customer to MY DIGITAL for the User Subscriptions in accordance with clause 10, as such subscription fees are set out in the Order Form and subject to MY DIGITAL's right to increase such subscription fees:

- (i) in accordance with clause 10.9 (CPI Increase); and
  - (ii) after expiry of the Initial Subscription Term in accordance with clause 11.10; and
- (b) the Minimum Subscription Fee.

**Subscription Term:** has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Supplemental Order Form:** means (if any) a supplemental order form entered into by the parties after the Effective Date and which sets out any changes to the Order Form.

**Support Request:** a request for support in relation to any problems or issues with the Relevant Services made by raising a ticket with the MY DIGITAL helpdesk strictly in accordance with the Support Services Policy.

**Support Services Policy:** MY DIGITAL's policy for providing support in relation to the Services as displayed on the Website from time to time.

**Termination Sum:** has the meaning given to it at clause 17.5(g).

**the contract:** means:

- (a) the Order Form;
- (b) Statements of Works (if any); and
- (c) these Terms.

**these Terms:** these terms and conditions as amended by MY DIGITAL from time to time.

**Third Party Services:** means any services which are provided to the Customer or a Client by a third party and which are not provided directly by MY DIGITAL as part of the Services.

**Third Party Sites:** any website which is operated by a third party.

**Third Party Terms:** the terms and conditions and privacy policies for any Third Party Services which the Customer accepts in connection with the Customer's use of Third Party Services which MY DIGITAL informs the Customer of from time to time, including, as of the Effective Date, those set out in the Appendix to the contract.

**Training, Implementation and Configuration Services:** the training, implementation and configuration services in relation to the Services including, where agreed, any services in relation to data migration, agreed to be provided by MY DIGITAL to the Customer pursuant to the contract.

**Training, Implementation and Configuration Fees:** the fees payable by the Customer to MY DIGITAL under the contract for the Training, Implementation and Configuration Services as such fees are set out in the Order Form.

**User Subscriptions:** the user subscriptions in relation to each Subscription Service as more particularly described at Schedule 1 and which are purchased by the Customer pursuant to the contract in relation to a Service agreed to be provided by MY DIGITAL pursuant to the contract and which entitles the Customer to access and use that Service and the Documentation for the

Purpose on its own behalf and/or on behalf of and for the benefit of its Clients (as the case may be).

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Website:** means the website which can be found at [www.mydigitalaccounts.com](http://www.mydigitalaccounts.com) (or any other URL which MY DIGITAL notifies to the Customer from time to time either in writing (including by e-mail) or by publishing details on the Website).

- 1.2 Terms used in the Order Form shall apply to these Terms, save where the context requires otherwise.
- 1.3 The Schedules and Appendix shall form part of, and are incorporated into, the contract.
- 1.4 Clause, schedule and paragraph headings shall not affect the interpretation of the contract.
- 1.5 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the contract.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the contract under that statute or statutory provision.
- 1.11 A reference to writing or written includes faxes but not e-mail, unless otherwise expressly stated in the contract.
- 1.12 References to clauses and schedules are to the clauses and Schedules of the contract; references to paragraphs are to paragraphs of the relevant Schedule to the contract.

## **2. Varying these Terms**

Save in relation to the Subscription Fees set out in the Order Form and which, subject to increase in accordance with clause 10.9, shall apply for the duration of the Initial Subscription Term, the Customer agrees that MY DIGITAL may vary these Terms from time to time and the Customer agrees to accept any changes made to these Terms as such terms can be found on the Website from time to time. MY DIGITAL may advise the Customer in writing of any proposed changes to

these Terms and the Customer should ensure that it reviews the terms as found on the Website regularly so that it is aware of any changes made to these Terms.

### **3. User Subscriptions - MY DIGITAL Limited Company**

3.1 If the Customer applies for a MY DIGITAL Account to be created on behalf of a Client or the Customer uses a MY DIGITAL Account or MY DIGITAL Limited Company on behalf of or for the benefit of a Client, the Customer shall ensure that:

- (a) it has received the prior written authorisation of the Client to open a My Digital Account and use the MY DIGITAL Account and MY DIGITAL Limited Company on behalf of and for the benefit of the Client (which shall include making the Client aware before the Client provides such consent of the terms and conditions set out in the contract including in particular, any conditions regarding collection and use of the Client's data in accordance with the contract and any applicable Third Party Terms);
- (b) it has the irrevocable authority to act as the Client's agent in respect of the Customer's access to and use of the MY DIGITAL Account and MY DIGITAL Limited Company including the right to receive and use the Client's unique user name and password to access the Website where applicable, to access each Client's MY DIGITAL Account, to use MY DIGITAL Limited Company for the benefit of the Client and to make decisions on behalf of the Client regarding access to and use of Third Party Sites, Third Party Services, Third Party Terms and use of the MY DIGITAL API);
- (c) it has received a written waiver from the Client pursuant to which each Client acknowledges that it is aware of the terms and conditions of the contract, that it appoints the Customer to use MY DIGITAL Limited Company on the Client's behalf (and at the sole risk of the Client) and shall waive any rights or remedies which it may have against MY DIGITAL to the extent that such rights or remedies arise from any breach by the Customer of the contract and shall be bound by the limitations and exclusions of MY DIGITAL's liability as set out in the contract as if the Client were a party to the contract,

and following a written request from MY DIGITAL, the Customer shall provide copies of such authorisations and waivers to MY DIGITAL.

3.2 MY DIGITAL reserves the right, at its absolute discretion, not to accept an application to create a My Digital Account including in circumstances where there is a technical constraint, legal or regulatory reason or commercial reason such that MY DIGITAL is unable or unwilling to provide MY DIGITAL Limited Company to or for the benefit of the Client. No charge will be made by MY DIGITAL where an application for a My DIGITAL Account is declined. MY DIGITAL does not accept any obligation to provide reasons or enter into correspondence or communications with the Customer (or any Client) regarding any application for a MY DIGITAL Account which MY DIGITAL chooses to decline.

3.3 At all times during the Subscription Term, the Customer shall be responsible for (and shall procure that the Client shall) ensure that Client details which are submitted to MY DIGITAL using MY DIGITAL Limited Company are kept up-to-date, accurate and complete and that any changes are made as soon as reasonably practicable following any change. The Customer acknowledges that it can add or change such information using the 'edit' function on the 'Company Details' or 'People' pages of the Website.

3.4 The Customer acknowledges and agrees that each MY DIGITAL Account is to be used by or for the benefit of a single Client only and the Customer shall not use any MY DIGITAL Account for the benefit of multiple Clients. In the event that MY DIGITAL, acting reasonably, believes that a MY DIGITAL Account is being used for the benefit of multiple Clients, it shall have the right to

suspend MY DIGITAL Limited Company, terminate the contract and/or to continue to perform its obligations under the contract subject to the Customer paying charges for MY DIGITAL Limited Company which have been used for the benefit of multiple Clients.

3.5 In relation to each MY DIGITAL Account, the Customer undertakes that:

- (a) where applicable, each Client shall be provided with a secure password for each Client's use of MY DIGITAL Limited Company (which the Customer shall ensure the Client permits MY DIGITAL to provide to the Customer for use on behalf of the Client) and the Customer shall procure that the Client shall change the password no less frequently than monthly and shall keep the password confidential;
- (b) it shall maintain a written, up to date list of current Clients and provide such list to MY DIGITAL within 1 Business Day of MY DIGITAL's written request at any time or times;
- (c) it shall permit MY DIGITAL to audit MY DIGITAL Limited Company, the MY DIGITAL Accounts and the Customer's and (where applicable) Client's use of MY DIGITAL Limited Company and the MY DIGITAL Accounts in order to establish MY DIGITAL Account usage and the name and password of each Client. Such audit may be conducted no more than once per quarter, at MY DIGITAL's expense, and this right shall be exercised with no less than two (2) Business Days' notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (d) if any of the audits referred to in clause 3.5(c) reveal that MY DIGITAL Limited Company has been provided for the benefit of any individual who is not a Client, then without prejudice to MY DIGITAL's other rights, the Customer shall promptly disable any access such individual has to MY DIGITAL Limited Company (including passwords) and MY DIGITAL shall not provide MY DIGITAL Limited Company for the benefit of (including the issuing of any new passwords) to any such individual; and
- (e) if any of the audits referred to in clause 3.5(c) reveal that the Customer has underpaid Subscription Fees to MY DIGITAL, then without prejudice to MY DIGITAL's other rights and remedies, the Customer shall pay to MY DIGITAL an amount equal to such underpayment as calculated in accordance with the charges set out in the Order Form within five (5) Business Days of the date of MY DIGITAL's demand.

#### **4. Purchase of and right to use the Services**

4.1 As at the Effective Date, the Customer has agreed to purchase the Services and such other services as indicated on the Initial Order Form. Where the Customer wishes to purchase additional Services during the Subscription Term, it shall notify MY DIGITAL in writing and, if MY DIGITAL agrees to make available such additional Services to the Customer, MY DIGITAL shall provide a Supplemental Order Form detailing the additional Services agreed to be made available by MY DIGITAL to the Customer on the terms of this contract. For the avoidance of doubt, save where MY DIGITAL agrees otherwise in any Supplemental Order Form, the Fees for all Services and other services to be provided pursuant to the contract are as set out in the Order Form.

4.2 In consideration of the Customer paying the Relevant Subscription Fees and, where applicable, the App Fees (and subject at all times to the Customer's compliance with the restrictions set out in this clause 4 and the Customer's compliance with the other terms and conditions of the contract and any applicable Third Party Terms), MY DIGITAL hereby grants to the Customer a personal, non-exclusive, non-transferable, revocable licence to the Customer which permits the Customer (and its Authorised Users) to access and use the Relevant Services and the Documentation solely for the Purpose and solely for the benefit of and on behalf of itself and/or



each Client (as the case may be) during the Subscription Term only. The Customer shall also be entitled to permit the Affiliates to use the Services and Documentation solely for the Purpose and solely for the benefit and on behalf of itself and/or their own Clients during the Subscription Term to the same extent as the Customer, provided always that the Customer shall at all times be responsible for the acts and omissions of such Affiliates and payment of all amounts (including Subscription Fees) in relation to Affiliates (notwithstanding any agreement to invoice the Affiliates directly). MY DIGITAL shall be entitled to suspend access to the Services (or any of them) and Documentation by any Affiliate upon providing written notice to the Customer.

4.3 The Customer acknowledges and agrees that:

- (a) it is not granted any right to sub-licence the rights which are granted to it by the Supplier in clause 4.1;
- (b) to the extent that Authorised Users have been granted the right to use the Services and the Documentation this right shall only be for purpose of enabling the Customer to provide services to its Clients for the Purpose;
- (c) it does not have, (nor does any Client have) any right or interest in the underlying source code which is used to deliver the Services and the rights granted to the Customer are limited to a right to access the Services and Documentation using each allocated user name and password, subject to the terms of the contract; and
- (d) with respect to any Affiliates which it allows to use the Services and Documentation (pursuant to clause 4.1), the Customer shall ensure that such Affiliates are made aware of the terms of the contract, including any applicable Third Party Terms, and shall be responsible for ensuring that such Affiliates comply with the obligations set out in the contract as though they were the Customer under the contract.

4.4 The Customer shall not, and shall procure that its Clients and Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services or use the Services for any purpose that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property; or
- (g) otherwise breaches: (i) the Acceptable Use Policy; or (ii) the terms of any contract to which MY DIGITAL is a party and which is necessary for the performance of the Services; or (iii) any applicable Third Party Terms,

and MY DIGITAL reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause (including the right to suspend access to and use of the Services entirely or partially for such period as MY DIGITAL shall determine in its absolute discretion).

4.5 The Customer shall not, and shall procure that each Client and Authorised User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion or by agreement in writing between the parties:
  - (i) and except to the extent expressly permitted under the contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Website, the Services (including the software which enables the provision of the Services) and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services (to the extent that the Services are software-enabled); or
- (b) use the Services and/or Documentation to provide services to third parties (save for the provision of services to Clients for the Purpose); or
- (c) subject to clause 26.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 4.

4.6 The Customer shall ensure that there is no unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any unauthorised access or use, the Customer shall immediately notify MY DIGITAL and co-operate with MY DIGITAL to mitigate the consequences of any unauthorised access or use (including prompt and diligent compliance with any reasonable instructions of MY DIGITAL).

4.7 The Customer acknowledges that the Customer shall only be permitted to allow its Clients to have access to the Services and Documentation via a unique user name and password to access the Website, and the Customer shall not be entitled to permit any other of its clients to have such access. Notwithstanding this, the Services may be used for the benefit of all Clients.

## **5. Services**

5.1 In consideration of:

- (a) the payment of the Training, Implementation and Configuration Fees, MY DIGITAL shall provide the Training, Implementation and Configuration Services;
- (b) the payment of the Platform Fee, the Subscription Fees and, where applicable, the App Fees in relation to the Relevant Services, MY DIGITAL shall, during the Subscription Term:
  - (i) provide the Relevant Services and make available the Documentation to the Customer on and subject to the terms of the contract;
  - (ii) provide support services in accordance with the Support Services Policy during Normal Business Hours;
  - (iii) use its commercially reasonable endeavours to perform the Relevant Services in accordance with the SLA;

- (iv) provide reasonable use of MY DIGITAL's customer support line (to be determined at the sole discretion of MY DIGITAL). If the use of MY DIGITAL's support line is deemed excessive (determined at the sole discretion of MY DIGITAL), additional fees will apply and these will be applied using the fees set out in the Order Form;
  - (c) the payment of the Quicksight Fees, MY DIGITAL shall provide the QuickSight Services;
  - (d) the payment of the Consultancy Fees, MY DIGITAL shall provide the Consultancy Services.
- 5.2 MY DIGITAL shall use commercially reasonable endeavours to make the Services available twenty-four (24) hours a day, seven (7) days a week, except for:
- (a) planned maintenance carried out during MY DIGITAL's maintenance window (i.e. anytime outside Normal Business Hours);
  - (b) unscheduled maintenance performed during Normal Business Hours, provided that MY DIGITAL has used commercially reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance; and
  - (c) unscheduled emergency maintenance in respect of any security or other emergency reasons including events which are outside MY DIGITAL's reasonable control.
- 5.3 MY DIGITAL may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at MY DIGITAL's then current rates.
- 5.4 MY DIGITAL may provide the Customer with consulting, training, development and other professional and consultancy services as specifically set forth in a Statement of Work.
- 5.5 Unless otherwise specified in a Statement of Work, MY DIGITAL hereby retains all right, title and interest in and to any deliverables which are provided under a Statement of Work including any and all intellectual property rights in such deliverables. MY DIGITAL grants to the Customer a non-exclusive, non-transferable and perpetual licence to use any deliverables created under a Statement of Work in conjunction with the Services for its own internal business purposes (subject to MY DIGITAL having received full payment for the deliverables in accordance with the charges set out in the Statement of Work).
- 6. Customer data**
- 6.1 In this clause 6, "controller", "data controller", "data processor", "data subject", "personal data", "process", "processor" and "special categories of data" shall have the meaning given to them by Data Protection Law.
- 6.2 MY DIGITAL's Privacy Policy is incorporated into the contract by reference and applies to those Services that are not specified in clause 6.15 as having separate privacy policies. The Customer acknowledges and agrees that Customer Data shall be collected and used by MY DIGITAL in accordance with the Privacy Policy and shall ensure that each Client, Contractor User and End Client User (as the case may be) is aware of the Privacy Policy and provides its prior written consent to the Customer which shall confirm that that party has seen and agrees to that party's personal data being used by MY DIGITAL in accordance with the Privacy Policy.

- 6.3 The Customer, as data controller/controller appoints MY DIGITAL as a data processor/processor to process the personal data described in the contract (the **Data**) for the purposes described in the contract (the **Permitted Purpose**). Each party shall comply with the obligations that apply to it under Data Protection Law.
- 6.4 The Customer shall not disclose (and shall not permit any data subject to disclose) any sensitive personal data/special categories of personal data to MY DIGITAL for processing.
- 6.5 MY DIGITAL shall not transfer the Data outside of the European Economic Area (**EEA**) unless it has taken such measures as are necessary to ensure the transfer is in compliance with Data Protection Law. Such measures may include transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.
- 6.6 MY DIGITAL shall ensure that any person it authorises to process the Data (an **Authorised Person**) shall protect the Data in accordance with MY DIGITAL's confidentiality obligations under the contract.
- 6.7 MY DIGITAL shall implement technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a **Security Incident**).
- 6.8 The Customer consents to MY DIGITAL engaging third party subprocessors to process the Data for the Permitted Purpose provided that: (i) MY DIGITAL maintains an up-to-date list of its subprocessors and shall notify the Customer of any change in subprocessors at least 10 Business Days' prior to any such change; (ii) MY DIGITAL imposes data protection terms on any subprocessor it appoints that require it to protect the Data to the standard required by Data Protection Law; and (iii) MY DIGITAL remains liable for any breach of this clause that is caused by an act, error or omission of its subprocessor. If the Customer objects to a proposed subprocessor on the data protection compliance grounds, it shall notify MY DIGITAL within 5 Business Days of receipt of MY DIGITAL's notice and shall specify the grounds on which it objects and the Customer may terminate the contract by serving notice within 10 Business Days of MY DIGITAL's notice, subject to payment of the Termination Sum. As at the Effective Date, MY DIGITAL processes personal data of its clients using AWS Europe as its sub-Processor and the Customer acknowledges and agrees that MY DIGITAL shall be entitled to appoint AWS Europe as its sub-processor to process personal data in respect of which the Customer is the controller under the contract during the Subscription Term.
- 6.9 MY DIGITAL shall provide reasonable and timely assistance to the Customer (at the Customer's expense) to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to MY DIGITAL, MY DIGITAL shall promptly inform the Customer providing full details of the same.
- 6.10 If MY DIGITAL believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Data Protection Law.

- 6.11 If MY DIGITAL becomes aware of a confirmed Security Incident, MY DIGITAL shall:
- (a) inform the Customer without undue delay and shall provide reasonable information and cooperation to the Customer so that the Customer can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Data Protection Law; and
  - (b) take any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident; and
  - (c) keep the Customer informed of all material developments in connection with the Security Incident.
- 6.12 Upon termination or expiry of the contract, MY DIGITAL shall (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement shall not apply to the extent that MY DIGITAL is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data MY DIGITAL shall securely isolate and protect from any further processing except to the extent required by such law.
- 6.13 On request by the Customer, MY DIGITAL shall:
- (a) contribute to audits and inspections of any written records which MY DIGITAL maintains in respect of its compliance with this clause 6 by permitting the Customer to audit and inspect such records; and
  - (b) respond to any written audit questions submitted to it by the Customer in respect of MY DIGITAL's compliance with this clause 6,
- provided that the Customer's rights under this clause 6.13 shall be exercised no more than once per Contract Year and any inspection shall take place during Normal Business Hours on Business Days and the Customer shall take all reasonable measures to prevent any unnecessary disruption to MY DIGITAL's operations.
- 6.14 The Customer acknowledges and agrees that internet transmissions are never completely private or secure and that any message or information which is sent or received using the Services may be read or intercepted by others, even if a particular transmission is encrypted.
- 6.15 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data (and shall procure that each Client shall maintain Customer Data so that it remains accurate, complete and up-to-date at all times).
- 6.16 MY DIGITAL shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by MY DIGITAL in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for MY DIGITAL to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by MY DIGITAL in accordance with the archiving procedure described in its Back-Up Policy. MY DIGITAL shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by MY DIGITAL to perform services related to Customer Data maintenance and back-up). The Customer shall ensure that each Client is aware of MY DIGITAL's Back-Up Policy and obligations with regard to the restoration of Customer Data.

6.17 MY DIGITAL shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data, as such documents may be amended from time to time by MY DIGITAL in its sole discretion.

6.18 The Customer consents (on behalf of itself and each Client) to MY DIGITAL collecting and using technical information about the devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve its products and to provide any Services to the Customer.

## **7. Third party providers**

7.1 The Services may contain links to other independent third-party websites (**Third Party Sites**). Third Party Sites are not under MY DIGITAL's control, and MY DIGITAL is not responsible for and does not endorse their content or their privacy policies (if any). The Customer will need to make its own independent judgement regarding your interaction with any Third Party Sites, including the purchase and use of any products or services accessible through them.

7.2 MY DIGITAL makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third Party Site, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any Third Party Site is between the Customer and the relevant third party, and not MY DIGITAL. MY DIGITAL recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant Third Party Site. MY DIGITAL does not endorse or approve any Third Party Site nor the content of any Third Party Site.

7.3 The Services can interact with third party applications where the Customer enables the MY DIGITAL API. Where the Customer enables the MY DIGITAL API, use of the MY DIGITAL API is subject to the following conditions:

- (a) where applicable, the Customer has received the express prior written permission of the Client (and has notified the Client of the conditions relating to use of the MY DIGITAL API as set out in the contract);
- (b) the Customer acknowledges and agrees that (and shall procure that the Client acknowledges and agrees that) any third party application which the Customer selects to access the Services has the ability to access to Customer Data and is outside of MY DIGITAL's control;
- (c) before enabling the MY DIGITAL API and using any third party application, it is the sole responsibility of the Customer and the Customer shall (and, where applicable, shall procure that the Client shall) carefully assess whether or not the Customer (and, where applicable, the Client) understands and is willing to accept the risks associated with use of each third party application, the terms and conditions on which the third party application will be provided (including any privacy policy which sets out the manner in which the third party will collect and use Customer Data) and any assurances provided by the third party regarding the Customer's (and the Client's) privacy and security.

7.4 The Customer acknowledges and agrees that it is the Customer's decision as to whether or not it enables the MY DIGITAL API and that the Customer has the right to disable the MY DIGITAL API at any time by modifying the preferences for the relevant MY DIGITAL Account.

7.5 As third party applications which the Customer (and Client) may use to access the Services are provided by third parties and used at the election of the Customer (and, where applicable, the Client), MY DIGITAL does not accept any responsibility for any loss suffered by the Customer

(and/or where applicable, the Client) as a result of the Customer's (or, where applicable, the Client's) use of any third party application to access the Services.

## **8. Supplier's obligations**

8.1 MY DIGITAL shall provide the Services and any other services supplied under the contract substantially in accordance with the Documentation with reasonable skill and care.

8.2 Clause 8.1 shall not apply to the extent of any non-conformance which is caused by:

- (a) use of the Services and any other services supplied under the contract contrary to MY DIGITAL's instructions;
- (b) modification or alteration of the Services or any other services supplied under the contract by any party other than MY DIGITAL or MY DIGITAL's duly authorised contractors or agents;
- (c) the Customer's or Client's breach of the contract (or any Third Party Terms);
- (d) use of the Services for any purpose other than the Purpose.

8.3 If the Services or any other services supplied under the contract do not conform with clause 9.1, MY DIGITAL will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of clause 8.1.

8.4 MY DIGITAL:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.5 The contract shall not prevent MY DIGITAL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the contract.

8.6 MY DIGITAL warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the contract.

## **9. Customer's obligations**

9.1 The Customer shall (and shall procure that each Authorised User and each Client shall):

- (a) provide MY DIGITAL with:
  - (i) all necessary co-operation in relation to the contract; and
  - (ii) all necessary access to such information as may be required by MY DIGITAL;

in order to provide the Services, the Training, Implementation and Configuration Services and any other services to be supplied under the contract, including Customer Data, security access information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under the contract;
- (c) carry out all other Customer and Client responsibilities set out in the contract and the Project Plan in a timely and efficient manner (and MY DIGITAL shall be relieved from the performance of and liability for breach of its obligations to the extent attributable to the Customer's breach of the contract or failure to perform the Customer responsibilities in a timely and efficient manner);
- (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for MY DIGITAL, its contractors and agents to perform their obligations under the contract, including without limitation the Services;
- (e) ensure that its network and systems comply with the relevant specifications provided by MY DIGITAL from time to time; and
- (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to MY DIGITAL's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 The Customer shall:

- (a) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the contract and shall be responsible for any Authorised User's breach of the contract;
- (b) where applicable, only access a Client's My Digital Account by using a password and username which that Client has expressly authorised the Customer to use in writing;
- (c) only use the Services on behalf of the Client whose My Digital Account the Customer is accessing and solely for money management purposes relating to that Client's own business which are legal;
- (d) ensure that each Client is aware of the terms and conditions and policies subject to which the Services are made available before using them on behalf of a Client (including Third Party Services);
- (e) procure an irrevocable written authorisation from each Client which grants the Customer the right to use the Services on and subject to the terms and conditions of the contract for the benefit of the Client and provide a copy of the Client's written authorisation to MY DIGITAL upon request (and shall procure that the Client shall do all things which are required by MY DIGITAL or a third party to comply with the terms of the contract including the grant of any necessary powers of attorney); and
- (f) ensure that each Client complies with the terms of the contract applicable to the Customer as if it were a party to it.

9.3 The Customer shall not (and shall procure that Authorised Users and the Client shall not);



- (a) do anything which could reasonably be expected to damage, disable, overburden, or materially impair the Services or the Website or which is likely to interfere with any other party's use or enjoyment of the Services; and/or
- (b) question or dispute MY DIGITAL's ownership of the intellectual property rights in the Services or any other services supplied under the contract, the Documentation and the Website.
- (c) employ the services of any employee, contractor, consultant or any associates of MY DIGITAL either directly or through any third party to undertake work of a similar nature during the term of the contract or on termination of the contract and thereafter for a period of 24 months.

## 10. Charges and payment

10.1 The Customer shall pay to MY DIGITAL:

- (a) the Training, Implementation and Configuration Fees in relation to the Training, Implementation and Configuration Services; and
- (b) the Subscription Fees for the User Subscriptions;
- (c) where the Services include the App, the App Fees;
- (d) the Quicksight Fees in relation to the Quicksight Services (if any);
- (e) expenses incurred in relation to the Services,

in accordance with this clause 10.

10.2 The:

- (a) Training, Implementation and Configuration Fees shall be paid on the date specified in the Order Form (the **Due Date**) and MY DIGITAL will generally raise an invoice for the Training, Implementation and Configuration Fees on the date of the Order Form and;
- (b) Subscription Fees and the App Fees shall be paid in relation to each Billing Period in arrear by the Customer by no later than 7 days of the date of invoice (the **Due Date**) and MY DIGITAL will generally raise an invoice for the App Fees and the Subscription Fees on the Monday following the first Friday of each calendar month; *(Note: a weekly payslip covers 1 pay interval, i.e. 1 week of tax allowances and a monthly payslip covers 4 or 5 pay intervals, i.e. 4 or 5 weeks of tax allowances, depending on the Billing Period.);* and
- (c) Quicksight Fees shall be payable on the same date as the Subscription Fees and the App Fees (the **Due Date**),

and all fees due from the Customer under the contract shall be paid in full and received in cleared funds by MY DIGITAL on or before the Due Date without application of any right of set-off, counterclaim, deduction or abatement.

10.3 The Customer acknowledges and agrees that:

- (a) the Subscription Fees shall be calculated in relation to each Billing Period in arrears based on the User Subscriptions during that Billing Period, subject always to the liability of the Customer to pay the Minimum Subscription Fee in relation to each Billing Period

where such minimum fee is greater than the Subscription Fees for that Billing Period;  
and

- (b) the Subscription Fees shall be payable from Go Live save where the Agreed Go Live Date is delayed as a result of the Customer's negligence, failure to perform or delay in the performance of any of its obligations under the contract or by reason of a request from the Customer to delay Go Live, in which case MY DIGITAL may, at its sole discretion, require the Customer to pay the Minimum Subscription Fees from the Agreed Go Live Date.

10.4 The Customer acknowledges and agrees that payment of Fees by the Due Date is of the essence of the contract.

10.5 Any required travel, accommodation and subsistence expenses will be an additional expense payable by the Customer and will be agreed in advance between the Customer and MY DIGITAL and added to the next invoice submitted by MY DIGITAL in relation to Subscription Fees and shall be payable in accordance with clause 10.2(b).

10.6 If MY DIGITAL has not received payment on the Due Date, and without prejudice to any other rights and remedies of MY DIGITAL:

- (a) MY DIGITAL may, without any obligation to notify or liability to the Customer, disable the Customer's password, account and access to all or any part of the Services and My Digital Accounts and/or My Digital Timesheets Accounts (as the case may be) and MY DIGITAL shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a weekly basis on such due amounts at a rate of 0.5% per week, commencing on the Due Date and continuing until fully paid, whether before or after judgment.

10.7 In respect of any additional fees which are agreed pursuant to a Statement of Work (including, but not limited to, in relation to any Consultancy Services), such fees shall be paid on the date specified on the Statement of Work (and where no date is specified, 25% of the fees shall be paid on signature of the Statement of Work and the remainder shall be paid within 7 days of the date on which MY DIGITAL notifies the Customer that the relevant services have been completed or the deliverables have been provided).

10.8 All amounts and fees stated or referred to in the contract:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 14.7(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to MY DIGITAL's invoice(s) at the appropriate rate and paid in addition.

10.9 MY DIGITAL may increase the Subscription Fees on an annual basis with effect from the beginning of each Contract Year in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the second Contract Year and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index at the beginning of the last month of the previous Contract Year.

10.10 Subject to clause 10.9, the Subscription Fees and other rates or amounts set out in the contract are fixed for the Initial Subscription Term. After the Initial Subscription Term, the Subscription

Fees and such rates will be as notified by MY DIGITAL to the Customer (and in the absence of any notification, the Subscription Fees shall be as displayed on the Website until such time as MY DIGITAL notifies the Customer of the applicable changes).

## **11. Proprietary rights**

- 11.1 The Customer acknowledges and agrees that MY DIGITAL and/or its licensors own all intellectual property rights in the Services, any other services supplied under the contract and the Documentation. Except as expressly stated herein, the contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, such services or the Documentation.
- 11.2 MY DIGITAL warrants that it has all the rights in relation to the Services, any other services to be supplied under the contract and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the contract.

## **12. Confidentiality**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the contract.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the contract.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, any other services supplied under the contract including, but not limited to, the Subscription Fees payable in relation to such Services and the results of any performance tests of the Services and any such services, constitute MY DIGITAL's Confidential Information.
- 12.6 MY DIGITAL acknowledges that the Customer Data is the Confidential Information of the Customer.

12.7 This clause 12 shall survive termination of the contract, however arising.

12.8 No party shall make, or permit any person to make, any public announcement concerning the contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

### **13. Indemnity**

13.1 The Customer shall defend, indemnify and hold harmless MY DIGITAL against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

- (a) the Customer's use of the Services, any other services supplied under the contract, the Documentation and/or Third Party Services;
- (b) any breach of the contract including any policies referred to in the contract (and including any claim made by or on behalf of a Client against MY DIGITAL arising from the Customer's breach of the contract), excluding any breach by MY DIGITAL;
- (c) any breach of any Third Party Terms, excluding any breach by MY DIGITAL;
- (d) any failure to comply with applicable laws or regulations, the requirements of any regulatory authority or any court Order, excluding any failure by MY DIGITAL; and/or
- (e) the infringement of any third party rights (including the rights of any Client), other than by MY DIGITAL;
- (f) any act or omission of the Customer or the Client which puts MY DIGITAL in breach of applicable laws and regulations, the requirements of a regulatory authority, court order or in breach of any contract with any service provider which MY DIGITAL contracts with to provide the Services or any other services provided under the contract,
- (g) provided that:
  - (i) the Customer is given prompt notice of any such claim;
  - (ii) MY DIGITAL provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (iii) the Customer is given sole authority to defend or settle the claim.

13.2 MY DIGITAL shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) MY DIGITAL is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to MY DIGITAL in the defence and settlement of such claim, at MY DIGITAL's expense; and
- (c) MY DIGITAL is given sole authority to defend or settle the claim.

- 13.3 In the defence or settlement of any claim, MY DIGITAL may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the contract immediately on notice in writing to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall MY DIGITAL, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than MY DIGITAL; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by MY DIGITAL; or
  - (c) any breach of the contract; or
  - (d) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from MY DIGITAL or any appropriate authority.
- 13.5 Clauses 13.2, 13.3 and 14.7(b) state the Customer's sole and exclusive rights and remedies, and MY DIGITAL's (including MY DIGITAL's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

#### **14. Limitation of liability**

- 14.1 The Customer acknowledges and agrees (and shall procure that the Client acknowledges and agrees) that:
- (a) the Services have not been developed to meet the Customer's or the Client's individual requirements, and that it is therefore the Customer's and the Client's responsibility to ensure that the facilities and functions of the Services as described in the Documentation meet the Customer's and the Client's requirements;
  - (b) it is the Customer's and each Client's responsibility to ensure that any information which is submitted using the Services is backed-up or a copy retained and that the Services are not intended to act as the sole repository for all of the Customer's and/or Client's information;
  - (c) all information which is provided by the Services shall be checked by the Customer and the Client before acting or relying on it and the Services are not intended to be a substitute for professional accountancy and tax advice and the information provided by our Services does not constitute accountancy or tax advice;
  - (d) as the Services are software-enabled and provided over the internet, the Services are not error-free and may suffer from minor defects and bugs, will not be available on a 24/7/365 basis (and no guarantee is provided as to the availability, speed or performance of the Services) and MY DIGITAL does not guarantee that the Services will be free from Viruses (but it will use industry standard software to detect and eradicate Viruses, where reasonably possible).
- 14.2 This clause 14 sets out the entire financial liability of MY DIGITAL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with the contract;

- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.
- 14.3 Except as expressly and specifically provided in the contract:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. MY DIGITAL shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to MY DIGITAL by the Customer in connection with the Services, or any actions taken by MY DIGITAL at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the contract; and
  - (c) the Services and the Documentation are provided to the Customer on an "as is" and "as available" basis.
- 14.4 Nothing in the contract excludes the liability of MY DIGITAL:
  - (a) for death or personal injury caused by MY DIGITAL's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 14.5 If MY DIGITAL fails to comply with any of the Service Levels then, subject to the terms of the contract, the Customer shall become entitled to the Service Credit specified in Schedule 1 corresponding to the relevant failure. The parties acknowledge that each Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty and the provision of a Service Credit shall be an exclusive remedy for a particular Service Level failure.
- 14.6 If MY DIGITAL's performance of its obligations under the contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay (including, but not limited to, any Service Credit, that would have been payable as a result of such prevention or delay).
- 14.7 Subject to clauses 14.3, 14.4 and 14.5:
  - (a) MY DIGITAL shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following losses or damage (howsoever arising):
    - (i) loss of profits;
    - (ii) loss of business;
    - (iii) depletion of goodwill and/or similar losses or loss;
    - (iv) loss of, damage to or corruption of data or information;
    - (v) fines (including fines levied by a regulatory authority or tax authority) or any costs, expenses or interest;

- (vi) pure economic loss; or
  - (vii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the contract; and
- (b) MY DIGITAL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the greater of:
- (i) £5,000 in each Contract Year; or
  - (ii) in each Contract Year:
    - (A) the total Subscription Fees paid or payable for the User Subscriptions in such Contract Year where such liability arises in connection with the performance or contemplated performance of the contract in relation to the Services; and
    - (B) where such liability arises in connection with the performance or contemplated performance of the contract in relation to services provided under the contract other than the Services, the total fees paid or payable for such services.

## **15. Suspension and cancellation of My Digital Account**

- 15.1 The Customer can close a MY DIGITAL Account in relation to a particular Client at any time by notifying MY DIGITAL in writing. Subject to the receipt of the Subscription Fees for the My Digital Account for the current Billing Period, no further Subscription Fees will be billed for the closed My Digital Account and no refund will be made of any Subscription Fees already billed and paid in respect of the closed My Digital Account.
- 15.2 MY DIGITAL may suspend access to or use of the Services or permanently cancel a MY DIGITAL Account in the event that:
- (a) the Customer or the Client fails to comply with:
    - (i) the contract;
    - (ii) any of the policies referred to in the contract;
    - (iii) any Third Party Terms;
  - (b) if the continued used of the Services would result in MY DIGITAL being in breach of:
    - (i) any applicable laws, regulatory requirements, court Orders, the requirements of any regulatory authority or law enforcement agency;
    - (ii) any contract to which MY DIGITAL is a party and which is necessary for the performance of the Services;
  - (c) payment of the Subscription Fees is not paid by the Due Date (or any other fees are not paid by the agreed date).
- 15.3 In respect of any suspension or cancellation by MY DIGITAL pursuant to clause 15.2, no refund of any Subscription Fees for the MY DIGITAL Account shall be paid (and the Customer shall be

responsible for the payment of twelve (12) months' fees for each suspended or cancelled MY DIGITAL Account).

## 16. Non solicitation

- 16.1 The Customer shall not, without the prior written consent of MY DIGITAL, at any time from the Effective Date until the expiry of 12 months after termination or expiry of the contract, solicit or entice away from the employment of MY DIGITAL or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of MY DIGITAL in relation to the provision of the Services at any time.
- 16.2 If the Customer breaches clause 16.1, the Customer agrees to pay on demand to MY DIGITAL the sum equal to one-year's salary of such employee or sub-contractor, (plus VAT if applicable), it being agreed by the parties that such sum represents a genuine pre-estimate of the loss that MY DIGITAL would suffer in the event of such breach.

## 17. Term and termination

- 17.1 The contract shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the contract shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 6 months before the end of the Initial Subscription Term or any Renewal Period, in which case the contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of the contract,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 17.2 Without affecting any other right or remedy available to it, either party may terminate the contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any other term of the contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
  - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;



- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(b) to clause 17.2(h) (inclusive);
- (a) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

17.3 Without affecting any other right or remedy available to it, MY DIGITAL may terminate the contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the contract on the Due Date;
- (b) the Customer fails to comply with clause 3;
- (c) a Client does not comply with any of the terms of the contract;
- (d) the Customer (or a Client) fails to comply with the Third Party Terms;
- (e) there is a Change of Control of the Customer.; or
- (f) the Customer:
  - (i) has committed a crime; or
  - (ii) has become involved in any situation or activity which:
    - (A) tends in the reasonable opinion of MY DIGITAL to have a negative effect on the reputation of MY DIGITAL or any aspect of its business;
    - (B) would expose MY DIGITAL or any aspect of its business to disrepute, scandal, ridicule or contempt, or would tend to shock, insult or offend the public in any territory in which MY DIGITAL's products or services are marketed;
    - (C) reflects unfavourably on the reputation of MY DIGITAL, its brands, products or services; or
    - (D) might affect the supply, successful sales and exploitation of the products or services of MY DIGITAL.

conduct shall be deemed a material breach in terms of clause 17.2(a).

MY DIGITAL's decision on all matters arising under this clause shall be conclusive.

17.4 The Customer may terminate the Quicksight Services by giving notice to MY DIGITAL and MY DIGITAL shall cease to supply the Quicksight Services on expiry of the Billing Period following the Billing Period during which such notice was given and the Quicksight Fees shall cease with effect from such date.

17.5 On termination of the contract for any reason:

- (a) the Customer shall immediately cease to be able to access any of the Services or any other services supplied by MY DIGITAL pursuant to the contract;
- (b) the Customer shall immediately pay to MY DIGITAL all of MY DIGITAL's outstanding unpaid invoices and interest and, without prejudice to clause 17.5(g), in respect of any services for which no invoice has been submitted, MY DIGITAL may submit an invoice, which shall be payable immediately on receipt;
- (c) all rights and licences granted under the contract shall immediately terminate (including any right to access and use the Services and each My Digital Account and/or My Digital Timesheet Account (as the case may be));
- (d) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (e) MY DIGITAL may destroy or otherwise dispose of any of the Customer Data in its possession unless MY DIGITAL receives, no later than ten (10) days after the effective date of the termination of the contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. MY DIGITAL shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by MY DIGITAL in returning or disposing of Customer Data;
- (f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- (g) without prejudice to any other rights or remedies of MY DIGITAL, in the event of termination other than in accordance with clause 17.1(a) or by the Customer in accordance with clause 18.2, the Customer shall pay a Termination Sum, being 50% of the Subscription Fees which would have been paid for the remaining Subscription Term, using the highest month of Subscription Fees to date and multiplying this by the number of months remaining of the Initial Subscription Term or the current Renewal Period.

## **18. Communication between us**

The Customer may contact MY DIGITAL by e-mail sent to support@mydigitalaccounts.com or by prepaid post to MY DIGITAL at Metropolitan House, Station Road, Cheadle Hulme, Cheshire, SK9 7AZ. MY DIGITAL will confirm receipt of this by contacting the Customer in writing, normally by e-mail. MY DIGITAL may change the address for notice from time to time and will either notify the Customer of any change (normally by e-mail) or by publishing updated details on the Website.

**19. Events outside our control**

MY DIGITAL shall have no liability to the Customer or Client under the contract if it is prevented from or delayed in performing its obligations under the contract , or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MY DIGITAL or any other party), failure of a utility service or transport or telecommunications network, unavailability of the internet network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**20. Conflict**

If there is an inconsistency between:

- (a) any of the provisions in the main body of the contract and the Schedules, the provisions in the main body of the contract shall prevail;
- (b)
  - (i) the Order Form;
  - (ii) a Statement of Works; and
  - (iii) these Terms,

a term contained in a document higher in the list shall have priority over the one contained in a document lower in the list and in the event of a dispute between the Initial Order Form and any Supplemental Order Form, the terms of the Supplemental Order Form shall have priority.

**21. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**22. Rights and remedies**

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

**23. Severance**

23.1 If any provision (or part of a provision) of the contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

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

**24. Further assurance**

The Customer shall (and shall procure that each Client shall) diligently and promptly following MY DIGITAL's reasonable request, do all such things (including an obligation to co-operate in good faith with MY DIGITAL and any third party which it nominates), perform all such acts and sign all such documents as MY DIGITAL considers to be necessary for the Customer and each Client to

comply with the terms of the contract and any Third Party Terms or which is required for MY DIGITAL to comply with any lawful requirement of a regulatory authority or law enforcement agency, any court Order or the terms of any contract to which MY DIGITAL is a party and which is necessary for the provision of the Services.

## **25. Entire agreement**

- 25.1 The contract and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 25.2 Each of the parties acknowledges and agrees that in entering into the contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the contract or not) relating to the subject matter of the contract, other than as expressly set out in the contract.

## **26. Assignment**

- 26.1 The Customer shall not, without the prior written consent of MY DIGITAL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract.
- 26.2 MY DIGITAL may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract.

## **27. No partnership or agency**

Nothing in the contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **28. Third party rights**

- 28.1 Subject to clause 28.2, the contract does not confer any rights on any person or party (other than the parties to the contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 28.2 Each Client and each third party supplier of MY DIGITAL (**Permitted Third Party**), shall have the right to enforce the terms of the contract against the Customer, provided that the consent of a Permitted Third Party shall not be required to amend the terms of the contract or to rescind the contract.

## **29. Notices**

- 29.1 Any notice required to be given under the contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the contract (and where such notice is sent by the Customer, with a copy to the e-mail or postal address detailed in clause 19), or such other address as may have been notified by that party for such purposes
- 29.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to

have been received at the time at which it would have been delivered in the normal course of post.

**30. Governing law**

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

**31. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the contract or its subject matter or formation (including non-contractual disputes or claims).



## **Schedule 1**

The Subscription Fees are calculated in relation to each Billing Period by reference to the following User Subscriptions:

1. MY DIGITAL Limited Company

A User Subscription being each My Digital Account that exists for a Limited Company Client during a Billing Period.

2. MY DIGITAL Payroll and Accounting

2.1. Save in relation to the MY DIGITAL Disaster and Recovery to which paragraph 2.2 shall apply, User Subscriptions being the number of payslips that are processed during a Billing Period and the following shall apply:

- (a) weekly payslips cover 1 pay interval, i.e. 1 week of tax allowances; and
- (b) Monthly payslips cover 4 or 5 pay intervals, i.e. 4 or 5 weeks of tax allowances, depending on the Billing Period.

2.2 In relation to MY DIGITAL Disaster and Recovery, User Subscriptions being the number of payslips or, unless otherwise agreed by MY DIGITAL, advances that are processed during a Billing Period and the following shall apply:

- (a) weekly payslips or, where applicable, advances cover 1 pay interval, i.e. 1 week of tax allowances; and
- (b) monthly payslips or, where applicable, advances cover 4 or 5 pay intervals, i.e. 4 or 5 weeks of tax allowances, depending on the Billing Period.

3. MY DIGITAL Timesheets

A User Subscription being each Active Contractor during a Billing Period.





## Schedule 2

### Service Level Agreement

#### 1. Support Requests

1.1 The Customer may make a Support Request for problems or issues with the Services in accordance with the Support Services Policy. MY DIGITAL will prioritise Support Requests based on its assessment of the severity level of the problem or issue reported being made.

1.2 The Support Services Policy is currently shown at <https://mydigitalaccounts.com/support-services-policy> and Support Requests can be raised using either our in app support widget or by email using [support@mydigitalaccounts.com](mailto:support@mydigitalaccounts.com)

1.3 Based on the severity level assigned to a Support Request, MY DIGITAL will use commercially reasonable endeavours to respond to and resolve a Support Requests in accordance with the times set out below:

Severity	Definition	Response Time	Resolution Times
1	A critical error or failure of the Services that prevents payrolls from being run and which: a) material impacts the operations of the Customer's business; or b) disables major functions of the Services from being performed.	1 hour	1 day
2	a) a critical error or failure of the Services for which a work-around exists; or b) a non-critical error or failure of the Services that materially impacts on the operations of the Customer's business.	2 hours	5 days
3	An error or failure of the Services that: a) does not significantly affect functionality; b) may disable only certain non-essential functions; or c) does not materially impact the Customer's business.	5 hours	10 days
4	Any isolated, minor or cosmetic errors.	2 days	As agreed between the parties.

1.4 When measuring compliance with these time periods:

(a) response times run from when a Support Request is received by MY DIGITAL;

- (b) resolution times do include time during which MY DIGITAL is waiting from input from the Customer or waiting for the Customer to undertake requested actions; and
  - (c) response times and resolution times are measured on Business Days and during Normal Working Hours only.
- 1.5 Where MY DIGITAL is to provide a resolution for a Support Request, such resolution would include the provision by MY DIGITAL of a reasonable workaround which does not materially impact on the Customer's operations.
- 1.6 The response and resolution times set out above shall not apply where the Support Request relates to a problem or issue which is as a result of:
- (a) the Customer's breach of the contract;
  - (b) any third party software, applications or hardware;
  - (c) any matter which is excluded under the Support Services Policy; or
  - (d) any other cause which is outside of MY DIGITAL's reasonable control.

**2. Service Credits**

Where MY DIGITAL has failed to provide a resolution for a Support Request in accordance with the resolution times as set out in paragraph 1.2, the Customer may be entitled to service credits as follows:

Severity	Service Credit
1	<p>In relation to Severity 1 Support Request for which MY DIGITAL fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Clients other than Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 50% of the Subscription Fees applicable to each such Client affected by the problem or issue which is payable in respect of the week of the Billing Period in which the problem or issue occurs</li> </ul> <p><u>for issues or problems which affect Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each such Limited Company Client affected by the problem or issue which is payable in respect of Billing Period in which the problem or issue occurs</li> </ul>
2	<p>In relation to Severity 2 Support Request for which MY DIGITAL fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Clients other than Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each such Client affected by the problem or issue which is payable in respect of the week in the Billing Period which the problem or issue occurs</li> </ul> <p><u>for issues or problems which affect Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 12.5% of the Subscription Fees applicable to each</li> </ul>

	Limited Company Client affected by the problem or issue which is payable in respect of the Billing Period in which the problem or issue occurs
3	Not applicable.
4	Not applicable.

- 2.1 The total service credits payable in respect of any Billing Period shall not exceed a maximum of 50% of the total Subscription Fees paid in respect of that Billing Period.
- 2.2 To be entitled to service credits, the Customer must notify MY DIGITAL of any claim for service credits, which will then be assessed by MY DIGITAL. Any claim for service credits must be made within thirty (30) days of the end of the Billing Period to which they relate.
- 2.3 For the avoidance of doubt, service credits will not be payable where the Support Request relates to a problem or issue which is as a result of those matters set out in paragraph 1.5.
- 2.4 Any service credits shall be shown as a deduction from the amount due from the Customer in the next invoice then due to be issued under the agreement. The Supplier shall not in any circumstances be obliged to pay any money or make any refund to the Customer.
- 2.5 The service credit mechanism above is the Customer's exclusive remedy for any failure of MY DIGITAL to provide the Services in accordance with the SLA as required under clause 5.1 or any failure to make the services available as required under clause 5.2.