

**1. DEFINITIONS**

In this Contract the following words have the following meanings:

- 1.1 **"Affiliate"** means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company (**"Holding Company"**): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.
- 1.2 **"Client Infrastructure"** means the Client's systems and technical infrastructure (whether owned or licensed by the Client), including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Supplier's management and control and explicitly identified as Supplier's responsibility under this Contract, , but excluding the Connectivity Infrastructure.
- 1.3 **"Client"** means the 'Client' specified in the Order Form.
- 1.4 **"Connectivity Infrastructure"** means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or supplied by the Supplier or the Client and which connect the Services and/or the Supplier Software to wide area networks.
- 1.5 **"Contract"** means these MSA Terms & Conditions, the Order Form, and the Schedules.
- 1.6 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.7 **"Deliverables"** means the output/deliverables in respect of any Services, excluding any Materials.
- 1.8 **"Effective Date"** means the contract date specified in the Order Form.
- 1.9 **"Event of Force Majeure"** any circumstances beyond a party's reasonable control, including, without limitation: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier's hardware, software and/or network infrastructure; (g) any government guidance or instruction(s) applicable to either party or its suppliers (and any difficulties in obtaining supplies), arising as a result of any epidemic, pandemic, or outbreak of disease.
- 1.10 **"Fees"** means the fees and charges specified in the Order Form and the SOW(s).
- 1.11 **"First Payment Date"** means the date identified in the Order Form as the 'First Payment Date' (or otherwise, the Target Go-Live Date).
- 1.12 **"Hosted Services"** means 'Hosted Services' as described in the Order Form.
- 1.13 **"Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.14 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles

incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.

- 1.15 **"Licensing Purpose"** means in the ordinary course of the Client's business and for the use(s) envisaged in the Supplier's published marketing materials of the Hosted Services.
- 1.16 **"Materials"** means any tangible materials delivered by Supplier to the Client under this Contract or any SOW(s).
- 1.17 **"Minimum Term"** means the period of years identified in the Order Form as the 'Minimum Term'.
- 1.18 **"MSA T&Cs"** means these MSA Terms & Conditions.
- 1.19 **"Order Form"** means the foregoing 'Services Order'.
- 1.20 **"Services"** means Set-up and Implementation Services, Supplier Software, Hosted Services and additional professional services from time to time upon the completion of a SOW.
- 1.21 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order Form.
- 1.22 **"SLA"** means the 'Service Level Agreement' set out at Schedule 1.
- 1.23 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.24 **"SOW"** means a contract for specified professional services that is made in accordance with Clause 4.2.
- 1.25 **"Supplier Software"** means the 'Supplier Software' described in the Order Form, including all new releases, new versions (which the parties may have mutually agreed that the Supplier will provide, at additional cost, to the Client, whether under an SOW or as a change in accordance with Clause 14), updates, and modifications thereto, and as specified in the SLA.
- 1.26 **"Supplier"** means the 'Supplier' specified in the Order Form.
- 1.27 **"System Access"** the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.28 **"Target Go-Live Date"** means the target date (advised by the Supplier) on which the Client should put some or all of the Hosted Services and/or Supplier Software into live and/or operational use.
- 1.29 **"User Data"** means any information, materials, or data: (a) uploaded, stored or created in or using the Supplier Software by: (i) the Client or its users; or (ii) by the Supplier or a third party on the Client's or its users' instructions; and/or (b) provided to the Supplier by (or on behalf of) the Client or its users.

**2. HOSTED SERVICES**

- 2.1 From the Target Go-Live Date the Supplier shall provide Hosted Services substantially in accordance with the SLA with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free.
- 2.2 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the duration of this Contract to: (a) permit its authorised users to use the Supplier Software via the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; and (b) use the Materials and Deliverables for the Licensing Purpose.
- 2.3 The Supplier shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client

Infrastructure, Connectivity Infrastructure, and/or the User Data; and/or (b) the occurrence of a Suspension Event.

- 2.4 The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted Services in the event of (each of which shall be a “**Suspension Event**”): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 6); (c) where ongoing use by the Client of Hosted Services has, in the Supplier’s reasonable opinion, the prospect of damaging Hosted Services or degrading performance (or actually has damaged or degraded the same) or (d) the occurrence of an Event of Force Majeure.
- 2.5 In the event of a failure by the Supplier to provide Hosted Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in accordance with the SLA. The Supplier’s provision of corrective services in accordance with this Clause 2.5 shall constitute the Client’s exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.5 purports to limit the Supplier’s liability for any failure of the Supplier to comply with this Clause 2.5 (for which the provisions of Clause 12 shall apply).

### 3. CLIENT’S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, the Supplier’s reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data (in addition to such back-ups maintained by the Supplier as part of the Hosted Services) and if so either commission directly (or via the Supplier, if available) such additional data back-up services; (j) ensure that any data (including User Data) migrated to the Supplier as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law.
- 3.2 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure and Client Infrastructure, and that changes to the Connectivity Infrastructure and Client Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services. The Client shall not make changes to those elements of the Connectivity Infrastructure and Client Infrastructure that are within its control, which may impact on the Hosted Services, without the authorisation of the Supplier. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the

consequences of such changes) are not the responsibility of either party (with the exception of the Client’s responsibility to pay Fees); save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.

- 3.3 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.

### 4. SERVICES

- 4.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order Form.
- 4.2 This Contract also operates as a framework under which additional Services may be provided if the parties agree any SOW(s) by completing an SOW pro forma. Any written communication is capable of constituting an SOW provided that it is clearly identified as an order for Services. An SOW is deemed completed and binding on the parties if it is signed or otherwise agreed by both parties. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.
- 4.3 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client.
- 4.4 The parties shall comply with Schedule 5 (Exit Management).

### 5. PERSONNEL

- 5.1 Each party shall appoint the personnel as specified in the Order Form (“**Key Personnel**”). Each party shall ensure that its Key Personnel shall be contactable using the contact details specified in the Order Form (as updated from time to time). Each party shall inform the other promptly if any of its Key Personnel resigns or for any other reason ceases to work under this Contract.
- 5.2 Each party shall use their reasonable endeavours to maintain the continuity of their Key Personnel in respect of the management of this Contract, and if such Key Personnel become unavailable, each party shall promptly replace such individuals and ensure that any disruption to the Contract is minimised.

### 6. PAYMENT

- 6.1 The Client shall pay: (a) Fees as and when they fall due for payment, as specified in the Order Form; and (b) Fees for additional Services in respect of any SOW(s) in the manner specified in the SOW(s).
- 6.2 The Supplier shall be entitled to raise invoices for Fees and charges in accordance with the Order Form and any SOWs.
- 6.3 The Client shall pay the Supplier’s invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order Form); or (b) immediately by direct debit or standing order (if applicable; and if specified in the Order Form).
- 6.4 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counter-claim, abatement, or other similar deduction.
- 6.5 All fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order Form) and are exclusive

of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on the Supplier.

- 6.6 If any sum payable under this Contract is not paid within ten (10) days after the due date for payment then (without prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.
- 6.7 All Fees shall increase on each anniversary of the First Payment Date by an amount, as notified by the Supplier, that does not exceed five per cent (5%), measured between the date of review and the last review date (or in the event of the first review date, the First Payment Date) ("**Indexed Increase**").
- 6.8 Unless otherwise specified in the Order Form, after the expiry of the Minimum Term, the Supplier shall be entitled by giving the Client not less than ninety (90) days' written notice prior to an anniversary of the First Payment Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by the Supplier in its sole discretion) ("**General Increase**"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to the Supplier not less than sixty (60) days' written notice prior to the Anniversary Date.

## 7. PROPERTY RIGHTS

- 7.1 Title to the Materials is and shall at times remain with the Supplier unless otherwise specified in the Order Form or an SOW. The Supplier and its licensors owns and shall continue to own all Intellectual Property Rights in the Supplier Software, and any Deliverables. Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation. The Client undertakes at the request of the Supplier at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 7.1.

## 8. TERM AND TERMINATION

- 8.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order Form. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 8.
- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order Form and each subsequent anniversary of the First Payment Date by giving to the other party not less than ninety (90) days' prior written notice.
  - (ii) Either party shall be entitled to terminate this Contract immediately by giving written notice to the other party if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under this Contract within the agreed payment terms shall constitute a material breach of this Contract.

- 8.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the Services or in accordance with this Clause 8.2.

- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice, save in respect of any SOW(s) that vary the scope of the Hosted Services.
- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if the other party commits any material breach of this SOW and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the SOW may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under any SOW within the agreed payment terms shall constitute a material breach of the SOW.

- 8.3 **Insolvency.** Save to the extent otherwise specified by Law, either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

## 9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 6, 7, 10, 11, 12, 15, 16, and 17 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.
- 9.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; and (d) the Supplier shall make available User Data for migration to the Client; and (e) the Supplier shall be entitled to permanently erase all User Data after the period of 90 days has elapsed from the effective date of termination of this Contract.
- 9.3 If, on termination of this Contract, howsoever caused, the parties agree pursuant to Schedule 5 (Exit Management) that Exit Services (as defined therein) shall be delivered, then the parties may agree in writing to revise the timing of data migration and/or deletion under clause 9.2 above in order to appropriately reflect the relevant Exit Plan and/or Exit Services.
- 9.4 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) the Supplier shall make such partial delivery to the Client of the Materials and Deliverables as is reasonably practicable, such Materials and Deliverables to be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to the Supplier of providing such Services.

**10. CONFIDENTIALITY**

- 10.1 Each party that receives ("**Receiving Party**") non-public business or financial information (subject to Clause 11.3) ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall:
- (i) keep the Confidential Information confidential;
  - (ii) not disclose the Confidential Information to any other person (save, in the case of the Supplier, to its Affiliates for regulatory, accounting, management, corporate oversight or other such similar matters) other than with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2, or 10.3; and
  - (iii) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 10.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 10 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 10.
- 10.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

**11. DATA**

- 11.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.
- 11.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory or offensive and that it, and its users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Supplier Software; and/or (b) to/with other Client users or any third parties who are authorised by the Client or by Law to view/access the User Data. The Client shall indemnify and hold harmless the Supplier for Costs arising from a breach of this Clause 11.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 11.2.
- 11.3 The Client acknowledges that the provision of high-quality services requires the Supplier to analyse data to identify trends, optimise services, and provide clients with the opportunity to use such information to enhance their own services. The Client therefore grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence to use, modify, adapt, and create derivative works of User Data for any purposes, and commercially exploit and/or sublicense any or all of such rights on any terms, provided always that such User Data must at all times be cleansed such that individuals, the Client, and/or any legal entities cannot be identified in any circumstances ("**Cleansed Data**").
- 11.4 The parties shall comply with Schedule 3.

**12. LIABILITY**

- 12.1 Neither party shall exclude or limit its liability for:
- (i) death or personal injury caused by its negligence;
  - (ii) fraudulent misrepresentation; and/or
  - (iii) any liability that cannot be excluded or limited by Law.
- 12.2 Subject to Clause 12.1, the Supplier shall not be liable for any direct or indirect loss of profit, loss of revenue, loss of anticipated savings, or loss of goodwill.
- 12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 12.4 The Supplier's Contractual Liability to the Client shall not exceed one hundred and fifty per cent (150%) of the fees paid (plus any unpaid fees that are payable) under the Contract (but not any SOW) in the 12 month period prior to the date in which the claim (or series of connected claims) arose. "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract that is not:
- (i) unlimited by virtue of Clause 12.1; or
  - (ii) excluded pursuant to Clauses 12.2 and 12.3.
- 12.5 The Supplier's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "**SOW Liability**" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2, 12.3, and 12.4.
- 12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the quality or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.
- 12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by an Event of Force Majeure. If an Event of Force Majeure causes the Supplier a delay in or failure to perform duties under this Contract for a continuous period of fourteen (14) days ("**Force Majeure Period**"), the Client shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days' prior written notice, such notice to be given within fourteen (14) days of expiry of the Force Majeure Period..

**13. ASSIGNMENT AND SUBCONTRACTING**

- 13.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.
- 13.2 The Supplier may sub-contract the performance of any of its duties. The Supplier shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.
- 13.3 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

**14. CHANGES**

- 14.1 Subject to Clause 14.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 14.2 Either party shall be entitled from time to time to request a change to the scope of the Services ("**Change**"). Neither party shall be entitled to charge for considering and/or negotiating a Change unless such consideration requires the Supplier to undertake detailed scoping in which case the Supplier shall be entitled to charge pursuant to an SOW.
- 14.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.
- 14.4 The Supplier reserves the right to make changes to Hosted Services from time to time provided that the Supplier has given the Client not less than sixty (60) days' prior written notice of such change (a "**Change Notice**") and provided further that in the event that such a change removes material Hosted Services functionality to the material detriment of the Client's use of Hosted Services the Client shall be entitled by giving the Supplier not less than thirty (30) days' prior written notice prior to the Change Notice taking effect to terminate this Contract. In the event that the Client has prepaid Fees covering a period that is shortened by termination by the Client in accordance with this Clause 14.4, the Supplier shall refund to the Client a proportion of the prepaid Fees in respect of such period, pro rated on a daily basis. This Clause 14.4 is without prejudice to the Supplier's rights under the SLA.
- 14.5 Neither party shall unreasonably withhold its consent to the other's request to re-schedule the date or time of performance of Services. However, given that it will not be practical for the Supplier to re-schedule resources on short notice, the parties agree that: (a) if the Client gives to the Supplier less than two (2) clear days' notice of such a request then the Client must pay to the Supplier the full value of such booked Services; (b) if the Client gives to the Supplier between two (2) and seven (7) clear days' notice of such a request then the Client must pay to the Supplier fifty per cent (50%) of the full value of such booked Services. For the purpose of this Clause 14.5, a "**day**" excludes Saturday, Sunday, and public holidays.

**15. NON-SOLICITATION**

- 15.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).
- 15.2 If a party breaches Clause 15.1, it shall pay the other party an amount equal to the last twelve (12) months' salary of the applicable individual in recognition of the value of the individual to the other party and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

**16. DISPUTES**

- 16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the "**Dispute**") through discussions between senior representatives.
- 16.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 16.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution ("**ADR**") procedure as recommended by the Centre for Effective Dispute Resolution.

- 16.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 16.4 Clauses 16.1 to 16.3 above shall not restrict either party's ability to commence court proceedings in respect of any:
- (i) matter relating to its Confidential Information or Intellectual Property Rights; and/or
  - (ii) unpaid invoice.

**17. GENERAL PROVISIONS**

- 17.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).
- 17.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 17.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier's behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier's credit.
- 17.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 17.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 17.6 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 17.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.
- 17.8 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.
- 17.9 **Injunctive Relief.** Nothing in this Contract shall prevent or preclude either party from seeking injunctive relief.
- 17.10 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.
- 17.11 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words "**including**" and "**include**" and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or

instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

- 17.12 **Hierarchy.** To the extent there is any inconsistency between the provisions of these MSA Terms & Conditions, the Order Form, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these MSA Terms & Conditions; (b) second the Schedules; (c) third the Order Form; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.
- 17.13 **Law.** This Contract is governed by the laws of England.

**MAINTENANCE**

- 1.1 The Supplier shall from time to time provide and install: (a) minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Supplier Software (each containing updates to the help files and documentation) ("**Maintenance Releases**"); and (b) new releases, new versions, updates, and modifications to the Supplier Software that do not constitute New Products (as generally available in accordance with the Supplier's timetable for releasing new versions as amended from time to time and available on request including updates to the help files and documentation) ("**New Version**").
- 1.2 The Supplier aligns the development of the Supplier Software and Hosted Services with Microsoft's Modern Lifecycle Policy. Therefore, the Client shall agree and comply with the provisions of the Microsoft Modern Lifecycle policy as set out at <https://docs.microsoft.com/en-us/lifecycle/policies/modern> (as updated from time to time).
- 1.3 If the Supplier notifies the Client that either a Maintenance Release or a New Version is mandatory to remain in line with Microsoft's Modern Lifecycle policy then the Client shall permit the Supplier to install the Maintenance Release or New Version (as applicable) within the timescale outlined by the Supplier. The Client must also test such Maintenance Release or New Version by a date specified by the Supplier.
- 1.4 Nothing in this Contract shall entitle the Client to any new version of the Products which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product ("**New Product**").

**SUPPORT**

- 1.5 In response to errors in the Hosted Services and/or the Supplier Software reported to the Supplier's helpdesk in accordance with paragraphs 1.10 - 1.11 (below), the Supplier will provide the service levels specified at paragraphs 1.16 - 1.17 (below) provided the errors reported are not Out of Scope.
- 1.6 "**Out of Scope**" means errors that fall outside the scope of the Supplier's responsibilities under this Contract and/or result directly or indirectly from the Client's: (a) misuse or improper use of the Hosted Services and/or the Supplier Software; and/or (b) combination, merger, or use of the Hosted Services and/or the Supplier Software with any hardware or software outside the Client Infrastructure and/or Connectivity Infrastructure.
- 1.7 The parties may agree that the Supplier will provide certain support and maintenance services in respect of Out of Scope errors as Services under an SOW.

**ENVIRONMENT**

- 1.8 The Client is responsible for procuring and maintaining the Client Infrastructure and Connectivity Infrastructure.
- 1.9 Maintenance Releases and New Versions may require enhancements to the Client Infrastructure and Connectivity Infrastructure. The Supplier will advise the Client if such enhancements are required. The Client is responsible for procuring and implementing such enhancements. The parties may agree that the Supplier will assist with implementation as Services under an SOW.

**CONTACTING THE COMPANY & SUPPLYING INFORMATION**

- 1.10 The Supplier's support operates during the "**Support Hours**": from 09:00 – 17:30, Monday – Friday excluding public holidays in England ("**Business Days**").
- 1.11 The Client may only contact the Supplier in respect of support queries via its support representative, using one of the following three methods: (a) email: [help@silverbear.com](mailto:help@silverbear.com); (b) telephone: +44 (0) 1483 409413; (c) online at the following web portal address: <https://support.silverbear.com>.

- 1.12 References to hours in this Service Level Agreement do not include hours outside the Support Hours.
- 1.13 When notifying the Supplier's support centre by any channel, the Customer must prepare a succinct description of the problem which accurately describes the problem to the Supplier.
- 1.14 If the Supplier's support representative does not understand the problem the Customer's representative will become involved. If the Customer's representative is involved and the Supplier's support representative still does not adequately understand the problem the Customer will re-assess the problem and having carried out a further investigation prepare a new description of it. The Supplier shall ensure that its support representatives are reasonably skilled and trained to provide helpdesk services.
- 1.15 It is the Customer's responsibility to provide the following information when notifying the Supplier's support centre:
- (i) the relevant background of the issue or problem to be reported
  - (ii) an exact and accurate description of the issue or problem being reported
  - (iii) what the user was doing at the time the issue or problem arose
  - (iv) how the issue or problem was identified
  - (v) what effect the issue or problem is having on the Customer
  - (vi) symptoms of the issue or problem
  - (vii) details of any message or warnings displayed on screen
  - (viii) where the information relates to a previously logged call give the reference of such call.

**SERVICE LEVELS**

- 1.16 The Supplier will assign a reported incident with a unique support number. If the Supplier determines that the reported incident is a fault or error with the Hosted Services and/or the Supplier Software and is within the scope of paragraph 1.5 (above) it will: (a) categorise the incident in accordance with the incident categories detailed at paragraph 1.17 (below); and respond in accordance with the response times detailed at paragraph 1.18 below.
- 1.17 Incident priority levels:

Impact Priority	Description	Examples
<b>Priority 1 – Critical</b>	Major loss of service(s) (all users affected and unable to continue working)	No user can access CRM Website unavailable (if Hosted with Silverbear) Silverbear Modules unavailable on website (My Membership etc)
<b>Priority 2 -High</b>	Loss of or severely restricted/degraded service	Group of users unable to access CRM Specific groups of users unable to access Silverbear modules on website Payments can only be processed in CRM OR online No Website data

Impact Priority	Description	Examples
		updating from CRM and vice versa No payments can be processed No event bookings are being processed
<b>Priority 3 - Medium</b>	Partial loss or degradation of service	Invoice values display incorrectly Some finance records failed to integrate Events bookings fail to link to CRM Member facing skinning issues on the website Unable to run business critical reports that previously ran successfully
<b>Priority 4 - Low</b>	Minor degradation of service	Non-service affecting script errors (ie OK/Continue allows execution of request)
<b>Priority 5 - Non-urgent</b>	Any incident that is not Priority 1, Priority 2, Priority 3, or Priority 4, e.g. Non-service affecting issue, or Client questions or queries	Review of environment Non-member facing skinning issues Spelling corrections How-to questions Release of Customer Own Development UAT functionality not aligned with Live Known Microsoft Dynamics Core CRM issues Known Core DNN issues
<b>SOW or Change Request required</b>	Tasks which are requested as initial Helpdesk services which are not covered in the standard support contract and may be chargeable.	UAT refresh of data with a copy from Live Database indexing review and application of scripts to extend Rollup application to Servers Changes to Silverbear Solution including text changes and modifications to workflows Creation of new reports

Impact Priority	Description	Examples
		Modification of design or content of existing reports

1.18 Target Response times:

Impact Priority	Target Time for Initial Response
<b>Priority 1 - Critical</b>	Within 1 Support Hour
<b>Priority 2 - High</b>	Within 4 Support Hours
<b>Priority 3 - Medium</b>	Within 8 Support Hours
<b>Priority 4 - Low</b> or <b>Priority 5 - Non-urgent</b>	Within 2 Business Days

#### SUPPORT EXCLUSIONS

- 1.19 Nothing in this Contract shall impose any obligation on the Supplier to provide support and maintenance in respect of any defect, error or circumstance arising due to any of the following:
- (i) any services other than the Hosted Services, any software other than the Supplier Software, or any hardware, electrical or other environmental work,
  - (ii) defects or errors resulting from any modifications of the Supplier Software or its documentation made by any person other than the Supplier without the Supplier's prior written consent. For the avoidance of doubt, modifications to the Supplier Software shall include, but are not limited to, changes to the logical or physical file system or database schema for the Supplier Software or changes to the data made directly by the Customer without use of the Supplier Software or its interfaces,
  - (iii) a situation where such a defect or error can be avoided by consideration of all information contained in the Supplier Software documentation, even if such consideration depends on the interpretation of such information
  - (iv) defects or errors caused by the malicious or negligent activities of the Customer, its employees, agents, or subcontractors or any other third parties
  - (v) defects or errors in any way related to any breach by the Customer of its obligations under this Contract.

#### CUSTOMER OBLIGATIONS

- 1.20 The Customer shall
- (i) use only the current release and patches of Supplier Software in accordance with this Contract
  - (ii) ensure that the Supplier Software is used only in accordance with applicable documentation and by competent trained employees only or by persons under their supervision
  - (iii) co-operate fully with the Supplier's personnel in the diagnosis of any error or defect in the Supplier Software or its documentation
  - (iv) provide continuous and uninterrupted remote access to the Supplier or its employees or subcontractors to the Software through any firewalls or any other barriers

protecting the Software as required by the Supplier for the purpose of providing the Services.

## **MICROSOFT UPDATES AND AGREEMENTS**

- 1.21 Microsoft products including Microsoft Dynamics will be updated directly by Microsoft subject to the terms of the applicable subscription agreement(s). Customer shall maintain and comply with all such agreement(s) as further set out at Schedule 4.

MSA: Schedule 2 – Change Control template

Change Control Notification (CCN)	
CCN ref.	
Client	
Specification of Changes	
Fees and Payment Consequences	
Expenses	The Client shall pay any expenses reasonably incurred by the Supplier in performing its duties under this SOW, including travel, accommodation, and subsistence.
This CCN is made pursuant to the Contract between the Supplier and the Client, and incorporates the terms thereof	
<div>Signed for and on behalf of the Supplier:</div> <div>Signed _____</div> <div>Name _____</div> <div>Position _____</div> <div>Date _____</div> <div>Signed for and on behalf of the Client:</div> <div>Signed _____</div> <div>Name _____</div> <div>Position _____</div> <div>Date _____</div>	

# MSA: Schedule 3 – Data Processing

## 1. DEFINED TERMS

1.1 For the purposes of this Schedule 3:

- (i) **"Data Controller", "Data Subject", "Personal Data", "Data Processor", and "Process"** shall have the meaning specified in the Data Protection Legislation;
- (ii) **"Data Protection Legislation"** means the UK GDPR; the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it;
- (iii) **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016; and
- (iv) **"UK GDPR"** means the GDPR as incorporated in UK domestic law by being Regulation (EU) 2016/679 as incorporated into domestic UK law by the European Union (Withdrawal Agreement) Act 2018 (as amended) and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (as amended)

## 2. DATA PROCESSING TERMS

2.1 In relation to the Processing of any User Data which constitutes Personal Data, the parties agree that the Client and/or its user(s) is/are the Data Controller and the Supplier is the Data Processor.

2.2 This Schedule 3 sets out the subject matter, duration, nature and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of the Client.

2.3 The Supplier shall in respect of such Personal Data:

- (i) process that Personal Data during the term of this Contract only on the documented written instructions of the Client (which include this Contract) unless the Supplier is required by Laws to otherwise process that Personal Data. Where the Supplier is relying on Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Laws unless those Laws prohibit the Supplier from notifying the Client;
- (ii) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or 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 Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (iv) not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Client has been obtained and there are appropriate safeguards in relation to the transfer;
- (v) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (vii) ensure that provisions which are equivalent to those set out in this paragraph **Error! Reference source not found.** are imposed upon any subprocessor engaged by the Supplier (acknowledging that the Supplier shall remain primarily liable to the Client for the subprocessor's compliance with such provisions);

- (viii) inform the Client of any intended additions to or replacements of the Supplier's subprocessors;
- (ix) subject to Clause 9.2(e) of the Contract, at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Laws to store the Personal Data; and
- (x) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 3 and allow for audits by the Client on reasonable notice and (but without thereby assuming the primary liability of the Client to only issue lawful instructions) immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

## 3. DATA

3.1 Subject matter and duration of the processing of Personal Data:

- (i) The subject matter and duration of the processing of Personal Data is set out in this Schedule and is further detailed in the Supplier's privacy policy (available online: <https://silverbear.com/Privacy-Policy>).

3.2 The nature and purpose of the processing of Personal Data:

- (i) Such processing, in accordance with the Client's instructions, as is necessary to provide the services pursuant to the Contract, which may include: the collection of data; recording of data; organisation of data; storage of data; alteration of data; retrieval of data; consultation with regard to data; use of data; disclosure of data to permitted third parties; combining data; and/or erasure of data.

3.3 The types of Client Personal Data to be Processed:

- (i) The Client may submit Personal Data in the course of using the Services, the extent of which is determined and controlled by the Client in its sole discretion, which may include, but is not limited to Personal Data relating to the following: name; personal contact details; professional contact details; IP addresses; cookie data; login credentials; and traffic data including web logs.

3.4 The categories of Data Subject to whom the Client Personal Data relates:

- (i) The Client may submit Personal Data to the Supplier, the extent of which is determined and controlled by the Client in its discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects: the Client's customers, employees, business partners and suppliers.

3.5 The obligations and rights of the Client:

- (i) The obligations and rights of the Client are set out in this Schedule and are further detailed in the Supplier's privacy policy (available online: <https://silverbear.com/Privacy-Policy>).

## 4. CLIENT RESPONSIBILITIES

4.1 The Client agrees that, in its role as Data Controller, it:

- (i) shall ensure that only lawful instructions are issued to the Supplier in respect of the Processing of the Personal Data;
- (ii) shall obtain and maintain throughout the term of the Contract all necessary permissions, consents and authorisations to enable the Supplier to process the Personal Data in accordance with the provisions of the Contract;
- (iii) has reviewed and approved the Supplier's technical and organisational measures as being suitable for the Client's purposes before entering into the Contract;
- (iv) has granted to the Supplier general authorisation to sub-contract its Processing of Personal Data to third parties on the terms set out in paragraph 2.3(vii);
- (v) may be considered to have no objections if it has not advised otherwise in writing within ten (10) days of notification under paragraph 2.3(viii); and
- (vi) shall promptly issue its instructions in writing to the Supplier, regarding return or deletion of the Personal Data, upon termination or expiry of the Contract (acknowledging the provisions of Clause 8.2(e) of the Contract.

(vii)

# MSA: Schedule 4 – Optional Additional Provisions

## 1 INTRODUCTION & LOCAL SOFTWARE

- 1.1 The provisions of this Schedule apply to the extent identified in the Order Form.
- 1.2 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the term of this Contract to: (a) permit the authorised users to install and use any Supplier Software (that is delivered to the Client for installation on the Client Infrastructure) for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; (b) use the Materials and Deliverables for the duration of the licence granted under this paragraph 1.2 and for the Licensing Purpose. The licence at Clause 2.2 of the Contract shall not apply to Supplier Software, Materials, and/or Deliverables licensed pursuant to this paragraph 1.2.

## 2 IMPLEMENTATION: TESTING & ACCEPTANCE

- 2.1 The parties shall mutually agree in writing the acceptance criteria that will be used to determine whether the Supplier Software is Accepted or Rejected ("**Acceptance Criteria**"), and in the absence of such agreement the Acceptance Criteria shall be such criteria recommended by the Supplier that demonstrate that the Supplier Software complies with relevant supplier specification(s).
- 2.2 The Client shall undertake and complete user acceptance testing in a test environment in accordance with good industry practice and the Supplier's reasonable recommendations promptly ("**Tests**").
- 2.3 If the Supplier Software fails the Tests: (a) the Supplier shall promptly, and in any event within fourteen (14) days, endeavour to remedy such failure (noting that the Supplier will have limited control over such Supplier Software that is supplied by third parties) and resubmit the Supplier Software for a second cycle of Tests in accordance with paragraph 2.2; or (b) the parties may agree to vary some or all of the Acceptance Criteria in relation to the Supplier Software and following which the Supplier shall promptly submit the Supplier Software for a second cycle of Tests in accordance with paragraph 2.2.
- 2.4 If the Supplier Software fails a second cycle of Tests, the parties agree that the cycle at paragraph 2.3 shall be repeated.
- 2.5 If the Supplier Software fails a third cycle of Tests, within thirty (30) days of such failure, the Client shall be entitled to Reject the Supplier Software, which: (a) in respect of Tests immediately following (or part of) the Set-Up and Implementation Services, will entitle the Client to terminate this Contract by giving to the Supplier not less than ten (10) days prior written notice, whereupon the Client shall be entitled to receive a refund of all pre-paid Fees under this Contract that relate to Supplier Software and/or Set-Up and Implementation Services; or (b) in respect of Tests immediately following (or part of) the installation/implementation of new releases and/or new versions of Supplier Software, will entitle the Client to remain on the previous release/version (as applicable).
- 2.6 Supplier Software shall be deemed accepted if: (a) the Client signs an acceptance certificate; (b) the Client does not exercise its rejection rights in accordance with paragraph 2.5; (c) the Client puts the Supplier Software into live or operational use.
- 2.7 The Client's rights at paragraph 2.5 shall be its exclusive remedies in respect of rejection. In no circumstances shall the Client be entitled to compensation and/or damages (with the exception of the refund(s) set out at paragraph 2.5 (a)).
- 2.8 The Client shall install and/or implement new releases and/or new versions of Supplier Software promptly, but prior to live or operational use shall undertake the test cycle set out at paragraphs 2.1 to 2.6 above in respect of such new releases/versions.

## 3 CLIENT CONTRACTED SOFTWARE AND SERVICES

- 3.1 In this paragraph, the following words have the following meanings: (a) "**Client-Contracted Services Agreements**"

means contracts entered into between Client-Contracted Services Providers and the Client; (b) "**Client-Contracted Services Providers**" means the third party 'Client-Contracted Services Providers' described in the Order Form; (c) "**Client-Contracted Software Vendors**" means the third party 'Client-Contracted Software Vendors' described in the Order Form; (d) "**Client-Contracted Vendor Licences**" means software licensing agreements entered into between Client-Contracted Software Vendors and the Client.

- 3.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Client-Contracted Vendor Licences and Client-Contracted Services Agreements; and (b) the Supplier will have no contractual obligations or responsibilities in respect of Client-Contracted Vendor Licences and Client-Contracted Services Agreements, subject to paragraph 3.4 below; and (c) any termination of the Client-Contracted Vendor Licence and/or Client-Contracted Services Agreements (other than as a result of a breach by the Supplier of paragraph 3.4 below) may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 3.3 The Client agrees that it will enter into Client-Contracted Vendor Licences and Client-Contracted Services Agreements and will maintain such Client-Contracted Vendor Licences and Client-Contracted Services Agreements for the duration of this Contract and abide by the terms and conditions of Client-Contracted Vendor Licences and Client-Contracted Services Agreements.
- 3.4 The Supplier shall ensure that the Client-Contracted Software Vendor and/or Services Provider (as applicable) does not terminate the Client-Contracted Vendor Licence or and Client-Contracted Services Agreements (as applicable) as a result of the Supplier's breach of paragraph 3.5 below.
- 3.5 The Supplier shall make payment to Client-Contracted Software Vendors and Client-Contracted Services Providers in respect of the grant of Client-Contracted Vendor Licences and the provision of services under the Client-Contracted Services Agreements, subject to the Client's: (a) payment to the Supplier of Fees in respect of Client-Contracted Vendor Licences and Client-Contracted Services Agreements; and (b) compliance, in full, with the terms and conditions of the Client-Contracted Vendor Licences and Client-Contracted Services Agreements.
- 3.6 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 3, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 3.
- 3.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Client-Contracted Software Vendor and/or Client-Contracted Service Provider, has increased its fees or charges in a manner that increases the costs imposed on the Supplier under this Contract, provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third-party costs and will endeavour to keep such increases to a minimum.
- 3.8 The Supplier's rights under paragraph 3.7 above are separate and additional to the further pricing stipulations set out in respect of Microsoft on the Order Form in connection with Client-Contracted Software Vendor Fees and Client-Contracted Services Provider Fees.
- 3.9 Client shall comply with paragraph 4 and Appendix 1 of this Schedule 4 in relation to Microsoft products.

## 4 MICROSOFT CLOUD SOLUTIONS PROVISION

- 4.1 Supplier is a direct Cloud Solution Provider, authorised through the Partner Programme at Microsoft.
- 4.2 Pursuant to this Contract, the Client purchases and shall purchase certain Microsoft products via the Supplier through the above Partner Programme.

# MSA: Schedule 4 – Optional Additional Provisions

- 4.3 In connection with all such Microsoft products, Client shall enter into Client-Contracted Services Agreements and Client-Contracted Vendor Licences in accordance with the paragraph 3 above and shall deal with such agreements in accordance with the further provisions of paragraph 3.
- 4.4 Appendix 1 to this Schedule 5 sets out various additional essential terms that the Supplier is required to have in place with each of its Clients in order to maintain its partner relationship with Microsoft as an authorised Partner as part of the CSP Direct Partner Programme. Accordingly, Client also agrees to the terms of Appendix 1 to this Schedule 5. Such terms are non-negotiable and are mandatory in order for the Client to purchase its Microsoft Cloud Solution requirements from the Supplier.
- 4.5 Appendix 1 to this Schedule 5 (the “CSP Agreement”) applies in relation to all Microsoft products provided via the Supplier. The CSP Agreement is effective only in relation to such Microsoft products and it does not apply in relation to any other products or services provided by the Supplier.
- 4.6 Client shall ensure that, in relation to each Microsoft product supplied via Supplier (including without limitation all Microsoft Azure and Microsoft Dynamics products), it accepts and agrees to the terms of the Microsoft Customer Agreement (“Customer Agreement”) located at <https://www.microsoft.com/licensing/docs/customeragreement>, which terms may be updated from time to time by Microsoft along with any other applicable Product Terms applicable to the Microsoft products purchased.
- 4.7 The terms of the Customer Agreement(s) are supplemental to the CSP Agreement. Client shall regularly check the above link for any changes or updates which may affect the Client's and/or Microsoft's obligations. Failure to do so will not in any way diminish the binding nature of such changes or updates on Client. For the avoidance of doubt, by signing this Contract the Client has fully accepted all provisions of this Schedule 4 including the CSP Agreement and any related Product Terms.
- 4.8 Client acknowledges, accepts and shall comply with the following terms and conditions (“Additional Microsoft Terms”) relating to relevant Microsoft products supplied to it via the Supplier under this Contract:
- (i) <https://azure.microsoft.com/en-gb/support/legal/subscription-agreement/>
  - (ii) <https://www.microsoftvolume licensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=46>
  - (iii) <https://azure.microsoft.com/en-gb/support/legal/>
  - (iv) <https://azure.microsoft.com/en-gb/support/legal/sla/>
  - (v) <https://privacy.microsoft.com/en-gb/privacystatement>
- 4.9 The Client acknowledges that Microsoft is a sub processor of the Client and not a sub processor of Supplier.
- 4.10 Client shall regularly check the Additional Microsoft Terms for any changes or updates which may affect the Client's and/or Microsoft's obligations. Failure to do so will not in any way diminish the binding nature of such changes or updates on Client.
- 4.11 In the event of any conflict between the Additional Microsoft Terms and the Customer Agreement, unless such conflict is expressly resolved by Microsoft's provisions within such terms, the Customer Agreement shall prevail.
- 4.12 Client shall enter into any further agreements required by Microsoft under the Additional Microsoft Terms and/or Customer Agreement (as amended) and/or as otherwise required by Microsoft from time to time, and shall not act (or fail to act) so as to cause Supplier to be in breach of any of its obligations to Microsoft from time to time.
- 4.13 Where a Microsoft cloud service is deployed/utilised within the project, the Supplier will be assigned to the cloud subscription/s as the Digital Partner of Record (DPOR) and/or Claiming Partner of Record (CPOR) (as applicable) for the term of this Contract.

- 4.14 Client's subscription comes with a set of admin roles that it can assign to users. Each admin role maps to common business functions and gives people in the Client's business permissions to do specific tasks in the admin centres. Client agrees, on request from the Supplier from time to time, to allocate admin roles to named Supplier personnel to the extent needed for Supplier to deliver services to Client under this Contract.
- 4.15 If Microsoft elects to discontinue a product and/or licence comprised within the Client-Contracted Services Agreements and/or Client-Contracted Vendor Licences, the Parties shall coordinate as necessary with a view to enabling continuation of the Hosted Services, and Supplier shall notify Client of an amendment to the Client-Contracted Services Agreements and/or Client-Contracted Vendor Licences in relation to equivalent or alternative Microsoft product(s) and/or licence(s) (as applicable) including the amended pricing to apply in relation to the same. Client shall then promptly enter into such Agreement(s) or Licence(s) (as applicable) on the required timescale to enable such continuity.
- 5 OPEN SOURCE SOFTWARE**
- 5.1 In this paragraph, the following words have the following meanings: (a) “Open Source Licence” means a licence in respect of Open Source Software as identified at [www.silverbear.com/opensource](http://www.silverbear.com/opensource); (b) “Open Source Software” means the open source software identified at [www.silverbear.com/opensource](http://www.silverbear.com/opensource), including all new releases, new versions, updates and modifications thereto.
- 5.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Open Source Licences; (b) the Supplier will have no contractual obligations or responsibilities in respect of Open Source Licences and, in particular, will not be providing patches or fixes in respect of the Open Source Software; and (c) any termination of the Open Source Licences may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 5.3 The Client agrees that it will enter into Open Source Licences and will maintain such Open Source Licences for the duration of this Contract and abide by the terms and conditions of Open Source Licences.
- 5.4 The Supplier warrants at the Effective Date that the provision of Open Source Software as part of the Hosted Services shall not infringe the terms of the Open Source Licences.
- 5.5 In the event that any Open Source Licence is terminated, or in the reasonable opinion of the Client or the Supplier, use of the Open Source Software infringes the Intellectual Property Rights of a third party, save in respect of such termination or reasonable opinion arising as a result of a breach by either party of this paragraph 5, the parties shall use all reasonable endeavours to mitigate any adverse impact to the Hosted Services (which may include the sourcing of alternative software components), provided that if notwithstanding such mitigation the adverse impact to the performance or functionality of the Hosted Services is substantial, the Client shall be entitled to terminate this Contract on thirty (30) days' prior written notice. Mitigation arising under this paragraph shall be deemed an Event of Force Majeure and the provisions of Clause 12.7 shall apply.
- 5.6 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 5, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 5.

# MSA: Schedule 4 – Appendix 1 (CSP Agreement)

## 1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this CSP Agreement. Any defined terms used herein and not defined below shall have the meaning ascribed elsewhere in this Contract.

“**Administrative Access Credentials**” means any administrative log-in credentials Microsoft provides for accessing or managing a Product.

“**Client Data**” has the meaning assigned to it in the Contract.

“**Consumption Subscriptions**” refers to one-month OLS Subscriptions that are billed based on actual usage in the preceding month without upfront commitment.

“**Customer Agreement**” means an agreement between a Client and Microsoft, or a Microsoft Affiliate, and the associated Microsoft license terms that govern a Client's use of a Product which may be updated from time to time and as set out at <https://www.microsoft.com/licensing/docs/Clientagreement>.

“**Offset**” means the withholding or deduction from the payment of any invoice amount or amount due by offset, counterclaim, or otherwise.

“**OLS Subscription**” means a right to use certain Online Services for a defined term.

“**Online Services**” means Microsoft-hosted services identified on the then-current Price List. Online Services do not include Software or professional services provided under separate license terms.

“**Order Form**” means the Order Form annexed to this Contract or a CCN.

“**Price List**” means the then current list of Products.

“**Product Fee**” means the royalty, commission, fee, or price to be paid for a Product.

“**Products**” as used in this CSP Agreement, means the Microsoft online services, tools, software, hardware, or professional support or consulting services.

“**Product Specific Terms**” means the additional terms, conditions, or restrictions that apply to specific Products.

“**Product Terms**” means the document that provides information about Products available through volume licensing. The Product Terms document is published at <http://www.microsoft.com/licensing/contracts> and is updated from time to time.

“**SLA**” means the service level agreement commitments regarding delivery and/or performance of the applicable Product.

“**Software**” means licensed copies of Microsoft software identified in the Order Form. Software does not include Online Services, but Software may be part of an Online Service.

“**Software Subscription**” means a right to use the Software identified in the Order Form as being available and licensable for a defined term.

“**Subscription**” means a right to use a Product for a defined term.

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

- 1.3 A reference to **writing** or **written** includes e-mail.

- 1.4 A reference to **this CSP Agreement** or to any other agreement or document referred to in this CSP Agreement is a reference to this CSP Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this CSP Agreement) from time to time.

## 2. PRODUCT FEES AND ORDERING, GENERAL

- 2.1 By submitting an order through the Order Form, Client (i) represents that any subscription commitments and requirements

disclosed are complete and accurate in all respects and (ii) agrees to pay the Supplier for all orders it submits for Products.

## 3. REPORTING, INVOICING AND PAYMENT, GENERAL

- 3.1 **Late Payment.** If (i) the Client fails to cause the full invoice payment to be received by the Supplier by the payment due date, (ii) an audit reveals an underpayment, or (iii) the Client Offsets, the Supplier may take any (or any combination) of the following actions to the maximum extent permitted by Law, and without waiving any other right or remedy it may possess:

1.1 charge interest and late fees on the past due amount as more fully set out in the Contract;

1.2 suspend all pending orders, further shipments, or Client's access to Products;

1.3 require the prepayment of Product Fees on future orders, place Client's account on hold, reduce Client's credit limit (if applicable), or require that Client provide a bank guarantee or other form of security; or

1.4 withhold the past-due amount from any other amounts payable by Supplier to Client under the Contract.

## 4. NOTICE OF CHANGES

- 4.1 The Client acknowledges and accepts that the Supplier reserves the right to unilaterally modify these terms from time to time. The Supplier will provide the Client no less than ninety (90) days' prior notice before such changes become effective; after such time such changes to these terms will become effective without further action by the parties. Any modification of these terms per this provision will have prospective effect only.

## 5. CUSTOMER AGREEMENT ACCEPTANCE.

- 5.1 The Client may not revise the Customer Agreement in any way. The Client agrees and acknowledges that if Microsoft updates the Customer Agreement, then the Client must ensure that it reads, agrees and acknowledges the terms of the new Customer Agreement prior to or at the submission of a subsequent order (which is not a subsequent adjustment to an existing Subscription) or the renewal of their Subscription. Notwithstanding the foregoing, Microsoft may independently obtain the Client's end user acceptance of the Customer Agreement.

- 5.2 By placing an order with the Supplier, the Client represents and warrants that the Client has accepted the Customer Agreement.

## 6. GENERAL PRODUCT RELATED OBLIGATIONS

- 6.1 **Product and Subscription Management.** The Supplier will perform certain functions associated with the purchase, activation, support and management of the Client's purchased Products. The Client acknowledges and agrees that from time to time Supplier may update, as Supplier in its sole reasonable discretion deems appropriate, the processes and tools needed to perform such functions and the Supplier may be required to implement such updates or changes to continue to perform the functions.

- 6.2 Disablement and Cancellation of Subscription Offers.

(i) As manager of Client purchased Products, the Supplier may cancel a Subscription for a Client in accordance with the terms of the Contract. The Supplier (i) will not provide a refund in connection with such cancellation of a Subscription if such cancellation occurs outside of the stated return period, and (ii) reserves the right to invoice the Client for any future scheduled billings for any Subscription cancelled in such a manner; cancellation terms may vary depending on the Product. Upon cancellation, Client will have ninety (90) days to migrate any Client Data to either a new Subscription with the Supplier, with Microsoft directly, or to some other service. Upon request, the Supplier may assist the Client with migration of its Client's Data at an additional charge agreed to between the Supplier and the Client.

(ii) As manager of Client purchased Products, the Supplier may temporarily disable a Client's Subscription. Depending on the Product, Client may continue to have limited or no access to

# MSA: Schedule 4 – Appendix 1 (CSP Agreement)

the Product. The Supplier will not be liable to the Client, in any manner whatsoever, in connection with the Supplier's disablement of the Client's Subscriptions.

(iii) Microsoft and/or the Supplier may temporarily disable a Client's Subscription for legal or regulatory reasons or as otherwise permitted under this CSP Agreement, the Contract, or the Customer Agreement(s). The Supplier will notify the Client of such a disablement as soon as commercially reasonable. In the event of disablement of a Client's Subscription, the Supplier may also suspend billing to Client for that Client's Subscription until the Subscription is re-enabled.

(iv) If a Subscription is cancelled by the Supplier before its term expires and during the Client's billing cycle, (i) the Supplier will provide a prorated credit for the un-used pre-paid portion of the cancelled Subscription in the Client's subsequent invoice, provided that such cancellation is not due to any violation of the terms of this CSP Agreement or the Customer Agreement with Microsoft and (ii) the Supplier will not invoice the Client for any future scheduled billings for that Subscription.

## 7. OLS SUBSCRIPTION OFFER TERMS AND OBLIGATIONS

### 7.1 Fixed Term OLS Subscriptions.

(i) Products sold under fixed term OLS Subscriptions are sold for a term as specified in the Order Form. The Order Form shall specify if such Subscriptions are to be billed on a monthly or annual basis. Any subsequent adjustments to OLS Subscriptions (e.g., adding seats) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.

### 7.2 Consumption Subscriptions ("Pay-As-You-Go")

(i) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period.

## 8. SOFTWARE OFFER TERMS AND OBLIGATIONS

8.1 **Installation of Software.** Client's installation of certain Software may require the Client to have a qualifying base license on the Client's hardware unit. The applicable requirements are set forth in the Product specific terms incorporated into the Customer Agreement.

## 9. PAYMENT, ORDERING

9.1 The Supplier may reject any purchase order for a Software offer, in whole or part, within ten (10) days from the receipt of the Client's order. The Supplier will notify the Client if the Supplier rejects any order. Once an order for a Software offer is submitted, the Client will have sixty (60) days from the order date to submit any revisions to such order. All revision requests must be accompanied by supporting documentation as required by the Supplier and will be subject to the Supplier's review and approval. An approved order revision will result in the full cancellation of the underlying order and a refund. The Supplier may, in its sole discretion, decide to charge a handling fee of 5% of the value of any purchase order revision submitted and approved after sixty (60) days.

## 10. OPERATIONAL AND TECHNICAL SUPPORT

### 10.1 Administrative Access.

(i) Administrative Access Credentials are the property of the Client; The Supplier shall provide Client with any Administrative Access Credentials Microsoft provides with respect to a Product purchased by Client.

(ii) If the Supplier (i) retains or obtains any Administrative Access Credentials of a Client for any purpose, including the fulfillment of its support obligations under the Contract, or (ii) otherwise has access to or processes Client Data, then the data protection terms found under the Master Services Agreement governing the use of Administrative Access Credentials shall apply.

(iii) Client shall supply Administrative Access Credentials to Supplier on request from time to time to enable Supplier to fulfil its support obligations under the Contract.

## 11. CLIENT DATA AND PRIVACY OBLIGATIONS

11.1 **Privacy.** Before obtaining information from Data Subjects, the Client must obtain their legally valid permission or have another valid legal basis to permit the processing and transfer of the data by the Supplier and Supplier Affiliates, Microsoft and Microsoft Affiliates, and each parties' respective subsidiaries and service providers as contemplated under this CSP Agreement. The Client shall seek the requisite consent to allow the Supplier and Microsoft to collect, use, transfer, disclose, and otherwise process each Client's data, including personal data, as described in the Customer Agreement and the Contract. If obtaining Data Subject permission, such permission must comply with applicable law as valid consent.

### 11.2 Client Data.

(i) The security, privacy and data protection commitments made by Microsoft in any Customer Agreement only apply to the Products purchased from Microsoft and not to any Services or other products provided by the Supplier. Except as the Supplier and Client may otherwise agree, the Supplier shall not delegate administrative privileges to a Product provided to Client or otherwise provide access to Client Data to a third party (other than Client) without Client's prior consent or in violation of any Laws, including Data Protection Laws.

(ii) Except as the Supplier and Client may otherwise agree, the Supplier shall use Client Data only to provide Client with the Products and the services specified under this Contract and to assist Client in the proper administration of the Products.

(iii) Additionally, the Supplier shall not disclose Client Data, including the content of communications, to law enforcement or other government authorities without the prior written consent of the Client, unless required to do so by Law.

(iv) If the Supplier receives a request for Client Data either directly from a law enforcement agency or as redirected to the Supplier by Microsoft, then the Supplier shall redirect the law enforcement agency to request that Client Data directly from Client. If compelled to disclose Client Data to law enforcement, then the Supplier shall immediately (i) notify Client; (ii) cooperate fully with Client in any reasonable efforts to intervene, quash or limit, or otherwise respond to, such requests; and (iii) after consultation with Client, only disclose the minimum amount of data necessary to comply with applicable Laws or judicial process.

(v) The Client shall (i) notify the individual users of the Products that their Personal Data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities when required by applicable Law as determined by the Supplier; and (ii) obtain individual users' consent to the same.

## 12. NOTICE OF CHANGES

### 12.1 Changes to Price List.

(i) Client accepts that Microsoft may decrease or increase Product Fees listed on the Price List at any time.

(ii) Notwithstanding the foregoing:

12.1.ii.1 the prices for Microsoft Azure Services may change without notice; and

12.1.ii.2 the Supplier will not be required to provide any prior notice before the effectiveness of a decrease or increase in Product Fees.

(iii) **Changes to Product Specific Terms.** Microsoft may change the terms and conditions of the Product Specific Terms at any time.

## 13. SUPPORT TERMS.

13.1 **Client Service Level Agreement.** The current Online Services Service Level Agreement can be found at: <http://www.aka.ms/csla>.

# MSA: Schedule 5 – Exit Management

## 1. DEFINED TERMS

1.1 For the purposes of this Schedule 5:

- (i) **"Exit Period"** means a period of time commencing on the date specified by Client by notice in writing to the Supplier, or in a notice by Client to the Supplier following receipt of the Supplier's notice to terminate the Contract, during which the Supplier shall provide Exit Services to Client as further described in this Schedule 5;

**"Exit Plan"** means the exit management plan to be agreed pursuant to this **Error! Reference source not found.** Schedule 5 (Exit Management);

**"Exit Services"** has the meaning given to it in paragraph 3.6.1 of this Schedule 5 (Exit Management); and

**"Successor Supplier"** means any person, firm, company or other entity which may on termination of the Contract be engaged by the Client to provide the Services or part thereof or services which formerly comprised the Services or part thereof.

## 2. OVERVIEW AND PRINCIPLES

2.1 This Schedule sets out the:

- (i) agreed principles with respect to the Exit Services;
- (ii) process the Client shall follow to:
- (iii) request Exit Services; and
- (iv) exercise its right to an Exit Period.

2.2 The Client is responsible for any transfer of the Services to a Successor Supplier. The Client specifically recognises that selection of a Successor Supplier with an adequate CRM platform is a critical dependency for any such transfer.

2.3 Subject to paragraph 2.2 above, irrespective of the circumstances at the time, where Exit Services are requested, both Parties shall co-operate with each other (and, if the Successor Supplier is not the Client, the Successor Supplier) to the extent reasonably required to achieve the orderly transition of the Services to a Successor Supplier.

2.4 Except where the Parties otherwise agree in writing:

- (i) where any Exit Services have been requested or are being performed; and
- (ii) during any Exit Period,

the Services shall continue, and the Client shall pay the charges for the Services in full.

2.5 To the extent the Successor Supplier is not the Client or a Client Affiliate:

- (i) the Client shall, at the Supplier's request, require the Successor Supplier to enter into the Supplier's then standard non-disclosure agreement;
- (ii) the Client shall not transfer any data relating to the Services to the Successor Supplier until the non-disclosure agreement described in paragraph 2.5(i) is in place; and
- (iii) the Client hereby consents to the Supplier providing any information or data belonging to the Client relating to the Services (including, for the avoidance of doubt, the Client's Data and the Client's Confidential Information) to the Successor Supplier, to the extent necessary to enable the Supplier to provide the Exit Services. In the event that the Supplier discloses any of the Client's Confidential Information to a Successor Supplier, Clause 10 (Confidentiality) of the MSA T&Cs shall not apply to Supplier in relation to such disclosure.

## 3. EXIT PLAN AND EXIT SERVICES

3.1 At any time, if requested by the Client, the Supplier shall, as a T&M chargeable service, promptly create a draft Exit Plan which sets out the Exit Services.

3.2 Following receipt of a draft Exit Plan, the Client shall promptly respond to the Supplier's reasonable requests for clarification and input into such draft Exit Plan.

3.3 Within ten (10) Business Days of receipt of a draft Exit Plan, the Client shall either:

- (i) confirm in writing to the Supplier that the draft Exit Plan has been approved; or
- (ii) provide a written response to the Supplier suggesting amendments to the draft Exit Plan.
- (iii) The Supplier shall have no obligation to deliver Exit Services until the Exit Plan is agreed.

3.4 Within ten (10) Business Days of receipt of any suggested amendments to a draft Exit Plan in accordance with paragraph 3.3(ii), the Supplier shall include such amendments as are reasonable into a revised draft of the Exit Plan and issue such revised draft to the Client. This iteration of the draft Exit Plan shall be deemed to have been approved by the Client if no written response is provided to the Supplier within ten (10) Business Days of the Client's receipt of the revised draft. If a written response is received by the Supplier within ten (10) Business Days of the Client's receipt of the revised draft then the process described in this paragraph 3.4 shall be repeated until the Exit Plan is approved.

3.5 Not more than once each year, following a request by the Client, as a T&M chargeable service, the Supplier shall update the Exit Plan to reflect any changes to the Services which would necessitate changes to the Exit Services. Following each update of the Exit Plan, the Supplier shall submit the revised Exit Plan to the Client and the provisions of paragraphs 3.2, 3.3 and 3.4 shall apply in respect of such revised Exit Plan. Until such time as a revised Exit Plan has been approved by the Parties, the previously approved Exit Plan shall continue to apply.

3.6 The Parties agree that any Exit Plan to be produced pursuant to this Agreement shall set out:

- (i) the "Exit Services", such being the actions to be performed by the Supplier to reasonably assist the Client to enable the transfer of the Services to a Successor Supplier
- (ii) a joint management structure to govern the transfer of the Services to a Successor Supplier which shall include:
- (iii) the appointment of exit managers on behalf of each Party;
- (iv) the appointment of workstream leaders for each workstream; and
- (v) a regular meeting of executives to provide oversight;
- (vi) a high-level project plan (to the extent possible at the time) for each workstream;
- (vii) an estimate of the total charges to be payable to the Supplier in respect of the Exit Services contemplated by the Exit Plan; and
- (viii) any actions to be performed by the Client to enable the Supplier to perform the Exit Services and/or to reasonably assist the Client in the orderly transition of the Services to a Successor Supplier.

3.7 Subject to paragraph 3.3, the Client shall be entitled to request the provision of, and the Supplier shall not unreasonably refuse to provide, Exit Services at any time by issuing the Supplier with a written request, provided always that:

- (i) the Client pays the charges in respect of such Exit Services which shall, for the avoidance of doubt and notwithstanding any other provision of this Contract, be calculated on a time (by reference to the Supplier's then-prevailing day

## MSA: Schedule 5 – Exit Management

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rates) and materials (including any third-party costs incurred by the Supplier in the provision of the Exit Services, provided these have been agreed with the Client in writing and in advance) basis;

- (ii) the Supplier shall not be obliged to provide the Exit Services following the expiry of any Exit Period which arises.

3.8 Where there is an approved Exit Plan at the time an Exit Period commences (or the Client requests the provision of Exit Services), the Exit Services shall be those set out in that approved Exit Plan except where the Parties otherwise agree.

3.9 Where there is no approved Exit Plan at the time an Exit Period commences (or the Client requests the provision of Exit Services), the Exit Services may include:

- (i) either the creation of the Exit Plan in accordance with the process set out in this paragraph **Error! Reference source not found.** and the subsequent performance of the Exit Services set out in such Exit Plan; or
- (ii) the performance of any of the activities set out at paragraph 3.6.

### 4. EXIT PERIOD

4.1 Notwithstanding that the Client can request the provision of Exit Services at any time without effecting a termination of this Agreement, the Supplier shall provide the Exit Services during the Exit Period.

4.2 Subject to the limitations set out in paragraph 4.3 below, the Client shall specify the length of the Exit Period in any notice of termination that it serves under this Agreement (which may, for the avoidance of doubt, be less than the maximum time that the Client would have otherwise been entitled). In the event that the Supplier has served a notice to terminate this Agreement, the Client shall notify the Supplier in writing of the length of the Exit Period it requires (subject always to paragraph 4.3 below) within fourteen (14) days of receipt of such Supplier notice to terminate.

4.3 The Exit period may be any period up to a maximum of twelve (12) months from the expiry of any notice period that may be required to terminate this Agreement (or, in the case of an immediate termination, from the date that the relevant termination notice is served).