



See Microsoft's Online Service Terms at <https://www.microsoftvolumelicensing.com/> and <https://www.microsoftvolumelicensing.com/Downloader.aspx?DocumentId=16205>

## ANNEX A - LEGAL TERMS

### I. INTERPRETATION

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

**"Additional Work"** means any additional Products, Software and/or Services provided by or on behalf of Supplier to the Customer pursuant to clause 4.

**"Applicable Laws"** all applicable laws, statutes, regulation of any relevant jurisdiction where the Products, Software and Services are provided from, as amended and in force from time to time.

**"Authorised Users"** means those employees, agents and independent contractors of the Customer who are authorised to receive the Software or Services as listed in the Cover Sheet, a SOW or otherwise agreed in writing by the Parties.

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

**"Business Hours"** the period from 9.30am to 5.30pm on any Business Day.

**"Charges"** the sums payable for the Products, Software and Services as set out in the Cover Sheet or otherwise agreed between the parties in writing (including any amounts due in relation to Additional Work).

**"Confidential Information"** means information in any form which is expressed to be confidential or which might reasonably be regarded as confidential in nature, not including information to the extent it: (i) was already lawfully known to the receiving Party at the time of the disclosure; (ii) became lawfully known to the receiving Party independently; or (iii) is in, or comes into, the public domain other than by wrongful use of or disclosure by the receiving Party. This shall include any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of Supplier, including but not limited to information relating to a Supplier's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

**"Contract Year"** means 12 months from the Commencement Date and every 12 month period thereafter.

**"Customer Data"** means any data including personal data of the Customer and its users including students provided to or otherwise accessed by the Supplier Personnel in providing the Products, Software and/or Services under this Agreement.

**"Customer Equipment"** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used or required directly or indirectly in the supply of the Products, Software and Services.

**"Customer Materials"** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Supplier or Supplier's Personnel in connection with this

Agreement, including the items provided pursuant to clause 6.1.5.

**"Customer Underlying IPR"** means all Intellectual Property Rights (including general concepts, ideas, methodologies, processes, techniques or algorithms), of the Customer which have been developed independently of the Agreement.

**"Deliverable"** means any specific output of the Services to be provided by the Supplier Personnel to the Customer as specified in this Agreement and any other documents, products and materials provided by Supplier to the Customer in relation to the Services.

**"Developed Materials"** mean any materials and Intellectual Property Rights specifically developed by Supplier as part of the Services specifically for the Customer but excluding any Supplier Underlying IPR, Customer Underlying IPR and Third Party IPR.

**"Force Majeure Event"** means any circumstance not within a Party's reasonable control including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) failure of IT or telecommunication systems or software (including a failure of the IT or telecommunication systems or software of a third party); (iv) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (v) collapse of buildings, fire, explosion or accident; (vi) any labour or trade dispute, strikes, industrial action or lockouts; and (vii) interruption or failure of utility service.

**"General Laws"** means an Applicable Law which is of a general legislative nature, or which generally affects or relates to the supply of products, software and services that are of a similar nature to the Products, Software and Services (but excludes Specific Laws).

**"Intellectual Property Rights"** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Products"** means hardware and related products supplied by Supplier as set out in the Cover Sheet or otherwise pursuant to this Agreement.

**"Rate Card"** means the table outlining the then applicable time (in hourly or day rates) or materials that Supplier considers is required for any Additional Work, as provided to the Customer from time to time.

**"Services"** means the services (including Support Services) provided to the Customer by the Supplier Personnel under this Agreement.

**"Specific Laws"** means an Applicable Law which only affects or relates to the Customer or the Customer's industry and/or which would not affect the supply of products, software and services that are identical or similar to the Products, Software and Services provided by Supplier to other customers.

**"Software"** means any software licensed to the Customer pursuant to this Agreement including the relevant object code, source code (if provided), system files, routines and documentation, software maintenance, other software-related items and services included as part of the licence.

**"SoW"** means a statement of work for Additional Work in the form set out at Annex B or such other written agreement agreed between the Parties from time to time.

**"SoW Initial Term"** has the meaning given to it in the relevant SoW.

**"SoW Renewal Term"** has the meaning given to it in the relevant SoW.

**"Support Services"** means Supplier's standard support services provided by the Supplier Personnel as described in the Cover Sheet or otherwise provided by Supplier to its customers.

**"Term"** means the period during which this Agreement (including any SoW) remains in full force and effect.

**"Third Party Agreements"** has the meaning set out in Clause 6.2.

**"Third Party IPR"** means all Intellectual Property Rights in any Products, Software and/or Services that are not-Supplier branded or owned.

**"VAT"** value added tax chargeable under the Value Added Tax Act 1994 as well as any other locally applicable sales tax or levies payable as a result of the provision of the Products, Software and/or the Services.

**"Supplier Personnel"** means those officers, contractors, employees, consultants, agents, representatives and advisers of Supplier that are providing the Products, Software and Services under this Agreement.

**"Supplier Underlying IPR"** means all Intellectual Property Rights owned or controlled by Supplier, including in Supplier's or Supplier's Personnel's pre-existing processes and procedures, general concepts, ideas, methodologies, processes, techniques or algorithms, which have been developed independently of this Agreement (including any additions and improvements made to such items in the course of providing the Services unless agreed in writing by both parties as being specifically developed for the Customer).

1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.

1.3 This Agreement shall be binding on, and ensure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall

include that Party's personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 A reference to writing or written includes email.

1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and shall continue in force unless terminated earlier in accordance with clause 11, for the later of the Initial Term and any applicable SOW Initial Term.

2.2 Subject to clause 2.3, at the end of the Initial Term (and any applicable SOW Initial Term in the case of a SOW, as the case may be), this Agreement shall (except as expressly provided otherwise in the Agreement) automatically continue in full force unless and until terminated by either party by providing the other party with at least the required Period of Notice (or SOW Period of Notice, as the case may be for terminating a SOW) such notice not to expire before the end of the Initial Term.

2.3 Where a Renewal Term (or SOW Renewal Term) has been agreed, and the Customer has failed to provide the required Period of Notice by at least that period of time in advance of the relevant Initial Term, Renewal Term, SOW Initial Term or SOW Renewal Term (as the case may be), such notice shall not take effect until the end of the following relevant Renewal Term or SOW Renewal Term.

## 3. CHARGES AND PAYMENT

3.1 In consideration for the provision of the relevant Products, Software and/or Services under this Agreement, the Customer shall pay the Charges in accordance with the provisions of this Agreement. All sums payable to Supplier under this Agreement:

3.1.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

3.1.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

3.2 Unless stated otherwise on the Cover Sheet or otherwise agreed by Supplier in writing, the Charges in respect of:

- 3.2.1 any Products shall be invoiced upon delivery of the Products to the Customer;
- 3.2.2 any Software shall be invoiced upon delivery of the Software to the Customer;
- 3.2.3 any Services (including SaaS services) shall be invoiced monthly in advance where the relevant amount is known or otherwise agreed in advance, and in arrears in all other cases.
- 3.3 The Customer shall pay each invoice submitted to it by Supplier within 30 days of receipt to a bank account nominated in writing by Supplier from time to time.
- 3.4 The Customer shall make all payments via Direct Debit to the Supplier and accepts that any payments not made via Direct Debit will attract an extra administration charge.
- 3.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Supplier any sum due under this Agreement on the due date:
  - 3.5.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
  - 3.5.2 Supplier may suspend part or all the delivery of the Products, Software and/or Services until payment has been made in full.
- 3.6 The Customer acknowledges that Supplier shall be entitled to increase the Charges at any time after the start of a Renewal Term (or SOW Renewal Term, as the case may be) upon 30 days' prior notice to the Customer provided that Supplier can increase the Charges:
  - 3.6.1 at any time if its own costs and expenses increase due to any factor beyond its reasonable control; and
  - 3.6.2 on an annual basis by the greater of; (i) the RPI inflation index over the relevant period; and (ii) 2%.

#### 4. **ADDITIONAL WORK**

- 4.1 From time to time, the Customer may request that Supplier provides Additional Work. Subject to the Parties agreeing the scope of such Additional Work, such Additional Work shall be provided on a time and materials basis in accordance with the then current Rate Card (unless agreed otherwise).
- 4.2 Where Additional Work is provided to the Customer, such Additional Work shall be provided in accordance with an SoW agreed between the Parties from time to time.
- 4.3 Once an SoW has been agreed and signed by the Parties, it shall: (i) be deemed to be a part of the Agreement; (ii) automatically incorporate the relevant terms and conditions of the Legal Terms; and (iii) not form a separate contract to the Agreement.

#### 5. **SUPPLIER'S RESPONSIBILITIES**

- 5.1 Supplier shall:
  - 5.1.1 apply such time, attention, resources and skill as it considers necessary for the due and proper performance of its obligations to the agreed standards set out in this Agreement;
  - 5.1.2 use its reasonable endeavours to pass on the benefit to the Customer of any third party warranties that it receives in respect of the Products, Software and Services. For clarity, the Customer acknowledges that Supplier may not be the manufacturer of the Products and licensor of the Software and therefore the Products and Software are subject to their own warranty terms; and
  - 5.1.3 use reasonable endeavours to provide the relevant Products, Software and/or Services to the Customer, in accordance with this Agreement in all material respects and General Laws;
  - 5.1.4 use reasonable endeavours to meet any performance dates agreed in writing between the parties, provided that any such dates shall be estimates only and time for performance by Supplier or Supplier's Personnel shall not be of the essence in respect of this Agreement
  - 5.1.5 ensure that its employees and sub-contractors have the necessary level of skills and experience to perform their obligations in accordance with the terms of this Agreement;
  - 5.1.6 use reasonable endeavours to ensure that Supplier's Personnel observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 6.1.6; and
  - 5.1.7 use reasonable endeavours to promptly bring all Third Party Agreements to the Customer's attention.
- 5.2 Supplier may sub-contract any of its obligations under this Agreement without the Customer's prior written consent provided that Supplier shall remain responsible for the acts and omissions of the subcontractor as if they were acts or omissions of Supplier under this Agreement.
- 5.3 Unless otherwise agreed in writing, all Support Services shall be performed during Business Hours at the locations agreed between the Parties (whether on site or remotely).
- 5.4 The Customer shall promptly report any faults in any Customer Equipment, Products or Software covered by the Support Services and co-operate with Supplier while Supplier provides the Support Services. When reporting such faults, the Customer shall include details of fault and any other information reasonably requested by Supplier.
- 5.5 When providing the Support Services, Supplier shall use reasonable endeavours to respond promptly and shall categorise, respond to and resolve faults in any Customer Equipment, Products or Software covered by the Support Services according to their severity and

the materiality of their impact on the Customer's business and operations.

## 6. CUSTOMER OBLIGATIONS

6.1 The Customer shall:

- 6.1.1 co-operate with Supplier and Supplier's Personnel in all matters relating to this Agreement;
- 6.1.2 promptly authorise Supplier to liaise directly with third parties including the Customer's internet service provider, web and domain hosting provider and telephony provider as may be reasonably required to enable Supplier to provide the Products, Software and/or Services;
- 6.1.3 nominate authorised representatives (identified as the Key Contacts in the Cover Sheet) who shall be able to bind the Customer in all respects in relation to this Agreement;
- 6.1.4 provide access to and use of the Customer Equipment, Customer's premises, office accommodation, data and other facilities as reasonably required by Supplier and Supplier's Personnel;
- 6.1.5 provide Supplier with all documents, information, items and materials in any form (whether owned by the Customer or a third party) required by Supplier in a timely manner, and ensure that these are accurate and complete;
- 6.1.6 inform Supplier and Supplier's Personnel of all health and safety and security requirements that apply at any of the Customer's premises that Supplier requires access to and take such steps as are reasonable to ensure the health and safety of such personnel when at the Customer's premises;
- 6.1.7 ensure that any relevant Customer Equipment is in good working order and suitable for the purposes for which it is to be used which shall include, replacing or upgrading such Customer Equipment when reasonably recommended by Supplier;
- 6.1.8 obtain and maintain all necessary licences and consents as required to enable Supplier to perform its obligations under this Agreement;
- 6.1.9 comply with all Applicable Laws (including taking responsibility for ensuring that the provision and use of the Products, Software and Services comply with any Specific Laws);
- 6.1.10 not transfer, sell, share, licence or provide the Products, Software or Services to any third party without Supplier's (and any relevant third party's) prior written consent;
- 6.1.11 regularly back up all existing data, software and programs that Supplier has access to or that may be impacted by the delivery of the Products, Software or Services;
- 6.1.12 not undertake any activities that are, or are reasonably likely to, destabilise the Customer's network or otherwise prevent Supplier from performing its obligations pursuant to this Agreement (including

introducing misconfigured or conflicting equipment to its systems and changing access rights or agreed passwords without Supplier's prior written approval); and

- 6.1.13 (if Supplier is required to provide installation services) ensure that prior to any installation, Supplier has sufficient rights of access to the relevant site, can reasonably access all necessary power, conduits, surge and lightning protection and associated hardware at the site, and the site is available and in a suitable state for the relevant installation to take place.
- 6.2 The Customer understands and agrees the Products, Software and Services may be provided to the Customer subject to (i) the Customer entering to agreements with a third party provider; or (ii) the relevant terms and conditions of the third party provider, (including all end-user licensing agreements, service support agreements and, in respect of Products, financing or leasing agreements) ("**Third Party Agreements**") and that in such instances, the Customer's use, enjoyment and receipt of such Products, Software and Services will be governed by the Third Party Agreements. Notwithstanding clause 5.1.7, the Customer will always be required to comply with such Third Party Agreements and might need to enter into a Third Party Agreement directly before receipt of and use of the relevant Products, Software and Services.
- 6.3 To the extent required to perform its obligations under this Agreement, the Customer acknowledges that (and consents to) Supplier accessing the information technology systems of the Customer (including accessing sensitive information and Customer Data).
- 6.4 When accessing the information technology systems of the Customer, Supplier shall use reasonable endeavours to comply with all written policies, standards and procedures relating to the security of the relevant systems of which are notified in writing, from time to time to the extent these are reasonable.
- 6.5 Subject to clause 6.6 and without prejudice to any other right or remedy Supplier may have, if Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees including any failure to comply with any of its obligations under this Agreement (a "**Customer Default**") then:
  - 6.5.1 Supplier and Supplier's Personnel shall use reasonable endeavours to mitigate the impact of the Customer Default;
  - 6.5.2 Supplier shall not be responsible for any failure to carry out the relevant obligations and shall be allowed an extension of time to perform its obligations; and
  - 6.5.3 the Customer shall promptly reimburse Supplier for all reasonable additional amounts incurred by Supplier as a result of the Customer Default.
- 6.6 The Customer hereby indemnifies Supplier from and against all claims, demands, actions, awards, costs, expenses, damages and losses (including any interest, fines and reasonable legal and other professional costs

and expenses incurred by Supplier and/or Supplier's Personnel) arising out of or in connection with any claim, demand or action from any third party in relation to the processing, storing, working with, backing up or accessing Customer Data, Customer Materials and Customer Equipment in accordance with the provisions of this Agreement.

## 7. DELIVERY AND ACCEPTANCE

- 7.1 Subject to the terms of any Third Party Agreements, risk in the Products shall pass to the Customer on delivery.
- 7.2 Subject to the terms of any Third Party Agreements, title to the Products shall not pass to the Customer until Supplier receives payment in full for the Products and all other sums that are or become due to Supplier for the provision of Products, Software and/or Services under this Agreement, in which case title to the Products shall pass upon Supplier confirming in writing that such title has passed.
- 7.3 Subject to the terms of any Third Party Agreements, until title to Products has passed to the Customer or as otherwise required under any Third Party Agreements, the Customer shall:
- 7.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
- 7.3.2 maintain those Products in satisfactory condition; and
- 7.3.3 insure and keep insured the Products on the Supplier's behalf for their full replacement value against all the risks for which a prudent trader would insure his own property of the same type with a reputable insurer that is reasonably acceptable to Supplier. The Customer shall:
- (a) obtain an endorsement of Supplier's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement;
  - (b) on demand, allow Supplier to inspect the Products, any insurance policy documents and the most recent receipt for the relevant insurance premium;
  - (c) perform any obligation required of it under the terms of such insurance;
  - (d) do nothing which could invalidate any such insurance; and
  - (e) promptly pay to the Supplier on receipt of the proceeds of any insurance claim made in respect of such Products and hold the same pending such payment in a separate bank account.
- 7.4 For clarity, where the Customer has failed to comply with clause 7.3.3 within one month of delivery of the Products, the Supplier may itself procure insurance for the Products and invoice the Customer for the costs of obtaining such insurance. The Customer shall pay the Supplier's invoice in accordance with clause 3.3.
- 7.5 Subject to the terms of any Third Party Agreements, the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any

of the Products until title has passed to the Customer and Supplier reserves the immediate right to repossess such Products which have not been paid for to which Supplier has retained title to at any time after delivery or collection of the Products.

- 7.6 If the Customer for any reason fails to accept delivery of any of the Products, Software or Services when they are ready to be delivered in accordance with the Statement of Work or if the Customer has failed to provide Supplier or Supplier Personnel with appropriate instructions, documents, licences or other authorisations, then risk in the relevant Products, Software and Services will pass to the Customer at the time of attempted delivery (including for loss or damage caused by Supplier or Supplier Personnel's negligence) and Supplier shall be entitled to invoice the Customer for the relevant Products, Software and Services (including any additional costs to store and insure such items until delivery is then made).
- 7.7 Where Supplier provides any Deliverable as agreed between the Parties in writing) under this Agreement, the Customer shall promptly inspect and test such Deliverable to ensure that it materially conforms to the agreed acceptance or other criteria set out in the Agreement. If the Customer reasonably considers that such Deliverable does not materially conform to the agreed criteria, then the Customer shall notify Supplier within 7 days of delivery of the relevant issue and then Supplier shall use its reasonable endeavours to remedy the issue. If the Customer does not notify Supplier of any issue within 7 days of delivery then the Deliverable of the Services shall be deemed to have been accepted by the Customer.
- 7.8 Any Software provided under this Agreement may be supplied in either physical form on software media or by remote means. The Customer shall promptly inspect the Software media on delivery and immediately notify Supplier of any issues. Where the defect or failure in the Software would not be apparent seven days of the date of delivery, the Customer shall notify Supplier of the defects within a reasonable period of time.
- 7.9 Software provided under the Agreement will be protected from price increases to the Customer unless the supplier of the Software raises their costs to the Company by more than 3%, upon which the Company, will give the Customer notice of a month before passing on those costs. The Customer may vary the Agreement to remove that Software and reduce payments after the Company has cancelled these from the supplier.
- 7.10 If the Customer does not comply with the notification provisions of clause 7.8 then, except in respect of any defect which is not one which should be apparent on reasonable inspection, the Software shall be conclusively presumed to be in all respects in conformity with the Agreement and the Statement of Work, the Customer shall be deemed to have accepted the delivery of the Software and Supplier shall not liability for such defect or failure.

- 7.11 Save for when governed by Third Party Agreements, Supplier grants the Customer a non-exclusive, non-transferable (other than as provided for in the Agreement) licence for the duration of the Agreement to use the Software and Deliverables, and to receive the Services subject to the terms of the Agreement.
- 7.12 The Customer shall:
- 7.12.1 use the Software and Deliverables, and receive the Services only for its own internal business purposes and in accordance with the Terms of Use and Privacy Policy;
- 7.12.2 not sub-license the Software or Deliverables;
- 7.12.3 not translate, adapt, vary or modify the Software or Deliverables in any way without Supplier's prior written consent;
- 7.12.4 not allow its staff to share access credentials or in any way permit access to the Software or Deliverables, or receipt of the Services without Supplier's prior written consent.
- 7.12.5 put into place and maintain reasonable security measures to safeguard the Software and Deliverables from access or use by any unauthorised person(s) in accordance with generally accepted security practices;
- 7.12.6 permit Supplier to audit the Customer in order to establish full details of all Authorised Users (or unauthorised users). For clarity, if such audits reveal that any unauthorised users have been provided with access in breach of this Agreement, then without prejudice to Supplier's other rights, the Customer shall promptly disable such access and shall pay to Supplier an amount equal to any underpayment of fees set out in the Rate Card or at Supplier's then headline rates as provided to the Customer at the relevant time.
- 7.12.7 be responsible for the input and transfer of all data for use with the Software;
- 7.12.8 not access, store, distribute or transmit any Viruses, or any material during its use of the Services 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; or
  - (f) is otherwise illegal or causes damage or injury to any person or property;
- and Supplier reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of this clause; and

7.12.9 not attempt to:

- (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;
- (b) de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (c) access all or any part of the Software in order to build a product or service which competes with the Services.

## 8. WARRANTIES

- 8.1 Each Party warrants that it has the power and authority to enter into and perform the Agreement, which constitutes valid and binding obligations on it in accordance with its terms.
- 8.2 The Customer's use and enjoyment of the Products, Software and Services shall be subject at all times to the terms and conditions of the original manufacturers, providers and developers thereof, including without limitation any licences or other limitations imposed on the use of the same. Customer agrees to be bound by such terms and conditions of the original) and to only use the Products, Software and Services in accordance with the relevant specifications and guidelines that are provided to the Customer under such terms and conditions (as may be amended from time to time).
- 8.3 Subject to clause 10, the Parties agree that Supplier shall not in any way be liable under or in connection with this Agreement for:
- 8.3.1 any defect arising from fair wear and tear, wilful damage, negligence, failure to follow instructions (whether oral or in writing), misuse, modification and any adjustment or repair not carried out by Supplier or with Supplier's approval;
  - 8.3.2 any and all losses arising from third party viruses, worms, time bombs, trojan horses and other malicious code, files, scripts, agents or programs computer attacks or malicious acts (including attacks on or through the internet, any internet service or telecommunications provider);
  - 8.3.3 the Products, Software or Services meeting the Customer's particular requirements or being of satisfactory quality or fit for the Customer's required purpose; and
  - 8.3.4 the performance or non-performance of any Products or Software that are manufactured or produced by third parties.
- 8.4 Subject to clause 10, to the maximum extent permitted by Applicable Law, other than as expressly set out in this Agreement all other representations, warranties and conditions (whether express or implied) are, to the fullest extent permitted by Applicable Law, excluded from this Agreement.

## 9. INTELLECTUAL PROPERTY

- 9.1 Nothing in this Agreement shall provide the Customer with any right, title or interest in or to the Intellectual Property Rights of Supplier, its licensors or any manufacturer or provider of the Products, Software or Services (including the Developed Materials) unless stated otherwise.
- 9.2 Ownership of the Supplier Underlying IPR (including Developed Materials and Deliverables) shall be vested and remain the property of Supplier or its licensors.
- 9.3 Supplier grants to the Customer s a royalty-free, non-exclusive licence to load, execute, store, transmit, display, modify and otherwise use the Developed Materials.
- 9.4 Supplier grants to the Customer and its Authorised User a royalty-free, non-exclusive licence during the term of this Agreement to use any Supplier Underlying IPR and Deliverables that are not Developed Materials provided to the Customer solely in connection with the Customer's receipt of any Services provided.
- 9.5 Ownership of the Customer Underlying IPR shall be vested and remain the property of the Customer or its licensors but Customer grants Supplier an irrevocable, royalty free, non-exclusive licence to use the Customer Underlying IPR, Customer Equipment and the Customer Materials to the extent necessary to provide the Services in accordance with the terms of this Agreement.
- 9.6 Customer grants Supplier the right to use its company name, logos and emblems for the purpose of the provision of the Services and in connection with its marketing campaigns and PR activities (including the right for Supplier to describe the nature of the Products, Software and Services provided to the Customer under this Agreement on Supplier's website and in mutually agreed press releases).
- 9.7 The Customer hereby indemnifies Supplier from and against all claims, demands, actions, awards, costs, expenses, damages and losses (including any interest, fines and reasonable legal and other professional costs and expenses incurred by Supplier and/or Supplier's Personnel) arising out of or in connection with any claim, demand or action alleging that:
- 9.7.1 the Customer has failed to obtain or comply with an appropriate licence, sub-licence or consent, Intellectual Property Right, or other permission, regulatory certification or approval, associated with technology, software, components or data (including in any Third Party IPR) provided under this Agreement;
- 9.7.2 any unauthorised use (including by non-Authorised Users) or modification of the Products, Software and Services whether by the Customer or a third party; and/or
- 9.7.3 any breach by the Customer of Clause 6.2 (including a breach of an obligation under any Third Party Agreement) or the occurrence of one of the events set out in Clause 9.7.1.

- 9.8 Supplier shall indemnify the Customer from and against all Losses incurred by the Customer arising out of or in connection with any claim, demand or action alleging that the Software, Deliverables or the Services has infringed the Intellectual Property Rights of a third party provided that:
- 9.8.1 the claim has not arisen from: (a) the Customer's or its personnel's breach of the Agreement; (b) the combination of the Products or Software with other materials or products not provided by Supplier (including the Customer Materials); or (c) Supplier's compliance with specifications provided by or instructions of the Customer;
- 9.8.2 the Customer promptly notifying Supplier of the claim;
- 9.8.3 Supplier having the sole conduct of all negotiations and litigation and settlement arising from the claim;
- 9.8.4 the Customer providing Supplier with all information and assistance reasonably required by Supplier; and
- 9.8.5 the Customer making no admission in respect of the claim.

## 10. LIMITATION OF LIABILITY

- 10.1 Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by its negligence or for fraud or any other matter that cannot be excluded or limited by law.
- 10.2 Subject to clause 10.1, Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- 10.2.1 loss of profits or revenue;
- 10.2.2 loss of sales or business;
- 10.2.3 loss of agreements or contracts;
- 10.2.4 loss of anticipated savings;
- 10.2.5 loss of or damage to goodwill;
- 10.2.6 loss of use or corruption of software, data or information;
- 10.2.7 any costs of substitute goods, services or deliverables; or
- 10.2.8 any indirect or consequential loss.
- 10.3 Subject to Clause 10.1, Supplier's total aggregate liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement in any Contract Year shall be limited to 100% of the Charges actually received by Supplier in that Contract Year.

## 11. TERMINATION

- 11.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement



(including all SoWVs) with immediate effect by giving written notice to the other Party if:

- 11.1.1 the other Party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [14] days after being notified in writing to do so; or
- 11.1.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 11.2 Supplier may terminate this Agreement (in whole or in part) with immediate effect by giving written notice to the other Party if:
  - 11.2.1 the Customer 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 11.2.2 the Customer 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 any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 11.2.3 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 the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 11.2.4 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 Customer (being a company);
  - 11.2.5 the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 11.2.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
  - 11.2.7 a creditor or encumbrancer of the Customer 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 Customer's assets and such attachment or process is not discharged within 14 days;
  - 11.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the

events mentioned in clause 11.2 to clause 11.2.7 (inclusive);

- 11.2.9 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 11.2.10 if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

## 12. CONSEQUENCES OF TERMINATION

- 12.1 Except as provided otherwise, on termination or expiry of this Agreement for any reason:
  - 12.1.1 the Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of any Products, Software and Services supplied (whether under Third Party Agreements or otherwise) but for which no invoice has been submitted, Supplier may submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 12.1.2 the Customer shall promptly return all of Supplier's Equipment. Until Supplier's Equipment has been returned, the Customer shall be solely responsible for its safe keeping; and
  - 12.1.3 any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 12.3 Should the Customer require any reasonable support or assistance after the Agreement terminates then such support and assistance shall be provided by Supplier and chargeable on a time and materials basis in accordance with Supplier's then applicable daily rates, provided that Supplier shall not be obliged to provide to such support and assistance if any amounts are owed to Supplier on termination.

## 13. DATA PROTECTION

- 13.1 In this clause:

"Data Protection Laws" means the Data Protection Act 2018 ("DPA") the General Data Protection Regulation 2016/979 ("GDPR"), the Privacy (Electronic Communications) Regulations 2003, the Data Protection (Charges and Information) Regulations 2018 and all Applicable Laws, and instruments relating to the processing of personal data and privacy (including any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body) as such laws, regulations and

instruments may be amended or replaced from time to time.

"**Information Commissioner**" has the meaning given in the DPA.

"**Personal Data**" has the meaning given in the DPA.

- 13.2 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 13 is in addition to, and does not relieve, remove or replace, either party's obligations under the Data Protection Laws.
- 13.3 The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the controller and Supplier is the processor.
- 13.4 The Customer warrants that it has all necessary and appropriate rights, consents and notices to enable lawful transfer and provision of the personal data to Supplier under this Agreement so that Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.
- 13.5 Without prejudice to the generality of clause 13, Supplier shall, in relation to Personal Data processed by it in accordance with the performance of its obligations under this Agreement, comply with the obligations placed on it as set out in the Data Protection Laws, namely:
- 13.5.1 only to process Personal Data for and on behalf of the Customer for the purpose of the Agreement;
- 13.5.2 to ensure that all Supplier Personnel who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential;
- 13.5.3 to ensure that it has in place and shall maintain appropriate technical and organisational measures, to protect against unauthorised and unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;
- 13.5.4 to comply with the obligations in Article 28(3)(d) of the GDPR for engaging another processor;
- 13.5.5 to maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow the Customer or the Customer's designated auditor, to audit Supplier's compliance with the requirements of this clause 13 on reasonable notice prior and/or to provide the Customer with evidence of this compliance with the obligations set out in this clause;
- 13.5.6 not to transfer, store or process Personal Data outside the European Economic Area unless the prior written consent of the Customer has been obtained. For clarity, the Customer hereby consents to the transfer of Personal Data outside of the European Economic Area: (a) from Supplier to its list of sub-processors (such list to be shared with the Customer upon written request) pursuant to clause 13.7 below; and (b) where required

by the Customer in order for Supplier to provide such services to the Customer.

- 13.5.7 to assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
- 13.5.8 to notify the Customer without undue delay on becoming aware of a Personal Data breach or if any Personal Data is destroyed or becomes damaged, corrupted or unusable.
- 13.6 If Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Laws, it shall promptly notify the Customer and it shall provide the Customer with reasonable co-operation and assistance in relation to any such complaint, notice or communication at the cost of the Customer.
- 13.7 The Customer authorises Supplier to sub-contract its processing activities under this Agreement to any third party or sub-contractor engaged pursuant to this Agreement.
- 13.8 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data including for ensuring that the Customer regularly backs-up Customer Data.
- 13.9 In the event of any loss or damage to Customer Data by Supplier, the Customer's sole and exclusive remedy against Supplier shall be for Supplier to use reasonable endeavours to restore the lost or damaged Customer Data.

## 14. **CONFIDENTIALITY**

- 14.1 Each Party undertakes that it shall not at any time during the term of this Agreement, and for a period of five years after termination of this Agreement, disclose the other Party's Confidential Information, except as permitted by clause 14.2.1.
- 14.2 Each Party may disclose the other Party's confidential information:
- 14.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement provided that the disclosing Party has ensured that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information complies with this clause 14; and
- 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that the disclosing Party notifies the other Party as far in advance as reasonably possible (unless prevented from doing so by Applicable Law).

14.3 Neither Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 15. CONFLICT

15.1 If there is any conflict or ambiguity between the terms of a Third-Party Agreement, the Cover Sheet, the Legal Terms, the Rate Card and the SoW, the following order of priority shall apply:

15.1.1 the Third-Party Agreement;

15.1.2 the SoW

15.1.3 the Cover Sheet;

15.1.4 the Rate Card; and

15.1.5 the Legal Terms.

## 16. GENERAL

16.1 Provided it has complied with Clause 16.2, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.2 The Affected Party shall:

16.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

16.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

16.4 Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement (including granting security over, or assign by way of security, any or all of its rights under this Agreement for the purposes of, or in connection with, any financing arrangements that it enters into). The Customer shall provide Supplier with all assistance reasonably required by Supplier (including entering into agreed confirmatory documentation) to ensure that Supplier is able to enjoy its rights pursuant to this clause.

16.5 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives) provided that the Customer shall not unreasonably withhold or delay its

consent if a variation is required by Supplier for any reason outside of its reasonable control including changes to Applicable Laws.

16.6 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.7 The Parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of this Agreement other than those which are expressly stated in the Agreement.

16.8 Neither Party shall have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement, unless the statement was made fraudulently.

16.9 Nothing in the Agreement is intended to, nor shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

16.10 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.11 A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.12 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

16.13 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

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

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

