

Infinity Group Services Terms

October 2023 ([Click here](#) for previous terms)

These terms set out the terms and conditions under which the Infinity Group (**IG**) provides Services to its Customers.

1. Definitions

Definitions used throughout these terms (those in capital letters) together with certain rules of interpretation are set out in Clause 32 below.

2. Statements of Work

- 2.1 Any person may procure Services by agreeing a Statement of Work with IG pursuant to this Clause 2.
- 2.2 Each Statement of Work shall be agreed in the following manner:
 - (a) any person may ask IG to provide Services, giving IG as much information as it reasonably requests in order to prepare a draft Statement of Work for such Services requested;
 - (b) following receipt of all information required IG shall, as soon as reasonably practicable, either:
 - (i) inform that person that it declines to provide the requested Services; or
 - (ii) provide that person with a draft Statement of Work;
 - (c) if IG provides a draft Statement of Work, the parties shall discuss and agree that draft Statement of Work; and
 - (d) once agreed, both parties shall sign the draft Statement of Work.
- 2.3 A Statement of Work shall only be deemed to be agreed and accepted once signed by IG and the Customer, and only at that point will the Contract come into existence.
- 2.4 Subject to Clause 2.5, these terms, as incorporated into each Statement of Work, apply to the exclusion of any prior oral or other prior terms or arrangements between IG and the Customer in connection with the purchase of the relevant Services and prevail over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any purchase order or other similar document issued by the Customer or implied by law, trade custom or practice.
- 2.5 No addition to, variation of or other amendment or purported amendment to these terms shall be binding on the parties unless expressly stated as such in a

Statement of Work or pursuant to a Change Order and signed by or acknowledged by a duly authorised representative of both parties.

3. Cancellation

3.1 The Customer has the right to cancel the Contract at any time during the period of seven (7) days following the Commencement Date, provided always that:

- (a) it shall reimburse IG's costs incurred on pre-contract site visits or procurement of supplies from subcontractors or Third-Party Suppliers and all other set up and administration costs; and
- (b) written notice of the Customer's cancellation must be made by email to cancellations@infinitygroup.co.uk. Notification via telephone or by email to any other address shall not be accepted.

3.2 The Customer's right of cancellation under this Clause 3 lapses after the end of the seven (7) day period stated in Clause 3.1 at which point and on which date the Contract cannot be cancelled but continues for the Minimum Term. If the Customer cancels any part of the Services at any time after that period then, without prejudice to IG's other rights and remedies, the Customer shall be liable for payment of the Fees set out in the Statement of Work for the entire Minimum Term (including the Recurring Charges (if any) for the entire Minimum Term and all Fees for any Professional Services).

4. Services

4.1 IG will provide any Services in accordance with the Statement of Work from the Commencement Date and for the duration of the Minimum Term and any Subsequent Term unless earlier terminated for any reason in accordance with these terms.

4.2 IG shall provide any Managed Services in accordance with any Service Level Arrangements stated in the Statement of Work.

5. Other products and services (including Microsoft products)

5.1 In conjunction with the Services, a Statement of Work may include the supply of Deliverables, including Third-Party Services.

5.2 In respect of Third-Party Services developed and owned by the Microsoft Corporation:

- (a) the Customer agrees to be bound by the applicable Microsoft Customer Agreement referenced in the Statement of Work (which is a Third-Party Licence for the purpose of these terms);
- (b) where any Microsoft subscription service is deployed or otherwise utilised in conjunction with the Services, the Customer shall assign to IG to the

subscription as the “Claiming Partner of Record” (CPOR), “Digital Partner of Record” (DPOR), and/or “Partner Admin Link” (PAL), as the case may be, and/or be given “Delegated Administration Privileges” (DAP), “Granular Delegated Admin Privileges” (GDAP) and/or “Admin on Behalf of” (AOBO), as the case may be, for the Term; and

- (c) in respect of any Microsoft funded services, including “End Customer Investment Funding” (ECIF), the Customer shall sign and deliver the Microsoft “Proof of Execution” (“POE”) within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days’ notice period, IG shall charge the Customer the amounts directly.
- 5.3 IG shall supply the Third-Party Services identified in the Statement of Work. Except as expressly set out in the Third-Party Licences, IG expressly excludes any warranty to the Customer that the Third-Party Services supplied or licensed under the Contract will operate substantially in accordance with, or perform, the material functions and features as set out in their marketing, sales or other associated documentation. The Customer shall remain liable for any and all payments owed to IG throughout the Contract and until the end of the respective licence terms for such Third-Party Services (the **Licence Fees**).
- 5.4 It is a condition of the Contract that the Customer shall enter into such direct Third-Party Licences issued by the Third-Party Suppliers. In the event the Customer does not enter into such Third-Party Licences, IG reserves the right to suspend the provision of the Services until such time as the Customer enters into such Third-Party Licences.
- 5.5 IG may treat the Customer’s breach of any Third-Party Licence as a breach of the Contract.
- 5.6 The Customer shall indemnify and hold harmless IG against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by IG in connection with any claim made against IG for actual or alleged infringement by the Customer of any Third-Party Licence and/or any other agreement with a Third-Party Supplier. This Clause 5.6 shall survive termination of the Contract.
- 5.7 IG shall not be held liable for the actions and or omissions of any Third-Party Suppliers or any other third party, including the Microsoft Corporation, where the Customer has a direct contract in place with those Third-Party Suppliers.
- 5.8 Any Service Level Arrangements set out in a Statement of Work do not relate to any Third-Party Services. The Customer acknowledges that the only arrangements and warranties in relation to the Third-Party Services, or the supply thereof, are those

contained in the Third-Party Licences which must be enforced directly by the Customer against the relevant Third-Party Suppliers. To the extent that any of such arrangements or warranties are given directly to IG, IG will pass on the benefit of such warranties to the Customer to the extent that they are transferable.

- 5.9 Any third-party Equipment is supplied subject to the manufacturer's warranty, if any, and IG provides no warranty for Equipment or any goods that it does not supply.
- 5.10 IG makes no warranty that a Service will interoperate properly with any equipment not procured from IG in connection with that Service.

6. **Delivery and acceptance tests**

- 6.1 The Statement of Work shall specify the timetable for the delivery of the Deliverables that are to be subject to any acceptance testing.
- 6.2 In relation to any acceptance tests:
- (a) the Customer shall have ten (10) Business Days (unless otherwise specified in the Statement of Work) from IG's delivery of each Deliverable under the relevant Statement of Work (the **Acceptance Period**) to confirm that such Deliverable conforms to any acceptance criteria set out in a Statement of Work (**Acceptance Criteria**). If the Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to IG a list of the non-conformities to the Acceptance Criteria (**Issues List**);
 - (b) the Customer shall correctly and efficiently ensure appropriate testing in relation to each Deliverable and shall notify IG within the Acceptance Period if it believes any of the Deliverables do not conform to the Acceptance Criteria with the Issues List. In the event that the Customer fails to supply the Issues List within the relevant Acceptance Period, for all purposes under the Contract, they shall be deemed accepted as if the Customer had issued a written acceptance thereof;
 - (c) if:
 - (i) the Customer does not provide an Issues List in the initial period described in Clause 6.2(a) above;
 - (ii) the Deliverable or Services are found to conform with the Statement of Work or any published specifications; or
 - (iii) the Customer fails to, or delays to deliver proposed Acceptance Criteria in accordance with the time period set out in the Statement of Work,

then in each case the Services or the Deliverable shall be deemed accepted;

- (d) if there are any non-conformities within any Deliverable which have been highlighted by Customer or IG during any acceptance tests and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of IG (and not subject to a Change Order as defined in Clause 10 or attributable to the Customer's acts or omissions, including inadequate acceptance testing) IG shall, as the Customer's sole and exclusive remedy, carry out all necessary remedial work without additional charge; and
- (e) if any non-conformity cannot be remedied by IG due to an error, defect or fault which IG is able to demonstrate to the reasonable satisfaction of the Customer to be outside IG's control and which has disabled IG's ability to remedy such non-conformity, then IG reserves the right to terminate work on that specific Deliverable without further liability to either party, provided that IG agrees not to charge the Customer any amounts payable by the Customer to IG which specifically relate to the non-conforming Deliverable which cannot be remedied (or shall refund amounts that have already been paid in respect to the non-conforming Deliverable).

7. IG's responsibilities

7.1 IG warrants that:

- (a) the Services will be performed with reasonable care and skill and in accordance with Good Industry Practice and all applicable laws;
- (b) it has the full capacity and authority to enter into and perform the Contract and that the Statement of Work is executed by a duly authorised representative of IG; and
- (c) it will comply with all applicable laws in performing its obligations under the Contract.

7.2 IG shall provide any Services in accordance with any Service Level Arrangements stated in the Statement of Work.

7.3 Time is not of the essence in relation to any performance dates for IG. IG will use its reasonable endeavours to meet any performance date set out in a Statement of Work.

7.4 IG shall not be liable under any Service Level Arrangement if any factors and conditions outside of IG's control adversely impact the ability of IG to perform functions of the Services including:

- (a) a failure of the Customer's equipment, the Customer's software or its operating system(s);
 - (b) the partial or full failure of any Third-Party Services; and
 - (c) network connectivity issues between equipment provided by the Customer for the purposes of the Services.
- 7.5 If the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network. IG shall not be liable for any failure to meet any Service Level Arrangements to the extent that such failure is directly or indirectly caused by such chosen provider(s).
- 7.6 IG will request approval from the Customer before making any changes to the Services that will materially affect the Services. IG will arrange any scheduled downtime of the Services in advance with the Customer. IG is not responsible for downtime that is due to anything outside IG's control and IG may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 7.7 Scheduled downtime will occur from time to time and IG shall give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. On rare occasions it may only be possible to give this notification after the emergency maintenance has taken place.
- 7.8 IG reserves the right to take any security action that it perceives necessary to protect the Customer's systems, even though this may impact on the Customer's business activities. IG will use reasonable endeavours to inform the Customer by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 8. The Customer's responsibilities**
- 8.1 The Customer warrants that:
 - (a) it has the full capacity and authority to enter into and perform the Contract and that the Statement of Work is executed by a duly authorised representative of the Customer;
 - (b) it has the authority to grant any rights to be granted to IG under the Contract; and
 - (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to IG, any materials reasonably necessary for the fulfilment of all its obligations under the Contract.

- 8.2 To the extent that IG requires access to the Customer's equipment or site(s) to perform the Services, the Customer shall provide such access during Normal Business Hours and provide a suitable work environment to enable IG to perform such Services, subject to IG complying with such reasonable internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to IG in writing from time to time giving at least one week's prior notice.
- 8.3 The Customer shall co-operate with IG in all matters relating to the Services as reasonably requested by IG.
- 8.4 The Customer shall:
- (a) adhere to the dates scheduled for the provision of Services by IG to the Customer as stated in the applicable Statement of Work or otherwise agreed between the parties in writing. In the event the Customer wishes to reschedule or cancel the dates for the provision of Services IG will use reasonable endeavours to re-assign allocated resources to other Customers. If such re-assignment is not possible, and the Customer has not provided more than fourteen (14) days advance notice, then, without prejudice the Customer's other rights and remedies, the Customer shall be liable to pay the following cancellation charges (**Cancellation Charges**):
 - (i) if dates are changed or cancelled at the Customer's request more than fourteen (14) days before the scheduled start date, no Cancellation Charges are payable
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date, Cancellation Charges equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable; and
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date, Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable,and, for the avoidance of doubt, where the Services that would have been provided are performed at a later date, the Fees that would have originally been payable will become payable following performance of those Services and IG shall invoice for such Fees following such performance;
 - (d) allow IG and third parties global admin access to the Customer's relevant servers and networking systems for the duration of the Contract;
 - (e) enable remote diagnosis for the performance of any Services;

- (f) follow the reasonable instructions of IG's support personnel with respect to the resolution of defects;
- (g) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, procedures required to replicate a problem if possible and any additional information which may help in the diagnosis of a defect (such as network configuration details);
- (h) agree that if, in the course of performing the Services, it is necessary for IG to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then it shall grant or procure the grant to IG and any of its subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services;
- (i) not:
 - (i) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under the Contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of any IG Materials in any form or media or by any means;
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of IG Materials;
 - (iii) access all or any part of the Services or IG Materials in order to build a product or service which competes with the Services or IG Materials;
 - (iv) use the Services to provide services to third parties;
 - (v) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or IG Materials available to any third party; or
 - (vi) attempt to obtain, or assist third parties in obtaining, access to the Services and/or IG Materials, other than as expressly permitted under the Contract; and
- (j) not use or access, or allow the use or access to, any IG Materials and/or the Services supplied under the Contract:
 - (i) by any third party, except Affiliates expressly named in a Statement of Work whilst they remain Affiliates provided that the Customer shall at all times be responsible for and liable in

respect of the performance of all obligations under the Contract and the acts and omissions of those Affiliates;

- (ii) in connection with the carrying out of any fraudulent, criminal, or any other illegal activity;
- (iii) to send, receive, upload, download or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights;
- (iv) to cause nuisance, annoyance or needless anxiety to any person;
- (v) to send or provide, or to receive, responses to, any spam or unsolicited advertising or promotional material;
- (vi) to knowingly or recklessly transmit any electronic material (including viruses) which may cause or is likely to cause detriment or harm in any degree to computer systems owned by IG or other person; or
- (vii) in a manner which restricts or inhibits any other user from using or enjoying IG's products or services,

and the Customer shall immediately notify IG in respect of any such illegal, fraudulent or unauthorised use of IG Materials and/or the Services the moment it becomes aware of such. Without prejudice to IG's other rights and remedies, on receipt of any such notice, IG may do anything within its power to prevent such unauthorised use continuing, including the right to suspend the Services or any part thereof until such unauthorised use ceases or its otherwise rectified to IG's satisfaction.

8.5 The Customer shall:

- (a) use the Services only for lawful purposes and in accordance with the Contract;
- (b) keep secure from third parties any passwords issued to the Customer by IG;
- (c) fully virus-check all data supplied to IG pursuant to the Contract;
- (d) permit IG to install updates and upgrades (including fixes and workarounds), including new versions of software where provided under the Contract or by the Customer itself (whether software of IG or third parties), as may be required to provide the Services from time to time when such updates, upgrades and new versions (as the case may be) occur and to provide a reasonable level of assistance in implementing and testing the same;

- (e) comply with all applicable laws and regulations with respect to its activities under the Contract; and
 - (f) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance, IG may adjust any timetable or delivery schedule set out in the Contract commensurately as reasonably necessary.
- 8.6 The Customer acknowledges that the backup of its data shall be the sole responsibility of the Customer unless otherwise expressly agreed as part of the Services in the Statement of Work.
- 8.7 Without prejudice to its other rights and remedies, if IG determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from:
- (a) the negligence, act, omission, or default of the Customer or its officers, employees, subcontractors or agents;
 - (b) the Customer's breach of the Contract;
 - (c) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Customer, or
 - (d) any third party action in response to an act or omission of the Customer or any person given access to the Service by the Customer (including third party hosted software vendors),

then IG may recover from the Customer all demonstrable costs incurred by IG in connection with the remedy of such defect, fault or impairment.

9. Fees and payment

- 9.1 The Customer shall pay the Fees for the Services (including any Third-Party Services as the case may be) as more fully set out in the Statement of Work.
- 9.2 If no Fee is set out in a Statement of Work, the Fee shall be calculated in accordance with IG's Rates. For the avoidance of doubt, and without prejudice to IG's other rights and remedies, in the event the Customer delays Activation (which falls outside of any Cancellation Charges), or has not conducted any required acceptance tests in accordance with Clause 6, IG may charge the Customer for such delays in accordance with its Rates.
- 9.3 Clause 9.5 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 9 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 9.4 IG shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work which, if not specified therein, shall be weekly. Save where

other payment terms are set out in the Statement of Work, all Fees will be payable by direct debit. The Customer shall provide IG with valid up-to-date and complete payment information and direct debit authority.

9.5 The Fees exclude:

- (a) unless otherwise agreed and set out in the Statement of Work, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by IG in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Customer for the Services (**Expenses**). IG shall obtain the Customer's prior written approval before incurring any such expense, material or service exceeding a total cost of fifteen hundred pounds (£1,500) in the aggregate per day and shall be payable by the Customer in accordance with this Clause 9; and
- (b) unless otherwise set out in the Statement of Work, the costs of packaging, insurance and transport of the Equipment.

9.6 In respect of Recurring Charges:

- (a) all Recurring Charges shall be due within fourteen (14) days of the date of the applicable invoice;
- (b) where fixed Recurring Charges are payable, the Customer agrees that the first two (2) months' charges will be payable in advance in addition to the pro-rata monthly charge, of which the second months' charge in advance shall be refunded on termination or set-off from any future charges or amounts due from the Customer;
- (c) where Usage based Recurring Charges are payable, these will be charged in arrears; and
- (d) Recurring Charges shall accrue daily with effect from the date of Activation and shall be invoiced at the frequency specified on the Statement of Work.

9.7 Unless otherwise specified in these terms or a Statement of Work and save in respect of hardware (which is invoiced in advance of delivery), the Customer shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within fourteen (14) days of the date of such invoice. Expenses shall be invoiced separately.

9.8 All payments by the Customer hereunder shall be in United Kingdom pounds sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to IG's bank account as advised by IG to the Customer in writing.

- 9.9 All amounts stated are exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 9.10 Should the Customer be required by any law or regulation to make any deduction on account of tax including withholding tax or otherwise on any sum payable under the Contract, the Fees payable shall be increased by the amount of such tax to ensure that IG receives a sum equal to the amount to be paid under the applicable Statement of Work.
- 9.11 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of three (3) months has elapsed from the date of invoice.
- 9.12 IG shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Statement of Work but should IG choose to continue to do so, this shall not in any way be construed as a waiver of IG's rights or remedies.
- 9.13 All Fees and Recurring Charges (as well as IG's Rates) shall increase automatically with effect from 1 July each year during the Term by a sum equal to the percentage increase published in March each calendar year to the Consumer Price Index (CPI) ("all items") plus 3.9%.
- 9.14 For the avoidance of doubt, IG may throughout the Term increase any fees relating to Third-Party Services in line with any increases imposed upon IG by such Third-Party Suppliers upon reasonable notice and in line with the terms of the applicable Third-Party Licence.

10. Change Orders

- 10.1 Either party may request changes to any Services under a Statement of Work (in each case, a **Change Order**). Any draft Change Order shall be made in writing and shall set out the change in sufficient detail so as to enable the other party to make a proper assessment of such change.
- 10.2 Where a party proposes a Change Order IG shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Fees as a result of the change, the likely effect of the change on the Services and any other impact of the change on the terms of the Contract (**Changes**).
- 10.3 The party receiving the draft Change Order shall notify the other party whether it accepts or reasonably rejects it, and in the case of the Customer whether it also accepts the Changes, within five (5) Business Days of its receipt of the draft Change Order (and the Changes as the case may be).

- 10.4 Until such time as a Change Order has been agreed to and signed by the parties, the parties shall continue to perform their respective obligations under the Contract without taking into account the Change Order. Once duly agreed and signed by both parties, the Change Order shall be deemed incorporated into the Contract and IG shall commence performance of the Change Order accordingly.
- 10.5 Unless expressly provided in the Contract, neither party shall be required to accept any draft Change Order made by the other party and shall not be bound by the Change Order unless it has been agreed in writing and signed by the parties as set out above.
- 10.6 IG shall be entitled to charge the Customer at its then current Rates for investigating, reporting on and, if appropriate, implementing any Change Order requested by the Customer.

11. Intellectual Property Rights

- 11.1 All Intellectual Property Rights and other rights in the Services and the Deliverables shall be, and shall remain, owned by IG or (as the case may be) its licensors. IG licenses all such rights to the Customer on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. On termination of the Contract, this licence will automatically terminate.
- 11.2 All Third-Party Services remain owned by the relevant Third-Party Suppliers and are licensed under the applicable Third-Party Licences.
- 11.3 If no software licence has been provided to the Customer by IG in respect of any Software (including where no Third-Party Licence has been referred to in the Statement of Work), the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without IG's prior written consent;
 - (b) the Customer shall only access the Software through the Services or on the Equipment supplied by IG and shall not use it on any other equipment;
 - (c) such licence shall terminate on the earlier of the end of the Term or at the end of either party's 28 days' written notice, provided that IG may also terminate the licence if it is compelled to do so by law or by any third-party owner, or if the Customer has failed to comply with any term of the Contract;

- (d) on or before the expiry of the Term, the Customer shall return to IG all copies of the Software in its possession; and
 - (e) the third-party owner or licensor of the Software is an intended third-party beneficiary of this Clause 11.3, with the right to enforce its provisions.
- 11.4 Subject always to Clause 13.6, each party shall pay and indemnify the other party, and hold it harmless, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the other party, arising by reason of claims that:
 - (a) the other party's possession of or use of any Intellectual Property Rights provided by it in connection with the provision or receipt of the Services infringes the Intellectual Property Rights of a third party; and
 - (b) its modification, alteration, replacement or combination of any Intellectual Property Rights with any other data, code, documents or other software infringes the Intellectual Property Rights of a third party.

This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this Clause 11, the Indemnified Party shall:
 - (a) notify the Indemnifying Party in writing of any IPR Claim as soon as possible;
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, provided always that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
 - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 11.6 If an IPR Claim is brought or in the reasonable opinion of IG is likely to be made or brought, IG may at its own expense ensure that the Customer is still able to use the Deliverables by either:

- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
 - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.
- 11.7 IG shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
 - (a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by IG where such use of the Deliverables directly gives rise to the claim, demand or action;
 - (b) the Customer's use of any version of Software other than the latest version of that Software, if such claim could have been avoided by the use of such version; or
 - (c) any modification carried out on behalf of the Customer to any item supplied by IG under the Contract if such modification is not authorised by IG in writing where such modification directly gives rise to a claim, demands or action.
- 12. **Data protection**
 - 12.1 IG shall promptly notify the Customer in writing of any loss or damage to Customer Data. In the event of any loss or damage to Customer Data, IG shall, as the Customer's sole and exclusive remedy, use commercially reasonable endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. IG shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party.
 - 12.2 For the purposes of this Clause 12, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the Applicable Data Protection Laws and **Customer Personal Data** means any personal data which IG processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.
 - 12.3 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

- 12.4 The parties have determined that, for the purposes of Applicable Data Protection Laws, IG shall process the personal data provided under the Contract as a processor on behalf of the Customer.
- 12.5 Without prejudice to the generality of Clause 12.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to IG for the duration and purposes of the Contract.
- 12.6 Unless otherwise agreed in writing from time to time, the particulars of any processing under the Contract will be as follows:
- (a) Subject matter: The subject matter is the Customer Personal Data;
 - (b) Duration: As between IG and the Customer, the duration is determined by the Customer but is likely to be for the Term;
 - (c) Purpose: The purpose is the provision of the Services received by the Customer from time to time;
 - (d) Nature of the processing: Computer storage and the receipt of such other Services as described in the Statement of Work;
 - (e) Type of personal data: The Customer Data uploaded using the Services; and
 - (f) Categories of data subjects: The data subjects could include the Customer's customers, employees, suppliers and other end users.
- 12.7 Without prejudice to the generality of Clause 12.3 IG shall, in relation to Customer Personal Data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, unless IG is required by applicable laws to otherwise process that Customer Personal Data. Where IG is relying on applicable laws as the basis for processing Customer Personal Data, IG shall notify the Customer promptly of this before performing the processing required by the applicable laws unless those applicable laws prohibit IG from so notifying the Customer. IG shall inform the Customer if, in the opinion of IG, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the

nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by IG to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to IG), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless IG is required by applicable law to continue to process that Customer Personal Data; and
- (g) maintain records to demonstrate its compliance with this Clause 12.7 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

12.8 The Customer hereby provides its prior, general authorisation for IG to:

- (a) appoint processors to process the Customer Personal Data, provided that IG:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on IG in this Clause 12;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of IG; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to IG's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify IG for any losses, liabilities, damages,

costs (including legal fees) and expenses suffered by IG in accommodating the objection; and

- (b) transfer Customer Personal Data outside of the UK as required for the purposes for which the Customer Personal Data is processed (as set out in the applicable Statement of Work), provided that IG shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of IG, including any request to enter into standard contractual clauses.
- 12.9 To the extent that the Microsoft Corporation provides any Third-Party Services, the Customer is referred to the Microsoft Products and Services Data Protection Addendum, which is incorporated into the Microsoft Customer Agreement referred to in Clause 5.2(a).
- 12.10 To the extent that IG cannot comply with a change to the Customer's instructions when processing Personal Data without incurring material additional costs:
 - (a) IG shall:
 - (i) immediately inform the Customer, giving full details of the problem; and
 - (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and
 - (b) any changes in the Customer's instructions that affect the pricing structure or commercial relationship between the parties should go through an appropriate Change Order (as set out in Clause 10).
- 13. Limitations of liability**
- 13.1 The Customer acknowledges and agrees that it assumes sole responsibility for:
 - (a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet, and the Customer further acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - (b) loss or damage arising from any Relief Event.
- 13.2 This Clause 13 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:

- (a) any breach of the Contract;
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract; and
 - (c) any indemnity provided under the Contract.
- 13.3 Nothing in the Contract excludes or limits either party's liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) wilful breach of the Contract;
 - (d) in the case of the Customer, the Customer's obligation to pay the Fees; or
 - (e) any other liability which cannot lawfully be excluded or limited.
- 13.4 Subject to Clause 13.3, the Service Level Arrangements state the Customer's sole and exclusive right and remedy, and IG's only obligation and liability, in respect of the performance and availability of the Services that are the subject of them, or their non-performance and non-availability.
- 13.5 Any breach of a party's responsibilities under Clause 12 (Data Protection) shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the caps set out in Clause 13.6 and Clause 13.7.
- 13.6 Subject to Clause 13.3, IG's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall:
 - (a) in respect of any Professional Services, be limited to the lower of two hundred and fifty thousand pounds (£250,000) and an amount equal to one hundred and twenty five percent (125%) of the price paid for such Professional Services during the 12 months during the twelve (12) months preceding the date on which the claim arose; and
 - (b) in respect of all other Services (including the supply of Deliverables) be limited to an amount equal to one hundred and twenty five percent (125%) of the price paid for such Services during the twelve (12) months preceding the date on which the claim arose.
- 13.7 Subject to Clause 13.3, the Customer's total aggregate liability under the Contract shall be limited to an amount equal to one hundred and twenty five percent (125%) of the price payable for the Services during the twelve (12) months preceding the date on which the claim arose.

- 13.8 Subject to Clause 13.3, and except as expressly and specifically provided in the Contract:
- (a) neither party shall have any liability for any costs, fines, damages, losses or liabilities which may be suffered by the other party (or any person claiming under or through that party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) special damage even if the other party was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill and reputation;
 - (vi) loss or corruption of data.
 - (b) the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. IG shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to IG by the Customer in connection with the Services, or any actions taken by IG at the Customer's direction; and
 - (c) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14. Confidentiality

- 14.1 Each party agrees and undertakes that it will treat all confidential information (however recorded or preserved) disclosed by a party to the other party in connection with the Contract (which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure) (**Confidential Information**) as strictly confidential and shall use it solely for the purposes intended by the Contract and shall not, without the prior consent of the other party, publish or otherwise disclose to any third party any such Confidential Information except for such purposes.
- 14.2 To the extent necessary to implement the provisions of any Services, each party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 14.1. Each party shall remain responsible to the

other party for any acts or omissions of their respective sub-contractors, agents or professional advisors as if such acts or omissions were those of the relevant party.

- 14.3 The obligations of confidentiality set out in this Clause 14 shall not apply to any information or matter which:
- (a) is in the public domain other than as a result of a breach of the Contract;
 - (b) was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party;
 - (c) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or
 - (d) can be shown to have been independently developed by the receiving party without use of or reference to the Confidential Information.

15. Term and termination

- 15.1 The Contract shall commence on the Commencement Date and, subject to the provisions of this Clause 15, shall remain in full force for the Minimum Term. Thereafter, the Contract shall continue to automatically renew for a Subsequent Term, unless a party gives written notice to the other party, not later than ninety (90) days before the end of the Minimum Term or the relevant Subsequent Term, to terminate Contract.
- 15.2 Without prejudice to any rights that the parties have accrued under the Contract or any of their respective remedies, obligations or liabilities, a party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within a period of forty-five (45) days after being notified to do so; or
 - (b) the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (c) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.2(b).
- 15.3 Without affecting any other right or remedy available to it, IG may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- (b) any required third-party authorisations, licences, consents or approvals necessary for all or any part of the supply of Equipment and/or Services is withdrawn;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the Customer;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
- (h) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause; or
- (k) if required by a legal or regulatory obligation.

- 15.4 Without affecting any other right or remedy available to it, IG may terminate the Contract pursuant to Clause 16.4.
- 15.5 If IG is unable to Activate a Service due to the act or omission of Customer (including the provision of incorrect information) IG may treat the Contract as terminated for material breach.
- 15.6 If for any reason a contract between a third party and IG relating to IG's right to provide Third-Party Services which are the subject of the Contract is terminated, then the Contract shall automatically terminate.
- 15.7 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 15.8 Without prejudice to each party's other rights and remedies, on termination of the Contract for any reason:
- (a) IG shall immediately cease provision of the Services;
 - (b) the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including:
 - (i) all remaining amounts owing up to the end of the Minimum Term or the Subsequent Term (as applicable);
 - (ii) any Licence Fees referred to in Clause 5.3; and
 - (iii) any termination fees that IG incurs from any of its third parties as a consequence of such early termination; and
 - (c) each party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party.
- 15.9 Except as expressly provided in this Clause 15, if the Contract is terminated by either party or is otherwise brought to an end, all Recurring Charges for the remainder of the Minimum Term or the Subsequent Term (as applicable) shall become payable within fourteen (14) days of the date of the applicable invoice.
- 15.10 Each Statement of Work constitutes a separate Contract and the termination of any one Statement of Work shall not terminate the Contract under any other Statement of Work (unless expressly provided therein).
- 15.11 Upon a termination of the Contract, IG shall only retain the Customer Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Customer Data after the (3) months period has ended.
- 15.12 On termination of the Contract for whatever reason the Customer shall return all of IG Materials which have not been fully paid for. If the Customer fails to do so, then IG may enter the Customer's Site and take possession of them. Until they have

been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

- 15.13 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination, cancellation or expiry of the Contract shall remain in full force and effect, including the provisions of Clauses 5 (Other products and services), 11 (Intellectual Property Rights), 12 (Data protection), 13 (Limitations of liability) and 14 (Confidentiality).

16. Suspension

- 16.1 The Customer acknowledges that IG or the relevant Third-Party Supplier has the right to temporarily halt, alter or suspend the Services without liability to the Customer in the following circumstances:

- (a) there is an attack on the Services or the Services are accessed or manipulated by a third party not authorised under the Contract or by IG; or
- (b) the law or a regulatory or government body requires IG or its hosting provider to suspend, halt or alter the Services; or
- (c) an event or circumstance arises for which IG or its hosting provider reasonably believes suspension, halting or alteration is necessary to protect its network, the Services or other customers of IG.

- 16.2 Without affecting any other right or remedy available to it, including its rights to claim payment of all Fees irrespective of the suspension and its rights to terminate, IG may suspend provision of Services under the Contract with immediate effect by giving written notice to the Customer if IG's performance of its obligations under the Contract or proper working or authorised use of the Equipment is prevented or delayed by any of the following events:

- (a) the Customer is in breach of any of its obligations under the Contract; or
- (b) any circumstance or event exists or is threatened that would otherwise give IG the right to terminate the Contract or IG reasonably believes that the Customer is about to become subject to any of them; or
- (c) a need to avoid loss, damage or disruption being caused to third parties; or
- (d) any operational or technical reasons with the Customer's equipment, including connectivity issues; or
- (e) any regulatory or legal obligation; or
- (f) any unauthorised use of any part of the Services, Equipment or IG Materials; or

- (g) any other default by act or omission of the Customer, or its agents, subcontractors, or employees, or its third party suppliers, to perform any relevant obligation.

16.3 In exercising its right of suspension in accordance with this Clause 16, IG shall:

- (a) be entitled to continue to suspend performance of the Services until the relevant event or events has or have (as the case may be) been remedied, and to rely on the relevant event or events to relieve it from the performance of any of its obligations;
- (b) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such suspension, prevention or delay;
- (c) be entitled to payment of the Fees during the period of suspension, including any additional costs or losses sustained or incurred by IG arising directly or indirectly from the applicable event;
- (d) be entitled to recover any reasonable additional costs, charges or losses IG sustains or incurs that arise directly or indirectly from such prevention or delay; and
- (e) lift its suspension or recommence its provision of the Services within a reasonable timescale after:
 - (i) the event or events has or have (as the case may be) been remedied; and
 - (ii) in case of any unauthorised use of any part of the Services, Equipment or IG Materials, the Customer demonstrates to IG's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use.

16.4 Where IG has the right to suspend the Services under this Clause 16 and the conditions in which IG is required to lift its suspension or recommence its provision of the Services have not been met within fourteen (14) days' of the date on which IG has received the relevant notice, the Contract relating to such Services shall be deemed terminated and the provisions of Clause 15 shall apply.

17. Staff non-solicitation

17.1 Neither party shall solicit the other party's staff or contractors who have been employed or engaged in the Services or the performance of the Contract during the lifetime of the Contract and for a period of nine (9) months thereafter. For the purposes of this Clause **solicit** means the soliciting of such person with a view to

engaging such person as an employee, director, sub-contractor or independent contractor.

- 17.2 In the event that either party is in breach of Clause 17.1 then the party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either party's ability to seek injunctive relief.
- 17.3 The parties hereby acknowledge and agree that the formula specified in Clause 17.2 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

18. Audit

- 18.1 Upon notice of no less than ten (10) Business Days and not more than once during the Term, IG shall allow the Customer and any auditors of or other advisers to the Customer to access any of IG sites and relevant records during Normal Business Hours as may be reasonably required in order to:
- (a) fulfil any legally enforceable request by any regulator; or
 - (b) identify suspected fraud.
- 18.2 The audit rights above shall not apply to IG's data centres or in any form enable access to any supplier owned multi-tenanted or shared platform which may enable the Customer, its auditors or any related third parties to access to such systems. In the case of shared platforms, IG shall enable the Customer or its auditors to have guided access controlled by IG (but not in such a way as to obstruct the Customer and/or its auditors from being able to conduct an audit in accordance with Clause 18.1).
- 18.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt IG or delay the provision of the Services by IG and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 18.4 Save as may be required by applicable laws and/or legal or regulatory requirements applicable to the Customer, IG shall not be under an obligation to provide audit access to commercially sensitive information governed by confidentiality undertakings with third parties.
- 18.5 The Customer shall bear its own costs and expenses and those costs of IG reasonably incurred by it in respect of compliance with its obligations under this Clause 18.

19. Relief Events

Subject to Clause 13.3, and notwithstanding any other provision of the Contract, IG shall have no liability for failure to perform the Services or its other obligations under the Contract if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

20. Force majeure

Neither party shall have any liability to the other under the Contract where it is prevented from, or delayed in, performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including act of God, war, riot, computer viruses and malware, epidemics, pandemics, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the party's own staff shall not entitle them to claim that to be a force majeure event, except to the extent that the affected party could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of the Contract or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), provided that:

- (a) the other party is notified of such an event and its expected duration; and
- (b) the affected party uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of the force majeure concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the party not affected may terminate the Contract by giving fourteen (14) days' written notice to the other party. Where such event arises, the Customer shall have no obligation to pay the Fees for Services that have not yet been provided by IG.

21. Anti-bribery and modern slavery

21.1 IG shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (**Relevant Requirements**);
- (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by IG in connection with the performance of the Contract.

21.2 IG shall procure that any person associated with IG, who is performing services in connection with the Contract, adheres to terms equivalent to those imposed on IG in this Clause 21 (**Relevant Terms**). IG shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

21.3 For the purpose of this Clause 21, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively.

21.4 In performing its obligations under the Contract, IG shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

22. Waiver

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

23. Severance

23.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

23.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

24. Entire agreement and amendment

24.1 The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

24.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract.

- 24.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in the Contract (whether made innocently or negligently) shall be for breach of contract.
- 24.4 IG may make minor amendments to these terms from time to time for operational reasons, provided that such amendments are reasonable and do not materially affect the nature and scope of the Services to be provided to the Customer. Save in respect of any non-material amendments to these terms for the purposes of compliance with legislative or regulatory requirements, no alteration to or variation of Contract shall take effect unless and until a Change Order is signed.

25. Assignment

- 25.1 The Customer shall not without the prior written consent of IG (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of the Contract or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under the Contract.
- 25.2 IG may assign or sub-contract its rights under the Contract to any person.
- 25.3 IG shall only engage suitably qualified sub-contractors and IG shall at all times be responsible for and liable in respect of the performance of all obligations under the Contract, whether such obligations are performed by itself or any sub-contractor.

26. No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other party.

27. Third-party rights

Except as expressly provided otherwise in the Contract, the Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit or be enforceable by anyone else.

28. Notices

- 28.1 Except as expressly provided otherwise in the Contract, any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by email only.
- 28.2 Any notice or communication shall be deemed to have been received at the time of transmission of the email unless receipt occurs outside of 9.00am to 5.00pm on a Business Day in the place of receipt, in which case it shall be deferred until business hours resume.

28.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. Dispute resolution

29.1 If a dispute arises under the Contract (**Dispute**), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (**Dispute Notice**).

29.2 If the parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each party will promptly (but no later than five Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the Contract (**Designated Representative**); and
- (b) notify the other party in writing of the name and contact information of such Designated Representative.

29.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.

29.4 If the parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.

30. Marketing

Both parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which include, a press release, case study and a reference to the Customer on IG's website, provided that in no event shall either party use the name, trademarks or other proprietary identifying symbols of the other party without such party's prior written consent, which consent shall not be unreasonably withheld or delayed.

31. Governing law and jurisdiction

31.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be

exclusively governed by and construed in accordance with the law of England and Wales.

- 31.2 Each party irrevocably agrees, for the sole benefit of IG that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. Nothing in this clause shall limit the right of IG to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

32. Definitions and interpretation

- 32.1 The definitions and rules of interpretation in this Clause apply in these terms:

Activation: means making the relevant Service available for use and **Activate** and **Activated** shall be construed accordingly.

Affiliate: in relation to the Customer, any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer.

Applicable Data Protection Laws: means:

- (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and
- (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which IG is subject, which relates to the protection of personal data.

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

Change Order: means any request to alter the Services under a Statement of Work as set out in Clause 10.

Commencement Date: means the date set out in the Statement of Work or, if not specified, the date the Customer signs the Statement of Work.

Contract: the contract between IG and the Customer for the supply of the Services in accordance a Statement of Work which incorporates these terms.

Customer Data: the data inputted by the Customer's officers, employees and agents when using the Services.

Deliverable: means all documents (including any drawing, map, plan, diagram, design, picture or other image, or any record embodying information in any form),

products and materials developed by IG or its agents, subcontractors, consultants and employees in relation to the Services in any form, including Equipment, Software (including any computer programs and preparatory design materials), data, reports and specifications (including drafts).

Equipment: means all and any goods and equipment, including hardware, provided and/or installed by IG in connection with supply of the Services as set out in the Statement of Work which, for the avoidance of doubt, shall at all times remain the property of IG until paid for in full.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: the fees payable to IG, as described in the Statement of Work as may be varied from time to time pursuant to the Contract.

Good Industry Practice: the standards of a skilled and experienced provider of services similar or identical to the Services, having regard to factors such as the nature and size of the parties.

IG: means Infinity Technology Solutions Limited, trading as the Infinity Group, incorporated and registered in England and Wales with company number 04330595, whose registered office is at The Coach House, Spencer Mews, Camden Road, Tunbridge Wells, Kent, TN1 2PY, United Kingdom.

IG Materials: means all documentation, materials, hardware, Software, routers, equipment and tools, drawings, specifications and data supplied by IG to the Customer in connection with supply of the Services which at all times remain the property of IG.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

IPR Claim: means a claim arising from the infringement of IPR belonging to a third party.

Managed Services: the managed services described in the Statement of Work to be performed by IG in accordance with the Contract.

Minimum Term: unless otherwise specified in the Statement of Work, the period commencing on Activation and ending on the date twelve (12) months thereafter.

Normal Business Hours: 8:30 am to 5.30 pm local UK time on Business Days.

Professional Services: the professional services described in the Statement of Work to be performed by IG in accordance with the Contract.

Rates: IG's standard hourly or daily fee rates published from time to time.

Recurring Charges: means those amounts including Fees payable by the Customer to IG on a recurring basis for provision of the Services as set out in the Statement of Work and excludes installation, set-up or other one-off charges.

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under the Contract that affects IG's ability to provide the Services;
- (b) any error or malfunction in the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customers or any of its agents or contractors, or any other software, hardware or systems for which IG is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which IG is not responsible;
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to IG which is reasonably required by IG for the proper performance of its obligations under the Contract; or
- (d) any of the causes or events set out in Clause 11.7.

Service Level Arrangements: any service level arrangements set out in the Statement of Work.

Services: means the services described in the Statement of Work to be performed by IG.

Software: means any software supplied by IG under or in connection with the Services (or Third-Party Services).

Statement of Work: means the detailed document describing the Services and any Deliverables to be provided by IG, which (among other things) incorporates

these terms (as may be varied therein), any timetable for the performance and any related matters relevant to the Contract.

Subsequent Term: means a period of equivalent length to the Minimum Term set out in the Statement of Work or, in the absence of such, twelve (12) months commencing on the Business Day after the last day of the Minimum Term or previous Subsequent Term (as the case may be).

Term: means the Minimum Term together with any Subsequent Term.

Third-Party Licences: any licence of a Third-Party Service to be entered into by the Customer with a Third-Party Supplier as set out in the Statement of Work.

Third-Party Services: any services provided by a Third-Party Supplier and supplied by IG under a Statement of Work to be used by the Customer.

Third-Party Supplier: any third party that provides Third-Party Services.

Usage: refers to the Services, Deliverables and/or Third-Party Services that are billed based on actual usage.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 32.2 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 32.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 32.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 32.5 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 32.6 In the event of any conflict or inconsistency between these terms and the Statement of Work (including any changes or variations under a Change Order), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Change Order;
 - (b) the Statement of Work; and
 - (c) these terms.