Support Revolution

Third party support services agreement

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions have the meaning set opposite:

"Confidential Information" means: (i) all confidential, technical, scientific, or commercial information (in any form or medium and including all copies of the same) concerning past, present, and/or future transactions, dealings, projects, plans, proposals (including the Proposal), staff and other business affairs that are disclosed directly or indirectly by one party (the **"disclosing party"**) to the other (the **"receiving party"**) at any time in contemplation of or in connection with the Agreement (whether or not it is stated to be confidential at the time of disclosure); and (ii) the terms of the Agreement, in respect of which the Client shall be the receiving party; and (iii) the Client Data, in respect of which the Supplier shall be the receiving party;

"Control" means the ownership of more than 50% of the issued share capital or other equity interest or the legal power to direct or cause the direction of the general management and policies of an entity;

"Customisation" means any improvement to, or modification, customisation or extension of, the functionality or performance of any Supported Software, other than a Fix;

"Fix" means the correction of an Incident by the Supplier, including the provision to the Client of any patches or documentation that are required for or as a result of such correction;

"Incident" means any defect or error in the Supported Software, including any failure by the Supported Software to perform in accordance with the specifications provided to the Client in respect of such Supported Software;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Laws" means any applicable: (a) statute, delegated or subordinate legislation; (b) binding judgment of a court of competent jurisdiction; (c) industry code, standard or policy enforceable by law; and (d) relevant binding regulatory direction, policy or rule, in each case in force at any time during the Term in any jurisdiction applicable to the Agreement;

"Losses" means all claims, actions, proceedings, losses, liabilities, damages, costs, and expenses howsoever arising (including legal fees and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions);

"Patches" means updates to the Supported Software;

"Personnel" means, in relation to a party or a Support Partner, as applicable, that party's employees, agents, consultants and subcontractors who are involved in the performance of the Agreement;

"Proposal" means the Supplier's final signed proposal for the provision of the Services, as provided to the Client;

"Services" means the third party software support services, and (if applicable) any transition services and Trend Micro, to be provided by the Supplier to the Client under the Agreement, as more particularly described in the Proposal;

"Service Levels" means the service levels described in the Service Level Agreement;

"Service Level Agreement" means the Supplier's standard service level agreement in force from time to time;

"Similar Services" means any services that are the same as or similar to the Services to be provided under this Agreement, and/or the performance of any other obligation or activity that is the same as or similar to the obligations and/or activities to be performed by the Supplier under this Agreement;

"Support Partner" means any third party provider of support services to the Client in relation to the Systems and/or the Supported Software;

"Systems" means the Client's IT systems that incorporate the Supported Software, excluding the Supported Software itself;

"Term" means the Initial Term and any Subsequent Terms; and

"Third Party Licensor" means the third party licensor or vendor of the Supported Software.

1.2 In the Agreement, except where otherwise stated or where the context otherwise requires:

1.2.1 clause headings are included for convenience only and will not affect the construction or interpretation of the Agreement;

1.2.2 any phrase introduced by the words **"including"**, **"includes"**, **"in particular"** or similar shall not limit the generality of any preceding words;

1.2.3 any reference to a clause is to the relevant clause of the Agreement;

1.2.4 use of the singular includes the plural and vice versa;

1.2.5 any reference to **"persons"** includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);

1.2.6 the words **"in writing"** and **"written"** exclude fax and email (unless stated otherwise in the Agreement);

1.2.7 the words **"day"** and **"month"** mean calendar day and calendar month;

1.2.8 any reference to a statute or provision of a statute includes references to:

(a) that statute or provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after the Agreement;

(b) any re-enactment of that statute or provision (with or without change); and

(c) any regulation, order, code of practice or similar thing having the force of law made (before or after the Agreement) under that statute or provision or any provision falling within clauses (1.2.8(a) or 1.2.8(b));

1.2.9 references to **"indemnifying"** any person against or with respect to any circumstance shall include indemnifying and keeping it harmless, on an after tax basis, from all Losses suffered, made or incurred by it arising from or in relation to such circumstance; and

1.2.10 a reference to **"good faith"** in the Agreement means that the applicable party or parties must:

(a) not act unconscionably, use misleading or deceptive conduct nor any element of duress (including economic duress or threat of enforcing legal rights);

(b)   act honestly, providing where relevant honest and objective appraisals of any facts or circumstances;

(c)   meet with and openly discuss issues where relevant, giving due and proper consideration to the views and needs of the other party as against their own views and needs, all in a professional and responsible manner,

and for the avoidance of doubt, **"good faith"** does not mean a party is obliged to act contrary to its own interests.

2.   CONTRACT STRUCTURE

2.1   This third party support services agreement is made and entered into by **Support Revolution Limited**, a company registered in England and Wales under company number 3626045 whose registered office is at 5-6 Rivermead, Pipers Way, Thatcham, RG19 4EP UK (the **"Supplier"**) and ……………………………., a company registered in ………………. under company number …………………. whose registered office is at……………………………………………………… …………………………………………….………………………………… (the **"Client"**).

2.2   The Client and the Supplier agree to be bound by:
2.2.1   these terms and conditions (subject to clause 3.3);
2.2.2   the Proposal;
2.2.3   the Service Description; and
2.2.4   the Quotation,
(together, the **"Agreement"**).

2.3   If there is any conflict or ambiguity between the terms of the documents listed in clause 2.2, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

3.   TERM

3.1   This Agreement shall come into force on the date of this Agreement (the **"Agreement Date"**) and the Supplier shall commence the provision of the Support Services from xxx (the **"Support Commencement Date"**). The Agreement will continue for xx Months (x Year) from the Support Commencement Date (the **"Initial Term"**) unless it is terminated earlier in accordance with its terms.

3.2   Subject to clause 3.3, at the end of the Initial Term and on each anniversary thereof, the Agreement shall automatically renew unless the parties agree, at least 90 days prior to the end of the Initial Term or the relevant Subsequent Term (as the case may be) to terminate the Agreement, in which case the Agreement shall renew for a further period of twelve months (each a **"Subsequent Term"**).

3.3   Before the start of any Subsequent Term: (a) the Supplier may require the Client to agree to the Supplier's most up to date terms and conditions (in which case they shall apply from the start of such Subsequent Term); and/or (b) the parties may review the Supported Software and agree any other changes to the scope of the Services for the relevant Subsequent Term, in which case the Supplier may adjust the Charges accordingly for any Subsequent Terms

4.   CONTRACT MANAGEMENT

4.1   The Client and the Supplier shall each appoint an individual who will serve as the principal interface between the parties with respect to all issues relating to the Agreement (such individual for the Client being the **"Client Representative"** and for the Supplier being the **"Account Manager"**. The Account Manager shall also be responsible for the co-ordination of all matters relating to the Services. Each party may replace such individual from time to time on written notice to the other party.

5.   SUPPLY OF THE SERVICES

5.1   The Client appoints the Supplier to provide, and the Supplier shall provide, the Services in accordance with the terms of this Agreement.

5.2   Any performance dates will be estimates only and time will not be of the essence for the performance of the Services.

5.3   Whilst the Supplier may undertake a review of the Client's software licences provided by a Third Party Licensor, and provide commentary on such licences as part of the Services at no additional cost, under no circumstances will the Supplier be deemed to be offering the Client a licence to use software similar to that provided by such Third Party Licensor.

5.4   During the Initial Term the Supplier shall: (a) deliver a more responsive Service than the relevant Third Party Licensor with a dedicated support team tailored to the Client's support needs; (b) resolve the Client's issues with supported products; (c) improve the Client's system security; (d) maintain interoperability; (e) defend licence compliance issues if the Client is audited by a relevant Third Party Licensor as a direct result of the provision of the Services; (f) not infringe the Intellectual Property Rights of the relevant Third Party Licensor; and (g) support the Client's systems and customisations with no forced upgrades and no de-support dates, and if the Supplier breaches this clause 5.4 during the Initial Term and the Client wishes to terminate this Agreement and return to the provision of support services by the applicable Third Party Licensor, the Supplier shall provide reasonable assistance to the Client in relation to such return and shall reimburse the Client for any Fees, as defined in clause 16.8, (which shall be the Client's sole and exclusive remedy for any breach of this clause 5.4).

6.   THE SUPPORTED SOFTWARE

6.1   The Supplier shall provide the Services in respect of:
6.1.1   the software listed in the Proposal;
6.1.2   any Customisations (subject always to clause 6.2);
6.1.3   any Fix and/or Patch provided by the Supplier to the Client under the Agreement; and
6.1.4   any other software which the Supplier and Client agree in writing from time to time in accordance with clause 15, provided that period in respect of which support is provided for any such additional software shall be consistent with the Term,
(together, the "**Supported Software**").

6.2   If an Incident arises in respect of any Customisation implemented by or on behalf of the Client on or after the Support Commencement Date, and such defect occurs within the first three (3) months of such implementation, the Client shall, in the first instance, require the developer of such Customisation to remedy the Incident.

7.   ACCESS TO SYSTEMS

7.1   The Supplier and the Supplier's Personnel may gain access to the Client's test version of its Systems (**"Test Systems"**), either directly or remotely ("**Access**") where such Access is granted by the Client, and may only utilise that Access as is required for the proper performance of the Supplier's obligations under the Agreement. For clarity, the parties acknowledge that the Supplier's Access shall, unless otherwise granted by the Client, be limited to access to and use of the Test Systems and the Supported Software in a test environment.

7.2   Where the Client does not grant Access, the Client acknowledges that the Supplier: (i) may not be able to provide all or part of the Services and/or any required Patches or Fixes; and (ii) shall not be liable for any such failure (including any failure to meet the Service Levels and/or any liability to pay Service Credits).

7.3   Where the Client grants the Supplier Access, the Client hereby grants the Supplier a non-exclusive, sub-licensable, royalty-free licence to access and use the Test Systems and the Supported Software in a test environment for the purposes of the Supplier providing the Services and otherwise performing its obligations and exercising its rights under and in connection with this Agreement. The Systems shall remain the property of the Client (or its licensors or lessors).

7.4   The Supplier and the Supplier's Personnel shall comply with all Client policies agreed in writing by the Supplier from time to time in relation to Access.

7.5   The Supplier shall use reasonable endeavours not to introduce any software virus, spyware, Trojan horse, malware or other limiting or disabling code, design or routine that allows unauthorised use of, or access to, or that is otherwise harmful to, any IT system or data (together a **"Virus"**) into the Systems. This obligation may be discharged by maintaining and operating reasonably up to date versions of virus protection and firewall software which are of reasonably acceptable industry standards.

8.   CLIENT OBLIGATIONS

8.1   The Client shall:
8.1.1   co-operate with the Supplier in all matters relating to the Services and provide in a timely manner such information relating to the System and Supported Software or access to

Client Personnel as the Supplier may require, and shall ensure that any such information is and remains complete and accurate in all respects throughout the Term;

8.1.2 where applicable and subject to clause 7.1, ensure that the Supplier is able to remotely access the Test System and the Supported Software in a test environment (unless agreed otherwise) in order to perform the Services (including maintaining appropriate environmental and operational conditions, and meeting any system requirements specified by the Supplier from time to time);

8.1.3 be solely responsible for ensuring it has all necessary licences and consents in relation to the System and the Supported Software (including Third Party Licensor licences) to enable the Supplier to perform the Services in compliance with this Agreement and all relevant Laws and without infringing the Intellectual Property Rights of any third party in relation to the System and/or the Supported Software;

8.1.4 not introduce any Virus into the Supplier's systems;

8.1.5 without affecting its other obligations under the Agreement, comply with all applicable Laws with respect to its activities under the Agreement, including ensuring that all Client Data complies with all applicable Laws;

8.1.6 carry out all its responsibilities set out in the Agreement in a timely and efficient manner; and

8.1.7 to the extent permitted by applicable Laws and except as otherwise expressly provided in this Agreement, be solely responsible for (i) procuring, maintaining and securing its network connections and telecommunications links from its Systems to the Supplier's data centres, and (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

8.2 The Client shall not use the Services (including by accessing, storing, distributing or transmitting any material through its use of the Services) in a way that is unlawful (including promoting or facilitating unlawful activity), offensive, immoral, harmful, threatening, defamatory, obscene, infringing, harassing, or discriminatory. The Supplier may, without liability to the Client and without prejudice to its other rights or remedies, disable the Client's access to the Services if the Client is in breach of this clause 8.2.

8.3 The Client shall not:

8.3.1 except as may be allowed by any applicable Laws which are incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
(a) attempt to copy, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; or
(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;

8.3.2 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Services, or otherwise make them available to any third party; or

8.3.3 attempt to obtain, or assist third parties in obtaining, access to the Services.

8.4 The Client shall prevent any unauthorised access to, or use of, the Services. In the event of any such unauthorised access or use, the Client shall notify the Supplier immediately.

9. DEFAULT BY THE CLIENT

9.1 To the extent that the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by a failure or delay by the Client or any of the Support Partners in: (i) complying with this Agreement (including any Client responsibilities set out in the Proposal); and/or (ii) granting the Supplier Access, the Supplier shall be entitled to an extension of time in respect of the performance of the affected obligation commensurate with the delay caused by the Client's or its Support Partner's failure to so comply or delay in complying or failure to grant or delay in granting Access.

10. RELATIONSHIP WITH SUPPORT PARTNERS

10.1 **THE CLIENT SHALL:**
10.1.1 on or immediately after the Support Commencement Date provide the Supplier with details of all Support Partners;
10.1.2 procure that the Supplier is provided with such access to and assistance from all Support Partners as is set out in the Service Level Agreement or otherwise required by the Supplier for the purposes of providing the Services;
10.1.3 procure that all Support Partners shall co-operate fully with the Supplier as reasonably required for the purposes of providing the Services; and
10.1.4 ensure that its Support Partners do not commit any act or omission which would invalidate the Client's agreement with a Third Party Licensor.

10.2 **THE CLIENT SHALL ENSURE THAT ITS SUPPORT PARTNERS:**
10.2.1 comply with the terms of the Agreement;
10.2.2 fully understand the scope of the Services provided by the Supplier;
10.2.3 raise any issues relating to the Supported Software, including any Incidents, on the Client's behalf with the Supplier in the first instance in accordance with the Service Level Agreement; and
10.2.4 do not raise any such issues or Incidents in relation to the Supported Software with any Third Party Licensor without the Supplier's prior written consent.

10.3 Where the Supplier has consented in writing to its Confidential Information being disclosed to a Support Partner under clause 19.1.2, the Client shall ensure that: (a) the Support Partner is made aware of the confidential nature of the Confidential Information; and (b) the Client and the Support Partner have entered into legally binding confidentiality and non-use obligations equivalent to those set out in clause 19.

10.4 Where any issue or Incident is raised by a Support Partner with the Supplier under clause 10.2, the Supplier shall provide support services (as described in the Proposal) to the Support Partner (including, where appropriate, by providing any Fixes) on the behalf of the Client.

11. RELATIONSHIP WITH THIRD PARTY LICENSORS

11.1 Any Intellectual Property Rights in the Supported Software which are proprietary to a Third Party Licensor shall at all times remain vested in such Third Party Licensor.

11.2 It is the Client's sole responsibility to ensure that it complies with any terms and conditions imposed upon it by any Third Party Licensor in relation to the Supported Software or the support thereof ("**Licence Terms**").

11.3 Except as expressly set out in the Agreement or agreed by the parties in writing, the Supplier shall not be obliged itself or on behalf of the Client to download, store or receive from the Client any software, documentation or other work or material which is proprietary to a third party (including: patches, object and source code; documentation and training materials; user interfaces and screen captures of those interfaces; system logs, application logs, traces, or diagnostic reports; design documents; data including metadata, demo data, training data; and/or formatted output and reports). The Supplier shall be relieved of its obligations to perform the Services to the extent that the performance is reliant upon the Supplier downloading, storing or receiving any such materials.

12. CLIENT DATA

12.1 The Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of any of the Client's proprietary information or images in the Systems or otherwise provided by the Client to the Supplier in connection with the Services (the "**Client Data**").

12.2 The Supplier shall not be responsible for the back-up of any Client Data, and the Client hereby acknowledges that it is responsible for maintaining its own database and back-up of any Client Data. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier in accordance with its standard disaster recovery procedure (for clarity, to the extent such loss or damage was caused wholly and directly by the Supplier). The Supplier shall not be responsible for any

loss, destruction, alteration or disclosure of Client Data caused by the Client or any third party.

12.3 The Client shall defend, indemnify and hold harmless the Supplier and any company or other entity which directly or indirectly Controls, is Controlled by or is under common Control with the Supplier against any Losses arising out of or in connection with: (a) the Client's (or the Support Partner's) use of the Services in breach of this Agreement; (b) any claim that the Supplier's (or any of its subcontractor's) use of the Client Data in accordance with the Agreement infringes any applicable Laws or the Supplier's or a third party's Intellectual Property Rights; and (c) any claim that the Supplier's provision of the Services, or the exercise of the Supplier's rights or the performance of its obligations, under or in connection with this Agreement infringes the rights of any third party, including any breach of clause 8.1.3 and/or 17.3.2.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in the Client Data are and will remain, as between the parties, the property of the Client. The Client hereby grants to the Supplier a non-exclusive, sub-licensable, royalty-free licence to use the Client Data as necessary to carry out the Supplier's obligations under the Agreement.

13.2 All Intellectual Property Rights in the Services and in any portal or dashboard provided by the Supplier in connection with the Services will belong to the Supplier. The Supplier hereby grants to the Client a non-exclusive, limited, royalty-free licence to use such portal and dashboard as necessary during the Term to enjoy the benefit of the Services.

13.3 All Intellectual Property Rights in any Customisations developed by the Supplier and in any Fixes are and will remain, as between the parties, the property of the Client. The Client hereby grants to the Supplier a non-exclusive, perpetual, irrevocable, sub-licensable, worldwide, royalty-free licence to use such Customisations and Fixes (including after termination or expiry of the Agreement) as necessary for the Client to enjoy the benefit of the Supported Software and/or Services (as applicable).

13.4 Neither party will have any right or licence in respect of the other's Intellectual Property Rights other than as expressly set out in the Agreement. On termination or expiry of the Agreement (or on cancellation or discontinuance of any Services to which those Intellectual Property Rights relate) all rights and licences granted in respect of such Intellectual Property Rights shall automatically terminate.

14. IPR INFRINGEMENT

14.1 In performing the Services, the Supplier shall not be obliged to take any action which may infringe the Intellectual Property Rights of any Third Party Licensor or any other third party. Subject to clause 14.3, if any Services, Fixes or Patches provided by the Supplier are held or alleged to infringe, or the Supplier believes that they may infringe, a Third Party Licensor's or any other third party's Intellectual Property Rights (an **"Infringing Item"**), the Supplier may, as the Client's sole remedy and at the Supplier's option and expense, either: (a) modify the Infringing Item so that it becomes non-infringing while otherwise substantially complying with the requirements of the Agreement; or (b) replace the relevant Infringing Item with other non-infringing items having a capability materially equivalent to the Infringing Item.

14.2 The Client shall notify the Supplier promptly upon becoming aware of any existing or alleged existence of an Infringing Item.

14.3 In no event shall the Supplier be liable to the Client under clause 14.1 to the extent that any Infringing Item arises as a result of:

14.3.1 a breach of the Licence Terms or misuse of the Supported Software by the Client;

14.3.2 a modification of the Services, a Fix or a Patch by anyone other than the Supplier;

14.3.3 use of the Services in a manner not specifically permitted by the Agreement or contrary to the instructions given to the Client by the Supplier from time to time; or

14.3.4 use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority or third party.

15. CHANGE CONTROL

15.1 Subject to clause 15.2, if either party requests a change to the Services or the Agreement, the Supplier shall, within a reasonable time, provide a written (including by e-mail) estimate to the Client of:

15.1.1 the likely time required to implement the change;

15.1.2 any variations to the Charges arising from the change; and

15.1.3 any other impact of the change on the terms of the Agreement.

15.2 The Supplier may amend the Services as necessary to comply with any applicable Laws, or if the amendment will not materially affect the nature or quality of the Services.

15.3 If the Supplier requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.

15.4 If the Client wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless the parties have agreed in writing any necessary variations to the Charges and any other relevant terms of the Agreement to take account of the change.

16. CHARGES AND PAYMENT

16.1 In consideration of the provision of the Services, the Client shall pay to the Supplier the charges for the Services, as set out in the Quotation, and any other charges agreed between the parties in respect of services to be provided by the Supplier (together, the **"Charges"**) in accordance with this clause 16.

16.2 The Client may increase the number of users accessing the Services by up to 10% during the term of a Proposal without incurring additional charges. Where the Client requests a decrease in the number of users accessing the Services by more than 10% from that set out in the relevant Proposal, the Supplier shall adjust the Charges accordingly for any Subsequent Term.

16.3 The Supplier shall be entitled to invoice the Charges annually in advance on or around the Agreement Date and on each anniversary thereof.

16.4 The Client shall pay each invoice submitted to it by the Supplier in full, in the currency in which the invoice is issued and in cleared funds, within thirty (30) days of the date of the invoice. Time for payment of the Charges by the Client shall be of the essence of the Agreement. Payments shall be made by electronic BACS transfer or such other method as is specified by the Supplier from time to time.

16.5 All amounts payable under the Agreement shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes, which shall be paid at the rate and in the manner for the time being prescribed by law and which shall be added by the Supplier to its invoices at the appropriate rate.

16.6 If the Client disputes any Charges, it shall nevertheless pay the relevant invoices in full and the parties shall attempt to resolve the dispute in accordance with clause 27. The Client may not deduct or withhold payment of any sum by reason of any set-off of any claim or dispute with the Supplier whether relating to the quality or performance of the Services or otherwise.

16.7 Without limitation to any other right or remedy available to the Supplier, if the Client has failed to pay any invoice issued under the Agreement in accordance with this clause 16 by the due date for payment, the Supplier may, without liability to the Client, suspend the provision of the Services.

16.8 Subject to clause 16.9, the Supplier shall reimburse the Client for any reinstatement of service fees levied by a Third Party Licensor ("**Fees**") and refund any Charges payable under this Agreement by the Client during the Initial Term if:

16.8.1 the Client enters into this Agreement after having been provided Similar Services by a Third Party Licensor and that Third Party Licensor levies any Fees on the Client as a direct result of the Client entering into this Agreement; or

16.8.2 the Client is approached by a Third Party Licensor during the Initial Term and is required by the Third Party Licensor to enter into an agreement with that Third Party Licensor for Similar Services as a direct result of entering into this Agreement (save where the Client is so required as a result of it being in breach or alleged breach of an agreement with such Third Party Licensor),

which the Client can reasonably evidence within 7 days of a request from the Supplier.

16.9 The Supplier shall be under no obligation to make any payment to the Client under clause 16.8 where:

16.9.1 the Client is in breach of clause 10.1.4;

16.9.2 the Client uses the Supported Software in any manner other than that permitted by the licence terms of the relevant Third Party Licensor; and/or

16.9.3 the Client and/or its Support Partners apply a Patch to the Supported Software (save where permitted by the Supplier in writing to do so).

17. WARRANTIES

17.1 Each party warrants to the other party that:

17.1.1 it has full capacity, power and authority to enter into and perform its obligations under the Agreement and has no conflicting obligations to any third party (whether contractual or otherwise); and

17.1.2 the Agreement is executed by a duly authorised representative of the that party.

17.2 The Supplier warrants to the Client that:

17.2.1 the Services will be performed with reasonable skill and care; and

17.2.2 in providing the Services, it will not knowingly cause the Client to breach the Licence Terms.

17.3 The Client warrants and represents to the Supplier that:

17.3.1 in performing the Client's obligations under the Agreement, it will exercise reasonable skill and care;

17.3.2 to the best of its knowledge, having made reasonable exhaustive enquiries and investigation, it has in place and shall maintain in place during the Term all licences of the Supported Software from all relevant Third Party Licensors, and any other licences, consents, other permissions, necessary to enable the Client to receive the benefit of the Services in accordance with the Agreement and has full authority to license or sub-license the Supported Software to the Supplier to the extent necessary for the purposes of providing the Services;

17.3.3 by entering into, and performing its obligations under, the Agreement, including by permitting the Supplier to access and/or use the Supported Software for the purposes of providing the Services, the Client will not be in breach of any Licence Terms or other applicable agreement; and

17.3.4 the performance of the Services by the Supplier in accordance with the Agreement will not infringe the Intellectual Property Rights of any Third Party Licensor or any other person.

17.4 The Supplier shall not be liable for any failure to comply, or delay in complying, with its obligations under clause 17.2 or the Agreement to the extent such failure or delay is caused by the Client's or a Support Partner's breach of the Agreement (including a failure to comply, or delay in complying, with any Client responsibilities set out in the Proposal) or use of the Services contrary to the Supplier's instructions and/or the terms of the Agreement. If the Services do not comply with clause 17.2, the Supplier will, at its expense, use reasonable endeavours to correct any such non-compliance promptly. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of its obligations under clause 17.2.

17.5 The Supplier:

17.5.1 does not warrant or represent that the Client's use of the Services will be uninterrupted or error-free;

17.5.2 is not responsible for the Client's use of the Services; and

17.5.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

17.6 Except for those set out in the Agreement, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

18. LIMITATION OF LIABILITY

18.1 Nothing in the Agreement shall limit or exclude the liability of either party for:

18.1.1 death or personal injury resulting from negligence;

18.1.2 fraud or fraudulent misrepresentation; or

18.1.3 any other liability which cannot be limited or excluded by law.

18.2 Subject to clause 18.1, the Supplier shall not in any circumstances have any liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

18.2.1 loss of profits;

18.2.2 loss of anticipated savings;

18.2.3 loss of business opportunity;

18.2.4 loss of or damage to goodwill or reputation;

18.2.5 loss of or damage to (including corruption of) data; or

18.2.6 indirect, consequential or special loss or damages.

18.3 Subject to clauses 18.1 and 18.2, except as set out in clause 18.1, the Supplier's total liability to the Client, whether in contract (including by way of indemnity), tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to and will in no circumstances whatsoever exceed a sum of 100% of the total Charges paid by the Client to the Supplier under the Agreement in the Contract Year in which the liability arose. For the purposes of this clause, a **"Contract Year"** means the consecutive period of twelve (12) months commencing on the Support Commencement Date and each anniversary thereof.

18.4 The Client acknowledges that the limitations and exclusions set out in this clause 18 reflect the level of the Charges and the allocation of risk between the parties. Each party agrees that the exclusions and limitations of liability contained in this clause 18 have been agreed in the context of the other provisions of the Agreement and satisfy the requirement of reasonableness within the meaning of the Unfair Contract Terms Act 1977.

18.5 The Supplier shall maintain in force, during the term of the Agreement the following insurance policies:

18.5.1 employer's liability insurance for a minimum amount of cover of £10 million on a single event or series of related events in a single calendar year;

18.5.2 professional indemnity insurance for a minimum amount of cover of £5 million on a single event or series of related events in a single calendar year; and

18.5.3 public liability insurance for a minimum amount of cover of £10 million on a single event or series of related events in a single calendar year.

19. CONFIDENTIAL INFORMATION

19.1 Subject to clauses 19.2 to 19.4, a receiving party agrees during the Term and thereafter:

19.1.1 to keep the Confidential Information of the other party in strict confidence and to take all reasonable precautions to prevent the unauthorised disclosure of it to any third party;

19.1.2 not to disclose any of the other party's Confidential Information in whole or in part to any third party except with the prior written consent of the disclosing party or as otherwise expressly permitted by any other clause of the Agreement; and

19.1.3 not to use any of the Confidential Information for any purpose other than as necessary to fulfil its obligations under the Agreement without the prior written consent of the disclosing party.

19.2 The receiving party may disclose the Confidential Information to such of its Personnel or legal or professional advisors who reasonably require access to it for the purpose of fulfilling the receiving party's obligations under the Agreement provided that before any of the Confidential Information is disclosed to them, they are made aware of its confidential nature and that they are under a legally-binding obligation to the receiving party to treat that Confidential Information in the strictest confidence which is equivalent to the terms of the Agreement. The receiving party will be liable to the disclosing party for any disclosure or misuse of the Confidential Information by the receiving party's Personnel or advisors.

19.3 The obligations of confidence and non-use set out in clause 19.1 will not apply to any Confidential Information which was at the time of disclosure or other becomes:

19.3.1 published, known publicly or otherwise in the public domain or known to and at the free disposal of the receiving party in circumstances in which the receiving party has no reason to believe that there has been a breach of an obligation of confidence owed to the disclosing party; or

19.3.2 is independently developed by or on behalf of the receiving party without use of or reliance on the Confidential Information received from the disclosing party.

19.4 Neither party will be in breach of its obligations under clause 19.1 to the extent that it is required to disclose any Confidential Information of the other under any Law or by or to a court or other public, regulatory or financial authority that has jurisdiction over it, provided that unless prohibited by any Law from doing so the receiving party gives the disclosing party written notice prior to disclosing any of the Confidential Information and that the disclosure is made only to the extent required and for the purpose of complying with the requirement and that the receiving party takes all reasonable measures to ensure, as far as it is possible to do so, the continued confidentiality of any Confidential Information so disclosed.

20. PUBLICITY

20.1 The Supplier may refer to the Client as being a client of the Supplier, including on its website and in customer reference lists and sales presentations. The Client hereby grants the Supplier a perpetual, irrevocable licence to use the Client's logo for such purpose.

20.2 The Client hereby agrees to act as a reference for the Supplier and the Supplier shall be entitled to write and publish a case study about its provision of the Services to the Client.

21. DATA PROTECTION

21.1 For the purposes of this clause, **"Privacy and Data Protection Laws"** means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 (**"EU GDPR"**); (ii) GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**); (iii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the EU GDPR; (iv) in the UK, the Data Protection Act 2018 (**"DPA"**); (v) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); and (vi) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time; and the terms "data subject", "personal data", "processing", "processor" and "controller" shall have the meanings set out in the DPA;

21.2 Each party shall comply with the provisions and obligations imposed on it by the Privacy and Data Protection Laws when processing personal data in connection with this Agreement. Such processing shall be in respect of the following:
21.2.1 **Nature and purpose of processing**: incidental access to personal data in the performance of the Services;
21.2.2 **Categories of personal data and data subjects**: such personal data as is held in any IT environment to which the Supplier to which the Supplier is granted access in order to perform the Services, and the individuals to which such personal data relates;
21.2.3 **Duration**: only so long as necessary for the purposes of providing the Services.

21.3 To the extent that a party processes any personal data on behalf of the other party, the processing party shall: (a) comply with the provisions and obligations imposed on a processor by the UK GDPR and/or EU GDPR (as applicable), including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, this Agreement as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of this Agreement; and (b) not disclose any personal data to any data subject or to a third party other than at the written request of the other party or as expressly provided for in this Agreement.

21.4 If either party receives any complaint, notice or communication which relates to the processing of personal data by the other party or to either party's compliance with the Privacy and Data Protection Laws, or if any Personal Data processed in connection with this Agreement is subject to a personal data breach (as defined in the UK GDPR), the relevant party shall immediately notify the other party and provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

22. EXPORT

22.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Agreement (or any products,

including software, incorporating any such data) in breach of any applicable export control Laws ("**Export Control Laws**").

22.2 Each party undertakes:
22.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
22.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

23. TERMINATION

23.1 If in any six (6) month period the Supplier fails to meet the Service Level threshold for Priority 1 Incidents on three (3) occasions, the Client may terminate the Agreement by written notice, such notice to be served no later than three (3) months after the end of such six (6) month period, provided that the Client has notified the Supplier of the Supplier's failure to meet the relevant Service Level threshold.

23.2 Either party may at any time terminate the Agreement and/or cancel or discontinue any Services (in whole or in part) with immediate effect by giving written notice to the other party if:
23.2.1 the other party fails to pay any amount due under the Agreement on the due date for payment and such amount remains unpaid for not less than fourteen (14) days after the due date for such payment;
23.2.2 the other party commits a material breach of any term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing (including by e-mail) to do so;
23.2.3 the other party or any of its holding companies becomes insolvent or has a receiver, administrative receiver, administrator or similar officer appointed or applies for or has called a meeting of creditors or resolves to go into liquidation (except for a bona fide amalgamation or reconstruction while solvent where the resulting entity agrees to be bound by and assumes that party's obligations under the Agreement) or has a petition lodged against it in relation to any potential insolvency which is not successfully opposed within thirty (30) days of being lodged or an application is made to appoint a provisional liquidator of the other party or an administration order or notice of intention to appoint an administrator is given in relation to the other party or a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with or assignment for the benefit of any of the other party's creditors or any event analogous to any of the foregoing occurs in any jurisdiction; or
23.2.4 the other party ceases or threatens to cease to carry on its business.

23.3 The Supplier may, without prejudice to its other rights or remedies, terminate the Agreement immediately by notice to the Client if the Client:
23.3.1 undergoes a change of Control;
23.3.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
23.3.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.

23.4 The Client may terminate the Agreement by giving the Supplier at least six months' written notice, provided that the Client shall, within thirty days of termination of the Agreement under this clause 23.4, pay to the Supplier all unpaid Charges that would otherwise have been due to the Supplier in the Initial Term and each Subsequent Term (as applicable) but for such termination.

24. CONSEQUENCES OF TERMINATION

24.1 Termination or expiry of the Agreement shall not limit any of the parties' rights, remedies, liabilities and obligations which have accrued as at termination or expiry. Other than as set out in the Agreement, neither party shall have any further obligation to the other under the Agreement after its termination.

24.2 On termination or expiry of the Agreement for any reason:
24.2.1 the Client shall immediately cease use of the Services;

24.2.2 save to the extent a party is required to retain a copy under applicable Laws or pursuant to its bona fide internal record-keeping policies, each party shall delete or return (at the other party's option) the other party's Confidential Information;

24.2.3 the Client shall immediately pay any outstanding unpaid invoices and interest due to the Supplier; and

24.2.4 the Client shall not be entitled to any refund of Charges.

24.3 If requested by the Client, and save where the Supplier has terminated this Agreement for cause, the Supplier will (at the Supplier's then current rates) provide the Client with such reasonable assistance as is specified in the any exit plan that may be agreed in writing between the parties in relation to the migration of the Services to the Client or to any replacement supplier for such period as the parties may agree in writing.

24.4 Notwithstanding the expiry or termination of the Agreement for any reason, it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after expiry or termination, including clauses 1, 13.3 18, 19, 23.4, 24, 26, 27, 28, 29, 30, 32, 33.

25. NON-SOLICITATION

25.1 Neither party shall, without the prior written consent of the other party, at any time from the date of the Agreement to the expiry of six (6) months after the end of the Term, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, employed by the other party during the Term. This clause 25.1 will not apply to and shall not prevent any party from hiring any person by means of an advertising campaign which is not specifically targeted at any of the staff of the other party.

26. NOTICES

26.1 Any notice to be given under the Agreement must be in writing (including e-mail) and may be delivered to the other party by any of the methods set out in the left hand column below to (in the case of the Supplier) 5-6 Rivermead, Pipers Way, Thatcham, Berks, RG19 4EP (addressed FAO Chief Commercial Officer and a copy sent to info@supportrevolution.com) and (in the case of the Client) to the Client's registered office address (or such other address or email address as is notified by either party from time to time in accordance with this clause), and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By pre-paid first class post or recorded delivery	the second working day after posting in the country of receipt
By email	one hour after completion of transmission by the sender (save where the email receives an automated response that it is undelivered or undeliverable in which event this deeming provision shall not apply)

27. DISPUTE RESOLUTION

27.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of the Agreement ("**Disputes**").

27.2 In relation to any Dispute a party may follow the dispute resolution procedure set out in this clause:

27.2.1 either party may give to the other written (including e-mail) notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**)", together with relevant supporting documentation. On service of the Dispute Notice the Account Manager and the Client Representative shall attempt in good faith to resolve the Dispute; and

27.2.2 if the Account Manager and the Client Representative are for any reason unable to resolve the Dispute within fourteen (14) days of service of the Dispute Notice, the Dispute may be referred to a director of the Supplier and a director of the Client, who shall attempt in good faith to resolve it.

28. ASSIGNMENT AND SUBCONTRACTING

28.1 The Client shall not assign, novate, transfer, charge, sublicense, subcontract or otherwise deal in or dispose of any of its rights and obligations under the Agreement, in whole or in part, without the Supplier's prior written consent.

29. THIRD PARTY RIGHTS

29.1 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement is not subject to the consent of any person that is not a party to the Agreement.

29.2 No term of the Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

30. FORCE MAJEURE

30.1 The Supplier shall not in any circumstances be in breach of the Agreement nor liable for any delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from any event beyond its reasonable control (each a "**Force Majeure Event**") and, and in such circumstances the Supplier shall be entitled to a reasonable extension of the time for performing such obligations.

30.2 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than twelve (12) weeks, then either party may, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the other party.

31. ANTI-CORRUPTION AND ANTI-BRIBERY

31.1 The Supplier shall:

31.1.1 comply, and shall ensure that its Personnel comply, with all applicable Laws relating to anti-bribery and corruption, including the Bribery Act 2010 ("**Relevant Requirements**");

31.1.2 have and maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the Relevant Requirements;

31.1.3 promptly report to the Client 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 Agreement; and

31.1.4 notify the Client in writing (including by e-mail) if a foreign public official (as defined in the Bribery Act 2010) becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.

32. GENERAL

32.1 The rights and remedies provided by the Agreement are cumulative and are additional to any right, power or remedy provided under general law or otherwise.

32.2 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

32.3 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 the minimum modification necessary to make it legal, valid and enforceable.

32.4 Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to the Agreement and the transactions contemplated by it.

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

32.6 Any waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

32.7 No failure to exercise or delay in exercising any right or remedy provided under the Agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

32.8 No single or partial exercise of any right or remedy under the Agreement shall prevent or restrict the further exercise of that or any other right or remedy.

32.9 Nothing in the Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise bind the other party in any way.

32.10 Except as expressly provided, no terms and conditions, standard or otherwise, contained on any invoice, purchase order, order form, licence or other document of the Client shall apply to the subject matter of the Agreement unless incorporated as a variation agreed in writing between the parties and signed by the relevant representatives of each party.

32.11 The Agreement and the documents referred to in it constitute the whole Agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement. The Client acknowledges that:

32.11.1 in entering into the Agreement it did not rely (and has not relied) on any representation (whether negligent or innocent), statement or warranty (in each case whether written or oral) of any kind made or agreed to by any person (whether a party to the Agreement or not) other that those expressly set out in the Agreement; and

32.11.2 the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for breach of contract under the Agreement.

32.12 The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Agreement, but all the counterparts shall together constitute the same agreement.

32.13 Each party shall bear its own costs and expenses (including legal fees) associated with the preparation of the Agreement.

33. GOVERNING LAW AND JURISDICTION

33.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, performance or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

This Agreement has been signed by a duly authorised representative of each party on the date appearing below.

Signed for and on behalf of	**Signed for and on behalf of** **Support Revolution Limited**
Signature: Name: Title: Date:	Signature: Name: Title: Date: