



Managed Security Services

Terms and Conditions

G-Cloud 14



This document contains 2 sets of Terms and Conditions. One General and one for Managed Services. The most appropriate set of terms will be selected to reflect your circumstances at the time.

General Terms SUPPLIER – TERMS AND CONDCTIONS

1. These terms and conditions which consist of the Sections listed below (these "Conditions") apply to all contracts that we enter into with our customers for the provision of "IT Supplies" to them:

SECTION A – DEFINITIONS AND INTERPRETATION

SECTION B – STATEMENT OF WORKS/SUBSIDIARY AGREEMENT GENERAL TERMS

SECTION C – SOFTWARE AND HARDWARE SUPPLY TERMS

2. Section A contains the definition and interpretation provisions that apply to these Conditions generally.
3. Section B contains the general terms which apply to orders for all IT Supplies.
4. Section C only applies where they are applicable to the IT Supplies being ordered.
5. Unless and until superseded by any new Conditions that we may post on this Website, these Conditions apply to all Statements of Work from and including 1 November 2013.
6. Unless otherwise stated in a quotation or a price guide, a price is valid until the end of the month in which it is quoted only, and unless otherwise agreed in writing, We may withdraw it at any time by notice to the You.
7. Each order or acceptance of a quotation for IT Supplies by You shall be deemed to be an offer by you subject to these Conditions. You shall ensure that Your order is complete and accurate.
8. A binding contract shall not come into existence between Us and You unless and a Statement of Works is signed by both parties, until We issue a written order acknowledgement to You or We commence delivery of the IT Supplies to You (whichever occurs earlier).
9. No order which has been acknowledged by Us may be cancelled by You, except as provided in these Conditions and/or a Statement of Works and provided that You

indemnify Us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.

10. It is suggested that you download and retain a copy of these Conditions if you have or will be placing an order.
11. It is suggested that you download and retain a copy of these Conditions if you have or will be placing an order.
12. Phone calls received and made by Us may be recorded for training and quality measurement purposes. All call recordings are treated as confidential information and are only available for review by authorised staff.

In these Conditions the expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

SECTION A – DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1.1 **"Applicable Laws"** means any legislation in force from time to time that We can be reasonably expected to be aware of in relation to the IT Supplies;

1.1.2 **"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout England and Wales or Scotland;

1.1.3 **"Commencement Date"** means the earlier of the date specified as such in the Statement of Works or the commencement of delivery of the IT Supplies;

1.1.4 **"Confidential Information"** means (i) Your Input Data; (ii) the Deliverables; (iii) the terms of any Statement of Works; and (iv) any and all other confidential information in any form or format disclosed by or on behalf of one Party to the other Party under or in connection with any Statement of Works at any time (whether before, upon or following the entry into force of these Conditions), which information is marked as confidential or otherwise designated (whether orally or in writing, including in the latter case in terms of the following provisions of this definition) by the person supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information in relation to the past, present and potential future finances, policies, procedures, plans, products, services, contractual arrangements, staff, customers or other of Our contractors and/or those of any of Our Group Companies;

1.1.5 **"Contract Governance Arrangements"** means the contract governance arrangements set out in any Statement of Works;

1.1.6 **"Data Subject"** has the meaning given in the DPA (as defined below);

1.1.7 **"Deliverables"** means any works, materials or other output in any form or format whatsoever (including drafts) produced or supplied by or on Our behalf for or to You, as part of the IT Supplies, including any such works, materials or other output specified in any Statement of Works;

1.1.8 **"Discloser"** means, in respect of any Confidential Information, the Party by or on behalf of which that Confidential Information is disclosed, except that both Parties will be treated as the "Discloser" of the terms of these Conditions;

1.1.9 **"DPA"** means the Data Protection Act 1998;

1.1.10 **"Fees"** means the fees specified in, or calculated in accordance with, any Statement of Works;

1.1.11 **"Force Majeure Event"** means any cause affecting the performance by a Party of its obligations under any Statement of Works arising from acts, events or omissions beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of any other party), failure of a utility service or transport network, default of suppliers or sub-contractors, act of God, war, riot, civil commotion, act or threats of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT equipment, fire, flood or storm;

1.1.12 **"Group Company(ies)"** means, in relation to a Party:

1.1.12.1 any subsidiary of that Party;

1.1.12.2 the holding company of that Party (if any); and 1.1.12.3

any other subsidiary of that holding company;

and for these purposes the terms "subsidiary" and "holding company" each have the meaning given to them in section 1159 of the Companies Act 2006;

1.1.13 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, 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 without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all 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;

1.1.14 **"IT Supplies"** means any services, Software, Hardware and/or other information technology product which We have agreed to supply to You under, and is described in, a Statement of Works;

1.1.15 **"Our Group"** means Us and our Group Companies;

1.1.16 **"Parties"** means Us and You as parties to the relevant Statement of Works;

1.1.17 **"Personal Data"** and **"Processing"** have the meanings given to them in the DPA and **"Process"** and any other tense or part of that verb will be interpreted accordingly;

1.1.18 **"Project Milestones"** means the dates (if any) identified as such in the Project Timetable;

1.1.19 **"Project Timetable"** means the timetable (if any) for the provision of the IT Supplies which appears in the Statement of Works;

1.1.20 **"Recipient"** means, in respect of any Confidential Information, the Party to which that Confidential Information is disclosed under any Statement of Works, except that both Parties will be treated as the "Recipient" of the terms of any Statement of Works;

1.1.21 **"Statement of Works"** means any contract (and any subsequent document(s)) that the Parties enter into for the provision of IT Supplies and/or Deliverables to be provided by Us to You, which is subject to these Conditions. Where the IT Supplies is Software and/or Hardware the Statement of Works refers to the order confirmation in relation to that Software and/or Hardware where no further agreement is signed by both parties;

1.2 Unless the context requires a different interpretation or these Conditions expressly provides otherwise, the following rules will be used to interpret these Conditions:

1.1.22 **"Term"** means the term of the Statement of Works;

1.1.23 **"Us"** means [] Limited, a company incorporated in England Wales (registered number), whose registered office is at [] and similar expressions such as "We", "Our" and "Ours" shall be construed accordingly;

1.1.24 **"VAT"** means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;

1.1.25 **"Website"** means the website url [] (or any website that We may operate in replacement therefor from time to time);

1.1.26 **"You"** means the person, firm or company who purchases the IT Supplies from Us and similar expressions such as "Your" and "Yours" shall be construed accordingly;

1.1.27 **"Your Input Data"** means any information and works in any form or format whatsoever disclosed to Us by You or on Your behalf for use by Us in supplying the IT

Supplies and includes the physical embodiment of any such information and works (if any) listed in the Statement of Works as part of Your Property; and

1.1.28 **"Your Property"** means the equipment, materials and other items listed in the Statement of Works as resource requirements that You will provide.

1.2.1 Any reference to a statute, a statutory instrument or a provision of either includes references to that statute, statutory instrument or provision as amended, extended, applied, consolidated or re-enacted from time to time, whether before, on or after the Commencement Date and, in the case of a statute or a provision of that statute, will be interpreted as including any subordinate legislation made under that statute or that provision from time to time.

1.2.2 Words used in the singular will be interpreted to include the plural and vice versa.

1.2.3 A reference to a Party to these Conditions includes that Party's permitted successors, transferees and assignees.

1.2.4 A reference to a "person" is to any legal person, including any individual, partnership, company or other body corporate.

1.2.5 The word "including" means "including but not limited to" and "include" and "includes" will be interpreted accordingly.

1.2.6 Except if and to the extent that these Conditions expressly provide otherwise, any reference to recording or communicating any matter in "writing" will be interpreted as excluding email, and "written" will be interpreted accordingly.

1.2.7 The word "disclose" includes permitting a person to access information in any manner or imparting that information orally or by demonstration and any other tense or part of that verb will be interpreted accordingly.

1.3 Where a word or phrase is defined anywhere in these Conditions, whether in this Clause 1 or elsewhere, that word or phrase will have the meaning given to it in that definition wherever it is used throughout these Conditions.

1.4 The clause headings in these Conditions and any Statement of Works do not create legal rights or obligations, nor affect the meaning of these Conditions.

1.5 In the event of any conflict or inconsistency between them, the terms of the Statement of Works will prevail over these Conditions.

1.6 Where these Conditions use an English legal term and the relevant provision of these Conditions is being considered in the context of a jurisdiction other than England and Wales, the term will be interpreted as referring to that which most nearly approximates to the English legal term in such other jurisdiction.

SECTION B - STATEMENT OF WORKS GENERAL TERMS

2. Application of the general terms to all Statements of Works

The general terms of this Section B of these Conditions apply to and are deemed incorporated within all Statements of Works to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You except to the extent expressly agreed by Us in the Statement of Works.

3. IT Supplies

3.1 We will use reasonable endeavours to provide the IT Supplies and/or Deliverables to You in accordance with:

3.1.1 the Statement of Works in all material respects;

3.1.2 all Applicable Laws; and

3.1.3 the Project Timetable, recognising however that the dates set out in the Project Timetable shall be estimates only and time shall not be of the essence of these Conditions.

4. Deliverables

4.1 Risk of damage to, or loss of, any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on delivery to You. 4.2 Property in any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on payment by You of the Fees in respect of that Deliverable. 5.1.1 co-operate with Us in all matters relating to the IT Supplies

5 Your obligations

5.1. You shall:

5.1.1 co-operate with Us in all matters relating to the IT Supplies;

5.1.2 provide in a timely manner such access to Your premises, Your Property and data (including Your Input Data), and such office accommodation, computer and other facilities, as is requested by Us and/or as indicated as being required from You in the Statement of Works;

5.1.3 provide in a timely manner such information as We may request, and ensure that such information is accurate in all material respects; and

5.1.4 be responsible (at Your own cost) for preparing the relevant premises for the supply of the IT Supplies.

5.2 where the provision of the IT Supplies requires Us to ensure that certain resources are made available at a time and location agreed by both Parties and/or as set out in the Project Timetable, if You are unable to fulfil Your obligations in relation to such activities at such time and location or wish to cancel or postpone the activity so that the resources are not required at the agreed time and/or location then You must give Us notice in accordance with Clause 18 (Notices) not less than 5 Business Days prior to the date of such activity.

5.3 We shall not be liable to You if Our performance of Our obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees. Subject to Clause 5.2, if Our performance of Our obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees, You shall be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any loss of opportunity to deploy resources elsewhere), subject to Our confirmation and evidence of such costs, charges and losses to You in writing, and provided We have taken all reasonable steps to mitigate such costs, charges and/or loss. To be clear, such costs, charges and losses may include any such costs, charges or expenses that We incur to Our sub-contractors.

5.4 You shall not, without Our prior written consent, at any time from the Commencement Date to the expiry of six months after the completion of the IT Supplies, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged by Us as an employee or sub-contractor in relation to the relevant IT Supplies.

6. Fees, invoicing and payment

6.1 The Fees, invoicing and payment information shall be confirmed in writing by Us in the Statement of Works.

6.2 Clause 6.3 shall apply if any part of the IT Supplies that are to be provided on a timeand- materials basis. Clause 6.4 and Clause 6.6 shall apply if any part of the IT Supplies are to be provided for a fixed price. The remainder of this Clause shall apply in either case. The provisions in this Clause are without prejudice to the provisions of Clause 32 where they apply.

6.3 Unless otherwise stated in the Statement of Works, where the Statement of Works provides that any part of the IT Supplies are to be provided on a time-and-materials basis:

6.3.1 The Fees payable for the IT Supplies shall be calculated in accordance with Our standard daily Fee rates as amended from time to time;

6.3.2 Our standard daily Fee rates are calculated on the basis of an seven and half hour day worked between 8.00 and 5.30 pm on Business Days;

6.3.3 We shall be entitled to charge at an overtime rate of 150% of the normal rate for time worked by members of Our team outside the hours referred to in Clause 6.3.2 on a pro-rata basis;

6.3.4 We shall ensure that all members of the team complete time sheets recording time spent in providing the IT Supplies, and We shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Clause 6.3.5; and

6.3.5 We shall invoice You monthly in arrears for Our Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 6. Each invoice shall set out the time spent by each member of Our team.

6.4 Where the Statement of Works provides that any of the IT Supplies are provided for a fixed price the Fees for the IT Supplies shall be the amount set out in the Statement of Works. The total price shall be paid to Us (without deduction or set-off) in instalments as set out in the Project Timetable on its achieving the corresponding Project Milestone. On achieving a Project Milestone, We shall invoice You for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in Clause 6.

6.5 Where the Statement of Works does not contain a Project Timetable, We may invoice You on the dates otherwise set out in the Statement of Works or otherwise on delivery of the IT Supplies and/or the Deliverables.

6.6 Any fixed Fees exclude:

6.6.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the team in connection with the provision of the IT Supplies, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the provision of the IT Supplies. Such expenses, materials and third party services shall be invoiced by Us at cost; and

6.6.2 VAT, which We shall add to Our invoices at the appropriate rate.

6.7 You shall pay each invoice submitted to You by Us in full, and in cleared funds, within 30 days of receipt.

6.8 Without prejudice to any other right or remedy that We may have, if You fail to pay Us on the due date We may:

6.8.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of The Royal Bank of Scotland plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Alternatively, We may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

6.8.2 suspend the provision of all IT Supplies until payment has been made in full.

6.9 Time for payment shall be of the essence of the Statement of Works.

6.10 All payments payable to Us under the Statement of Works shall become due immediately on termination of the Statement of Works, despite any other provision. This Clause is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.

6.11 We may, without prejudice to any other rights We may have, set off any liability that We may have to You against any liability of You may have to Us.

7. Change control

7.1 If either Party wishes to change the scope of the IT Supplies, it shall submit details of the requested change to the other in writing.

7.2 If either Party requests a change to the scope or execution of the IT Supplies, We shall, within a reasonable time, provide a written estimate to You of:

7.2.1 the likely time required to implement the change;

7.2.2 any variations to Our Fees arising from the change;

7.2.3 the likely effect of the change on the Project Timetable; and

7.2.4 any other impact of the change on the terms of these Conditions and/or the Statement of Works.

7.3 If We request a change to the scope of the IT Supplies, You shall not unreasonably withhold or delay consent to it.

7.4 If You wish Us to proceed with the change, We have no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to Our Fees, the Project Timetable and any other relevant terms of these Conditions and/or the Statement of Works to take account of the change.

7.5 You shall be responsible for paying additional fees for providing You with an estimate in accordance with Clause 7.2 unless the change in question has been requested by Us.

8. Contract governance

8.1 Where applicable, the Parties will implement and follow the Contract Governance Arrangements.

8.2 Without affecting the generality of Clause 8.1, each Party will ensure that the individuals identified in the Contract Governance Arrangements attend the meetings and otherwise perform the functions set out there. We may also require You to ensure that one or more of Your senior representative(s) attends any of those meetings, in any case where We consider that the issues to be discussed at that meeting justify that.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights existing prior to the Commencement Date shall vest in their originator absolutely.

9.2 You grant Us for the Term a non-exclusive, worldwide, royalty free licence to use Your Intellectual Property Rights in any pre-existing material that vests in You pursuant to Clause 9.1 (including without limitation Your Input Data) to the extent required by Us to provide the IT Supplies and to fulfil Our other obligations under these Conditions or the Statement of Works.

9.3 Subject to Clauses 9.1 and 9.2 above and 9.4 below, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us. We hereby licence all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable You to make reasonable use of the Deliverables and the IT Supplies as is envisaged by the Parties. If We lawfully terminate a Statement of Works under Clauses 14.1, 14.2, 14.5, 14.6 and 14.7, this licence will automatically terminate.

9.4 Where we have agreed to provide You with third party software as part of the IT Supplies, the terms upon which such software is provided are set out in Section C of these Conditions.

10. Limitation of liability

10.1 The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:

10.1.1 any breach of these Conditions or the Statement of Works;

10.1.2 any use made by You of the IT Supplies, the Deliverables or any part of them; and

10.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Conditions or the Statement of Works.

10.2 We will provide the IT Supplies to You using reasonable care and skill and any Deliverables will conform substantially to the requirements of the Statement of Works.

Without prejudice to Clause 35 if it should be applicable, all other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded by these Conditions.

10.3 Nothing in Clause 10 excludes Our liability:

10.3.1 for death or personal injury caused by Our negligence; or

10.3.2 for fraud or fraudulent misrepresentation.

10.4 Subject to Clause 10.3:

10.4.1 We shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:

10.4.1.1 loss of profits; or

10.4.1.2 loss of business; or

10.4.1.3 depletion of goodwill or similar losses; or

10.4.1.4 loss of anticipated savings; or

10.4.1.5 loss of goods; or

10.4.1.6 loss of contract; or

10.4.1.7 loss of use; or

10.4.1.8 loss or corruption of data or information; or

10.4.1.8 any loss arising as a result of any defect in Software and/or Hardware; or

10.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

10.4.2 subject to Clause 10.4.1, Our total 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 Our obligations under these Conditions or the Statement of Works (including any applicable conditions) shall be limited to the value of the Fees (unless any other amounts are agreed in writing in the Statement of Works).

11. Insurance

We will take out and maintain with a reputable insurer the insurance policies detailed in the Statement of Works in respect of Our potential liabilities under or in relation to the Statement of Works.

12. Confidentiality

12.1 Each Party will in respect of any Confidential Information of which it is the Recipient:

12.1.1 use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations and/or exercising its rights under these Conditions and the Statement of Works;

12.1.2. not disclose that Confidential Information to any person other than:

12.1.2.1.any person employed or engaged by it (including, in Our case, any of Our subcontractors); (ii) its auditors and other professional advisers, in each case if and to the extent that such disclosure is necessary for the purposes in Clause 12.1.1

("Permitted Disclosees"); or

12.1.2.2 any other person having a statutory or other legal right (other than a contractual right) to request and receive that information, including any court of competent jurisdiction, provided that the Recipient informs the Discloser prior to such disclosure that it has been required to make it (if and to the extent that the Recipient is legally permitted to so inform the Discloser); and

12.1.3 otherwise use its best endeavours to protect and maintain the confidentiality of that Confidential Information.

12.2 Clause 12.1 will not apply to any information which:

12.2.1 is or becomes public knowledge other than as a result of a breach of this Clause 12;

12.2.2 was lawfully in the Recipient's possession before its disclosure to the Recipient under or in connection with these Conditions; or

12.2.3 following its disclosure to the Recipient under or in connection with these Conditions, is received by the Recipient from a third party who is not under an obligation of confidentiality in relation to that information.

12.3 Each Party will ensure compliance by its Permitted Disclosees with the confidentiality obligations imposed on it by this Clause.

12.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible.

12.5 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause and that the other Party will be entitled to a court order to enforce compliance with this Clause or to stop any breach of it, actual or threatened.

12.6 The provisions of this Clause 12 are subject to the provisions of Clause 13 in so far as they apply to any Confidential Information which is Personal Data.

13. Data protection

13.1 If and to the extent that We are required to Process Personal Data on Your behalf pursuant to a Statement of Works, We shall:

13.1.1 Process such Personal Data only to the extent necessary for the purposes of performing Our obligations under the Statement of Works, and otherwise in accordance with Your instructions;

13.1.2 put and at all times maintain in place appropriate technical and organisational measures against unauthorised or unlawful Processing of such Personal Data and against accidental loss or destruction of or damage to such Personal Data; and 13.1.3 not transfer any of that Personal Data outside the European Economic Area, except with Your prior written consent.

13.2 We shall be entitled to authorise a third party to process the Personal Data.

14. Termination

14.1 The Statement of Works may be terminated by Us at any time by giving at least thirty days' written notice to You.

14.2 The Statement of Works may be terminated by Us immediately by giving written notice to You, if You commit a material breach of the Statement of Works.

14.3 You may terminate the Statement of Works by giving written notice to Us, if We commit a material breach of the Statement of Works. However, where a breach is capable of being remedied, such Statement of Works may only be terminated where We have failed, within 14 days of receipt of a notice from You (unless an alternative

timescale is agreed), describing that breach and requesting that it be remedied, to remedy that breach or to provide You with a plan for remedying that breach.

14.4 The Statement of Works may be terminated immediately by You by giving written notice to Us, if We are in persistent breach of the Statement of Works. We will be in persistent breach of the Statement of Works if We have committed a material breach of such Statement of Works on at least the number of occasions in the period prescribed in the Statement of Works.

14.5 Where any of the IT Supplies is subject to a User License, We shall be entitled to suspend or terminate the relevant IT Supplies immediately effective upon notice, for a violation of the User License by You, and You agree to defend, indemnify and hold Us harmless from any losses, damages, costs, liabilities or expenses resulting from any third party claim or allegation arising out of, or relating to, use of the relevant IT Supplies, which is as a result of Your violation of the User Licence.

14.6 Either Party may, by written notice to the other, terminate the Statement of Works if a Force Majeure Event occurs which prevents Us from performing Our obligations in respect of all or a substantial part of the IT Supplies for a continuous period of more than 15 days.

1.14.7 The Statement of Works may be terminated by either Party (the “**Terminating Party**”) immediately by giving written notice to the other Party if:

14.7.1 the other Party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or, being a company or a limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or, being a natural person, is deemed either to be unable to pay its debts or to have no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies;

14.7.2 the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);

14.7.3 a moratorium is declared in respect of any indebtedness of the other Party;

14.7.4 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 other Party (other than for the sole purpose of

a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);

14.7.5 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party;

14.7.6 an administrative receiver, a receiver or a compulsory manager is appointed over the assets of the other Party or a person becomes entitled to make any such appointment;

14.7.7 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;

14.7.8 any event occurs or step is taken in respect of the other Party in any jurisdiction to which it is subject which event or step is equivalent or similar to those set out in this Clause 14.7;

14.7.9 the other Party ceases (or threatens to cease) for any reason to carry on all or a substantial part of its business or takes or suffers any similar action which in the opinion of the Terminating Party means that the other Party may be unable to pay its debts.

15 Consequences of expiry or termination

15.1 The expiry or termination of the Statement of Works (for any reason) will not affect:

15.1.1 any rights or obligations of either Party that have accrued prior to such expiry or termination; or

15.1.2 any provision of the Statement of Works which is expressly or by implication intended to come into or to continue in force on or after such expiry or termination.

15.2 Subject to Clause 15.3, upon the expiry or termination of the Statement of Works, each Party will promptly, and in event within ten Business Days of such expiry or termination, deliver up to the other Party or destroy (at the absolute discretion of the other Party) any and all copies of Confidential Information (other than copies of these Conditions or any of its terms) of which it is the Recipient then in its (or any of its Permitted Disclosees') possession or control and provide the other Party with written confirmation, signed by a duly authorised officer, certifying that it has complied with its obligations under this Clause 15.2. The obligation to destroy any Confidential Information pursuant to this Clause 15.2 includes an obligation to permanently delete

from any information technology system any copies of that Confidential Information held there in electronic form.

15.3 Clause 15.2 does not prohibit a Party (or its Permitted Disclosee) from retaining a copy of any Confidential Information if and to the extent that and for so long as that Party (or its Permitted Disclosee) is legally obliged to do so (other than in terms of any contractual obligation on its part) or that Party (or its Permitted Disclosee) reasonably requires to do so for internal audit and legal risk management purposes.

16. Assignment and sub-contracting

16.1 You may not assign, novate or otherwise transfer or sub-contract or otherwise deal in any of Your rights and/or obligations under the Statement of Works, whether in whole or in part, without Our prior written consent, such consent not to be unreasonably withheld or delayed.

16.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions and/or the Statement of Works.

17. Force majeure

A Party that is subject to a Force Majeure Event will not be in breach of these Conditions and/or the Statement of Works or liable for any failure or delay in the performance of any obligations under these Conditions and/or the Statement of Works to the extent that such failure or delay is attributable to the Force Majeure Event.

18. Notices

18.1 Where any notice is to be given under the Statement of Works, it must be in English and in writing, signed by a duly authorised signatory of the Party giving it. Notices must be:

18.1.1 delivered personally or by commercial courier or sent by first class post or recorded delivery, to the address and marked for the attention of the individual specified in the notices provisions of the Statement of Works, or to any other address and marked for the attention of any other individual that either Party may nominate in writing for these purposes from time to time; or

18.1.2 sent by fax to the fax number specified in the notices provisions of the Statement of Works, or such other fax number as either Party may nominate in writing for these

purposes from time to time, and provided that within twenty four hours of sending it by fax, the notice is also delivered or posted to the Party concerned in accordance with Clause 18.1.1.

18.2. Any notice given in accordance with Clause 18.1 will be treated as having been received:

18.2.1 at the time of delivery, if delivered personally;

18.2.2 at the time of signature by the recipient of the courier's receipt, if delivered by commercial courier;

18.2.3 at 0900 hours on the second Working Day following the date of posting the notice, if sent by post; and

18.2.4 immediately on completion of successful transmission, if sent by fax.

However, where in any case, these rules would result in a notice being treated as having been received on a day which is not a Business Day, or after 1700 hours on a day which is a Business Day, it will be treated as having been received at 0900 hours on the next Business Day afterwards.

18.3 To prove the giving of a notice it will be sufficient to show it was sent in accordance with Clause 18.1.

18.4 The provisions of this Clause do not apply to the service of any process in any legal action or proceedings which may be served in any manner competent under applicable law.

19. Severability

19.1 If any provision of these Conditions and/or the Statement of Works is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

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

20 Waiver

20.1 No failure to exercise or delay in exercising a right or remedy under a Statement of Works or otherwise in law will constitute grounds from which to infer that the Party so delaying or failing has waived or elected to abandon that right or remedy in respect of any circumstances or events, past, present and/or future.

20.2 No single or partial exercise of any right or remedy under a Statement of Works or in law will preclude or restrict the further exercise of that right or remedy.

21. Variations

No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Exclusive Remedies

The remedies set out in these Conditions and the relevant Statement of Works are Your sole and exclusive remedies.

23. Disputes

23.1 If a dispute arises out of or in connection with these Conditions and/or a Statement of Works, or the performance, validity or enforceability of either of them (**Dispute**) then the Parties shall follow the procedure set out in this clause:

23.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, our Sales Director and the person identified in the Statement of Works for First Stage Dispute shall attempt in good faith to resolve the Dispute;

23.1.2 if the above are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to our Sales & Marketing Director and the person identified in the Statement of Works for Second Stage Dispute who shall attempt in good faith to resolve it; and

21.1.3 if the above are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred for determination as follows:

23.1.3.1 if the dispute is of a technical nature which is related to the provision of the IT Supplies and/or the Project, to an expert (an "Expert"), who will act as expert and not as arbitrator, in accordance with Clause 23.2 to Clause 26.5; or

23.1.3.1 if the dispute is of a technical nature which is related to the provision of the IT Supplies and/or the Project, to an expert (an "Expert"), who will act as expert and not as arbitrator, in accordance with Clause 23.2 to Clause 26.5; or

23.1.3.2 in all other cases, mediation and/or arbitration in accordance with Clause 23.6 and Clause 26.8.

23.2 The Expert will be selected and appointed by agreement of the Parties. If the Parties fail to appoint the Expert within 10 Business Days, the Expert will be chosen and appointed on the instructions of either Party using CEDR Solve who shall appoint an Expert who is suitably qualified and experienced to determine the issue in dispute.

23.3 The Expert will be instructed to deliver his or her decision to the Parties in writing within 30 days or such other period as may be agreed in writing of the date on which his or her appointment takes effect.

23.4 Each Party will fully comply with any instructions issued by the Expert in accordance with the terms of his or her appointment and otherwise co-operate with the Expert, including by providing him or her with any information in its possession which he or she requests for the purposes of considering the issue in dispute and reaching his or her decision.

23.5 Each Party will bear its own costs in relation to the reference to the Expert. The fees and costs of the Expert will be borne by the Parties in whatever proportion he or she decides having regard (amongst other things) to the conduct of the Parties.

23.6 If Clause 23.1.3.2 applies and/or the Parties cannot agree that the Dispute is of a technical nature, the Parties shall first seek settlement of the Dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

23.7 If the Dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause there shall be one arbitrator and the seat, or legal place, of arbitration shall be England.

23.8 The provisions of this Clause 23 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute in accordance with this clause.

24. No joint venture, partnership or agency

A Statement of Works does not and is not intended to create a partnership or joint venture between the Parties to it, nor authorise either Party to act as agent for the other. Except to the extent otherwise agreed expressly in a Statement of Works or otherwise in Writing, neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other Party in any way (including without limitation the making of any

representation or warranty, the assumption of any obligation or liability and the exercise of any right or power), nor will they purport to so act or to so bind the other Party.

25. Counterparts

A Statement of Works may be entered into in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts together shall together constitute the one agreement.

26. Entire agreement

26.1 The Statement of Works and any other documents that may be referred to in it or annexed to it, constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.

26.2 Each of the Parties acknowledges and agrees that in entering into the Statement of Works and the documents referred to in it or annexed to it, it does not rely on the statement, representation (whether innocent or negligent), assurance or warranty (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Statement of Works or those documents. 26.2 These Conditions and the Statement of Works are 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.

27 Law

27.1 These Conditions, the Statement of Works and any dispute or claim arising out of or in connection with them or their subject matter or formation (including without limitation non- contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

27.2 Subject to Clause 23, the Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, the Statement of Works or its or their subject matter or formation (including without limitation non-contractual disputes or claims).

SECTION C – SOFTWARE AND HARDWARE SUPPLY TERMS

28. Application of Section C

28.1 The terms of this Section C of these Conditions apply to and are deemed incorporated within all Statement of Works where within the IT Supplies there is a reference to Software and/or Hardware, to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You.

28.2 Unless any provision in this Section provides otherwise, the terms of this Section apply subject to the other terms of these Conditions which shall take precedence in the event of conflict or inconsistency.

29. Definitions

In addition to the defined terms contained within Section A Clause 1, the expressions which follow are given these meanings unless the context in which they are used requires another meaning.

"Hardware" means the hardware products to be provided by Us to You under the Statement of Works;

"Media" means the media upon which Software is recorded and any documentation produced by Us which is associated with Software specified in the Statement of Works;

"Software" means any third party software products to be provided by Us to You under the Statement of Works;

"User Licence" means the end user licence agreement applying to the Software provided to You by the licensor of the Software.

30. Software User Licences, Intellectual Property and Representations

30.1 Subject to the payment of the Fees by You and acceptance by You of the terms of the relevant User Licences, We shall procure the delivery of the Software for, and provide the Media to, You.

30.2 We do not own any Intellectual Property Rights in the Software and We do not grant You any rights to use the Software. You acknowledge that User Licences are granted by the licensors of the Software direct to You and confirm that You will use Software on and subject to their terms.

30.3 You acknowledge that We are not authorised to make and have not made any representations regarding the Software to You, and You have not entered into the Statement of Works in reliance of any representations regarding the Software

30.4 The Statement of Works covers the supply of the Software by Us to You. Unless the description of the IT Supplies expressly provides otherwise, We do not advise or recommend the purchase of any software by You and assume no duties under contract or otherwise in relation to Your choice of Software.

31. Use of Software

31.1 You undertake:

31.1.1 not to use the Software until You have accepted the terms of the relevant User Licence;

31.1.2 to notify Us of any material breaches of User Licences without delay;

31.1.3 not to copy the Software (other than in accordance with the terms of a User Licence);

31.1.4 not to disassemble, decompile or reverse engineer the Software except in accordance with the terms of the User Licence, the Statement of Works or as permitted by applicable law;

31.1.5 not to translate, modify, create derivative works from, adapt, enhance or extend the Software (other than in accordance with the terms of a User Licence);

31.1.6 not to lease, rent, loan, distribute, sub-lease, transfer, or sub-license the Software (other than in accordance with the terms of a User Licence);

31.1.7 to supervise and control use of Software to ensure compliance with the terms of User Licences and the Statement of Works;

31.1.8 to ensure that Your employees and agents are notified of the restrictions contained in this Section and the terms of User Licences prior to such employee or agent using the Software; and

31.1.9 not to use the Software to provide any bureau, application service or facilities management service or use the Software to process the data of any third party.

32. Payment

32.1 Unless otherwise stated in the Statement of Works, You shall pay the Fees which relate to the Software and/or Hardware in full to Us within 30 days of the date of Our invoice without any withholding, deduction, set-off, counterclaim or cross demand. We

reserve the right to have User Licences revoked and withdraw IT Supplies if payment is not received for the Software and/or Hardware within 30 days of Our Invoice date (or in accordance with any other payment terms which are agreed between the Parties).

32.2 Time shall be of the essence in respect of Your obligations under this Clause 32.

32.3 Title to Media and/or Hardware shall not pass until full payment of the relevant Fees and all other monies due from You to Us have been paid.

32.4 In addition to the Fees (and unless the parties agree otherwise) You shall pay any delivery charges associated with the delivery of Media and/or Hardware to Us and/or to You.

32.5 Save to the extent that they are inconsistent with the terms of this Clause 32, the terms of Clause 6 apply to the Fees which relate to Software and/or Hardware

33 Delivery

33.1 Where applicable, We agree to deliver Media and/or Hardware to You. Any delivery times

33.2 provided by Us to You are estimates only and time of delivery of Media and/or Hardware shall not be of the essence.

33.3 We may deliver Media and/or Hardware in instalments.

33.4 Risk in Media and/or Hardware shall pass on delivery.

33.5 You shall be responsible (at the Your own cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If We are prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, We may levy additional charges to recover Our loss arising from this event.

34. Returns/Cancellation

As a reseller of Software and Hardware, We are subject to the return and cancellation policies of the relevant supplier of the Software and Hardware. We shall provide reasonable efforts to assist You in cancelling and/or returning the Software and/or

Hardware in accordance with the relevant return and/or cancellation policies of the supplier applicable to the Software and/or Hardware.

35. Warranty

35.1 We warrant that Media will be of satisfactory quality on delivery but otherwise all warranties and conditions that may apply to the Software are excluded to the fullest extent permitted by law.

35.2 In the event of any breach of Clause 35.1 by Us, Our sole obligation and Your sole remedy shall be to replace such deficient Media provided that this remedy will only be available to You where such deficiency has been notified to Us within 7 days of the date of delivery.

35.3 We do not manufacture the Hardware, We therefore, exclude all warranties, conditions and implied terms to the fullest extent possible in relation to such Hardware.

36. Export Control

Without prejudice to the generality of Clause 30.2, You acknowledge and undertake that the Software may be the subject of governmental controls on its use or resale and that You will observe the provisions of applicable law and User Licences relating to such controls.

37. Indemnity

You will indemnify Us against all losses, claims, demands, expenses and liabilities of any nature which We may sustain or suffer arising from a breach by You of your undertakings to Us under clauses 31 and/or 36.

SUPPLIER – MANAGED AND SUPPORT SERVICES TERMS AND CONDITIONS (“CONDITIONS”)

- 1 Supplier shall perform the services specified in the statement of work for support services (“the Statement of Works”) agreed between Supplier and the client identified in the Statement of Works (“the Client”).
- 2 The Client shall pay to Supplier the sums specified in the Statement of Work and all other sums payable hereunder (“the Price”).

3 The Client shall perform its obligations under the Statement of Works and these Conditions ("the Client Obligations").

4 The Services, the Price and the Client Obligations are subject to these Conditions.

Terms and Conditions for Support Services

1 Price

1.1 The Price and all other sums payable hereunder are exclusive of Value Added Tax and all taxes or duties which may be levied or based upon the Price or such sums or upon the Support Services, or any part thereof. Value Added Tax and all such taxes or duties (with the exception of any tax levied or based upon the income of Supplier) shall be paid by the Client as additional charges hereunder.

2 Payment

2.1 Invoices shall be submitted by Supplier in accordance with the payment schedule specified in the Statement of Work. Payment of each invoice shall be made by the Client within thirty days of the date of issue.

2.2 If the Client fails to pay any sum due under these Conditions, interest shall be charged thereon from the date of issue of the applicable invoice until the date payment be made at the rate of two per cent per annum over the Base Rate of Barclays Bank plc from time to time in force.

2.3 If the Client fails to pay any sum due under these Conditions, Supplier may, without prejudice to any other remedy, after giving the Client fourteen days' notice of its intention so to do, withdraw the provision of the Support Services or any part of them until the payment is made.

2.4 Without prejudice to any other right or remedy it may have, the Client shall not have the right to set off any liability it has to Supplier against any liability that Supplier may have to the Client.

3. Employees

3.1 The parties agree that they are each responsible for their own employees, consequently when the employees of one party are present on the premises of the other party they shall comply with any rules and regulations for the conduct of employees on those premises which are notified to them.

3.2 Supplier employees engaged in the Support Services shall at all times remain under the direction and control of Supplier.

3.3 The Client agrees that during a period from the commencement of the Support Services to twelve months after the expiry or termination of these Conditions it shall not employ or engage on any other basis or offer such employment or engagement to any of Supplier's staff who have been associated with the provision of the Support Services without Supplier's prior agreement in writing.

3.4 The Client agrees that if it employs or engages any person contrary to Clause 3.3 it shall be liable to pay to Supplier liquidated damages in an amount equal to such person's salary per annum at the time of leaving the employment of Supplier.

3.5 For the avoidance of doubt, reference to employees shall include any employees of Supplier's Affiliates, which may provide Support Services pursuant to these Conditions. "Affiliates" means any subsidiary or holding company of Supplier, and any subsidiary of such holding company.

4. The Support Services

4.1 Supplier will provide the Support Services to the Client in accordance with the Statement of Works in all material respects.

4.2 Either party may request at any time during these Conditions that a change be made to the Support Services. Each party shall have the right to reject any change requested by the other party but shall not exercise such right unreasonably. Change requests must be made in writing.

4.2 When the parties agree to implement a change requested to the Support Services, the details of that change shall be specified and confirmed in writing by the parties. Supplier shall not be obliged to implement any change until it has been confirmed in this way and until any revision to the Price and any timetable of work and/or delivery dates has also been agreed in writing.

5. Client Obligations

5.1 The performance by Supplier of the Support Services is dependent upon the Client's prompt performance of the Client Obligations which include, among others, the responsibilities described in this Clause 5.

5.2 The Client agrees to make available to Supplier an authorised representative who shall:

a be authorised to make binding decisions for the Client with regard to these Conditions, including any change to the Support Services or other variation; b provide Supplier with all information concerning the Client's operations and activities which Supplier may require to perform the Support Services; and c if requested by Supplier, nominate an individual who shall act as the point of contact with respect to the provision of the Support Services.

5.3 Where participation by, or access by Supplier to, the Client's own employees is necessary for the performance of the Support Services, the Client agrees that such employees shall:

a be available at the times agreed between the two parties; b possess the appropriate skills and experience for the tasks assigned to them; and c exercise proper skill and care in following any fault finding procedures laid down by Supplier.

5.4 Unless otherwise agreed in the Statement of Works, the Client shall keep full back up copies of the Supported System(s) (as defined in the Statement of Works) and any associated databases.

5.5 Neither the Client nor any third party shall make any modifications or enhancements to the Supported System(s), without informing Supplier in writing prior to such modifications or enhancements taking effect, and if any such modifications or enhancements are made, Supplier shall be provided with full details of those modifications and/or enhancements. The Client acknowledges that modifications and/or enhancements to the Support System(s) may require a change control to the services being provided. Supplier will not make any modifications or enhancements to the Client's infrastructure without the Client's instruction to do so.

5.6 The Client agrees at Supplier's request, to provide Supplier's employees with such facilities and access to the Client's premises as may be reasonably necessary for Supplier to perform the Support Services.

5.7 The Client shall supply Supplier without charge throughout the period of the Support Services with a complete copy of the latest issue of all documentation and other material notified by Supplier from time to time as being necessary for Supplier to perform its obligations under these Conditions including without limitation:

a all source code in relation to the application software;
b operating system manuals; and c third party
software documentation.

5.8. The Client warrants that it has all necessary authorities required to permit Supplier throughout the duration of these Conditions to receive and use the documentation and material detailed at paragraph 1 above, including the right to modify or enhance the source code of the application system and the Client undertakes to fully indemnify Supplier against any liability arising from a breach or alleged breach of this warranty

6 Additional Work or Expense: Client Default

6.1 If the Client fails or delays in fulfilling any Client Obligation, Supplier may revise the Price and any timetable of work. If this happens, Supplier shall promptly following the failure or delay provide the Client with a notice describing in reasonable detail the additional costs and expenses that have been or are likely to be incurred by Supplier as a result of the Client's failure or delay and the Client shall pay Supplier for additional costs and expenses incurred by Supplier on a time and materials basis at Supplier's then current fee rates.

7. Property Rights

7.1 To the extent that the Support Services are being provided with respect to software and systems originally provided under a separate agreement, the title and all intellectual property rights in any document, material, idea, data or other information constituting an original item developed and supplied as part of the Support Services shall be vested on the same terms as those detailed in that separate agreement.

7.2 To the extent that any document, material, idea, data or other information constituting an original item is developed by Supplier and supplied as part of the Support Services, title thereto and all intellectual property rights specifically developed by Supplier to provide the Support Services shall be vested in Supplier.

7.3 Supplier licences all such rights as described in Clause 7.2 above to the Client free of charge and on a non-exclusive, worldwide basis to such an extent as is necessary for the Client to use for the purpose of receiving the Support Services. If Supplier terminate a Statement of Works, or these Conditions in accordance with Clauses 9.1 and 9.2, this licence shall automatically terminate.

8 Confidentiality and Publicity

8.1 Each party undertakes at all times to hold in confidence for the other party, to use only for the purposes hereof and not to print, publicise or otherwise disclose to any third party, Confidential Information of the other party. "Confidential Information" of the other

party means any document, material, idea, data or other information which relates to either Supplier's or the Client's research and development, trade secrets or business affairs or which is marked as confidential and disclosed by either party to the other for the purposes of these Conditions. "Confidential Information" of the other party does not however include any document, material, data, or other information which:

a is known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party; or b is or becomes publicly known through no wrongful act of the receiving party; or c is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party; or d is independently developed by the receiving party; or e is disclosed by the other party to a third party under no obligation of confidence.

8.2 Notwithstanding Clause 8.1 above, nothing in these Conditions shall be construed to prevent or restrict Supplier from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by Supplier in the performance of these Conditions.

8.3 Supplier may refer to the Client in Supplier's publicity material as being a client of Supplier, but shall not, without the Client's permission (which shall not be unreasonably refused), publicise Supplier's work under these Conditions. The Client undertakes not to publicise work undertaken by Supplier through the use of Supplier's name without the prior consent of Supplier, which consent shall not be unreasonably withheld.

9 Term and Termination

9.1 Unless specified to the contrary elsewhere herein or in the Statement of Works, these Conditions shall come into force on the date of full execution and shall continue in force until terminated in accordance with this Clause 9. The Client may terminate these Conditions after the first full year of Support Services by providing Supplier with three (3) months prior written notification. Supplier may terminate these Conditions by giving the Client three (3) months prior written notification.

9.2 Either party may terminate these Conditions forthwith by written notice to the other party if:

a the other party shall commit a material breach of any of its obligations under these Conditions and shall not have remedied such breach within thirty days of receiving written notice of the breach; or b the other party shall become bankrupt or enter into liquidation (other than for reconstruction or amalgamation) or have a receiver

appointed of its assets or any part thereof or an administration order is served upon it.

9.3 For the avoidance of doubt, failure to meet a target SLA identified in the Statement of Works shall not in itself be a material breach.

9.4 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

10 Warranty and Limitation of liability

10.1 Supplier warrants that it will use reasonable skill and care to provide the Support Services.

10.2 Except as aforesaid, Supplier to the fullest extent permitted by law, excludes all other warranties, conditions and other terms implied by statute and common law whether express or implied (this includes but is not limited to, warranties or conditions of merchantable quality or fitness for particular purpose).

10.3 Except as provided in Clause 10.5 below, the Client agrees that Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with performance or contemplated performance of the Support Services under these Conditions or the Statement of Works shall be limited to 120% of the Price (unless any other amounts are agreed in writing in the Statement of Works).

10.4 Subject to clause 10.5, Supplier shall not in any circumstances be liable, whether in tort, contract, misrepresentation or otherwise for;

- a. loss of profits; or

- b. loss of business; or

- c. depletion of goodwill or similar losses; or

- d. loss of anticipated savings; or

- e. loss of contract; or

- f. loss of use; or

- g. loss or corruption of data or information; or

- h. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

10.5 The limitations and exclusions set out in this clause 10 shall not apply to personal injury, including death, caused by either party's negligence.

11. Force Majeure

11.1 Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under these Conditions due to any cause outside its reasonable control, including, without limitation, strikes, lock-outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, failure or delay on the part of any sub-contractor beyond the sub-contractor's reasonable control or the lack of availability of materials.

11.2 If either party is prevented from meeting any of its obligations due to any cause outside its reasonable control, it shall promptly notify the other party in writing of the circumstances and the other party shall grant a reasonable extension for the performance of these Conditions, provided however that if either party shall have been so prevented from meeting its obligations for more than thirty days following receipt of such notice, then either party may terminate these Conditions forthwith upon written notice. In the event of termination for this reason, the Client shall pay Supplier a reasonable sum for the Support Services which shall include the costs and expenses relating to materials or services obtained or ordered in connection with providing the Support Services which can not reasonably be defrayed elsewhere.

12 Notices and Other Communications

12.1 Any notice, which expression includes any other communication whatsoever which is made in accordance with these Conditions shall, without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post to the other party to the address stated on the signature page of these Conditions or to such other address as the respective party may advise by notice in writing from time to time.

12.2 Notices shall be deemed to have been properly given after three working days in the case of notices posted from the United Kingdom to a destination therein and eight working days in the case of all other notices posted internationally

13. Assignment and Delegation

13.1 No right under these Conditions shall be assigned by either party without the prior written approval of the other party. Supplier may delegate the performance of any of its obligations hereunder to any of its Affiliates and/or third parties without the Client's consent, provided however that Supplier shall remain liable in Agreement for the performance of the Support Services notwithstanding such delegation. Nothing in these

Conditions confers or purports to confer on any third party any benefit or right to enforce any term of these Conditions, and the provisions of the Agreements (Rights of Third Parties) Act 1999 (as amended or modified from time to time) are expressly excluded.

14. Waiver

14.1 No delay or failure of either party in enforcing against the other party any term or condition of these Conditions, and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under these Conditions.

15. Legal Construction

15.1 The parties have read and understand these Conditions and the Statement of Works (and any documents attached to or referred to in the Statement of Works) and agree that they together constitute the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.

15.2 If the scope of any of the provisions of these Conditions is too broad in any respect to permit enforcement to its full extent, then the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly.

15.3 In the event of any conflict or inconsistency between them, the terms of the Statement of Works will prevail over these Conditions.

15.4 No purported variation of these Conditions shall take effect unless made in writing and signed by an authorised representative of each party.

15.5 These Conditions shall be governed by English Law and the parties hereby submit to the jurisdiction of the English Courts.

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[Schedule X to be included as required]

Schedule – STAFF TRANSFER AND PENSIONS

To be finalised [relevant options to be selected] by the parties having regard to the circumstances.

1. Interpretation

1.1. Unless otherwise provided for in the Schedule or the context otherwise requires the following expressions shall have the meanings set out below:

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Client

means [].

Direct Employment Costs

means, in respect of a:

- (i) Transferring Client Employee; or
- (ii) Transferring Former Supplier Employees,

the salary, benefits and associated payrollrelated taxes (including all employer and employee National Insurance Contributions) of such Transferring Client Employee or Transferring Former Supplier Employees (as applicable).

Effective Date

[means the date of the Statement of Work.]

Employment Regulations

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations.

Former Supplier

means any supplier supplying, or which has supplied, services to the Client that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).

Relevant Transfer

means a transfer of employment to which the Employment Regulations applies.

Relevant Transfer Date

means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

Replacement Services

means any services which are the same as or substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry or termination of this Agreement, whether those services are provided by the Client internally and/or by any third party.

Replacement Supplier

means any third-party service provider of Replacement Services appointed by the Client from time to time (or where the Client is providing replacement Services for its own account, the Client).