

# **Next Generation User Experience Terms and Conditions Of Supply**

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STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF CONSULTANCY SERVICES,  
MANAGED SERVICES, MAINTENANCE AND SUPPORT SERVICES, SOFTWARE AND/OR HARDWARE

**PART A: GENERAL TERMS AND CONDITIONS**

The conditions set out in this Part A apply to any Contract between the Customer and the Supplier, irrespective of whether such Contract is for the sale or licensing of Products or the performance of Services. The subsequent Part B sets out the specific terms applicable to the sale and/or licensing of third party or the Supplier Products and Part C sets out the specific terms applicable to the sale of Support Services.

**1 INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Assets:** means any Software or Intellectual Property used by the Supplier exclusively for the delivery of the Support Services to the Customer.

**Assumed Contract:** any contract which the Supplier identifies as subject to the provisions of condition 1 of Part C.

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

**the Supplier:** the Supplier Next Generation User Experience Ltd, a company registered in England and Wales with company number 12810381 and with registered address at Second Floor, Windsor House, 40/41 Great Castle Street, London, W1W 8LU.

**the Supplier Owned Software:** software which is owned by the Supplier and licensed to the Customer pursuant to any Order.

**the Supplier Project Manager:** the Supplier manager for the Project, appointed in accordance with condition 4.1.3 of Part A.

**the Supplier Representative:** the representative of the Supplier appointed in accordance with

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condition 3.1 of Part C.

**the Supplier System:** the information and communications technology system to be used by the Supplier in performing the Support Services, including all hardware, Software, and communications links between such hardware and the Customer equipment and the Customer's operating environment.

**Change Control Procedure:** the procedure as set out in condition 6 of Part A.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Support Services (together its Representatives) to the other party and that party's Representatives in connection with the provision or receipt of the Services which information is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Consultancy Services:** the consultancy services which are set out in the Statement of Work.

**Contract:** the Customer's Order and the Supplier acceptance of it in accordance with condition 3 of Part A, incorporating if applicable the Statement of Work.

**Customer:** the person, firm or company who purchases Products and/or Services from the Supplier.

**Customer's Project Manager:** the Customer's manager for the Project, appointed in accordance with condition 5.1.1 of Part A.

**Customer Data:** any information or data including Customer Personal Data as defined in condition 9 of Part C. which is provided by Customer to the Supplier as part of Customer's use of the Support Services, including any information derived from such information.

**Customer's Representative:** the representative of the Customer appointed in accordance with condition 4.1.3 of Part C.

**Customer Site:** means any premises occupied by the Customer at which it receives the Support Services.

**Deliverables:** all materials developed or supplied by the Supplier in relation to the Project in any media, including, without limitation, software, data, diagrams, reports and specifications (including drafts).

**Extended Term:** has the meaning given in condition 10.1 of Part C.

**Fees:** the fees and expenses set out in the Statement of Work or as otherwise payable under the Contract in accordance with these conditions.

**Hardware:** the hardware to be supplied by the Supplier pursuant to any Order.

**Initial Term:** means the initial fixed period as set out in the Statement of Work or Support Services Agreement.

**Intellectual Property Rights or IPR:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all

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applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Support Services:** the support services which, if required by the Customer, shall be provided in accordance with these Conditions and as further set out in the Support Services Agreement.

**Support Services Agreement:** if applicable, the agreement delivered to the Customer with the Quotation which shall be signed by the parties, and which:

- (i) shall set out such detail as is required by these conditions;
- (ii) is subject to these conditions; and
- (iii) shall form a part of the applicable Contract.

**Order:** means the Customer's order for the purchase of Hardware or license of Software and/or the performance of Services as set out in the Customer's purchase order or in the Customer's written acceptance of the Suppliers quotation.

**Order Confirmation:** a written or electronic acknowledgement which may be issued by the Supplier in response to an Order.

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Products:** the Software and/or Hardware as set out in the Statement of Work.

**Project:** the project as described in the Statement of Work.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** the detailed plan as set out in the Statement of Work describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Products and/or Services by the Supplier in accordance with the Contract.

**Quotation:** means the quotation provided by the Supplier to the Customer following receipt of the Customer's request for a quotation together with any applicable Specification, such Quotation to include as applicable a draft Statement of Work to be agreed and signed by the parties before the Suppliers acceptance of the Order in accordance with the provisions of condition 3.1.

**Replacement Supplier:** has the meaning given in condition 11.1 of Part C.

**Service Commencement Date:** the date upon which the Services will commence, as set out in the Statement of Work.

**Service Level Agreement:** the service level agreement set out in Schedule 3 of the Framework Agreement.

**Services:** the services to be provided by the Supplier under the Contract and which may include any of the Consultancy Services, Support Services and/or Maintenance and Support Services (as applicable) as set out in the Statement of Work or Support Services Agreement.

**Software:** the software whether owned by a third party (Third Party Software), by the Customer (Customer Software) or by the Supplier (the Supplier Software) to be supplied by the Supplier pursuant to any Order.

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**Special Terms:** means any additional terms that may apply to the provision of Services by the Supplier to the Customer, as set out in the Statement of Work.

**Specification:** any specification for any of the Products and/or Services provided by the Customer as part of its request for a Quotation.

**Standard Working Hours:** any time between the hours of 9.00 am to 5.30 pm.

**Statement of Work:** if applicable, the statement of work delivered to the Customer with the Quotation which shall be signed by the parties, and which:

- (i) shall set out such detail as is required by these conditions;
- (ii) is subject to these conditions; and
- (iii) shall form a part of the applicable Contract.

**Supported Environment:** has the meaning as set out in the Statement of Work or Support Services Agreement.

**Third Party Provider Service:** means services provided by a third-party service provider as proposed by the Supplier.

**Third Party Provider Software:** means software provided by a third-party service provider as proposed by the Supplier.

**Third Party Software:** software which is owned by a third party, a licence of which is procured by the Supplier for the benefit of the Customer pursuant to any Order.

**Transferring Contracts:** the third-party contracts (including licences to Third-Party Software) which the Supplier reasonably considers necessary to enable the transition of the Support Services to the Customer or any Replacement Supplier on expiry or termination of a Contract.

**Transition Services:** has the meaning given in condition 11.2.

**User:** means any person, employee or consultant granted access to some or all of the Customer's IT estate.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings do not affect the interpretation of these conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa. A reference to one gender shall include a reference to the other genders. A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.6 Any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

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## **2 APPLICATION OF CONDITIONS**

- 2.1 These conditions shall apply to and be incorporated in the Contract and shall prevail over any inconsistent terms or conditions contained in, or referred to in or on, the Customer's Order, or any specification or other document issued by the Customer, or as may be implied by law, trade custom, practice or course of dealing.
- 2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

## **3 EFFECT OF ORDER**

- 3.1 The Supplier Quotations are not binding on the Supplier and constitute an invitation to treat. Quotations shall, with respect to the prices specified, remain valid for a period of thirty (30) days from date of issue. All Orders placed with the Supplier by the Customer for Products and/or Services shall constitute an offer to the Supplier and shall not come into being until accepted by the Supplier. The Supplier's acceptance of an Order is effective upon the earlier of: (a) the Supplier issuance of an Order Confirmation or (b) the Supplier delivery of the Products and/or commencement or execution of the Services pursuant to the Order. The Contract shall be formed when the Supplier has indicated its acceptance in accordance with this condition 3.1.
- 3.2 The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Order or any other document or communication received from or relating to the Customer shall not govern the Contract.
- 3.3 In the event of any inconsistency between any provision in the Contract, the following order of precedence will apply (in descending order):
  - 3.3.1 the Statement of Work or Support Services Agreement;
  - 3.3.2 the appropriate specific Part B and/or Part C of these conditions (as applicable);
  - 3.3.3 Part A of these conditions;
  - 3.3.4 the Order Confirmation; and
  - 3.3.5 the Order.

## **4 SUPPLIER OBLIGATIONS**

- 4.1 the Supplier shall:
  - 4.1.1 use reasonable endeavours to manage and complete the Project, and/or to deliver the Products and/or Services and any Deliverables to the Customer, in accordance with all material respects with the Project Plan;
  - 4.1.2 use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract;
  - 4.1.3 appoint the Supplier Project Manager who shall have authority to act on behalf of the Supplier on all matters relating to the Project and to ensure adherence by the Customer to these conditions. the Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of the Supplier business;
  - 4.1.4 perform such other duties in relation to the Services (if applicable) as may be mutually agreed in writing from time to time.
  - 4.1.5 the Supplier Project Manager will provide sufficient notice for changes to project milestones. Customer will do likewise. 48 hours will be recommended in the Project Initiation Document.

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- 4.2 the Supplier warrants that the Services will be performed with:
    - 4.2.1 reasonable skill and care;
    - 4.2.2 in accordance with generally accepted industry standards applicable to such services;  
and
    - 4.2.3 substantially in accordance with the Statement of Work.
  - 4.3 The warranty in condition 4.2 shall not apply to the extent of any non-conformance which is caused by the Customer's use of the Services contrary to the Supplier instructions.
  - 4.4 If the Services do not conform to the warranty in condition 4.2, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in condition 4.2.
  - 4.5 Any claim for breach of the warranty in condition 4.2 must be made in writing and notified to the Supplier within sixty (60) days of performance of the Services at issue.
  - 4.6 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error free.
  - 4.7 Entering into a Contract with a Customer shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under a Contract.

## **5 CUSTOMER'S OBLIGATIONS**

- 5.1 In addition to its obligations set out elsewhere in the Contract, the Customer shall:
  - 5.1.1 co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project and for ensuring adherence to these conditions;
  - 5.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
  - 5.1.3 provide promptly upon request such information and data concerning its operations as the Supplier may request, and ensure that such information is accurate; and
  - 5.1.5 provide the Supplier with access to the production and development/test environments via an ADSL/VPN or equivalent link into the Customer's environment, the provision and costs of which are the responsibility of the Customer including making the relevant premises generally ready for the supply of the Products and/or Services.
- 5.2 If the Supplier performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere).



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## **6 CHANGE CONTROL**

- 6.1 The Customer's Project Manager and the Supplier Project Manager shall attend monthly (or otherwise agreed periodic) meetings to discuss matters relating to the Project.
- 6.2 If either party wishes to change the scope of the Project or change any Product and/or Services ("Change"), it shall submit details of the requested Change to the other in writing and the Supplier shall provide a written estimate to the Customer of (i) the likely time required to implement the Change, (ii) any variations to the Supplier's charges arising from the Change, (iii) the likely effect of the Change on the Project Plan and (iv) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a Change, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes the Supplier to proceed with the Change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the charges, the Project Plan and any other relevant terms of the Contract.

## **7 FEES AND EXPENSES**

- 7.1 In consideration of the Supplier supplying the Products and/or providing the Services, the Customer shall pay the Supplier the Fees.
- 7.2 the Supplier shall submit a valid VAT invoice for all Fees. The Customer will pay all Fees properly invoiced (unless the subject of a bona fide dispute) in full, without deduction or set-off, and in cleared funds within 30 days of the date the invoice in question was raised unless otherwise expressly agreed between the parties in writing.
- 7.3 If the parties agree to the provision of any additional services, such services shall be invoiced on a time and materials basis as set out below unless otherwise agreed:
  - 7.3.1 the charges payable for the additional services shall be calculated in accordance with
  - 7.3.2 the Supplier standard daily fee rates as amended from time to time;
  - 7.3.3 the Supplier standard daily fee rates are calculated on the basis of a 7.5 hour day worked within Standard Working Hours (excluding weekends and public holidays);
  - 7.3.4 the Supplier may charge overtime at a rate of between 150% (out of hours on standard working days) and 200% (weekends and public holidays) of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.3.2 on a pro-rata basis.
- 7.4 Where the Products and/or Services are provided for a fixed price the total price for the Products and/or Services shall be the amount set out in the Statement of Work. The total price shall be paid to the Supplier (without deduction or set-off) in instalments as set out in the Statement of Work on the Supplier achieving the corresponding Project Milestone provided that the Supplier shall have invoiced the Customer for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).
- 7.5 Any fixed price excludes: (i) VAT (which the Supplier shall add to its invoices at the rate in force at the date of the invoice); (ii) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the delivery of the Products and/or performance of the
- 7.6 Services; and (iii) the cost of any materials or services provided by third parties required by the Supplier for the supply of the Services and such expenses, materials and third-party services shall be invoiced by the Supplier.
- 7.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails

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to pay the Supplier on the due date the Supplier may:

- 7.7.1 charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
- 7.7.2 suspend the delivery of the Products and/or performance of all Services until payment in respect of any Order has been made in full.
- 7.8 Time for payment shall be of the essence of the Contract.
- 7.9 the Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. the Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis (including the right to sublicense to customers and/or employees of the Customer) 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. If the Supplier terminates the Contract under condition 13.1 of this Part A, this licence will automatically terminate.
- 8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## **9 CONFIDENTIALITY**

- 9.1 The Customer and the Supplier will keep confidential any and all information expressed in writing to be confidential which relates to the business, affairs, customers, clients or suppliers of the other party and which is exchanged between the parties in connection with the Contract and will not divulge the same to any person (other than to those of their employees who require the confidential information on a "need to know" basis) without the consent of the other party, except as provided in condition 9.2.
- 9.2 This condition 9.2 will not apply to confidential information which:
  - 9.2.1 is already in, or which subsequently comes into, the public domain other than through a breach of these conditions;
  - 9.2.2 is in the possession of the receiving party before disclosure;
  - 9.2.3 is obtained from a third party who is free to divulge or disclose the same;
  - 9.2.4 is required to be disclosed by law or by any governmental or other regulatory or supervisory body.
  - 9.2.5 is or has been independently developed by one party without access to the Confidential Information.
- 9.3 This condition 9 will remain in full force and effect for a period of 10 years after termination of the Contract.

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## **10 DATA PROTECTION**

- 10.1 Each Party undertakes and agrees to comply with all applicable requirements under the Data Protection Act 1998, ("Act"), including but not limited to ensuring that it has in place and maintains valid notifications under the Act.
- 10.2 To the extent that the Supplier acts as a data processor in relation to any personal data (as that term is defined in the Act) it shall act upon the reasonable instructions of the Customer and warrants that it shall have in place all applicable security procedures as required by the seventh data protection principle under the Act to protect the personal data from loss or damage.

## **11 GDPR**

- 11.1 the Supplier may not make, or permit any person to make, any public announcement, communication or circular (announcement) concerning this Agreement without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).
- 11.2 The processor (the Supplier) must only act on the written instructions of the controller (unless required by law to act without such instructions);
- 11.3 The processor must ensure that people processing the data are subject to a duty of confidence;
- 11.4 The processor must take appropriate measures to ensure the security of processing;
- 11.5 The processor must only engage a sub-processor with the prior consent of the data controller and a written contract;
- 11.6 The processor must assist the data controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;
- 11.7 the processor must assist the data controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- 11.8 the processor must delete or return all personal data to the controller as requested at the end of the contract; and
- 11.9 the processor must submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.

## **12 WARRANTIES**

- 12.1 Each party warrants that it has full capacity and authority to enter into a Contract pursuant to these conditions and that the Statement of Work is executed by its duly authorised representative and represents a binding commitment on it.

## **13 LIMITATION OF LIABILITY**

- 13.1 The following provisions set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 13.1.1 any breach of the Contract;
  - 13.1.2 any use made by the Customer of the Services, the Products and/or the Deliverables or any part of them; and
  - 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

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- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these conditions excludes the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraud or fraudulent misrepresentation, or for any other liability which cannot at law be excluded.
- 13.4 Subject to condition 13.2 and condition 13.3:
- 13.4.1 the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any of the following: loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 13.4.2 the Supplier total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid and payable for the Products and/or Services (as applicable) the subject of the applicable claim.

## **14 TERMINATION**

- 14.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract immediately without liability to the other if:
- 14.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within forty-five (45) days of that party being notified in writing of the breach; or
- 14.1.2 if the other party becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt;
- 14.1.3 the other party ceases, or threatens to cease, to trade; or
- 14.1.4 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.2 the Supplier may terminate the Contract forthwith if there is a change of control of either party. [A change of control shall be deemed to occur when an entity acquires 50% or more of the voting shares or equity interest in one of the parties to the Contract or in the event of a change of a majority of the Board of Directors (or majority of the equity partners if a partnership) of such party.
- 14.3 Without limiting its other rights or remedies, the Supplier may terminate any Contract with the Customer with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under such Contract or under any other Contract with the Supplier on the due date for payment.
- 14.4 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 14.5 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services and/or delivery of any Products under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition

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- 14.6 13.1.2 to condition 13.1.3, or if the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15 CONSEQUENCES OF TERMINATION

- 15.1 Without prejudice to any other right or remedy, on termination or expiry of any Contract for any reason:
- 15.1.1 the Customer shall immediately pay to the Supplier all of the Suppliers outstanding unpaid invoices and interest [under such terminated Contract] and, in respect of Services and/or Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 15.1.2 the Customer shall return any and all Pre-Existing Materials, Confidential Information, any Deliverables and/or Products which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises 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 this Contract;
  - 15.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 15.1.4 conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## 16 NON-SOLICITATION

- 16.1 Neither party shall, without the prior written consent of the other, at any time from the date of the Contract to the expiry of one year after the completion of the Contract Recruit or attempt to Recruit any person who is, or has been, engaged as an employee or sub-contractor of the other.
- 16.2 "Recruit" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are presented to Customer by a recruiting firm.
- 16.3 If a party hires personnel in violation of this condition 15.3, such party will pay the other liquidated damages in an amount equal to 50% of the hired employee's total compensation preceding the date of hiring.

## 17 FORCE MAJEURE

- 17.1 the Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub- contractors ('Force Majeure Event').
- 17.2 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Products for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

## 18 MISCELLANEOUS

- 18.1 **Waiver.** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

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- 18.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 18.3 **Severance.** If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.4 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.5 **Status of pre-contractual statements.** Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract other than as expressly set out in the Contract.
- 18.6 **Assignment and Subcontracting.** The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 18.7 **No Partnership.** the Supplier is an independent contractor and nothing in the Contract or these conditions shall render it an agent or partner of the Customer and the Supplier shall not hold itself out as such.
- 18.8 **Third party rights.** 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.
- 18.9 **Notices.** All notices shall be in writing and delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Contract provided that a confirmatory copy is printed and sent by post. A notice delivered by hand shall be deemed received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class or recorded delivery post shall be deemed received at the time at which it would have been delivered in the normal course of post. A notice sent by email and shall be deemed received on the next working day.
- 18.10 **Disputes.** All disputes between the parties arising out of or relating to any part of the Contract that cannot be settled between the appointed representatives of the parties within a maximum of ten (10) calendar days of the issue arising shall be referred, by either party, to their respective senior management for resolution. If any dispute cannot be resolved by the respective senior management within a maximum of ten (10) calendar days after it has been referred, the dispute shall be referred to the Supplier Managing Director and the Customer's Head of Procurement for resolution. If the Supplier Managing Director and the Customer's Head of Procurement fail to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
- 18.11 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the

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ADR notice.

- 18.12 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 18.13 **Governing Law and Jurisdiction.** These conditions and the Contract shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

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## **PART B: PRODUCT DELIVERY**

The specific terms set out in this Part B apply to any Contracts made between Customer and the Supplier for the licence and/or supply of Products. The General Terms set out in Part A apply to, and form an integral part of, these specific terms.

### **1. PRODUCT DELIVERY**

- 1.1 The Customer acknowledges and agrees that the Supplier relies on the supply of the Product(s) to it by third party vendors of Products and that it is reasonable that the supply of Product(s) to the Customer by the Supplier by a specified date shall not be of the essence of the Contract.
- 1.2 The Product(s) shall be delivered by the Supplier to the delivery address indicated by Customer in the Order (provided such address is in the United Kingdom) (the "Delivery Address"). Without prejudice to condition 1.3 of this Part B, the risk of loss and/or damage to the Product(s) passes to Customer at the time of delivery by or on behalf of the Supplier to the Delivery Address.
- 1.3 Title to the Product(s) shall be retained by the Supplier (or any applicable third-party vendor) until payment in full is made by the Customer for the relevant Product(s), including any relevant amounts as referred to in condition 7 of Part A. Product(s) delivered to the Customer with retention of title may not be resold, pledged or proposed as security for a claim of a third party.
- 1.4 the Supplier may make Product(s) substitutions and modifications that do not cause a material adverse effect in overall Product performance (and any such substitution or modification shall not amount to a Change under condition 6 of Part A).
- 1.5 Unless otherwise stated in the Contract, the Supplier may make and invoice for partial deliveries.
- 1.6 The Customer shall immediately check the Product(s) delivered for deficiencies in quantity and for external damage to the packaging and indicate any deficiencies and/or damage on the accompanying transport documents. Failure by the Customer to make such indication shall render any claims relating to quantity or damage (other than for latent damage) null and void.
- 1.7 The Customer will have three (3) working days after delivery of Products at the Delivery Address to inspect and test the Product(s). In the absence of any written notice to the Supplier reporting any defects, Products will be deemed accepted by Customer three (3) working days after receipt at the Delivery Address. In the event that the Supplier installs the Product(s) for the Customer, acceptance will be deemed to occur upon successful completion of the manufacturer's standard diagnostic testing by the Supplier of the installed Product(s). If a defect is reported to the Supplier within the period specified above, the provisions of condition 1.9 in this Section B will apply.
- 1.8 the Supplier warrants that it will use its reasonable endeavours to assign to, or procure for the benefit of, the Customer any warranties generally made available by any third-party manufacturer or vendor of the Product(s). Save as expressly provided in the Contract:
  - 1.8.1 the Supplier does not provide any warranty relating to the Product(s); and
  - 1.8.2 all Products are provided without any obligation for the Supplier to maintain or support such Products.
- 1.9 The Customer's sole and exclusive remedy and the Supplier's entire liability for breach of any warranties, conditions, terms, representations, statements, undertakings and/or obligations in relation to the Products will be (at the Supplier's option): (a) the repair of defective Products; (b) the replacement of defective Products; or (c) the issuance of a credit note to the Customer in respect of



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such Products. As between the Customer and the Supplier, title in all defective Products (or parts thereof) which are removed shall transfer back to the Supplier.

- 1.10 No warranty will apply to any Products which have been:
  - 1.10.1 modified, altered or adapted by or on behalf of the Customer without the Supplier ' written consent;
  - 1.10.2 abused or used in a manner other than in accordance with the relevant manual;
  - 1.10.3 repaired by any third party (other than by the Supplier or any third party contracted by the Supplier to perform any of the Supplier obligations under any Contract);
  - 1.10.4 improperly installed by any party other than the Supplier (or any third party contracted by the Supplier to perform any of the Supplier obligations under any Contract); or
  - 1.10.5 used with equipment or software other than that which is advised in the Product literature, to the extent that the problems are attributable to such use.

## **2. LICENCE TERMS FOR NEXT GENERATION USER EXPERIENCE LTD OWNED SOFTWARE**

- 2.1 the Supplier shall grant to Customer a non-exclusive and non-transferable licence to use the Supplier Owned Software provided to Customer, subject to:
  - 2.1.1 any restrictions as to the permitted users;
  - 2.1.2 payment in full being made for the Supplier Owned Software by the Customer; and
  - 2.1.3 any supplemental licence terms accompanying the Supplier Owned Software (the Supplier shall provide Customer with a copy of such supplemental licence terms upon Customer's request).
- 2.2 All IPR in the Supplier Owned Software and all other rights not expressly granted to Customer are reserved to the Supplier and the Supplier retains title to any and all IPR in all copies made by the Customer.
- 2.3 Except as prohibited by applicable law, Customer may not make copies of the Supplier Owned Software, other than for archival purposes, nor may the Customer modify, decompile, or reverse-engineer the Supplier Owned Software.
- 2.4 Until such time as the Customer has paid in full any and all the Supplier Owned Software fees, the Customer shall have no right of access to any such the Supplier Owned Software.

## **3. LICENCE TERMS FOR THIRD PARTY SOFTWARE**

- 3.1 the Supplier shall use its reasonable endeavours to procure the grant to the Customer of a non- exclusive and non-transferable end user licence on the third-party supplier's terms to use the Third-Party Software provided to the Customer, subject to:
  - 3.1.1 any restrictions as to the permitted users;
  - 3.1.2 payment in full being made for the Third-Party Software by the Customer; and
  - 3.1.3 any supplemental licence terms accompanying the Third-Party Software (the Supplier shall provide Customer with a copy of such supplemental licence terms upon Customer's request).

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- 3.2 All IPR in the Third-Party Software and all other rights not expressly granted to Customer are reserved to the owner of the Third-Party Software and the owner thereof retains title to any and all IPR in all copies made by the Customer.
  - 3.3 Except as prohibited by applicable law, Customer may not make copies of the Third-Party Software, other than for archival purposes, nor may the Customer modify, decompile, or reverse-engineer the Third-Party Software.
  - 3.4 Until such time as the Customer has paid in full any and all Third-Party Software fees, the Customer shall have no right of access to any such Third-Party Software.

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## **PART C: SUPPORT SERVICES**

The specific terms set out in this Part C apply to any Contracts made between Customer and the Supplier for the supply of Support Services. The General Terms set out in Part A apply to, and form an integral part of, these specific terms.

### **1. ASSUMED CONTRACTS AND ASSETS**

- 1.1. With effect from the Service Commencement Date the Customer shall grant a licence or procure the grant of such a licence for the benefit of the Supplier, in order to enable the Supplier to use the Assets for the performance of the Support Services.
- 1.2. If any consent of any third party is required to the licence of an Assumed Contract and has not been obtained at, or prior to, the Service Commencement Date, the Customer shall use all reasonable endeavours to obtain that consent as soon as possible after the Service Commencement Date. Unless or until any Assumed Contract is so licensed, or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution which may include the Supplier finding an alternative source of supply and/or the Customer holding the benefit of the relevant Assumed Contract as agent for the Supplier.

### **2. SERVICE PROVISION**

- 2.1. the Supplier will provide the Support Services as from the Service Commencement Date until expiry or termination of the Contract for any reason in accordance with the provisions of condition 9 of this Part C.
- 2.2. The Service Level Agreement shall apply with effect from the Service Commencement Date.
- 2.3. The Customer shall remain responsible for the use of the Support Services under its control, including any use by third parties (whether or not invited by the Customer).
- 2.4. The Customer shall not provide the Support Services to third parties without the prior written consent of the Supplier.
- 2.5. the Supplier reserves the right to:
  - 2.5.1. modify the Suppliers System, its network, system configurations or routing configuration; or
  - 2.5.2. modify or replace any hardware or Software in its network or in equipment used to deliver any of the Support Services over its network, provided that this has no adverse effect on the Supplier obligations under these Conditions and its provision of the Support Services or the Service Level Agreement. If such changes will have an adverse effect, the Supplier shall notify the Customer and the parties shall follow the Change Control Procedure at condition 6 of Part A.

### **3. SUPPLIER OBLIGATIONS**

- 3.1. the Supplier shall appoint the Suppliers Representative, who shall have the day-to-day conduct of the Customer account. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Representative but has the right to replace him/her/them from time to time where reasonably necessary in the interests of the Supplier's business.

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## **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

4.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to the Support Services; and
- (b) all necessary access to such information as may be required by the Supplier

in order to enable the Supplier to perform the Support Services, including Customer Data, security access information and software interfaces to the Customer's other business applications;

4.1.2 provide such personnel assistance and make available such Customer personnel, as may be reasonably requested by the Supplier from time to time;

4.1.3 appoint the Customer's Representative, who shall have the authority to contractually bind the Customer on all matters relating to the Support Services;

4.1.4 comply with all applicable laws and regulations with respect to its activities under a Contract; and

4.1.5 carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in the Contract as reasonably necessary;

4.1.6 provide the Supplier (at the Customer's cost) with all necessary access codes, tokens, certificates and/or other means or methods of access to the Customer Environment via ADSL or equivalent link to enable the Supplier to perform the Managed Services and Support in accordance with the Customer's security requirements.

## **5. PROPRIETARY RIGHTS**

5.1 The Customer acknowledges and agrees that, as between the parties, the Supplier and/or its licensors own all Intellectual Property in all materials connected with the Support Services and in any material developed or produced in connection with the provision of Support Services by the Supplier, its officers, employees, subcontractors or agents. Except as expressly stated in these Conditions, these Conditions do not grant the Customer any rights to such Intellectual Property.

5.2 The Customer acknowledges and agrees that the Support Services may include the supply by the Supplier of Third-Party Provider Software and Third-Party Provider Services. All terms applicable to the supply of such Third-Party Provider Software and/or Third-Party Provider Services as applicable shall be as set out in the Statement of Work.

## **6. CHARGES AND PAYMENT**

6.1 The Customer shall pay the Supplier the Fees as set out in the Statement of Work. Except as expressly provided in these Conditions, no variations shall be made to the Fees during the Initial Term.

6.2 The Customer may additionally be liable to pay fees to the Supplier in respect of Third-Party Provider Software and/or Third-Party Provider Services.

6.3 the Supplier shall invoice the Customer annually in advance in respect of Managed Services and Support unless otherwise expressly set out in the Support Services Agreement.

6.4 If the Customer fails to pay any fees under conditions 6.1 and 6.2 of this Part C and in accordance with the provisions of condition 7.2 and 7.3 of Part A, the Supplier shall have the right to suspend or

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cancel and remove such Third-Party Provider Software and/or Third-Party Provider Services and / or the Support Services, as applicable.

- 6.5 the Supplier may adjust the fees payable for Third Party Provider Software and/or Third-Party Provider Services at any time on giving reasonable notice to the Customer to reflect increases or decreases in the costs charged by third party vendors. The Supplier shall give the Customer not less than 14 days' prior notice in writing of the proposed changes.

## **7. SERVICE REVIEW AND GOVERNANCE**

- 7.1 The parties shall maintain regular contact to monitor and review the performance of the Support Services, to discuss any changes proposed in accordance with the Change Control Procedure and to discuss the Service Level Agreement.
- 7.2 The parties shall notify one another in writing of any problems relating to the provision of the Support Services for discussion and the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the procedure outlined at conditions 18.10 to 18.12 of Part A. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 7.3 The Customer and the Supplier shall review the Service Level Arrangement at each Review Meeting and will, in accordance with the Change Control Procedure, agree modifications to reflect changes in the Customer's requirements for the Support Services.

## **8. LIMITATION OF LIABILITY**

- 8.1 Except as expressly and specifically provided in these Conditions:
- 8.1.1 the Customer assumes sole responsibility for results obtained from the use of the Support Services, and for conclusions drawn from such use. the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Support Services, or any actions taken by the Supplier at the Customer's direction; and
- 8.1.2 all warranties, conditions and other terms implied or incorporated by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from these Conditions including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.
- 8.2 Nothing in these Conditions excludes or limits the liability of the Supplier for:
- 8.2.1 death or personal injury caused by the Suppliers negligence;
- 8.2.2 fraud or fraudulent misrepresentation; or
- 8.2.3 any other liability which cannot lawfully be excluded or limited.
- 8.3 The Service Level Agreement states the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance, non-performance or non-availability of the Support Services.
- 8.4 Subject to condition 8.2 and condition 8.3:
- 8.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and

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- 8.4.2 the Supplier'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 Managed Services and Support shall be limited to the price paid for the Support Services during the 12 months preceding the date on which the claim arose.
- 8.4.3 the Supplier will not be liable for any delay or failure caused by:
- (a) errors in programs, information, data or instructions supplied by Customer;
  - (b) the late arrival or non-arrival of material from Customer; or
  - (c) defects in any Customer hardware or Customer software (including any Third Party Vendor Software and Third-Party Vendor Services).

## 9. CUSTOMER DATA

- 9.1 In this condition 9, the following definitions apply:
- 9.1.1 the terms "data controller", "data processor", "data subject", "personal data" and "process" bear the respective meanings given to them in the Data Protection Act 1998; and GDPR 2018 and
- 9.1.2 **Customer Personal Data** means any Personal Data comprised in the Customer Data.
- 9.2 If the Customer requires the Supplier to process any Customer Personal Data pursuant to the Support Services, the Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out pursuant to a Contract. In such circumstances, the Supplier shall:
- 9.2.1 only carry out processing of any Customer Personal Data on the Customer's instructions; and
- 9.2.2 implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage.
- 9.3 Unless otherwise expressly set out in the Statement of Work, the Supplier shall not be responsible for storing, archiving or providing security procedures in respect of Customer Data.
- 9.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by the Supplier to perform services related to Customer Data maintenance and back-up).

## 10. TERM AND TERMINATION

- 10.1 The Support Services shall commence on the Service Commencement Date and shall continue, unless terminated earlier in accordance with this condition 10, in force for the Initial Term. The Initial Term shall automatically be extended for successive twelve (12) month periods (Extended Term) at the end of the Initial Term and at the end of each Extended Term, unless either party gives written notice to the other party, not later than 120 days before the end of the Initial Term or the relevant Extended Term, to terminate the Support Services at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 10.2 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, the Customer may terminate the Contract on giving not less than 120 days' written notice to the Supplier, provided that on any such termination it shall, without prejudice to any accrued rights or

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obligations as at that time, be obliged to pay termination compensation to the Supplier calculated as the balance of any unpaid Fees for the remainder of the Initial Term or Extended Term, as applicable inclusive of any fees payable in respect of Third Party Provider Software and/or Third Party Provider Services.

10.3 On termination of the Contract for any reason:

- 10.3.1 the Supplier shall immediately cease provision of the Support Services but may provide Transition Services for a further period in accordance with condition 11.2;
- 10.3.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 10.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination or expiry of the Contract, a written request for the delivery to the Customer of the most recent backup of the Customer Data. the Supplier shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of its receipt of such a written request, provided that the Customer has at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data.

## 11. EXIT ASSISTANCE AND TRANSFER OF ASSETS

- 11.1 the Supplier shall, on request from the Customer at any time after the expiry of six months from the Service Commencement Date, prepare or update a detailed plan (Exit Plan) for the orderly transition of the Support Services from the Supplier to the Customer or its nominated replacement supplier (the "Replacement Supplier").
- 11.2 The Customer may, at any time before termination of the Contract, for any reason, request the Supplier to put into effect the Exit Plan (Transition Service) or otherwise to offer reasonable assistance in transitioning the Support Services to a Replacement Supplier (by providing the Transition Services). the Supplier will, in return for a reasonable fee (to be agreed prior to the commencement of any Transition Services), provide such Transition Services for a maximum period of three months, or until termination of the Contract in accordance with condition 9, whichever is later.
- 11.3 On expiry or termination of the Contract the Supplier will promptly produce a list of the Transferring Contracts. the Supplier and Customer shall co-operate to procure the termination of any licence granted under condition 1 of Part C, the novation or assignment to the Customer and/or Replacement Supplier of the Transferring Contracts.
- 11.4 The Customer shall:
  - 11.4.1 accept assignments or licence termination from the Supplier or (as applicable) join with the Supplier in procuring a novation of each Transferring Contract; and
  - 11.4.2 once a Transferring Contract is novated, re-assigned to the Customer or the Replacement Supplier or the applicable licence is terminated (as applicable), the Customer shall carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Supplier does the same.
- 11.5 All obligations of the Supplier under this condition 11 shall be at the sole cost and expense of the Customer calculated on the basis of the Supplier's daily rates set out in the applicable list price in force at the applicable time.

## 12. AUDIT

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- 12.1 For the term of the Contract, the Supplier shall maintain full and accurate records in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Support Services and its performance against the Service Level Agreement.
  - 12.2 the Supplier shall, on reasonable written notice in advance, allow the Customer and any auditors of, or other advisers to, the Customer, no more than once per year, to access any of the Supplier's premises, personnel and relevant records as may be reasonably required in order to verify that the Support Services are being provided in accordance with these Conditions.
  - 12.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Support Services by the Supplier.
  - 12.4 Subject to the Customer's obligations of confidentiality, the Supplier shall provide the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
  - 12.5 The Customer shall bear all reasonable costs and expenses incurred by the parties arising out of the provisions of this condition.

### **13. ANTI-BRIBERY**

- 13.1 the Supplier shall:
  - 13.1.1 comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - 13.1.2 have and shall maintain in place throughout the term of any Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
  - 13.1.3 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Support Services.
- 13.2 For the purpose of this condition 13, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act).

## **PART D: ACCEPTABLE USE POLICY (AUP)**

Introduction and Applicability of Acceptable Use Policy NGUX LTD ("NGUX" or "Company" or "we") have adopted this Acceptable Use Policy ("AUP") to govern the use of their Extensible Desktop as a Service Platform (DaaS) and general interconnection services (the "Services") by their customers ("Customers" or "you") and by users that have gained access to the Services through Customer accounts ("Users"). As used in this AUP, any reference to "Users" is intended to encompass, as applicable, both Customers and their Users, and any reference to "Services" is intended to encompass, as applicable, both the Services and the NGUX Environment and Network (as defined below). Any use of the Services by a User in violation of this AUP shall also be considered a use of the Services by Customer in violation of this AUP and any other breach by a User of this AUP shall also be considered a breach by Customer of this AUP. In the event NGUX has a right hereunder to terminate or suspend an individual User's right to use any or all of the Services, NGUX shall also have the right to terminate or suspend, as the case may be, Customer's (and all other User's) right to use such Services. By using the Services, you acknowledge that you and your Users are responsible for compliance with this AUP, and agree to be bound by this AUP. You are responsible for violations of this AUP by any User that accesses the Services through your account. NGUX does not intend to control or monitor any User's experience or the content of their online communications, however, NGUX reserves the right to disconnect or otherwise terminate your (and all of your Users') access to the Services for usage that violates (or may violate) the AUP or that otherwise appears unlawful, harmful or offensive.



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This AUP applies to all aspects of the Company's Services, including any aspects of such Services across NGUX's network, including equipment, systems, facilities, services and products incorporated or used in such transmission network ("NGUX Environment and Network"). This AUP is designed to protect the Services (including the NGUX Environment and Network), Users, and the Internet community from improper or illegal activity across the Internet, to improve the Services and to improve Services offerings. In situations where data communications are carried across networks of other Internet Service Providers (ISPs), you and Users must also conform to the applicable acceptable use policies of such other ISPs. The use of the Services by a Customer (and any other User accessing the Services through Customer) is subject to the terms and conditions of any agreements entered into by such Customer and NGUX. This AUP is incorporated into such agreements by reference. Certain Services may have additional terms and conditions, which govern in the event of any inconsistency with this AUP. Please refer to the specific products and services terms and conditions including any specification sheets as well as FAQs, and the agreements under which such products and services are being provided for further information. If you do not wish to be bound to this AUP, you should not access, subscribe to, or otherwise use the Services or permit any Users to do any of the foregoing.

1.1 Prohibited Uses Illegal Activity Users may access and use the Services for lawful purposes only. You are responsible for any transmission you or your Users send, receive, post, access, or store using the Services, including via the NGUX Environment and Network. Users must at all times use the Services in compliance with all applicable laws, rules and regulations. NGUX strictly prohibits the use of the Services for the transmission, distribution, retrieval, or storage of any information, data, or other material in violation of any applicable law or regulation (including, where applicable, any tariff or treaty). This prohibition includes, but is not limited to, the use or transmission of any data that is protected by copyright, trademark, trade secret, patent or other intellectual property right without proper authorisation and the transmission of any material that constitutes an illegal threat, violates export control laws, or is obscene, defamatory, or otherwise unlawful. Some examples of unlawful conduct include:

- Infringement: Infringement of intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret or other intellectual property right. Infringement may result from the unauthorised copying, distribution and/or posting of pictures, logos, software, articles, musical works, and videos.
- Offensive Materials: Disseminating or posting material that is unlawful, libellous, defamatory, obscene, indecent, explicit, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable.

1.2 Unauthorised Access/Interference A User may not attempt to gain unauthorised access to, or attempt to interfere with or compromise the normal functioning, operation, or security of any portion of the Services. A User may not use the Services to engage in any activities that may interfere with the ability of others to access or use the Services or the Internet. A User may not use the Services to monitor any data, information, or communications on any network or system. A User is strictly prohibited from attempting to gain access to the user accounts of other customers or users, or violating system or network security, each of which may result in criminal and civil liability. NGUX will investigate incidents involving such violations and may involve and will co-operate with law enforcement if a criminal violation is suspected. NGUX may, but is under no obligation to, monitor equipment, systems and network equipment at any time for security and management purposes. Examples of prohibited unauthorised access or interference include:

- Hacking: Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without the express prior authorisation of the owner of the system or network.
- Interception: Unauthorised monitoring of data or traffic on any network or system without the express prior authorisation of the owner of the system or network.
- Intentional Interference: Interference with service to any user, host or network including, without limitation, denial-of-service attacks, mail bombing, news bombing, other flooding techniques,

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deliberate attempts to overload a system, and broadcast attacks.

- Falsification of Origin or Routing Information: Using, selling, or distributing in conjunction with the Services, any computer program designed to conceal the source or routing information of electronic mail messages in a manner that falsifies an Internet domain, header information, date or time stamp, originating e-mail address, or other identifier.
- Avoiding System Restrictions: Using manual or electronic means to avoid any limitations established by Company or attempting to gain unauthorised access to, alter, or destroy any information that relates to any Company customer or other end-user. Company may, but is not obligated to, take any action it deems necessary to protect the Services, its rights or the rights of its customers or third parties, or optimize or improve the Services, systems, and equipment. Users acknowledge that such action may include, without limitation, employing methods, technologies, or procedures to filter or block messages and data sent through the Services. Company may, in its sole discretion, at any time, filter "spam" or prevent "hacking," "viruses" or other potential harms without regard to any preference Users may have communicated to us.
- Failure to Abide by Third-Party Policies: Violating the rules, regulations, or policies that apply to any third-party network, server or computer database that a User accesses.
- Harmful Content: Disseminating or posting harmful content including, without limitation, viruses, Trojan horses, worms, time bombs, zombies, cancelbots or any other computer or other programming routines that may damage, interfere with, secretly intercept or seize any system, program, data or personal information.

1.3 Spoofing/Fraud Users are prohibited from intentionally or negligently injecting false data into the Internet via the Services, for instance in the form of bad routing information (including, but not limited to, the announcing of networks owned by someone else or reserved by the Internet Assigned Numbers Authority) or incorrect DNS information. A User may not attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than such User for purposes of deception via the Services. Any attempt to impersonate someone else by altering a source IP address information or by using forged headers or other identifying information is prohibited. Any attempt to fraudulently conceal, forge, or otherwise falsify a User's identity in connection with use of the Services is also prohibited.

1.4 Unsolicited Commercial E-mail/Spamming A User may not use the Services to transmit unsolicited commercial e-mail messages or deliberately send excessively large attachments to one recipient, or files that disrupt a server, account, newsgroup, or chat service. Any unsolicited commercial e-mail messages or a series of unsolicited commercial e-mail messages or large attachments sent to one recipient using the Services is prohibited. In addition, "spamming" or "mail-bombing" using the Services is also prohibited. Likewise, Users are precluded from transmitting using the Services:

- unsolicited informational announcements;
- chain mail;
- numerous copies of the same or substantially similar messages;
- empty messages;
- messages which contain no substantive content.

Use of the service of another provider to send unsolicited commercial e-mail, spam, or mail-bombs, to promote a site hosted on or connected to the Services, is similarly prohibited. Likewise, a User may not use the Services to collect responses from mass unsolicited email messages, e-mail addresses, screen names, or other identifiers of others (without Company's prior written consent), a practice sometimes known as spidering or harvesting. You and your Users may not use any of Company's mail servers or another site's mail server to relay mail without the express permission of the account holder or the site. NGUX may, in its sole discretion, rely upon information obtained from anti-spamming organisations (including, for example and without limitation, spamhaus.org, spamcop.net, sorbs.nle, and abuse.net) as evidence that a User is an active "spam operation" for purposes of taking remedial action under this AUP.

1.5 Usenet Postings All postings to Usenet groups must comply with that group's charter and other policies. Users are prohibited from cross-posting to unrelated news groups or to any news groups where the post

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does not meet that group's charter. Continued posting of off-topic messages, including commercial messages (unless specifically invited) is prohibited. Disrupting newsgroups with materials, postings or activities that are (as determined by NGUX in its sole discretion) frivolous, unlawful, obscene, threatening, abusive, libellous, hateful, excessive or repetitious is prohibited, unless such materials or activities are expressly allowed or encouraged under the newsgroup's name, Frequently Asked Questions, or charter.

1.6 Miscellaneous Prohibited Activities NGUX prohibits Users from using the Services for any prohibited activities, including, but not limited to, the following activities:

- Intentionally transmitting files containing a computer virus or corrupted data.
- If NGUX has specified bandwidth limitations for your user account, use of the Services shall not be in excess of those limitations.
- Attempting to circumvent or alter the processes or procedures to measure time, bandwidth utilisation, or other methods to document use of the Services.
- Unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network.
- Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to deliver unsolicited commercial e-mail.
- Any activity that disrupts, degrades, harms or threatens to harm the Services, including the NGUX Environment and Network.
- Any use of another party's electronic mail server to relay email without express permission from such other party.
- Any other inappropriate activity or abuse of the Services (as determined by NGUX in its sole discretion), whether or not specifically listed in this AUP, may result in suspension or termination of the User's access to or use of the Services.

1.7 Complaints If NGUX receives complaints directly from Internet users, through Internet organisations and through other parties, NGUX shall not be required to determine the validity of complaints received, or of information obtained from anti-spamming organisations, before taking action under this AUP. A complaint from the recipient of commercial e-mail, whether received directly, or through an anti-spamming organization, shall be evidence that the message was unsolicited. NGUX has no obligation to forward the complaint to the User, or to identify the complaining parties.

1.8 NGUX Right of Action for Prohibited Actions The actions described in this are non-exhaustive, and NGUX reserves the right to take appropriate action to remedy any conduct which it deems to be a violation of this AUP or otherwise may be harmful to the Services, its customers, or Internet users. **INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUP, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A USER, SHALL BE CONSIDERED VIOLATIONS OF THE AUP BY SUCH USER.**

1.9 NGUX's Rights Suspension or Termination of Services If Users engage in conduct or a pattern of conduct, including without limitation repeated violations by a User whereby correction of individual violations does not, in NGUX's sole discretion, correct a pattern of the same or similar violations, while using the Services that, in NGUX's sole discretion, violates the AUP, or is otherwise illegal or improper, NGUX reserves the right to suspend and/or terminate the Services or the User's access to the Services. NGUX will generally attempt to notify the Customer of any activity in violation of the AUP and request that such Customer take whatever steps necessary to, or to get the User to, cease such activity; however, in cases where the operation of the Services is threatened or cases involving unsolicited commercial e-mail/spam, a pattern of violations, mail relaying, alteration of the User's source IP address information, denial of service attacks, illegal activities, suspected fraud in connection with the use of Services, harassment or copyright infringement, the Company reserves the right to suspend or terminate the Services or the User's access to the Services without notification. In the event that Company becomes aware that any such material may violate the terms of this AUP and/or expose Company to

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civil or criminal liability including, without limitation, under the Digital Millennium Copyright Act ("DMCA"), Company reserves the right to block access to such material and suspend or terminate the access of any User creating, storing, copying, or communicating such material, including any User whom Company becomes aware the User has engaged in any of the foregoing activities multiple times. 5 NGUX reserves the right to avail itself of the safe harbour provisions of the DMCA. NGUX does not make any promise, nor does NGUX have any obligation, to monitor or police activity occurring using the Services and will have no liability to any party, including a User, for any violation of the AUP.

- 1.10 Investigation and Enforcement NGUX has the right, but is not obligated, to strictly enforce this AUP through self-help, active investigation, litigation and prosecution. Company shall not be obligated to monitor or exercise any editorial control over any material stored, copied, or communicated using the Services, but reserves the right to do so. In addition, NGUX may take any other appropriate action against the User for violations of the AUP, including repeated violations wherein correction of individual violations does not, in NGUX's sole discretion, correct a pattern of the same or similar violations. Company further reserves the right to conduct investigations into fraud, violations of the terms of this AUP or other laws or regulations, and to cooperate with legal authorities and third parties in the investigation of illegal or inappropriate activity using the Services, including disclosing the identity of the User that Company deems responsible for the wrongdoing.
- 1.11 Cooperation with Law Enforcement NGUX may also access and disclose any information (including transactional information) related to a User's access and use of the Services if required by applicable law. NGUX will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. By using and accepting the Services, Customer consents to Company's disclosure to any law enforcement agency, of Customer's identity as the service provider of record (including basic contact information), as applicable, for any User about whom NGUX is required by applicable law to provide such information to such law enforcement agency. In instances involving child pornography, NGUX will comply with all applicable federal and state laws, including providing notice to the National Center for the Missing and Exploited Children or other designated agencies.
- 1.12 Filters and Service Information NGUX reserves the right to install and use, or to have Customer install and use, any appropriate devices to prevent violations of this AUP, including devices designed to filter or terminate access to the Services. By accepting and using the Services and allowing Users to use the Services, Customer consents (on its own behalf and on behalf of all other Users) to allowing Company to collect service information and routing information in the normal course of its business, and to use such information for general business purposes.
- 1.13 Indemnification The Customer agrees to indemnify, defend and hold harmless Company, its officers, directors, employees, agents, shareholders, licensors, and suppliers from and against all claims, liabilities, losses, expenses, damages and costs, including reasonable attorneys' fees, that arise from or are related to: (1) any violation by the Customer of this AUP or the acceptable use policy of any third party network provider contracted by NGUX in support of the Services; (2) any violation of any rights of a third party by the Customer; (3) any violation of applicable law; or (4) information or content that a Customer submits, posts, transmits or makes available through the Services. Notwithstanding anything in the Agreement to the contrary, Customer's obligations under this Section
- 1.14 Shall not be subject to any limitations on liability under the Agreement, including, but not limited to, any liability cap or consequential, indirect, special or punitive damages waiver. Customer and User Responsibilities
- 1.15 Notice of Security Issues Users are entirely responsible for maintaining the confidentiality of password and account information, as well as the security of their network. Users agree to immediately notify NGUX of any unauthorised use of their accounts or any other breach of security known to such User. If the User becomes aware of any violation of this AUP by any person, the User is required to notify Company.
- 1.16 Configuration All Users of the Services are responsible for configuring their own systems to provide the maximum possible accountability. NGUX shall not be liable for any damage caused by such system configurations regardless of whether such configurations have been authorised or requested by NGUX. For example, Users should ensure there are clear "path" lines in news headers so that the originator of a

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post may be identified. Users should also configure their Mail Transport Agents (MTA) to authenticate (by look-up on the name or similar procedures) any system that connects to perform a mail exchange and should generally present header data as clearly as possible. As another example, Users should maintain logs of dynamically assigned IP addresses. Users of the Services are responsible for educating themselves and configuring their systems with an effective level of security. Should systems at a User's site be violated, the User is responsible for reporting the violation and then fixing the exploited system. For instance, should a site be abused to distribute unlicensed software due to a poorly configured FTP (File Transfer Protocol) Service, the User is responsible for reconfiguring the system to stop the abuse.

- 1.17 Impending Security Event Notification All Users of the Services are responsible for notifying NGUX immediately if they become aware of an impending event that may negatively affect the Services. This includes extortion threats that involve threat of "denial of service" attacks, unauthorised access, or other security events.
- 1.18 Complaints In most cases, NGUX will notify its customer(s) of complaints received by it regarding an alleged violation of this AUP. You agree to, and to cause the applicable User to, promptly investigate all such complaints and take all necessary actions to remedy any violations of this AUP. Company may inform the complainant that you and/or the applicable User are investigating the complaint and may provide the complainant with the necessary information to contact you and/or the applicable User directly to resolve the complaint. Users are required to identify a representative for the purposes of receiving such communications. Privacy Because the Internet is an inherently open and insecure means of communication, any data or information a User transmits over the Internet may be susceptible to interception and alteration. Subject to NGUX's online Privacy Policy, we make no guarantee regarding, and assume no liability for, the security and integrity of any data or information a User transmits via the Service or over the Internet, including any data or information transmitted via any server designated as "secure".
- 1.19 Miscellaneous Provisions No Waiver and Severability of AUP Failure by NGUX to insist upon or enforce strict performance of any provision of this AUP will not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice will act to modify any provision of this AUP. If any provision of this AUP is found to be unenforceable or invalid, this AUP's unaffected provisions will remain in effect.
- 1.20 Complaints and Contact Information Any complaints regarding prohibited use or other abuse of the Services, including violation of the AUP, should be sent to NGUX at [hello@NGUX.co.uk](mailto:hello@NGUX.co.uk). Please include all applicable information that will assist NGUX in investigating the complaint, including all applicable headers of forwarded messages.