



MASTER SERVICES AGREEMENT - STANDARD (the "Agreement")

PARTIES

Supplier: **Advania UK Limited** incorporated and registered in England and Wales with registered number 03645998 whose registered office is at Lowry Mill, Lees Street, Swinton, Manchester, England, M27 6DB (the "**Supplier**").

Client: **[CLIENT NAME]** incorporated and registered in England and Wales with company number [ENTER CO REG NUMBER] whose registered office is at [ENTER REGISTERED ADDRESS] (the "**Client**").

BACKGROUND

- (A) The Supplier has developed and will provide the Services.
- (B) The Client wishes to use the Supplier's Services in its business operations
- (C) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of the Contract (as defined below).

The following conditions apply to any Contract between the Supplier and the Client.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In the Contract, the terms and expressions shall have the meanings set out in Annex One.
- 1.2 In construing the Agreement, unless otherwise expressly specified:
 - 1.2.1 references to clauses, sub-clauses, paragraphs, sub-paragraphs, are to clauses and paragraphs of the Agreement;
 - 1.2.2 use of either gender includes the other gender, and use of the singular includes the plural and vice versa;
 - 1.2.3 a reference to any statute or statutory provision shall be construed as a reference to the same as it may, from time to time, be amended, modified or re-enacted;

- 1.2.4 references to times are to London, England times, except where expressly stated to the contrary;
- 1.2.5 a reference to any other document in the Agreement is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of the Agreement) from time to time;
- 1.2.6 headings and titles are for convenience only and do not affect the interpretation of the Agreement;
- 1.2.7 references to “writing” include references to any method of representing or reproducing words in a legible and non-transitory form whether sent or supplied in electronic form or otherwise and “written” shall be construed accordingly; and
- 1.2.8 Each Service shall be provided (and shall be binding with the following order of precedence (in decreasing order) to the extent of such conflict or inconsistency) in accordance with:
 - (a) the VCSS;
 - (b) the relevant SOF or SOW for that Service;
 - (c) the terms set out in the respective Schedules;
 - (d) and the clauses of this Agreement.

2. **PROVISION OF SERVICES**

- 2.1 Unless otherwise stated in the relevant SOF or SOW, each Service shall be provided on and from the Service Start Date until the Service End Date (unless terminated earlier in accordance with the Contract).

3. **SUPPLIER OBLIGATIONS**

- 3.1 The Supplier shall:
 - 3.1.1 provide the Services to the Client in accordance with the Contract (including, without limitation, the Service Levels);
 - 3.1.2 supply all elements of the Services in accordance with Good Industry Practice;

- 3.1.3 perform the Services in compliance with all Applicable Law;
 - 3.1.4 comply with reasonable health and safety security requirements of the Client, provided such requirements have been notified to the Supplier in writing in advance;
 - 3.1.5 act in accordance with all reasonable written instructions given to it by the Client provided such instructions are not inconsistent with the Contract or Applicable Laws;
 - 3.1.6 use reasonable endeavours to minimise disruption to the business of the Client while performing the Services;
 - 3.1.7 use personnel who are suitably skilled and experienced and in sufficient number to ensure that the Services are provided in accordance with the Contract;
 - 3.1.8 use reasonable endeavours to meet any performance and/or delivery dates specified in the SOF or SOW but the Parties agree that time shall not be of the essence of this Contract; and
 - 3.1.9 perform the Services within a reasonable time if no performance and/or delivery dates are specified in the SOF or SOW.
- 3.2 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances:
- 3.2.1 providing any other services not covered in an applicable SOF or SOW; and
 - 3.2.2 training in use of any Software updates and/or upgrades; and
 - 3.2.3 providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and/or upgrade(s) supplied or offered to the Client pursuant to the call for technical support.
- 3.3 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet.

4. **CLIENT OBLIGATIONS**

- 4.1 The Client shall:

- 4.1.1 co-operate with the Supplier in the provision of the Services;
- 4.1.2 provide, in a timely manner, access to such information, data, premises, personnel, office accommodation and other facilities as the Supplier may reasonably require for the performance of the Services;
- 4.1.3 allow the Supplier the use of the Client System to the extent necessary to enable it to provide the Services;
- 4.1.4 comply with such of the Dependencies as applicable to the Client;
- 4.1.5 ensure the Client System is virus free;
- 4.1.6 ensure that it has access to a fast and resilient internet service;
- 4.1.7 be responsible (at its own cost and expense, unless otherwise agreed) for preparing the Client Site(s) for the supply of the Services;
- 4.1.8 promptly notify the Supplier in writing of any changes to the number of Users or to the Client System and any such Variation to be made pursuant to Contract Change Control under this Contract;
- 4.1.9 ensure that payment on all manufacturing warranties relating to the Client System (and each element thereof) is up to date;
- 4.1.10 ensure the operability of its Client System in line with industry standards and vendor OEM guidelines and ensure that Users comply with the Internet Access Policy (where relevant);
- 4.1.11 provide all reasonable details and assistance requested by the Supplier to allow resolution of the Incident or Service Request within the agreed Service Levels, where practicable;
- 4.1.12 In respect of any Microsoft funded services, sign and deliver the Proof of Execution (POE) on the last day of scheduled work;
- 4.1.13 where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record and Digital Partner of Record for a minimum of twelve (12) Months from advanced completion date;
- 4.1.14 maintain and allow the Supplier continuous global admin access to the Client's relevant Microsoft cloud services portals for the duration of the Agreement;

- 4.1.15 where necessary, support the Supplier with escalations and resolutions of Incidents in accordance with Third Party Providers service levels detailed in the relevant SOF or SOW.
 - 4.1.16 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client Sites
- 4.2 The Client shall implement rigorous fraud prevention and detection risk mitigation controls and the Client accepts full liability and shall hold the Supplier harmless for any misuse or fraudulent purchases regarding the software subscriptions including Subscriptions as defined in the Microsoft CSP Services Schedule. Accordingly, the Client is liable and shall hold the Supplier harmless for all payments of all costs incurred relating to any Fraud or Fraudulent use of any of the Services or Systems provided under this Contract.
- 4.3 The Client acknowledges that the Supplier's provision of the Services in accordance with any Contract is subject to the Client's fulfilment of its obligations under that Contract including (without limitation) the Dependencies. The Supplier shall not be in breach of the Contract and shall not be liable for any failure to deliver the Services or perform its obligations under the Contract to the extent that such failure is caused by the Client's (or a third party, on behalf of the Client's) failure to fulfil any of its obligations under the Contract, provided that the Supplier:
 - 4.3.1 has notified the Client of such failure or anticipated failure and its likely effect on the provision of the Services and/or on the ability of Supplier to perform its obligations under the Contract; and
 - 4.3.2 used reasonable endeavours to mitigate the effect of such failure or anticipated failure and, where possible, to continue to perform its affected obligations.
- 4.4 Where the Services including technical assessments, 'hacking' and/or any activities defined as an offense under the United Kingdom Computer Misuse Act 1990, of Client's information technology infrastructure or other Client assets, the Client consents to the Supplier and/or its authorised representatives carrying out such activities and grants to the Supplier and/or such representatives such authority to carry out such activities. The Client agrees to obtain authority to such activities from any relevant third parties, such as infrastructure hosting or management companies.

- 4.5 The Client and the Supplier shall jointly ensure that the work requested and specified in the SOF or SOW does not breach Article 8 of the European Convention on Human Rights and does not entail interference in the private and family life, home or correspondence (except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others) of any individual.
- 4.6 The Client recognises that Malware may enter Services/ work product or the Client's information technology environment notwithstanding the Supplier's compliance with this Contract and if such entry does occur notwithstanding such compliance and is not due to the Supplier's or the Supplier Personnel's deliberate act or negligence then such entry shall not constitute a breach of this clause 4.6. For the avoidance of doubt, the Client network may become infected from a virus from various sources which even fully operable and up to date anti-virus definitions cannot avoid. In the event of a virus, worm, trojan, Cryptolocker event or other form of malware ('**Malware**'), the removal of the Malware (including any ransom payable) shall be paid by the Client inclusive of the time spent by the Supplier in addressing and removing any Malware except in the event of the Supplier 's negligence, in which case the time costs associated with the removal shall be borne by the Supplier (excluding any ransom payable). If the Client has failed to follow the Supplier's reasonable recommendations or failed to ensure appropriate cyber security education, training and procedures are implemented, then the Supplier shall not be in anyway liable to the Client for any related costs arising therefrom.

5. **SUB-CONTRACTORS**

- 5.1 The Supplier may sub-contract the performance of its obligations in respect of any part (but not the whole) of the Services.
- 5.2 The Supplier shall not be relieved of any of its obligations under the Contract by entering into any sub-contract for the performance of any part of the Services. The Supplier shall be liable to the Client in respect of all acts or omissions of any Sub-Contractors as if they were acts or omissions of the Supplier.

5.3 The Supplier will be solely responsible for co-ordinating with and managing any Sub-Contractors.

6. **FEES**

6.1 The Client shall pay the Fees howsoever arising including but not limited to those arising from Fraud or Fraudulent Use as set out in the applicable SOF or SOW .

6.2 The Fees and Third Party Provider fees shall be due and payable to the Supplier (and where relevant, expenses pursuant to clause 6.3) unless otherwise agreed in writing. All Third Party Provider fees that form part of the Fees shall be charged to the Client in accordance with clause 6.5 below.

6.3 The Supplier shall be entitled to recover from the Client, at cost, any reasonable incidental expenses incurred in connection with the provision of the Services, provided the Client is notified and agrees in advance and in writing.

6.4 The Client shall pay the Supplier for any additional services (other than the Services), which are requested and agreed in advance by the Client and provided, in accordance with the Supplier's Rate Card in effect at the time of performance or such other rate card as may be agreed.

6.5 The Supplier shall provide the Client with a quote for any Third Party Goods and Services.

6.6 If any agreed Third Party Item provided to the Client as part of the Service is subject to a cost variation to the Supplier, the Supplier shall:

6.6.1 notify the Client in writing of the effect of the cost variation on the Fees; and

6.6.2 where the Supplier has incurred an increase in the cost of the Third Party Item, the Supplier shall to the extent reasonably practicable and at its discretion propose reasonable alternatives to the Client for the Third Party Item which will minimise the increase to the Fees, where possible. If there are no reasonable alternatives or if the Client agrees it is content to continue with the existing Third Party Item provider, the Supplier may increase the Fees by an amount equivalent to the value of the increase incurred by the Supplier for such Third Party Item, including its reasonable margins thereon, which shall be effective from the date of the invoice following the notification to the Supplier from the Third Party Item provider.

- 6.7 The Supplier reserves the right to increase the Fees and the applicable Rate Card in line with RPI once in any 12 Month period of the Term. The Supplier will give the Client written notice of any such increase at least 30 days before the proposed date of the increase.

7. PAYMENT

- 7.1 From the Effective Date, the Supplier shall invoice the Client in respect of all Fees due under the Contract.
- 7.2 Save where otherwise set out in the relevant SOF or SOW, the Client shall pay by direct debit each invoice no later than fourteen (14) days from the date of the invoice. Each invoice submitted by the Supplier shall include a breakdown of the Fees being invoiced.
- 7.3 All payments shall be in UK pounds sterling in cleared funds without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 7.4 If the Client reasonably believes that it has received an incorrect invoice it shall, within ten (10) Business Days of receipt of such invoice, notify the Supplier stating the reason or reasons why it believes the invoice to be incorrect (provided that the Client shall pay to the Supplier any part of the amount of such invoice which is not in dispute, in accordance with clauses 7.2 and 7.3). The Parties shall thereafter consult promptly with respect to the portion of the invoice that is in dispute and if necessary follow the procedures set out in Clause 36 (Dispute Resolution). Upon resolution of the dispute, the Client shall pay any remaining amount that is properly due and owing under the invoice, and if the original invoice was shown to be correct, the Client will also pay interest on the invoice amount in accordance with clause 7.5.
- 7.5 If the Client defaults in paying any sum due under the Contract by the due date for payment, the Client shall pay interest on the outstanding balance of such sum from the date when such payment is due until the date of payment at a rate per annum (both before and after judgment) of 2% above the Bank of England's base rate from time to time.
- 7.6 The Client agrees that, in the event of a material devaluation (greater than 2.0%) between the pound sterling (£) exchange rate and any currency in which Supplier orders hardware or software or third party services on behalf of the Client (a **Devaluation**):
- 7.6.1 if a quotation has been accepted by the Client prior to such Devaluation, but following the order being placed, the Client agrees that the Supplier may adjust

its final invoiced price to reflect the Devaluation to the extent only that such Devaluation impacts the Supplier; or

7.6.2 if the Devaluation occurs prior to any order being confirmed by the Supplier, the Client is entitled to cancel any orders which may be impacted by such Devaluation.

7.7 In the event that either Party becomes aware of any overpayment of Fees by the Client to the Supplier, that Party shall promptly notify the other Party. The Supplier shall promptly repay to the Client any amount which it agrees constitutes an overpayment and in any event, the Supplier shall repay the overpayment.

8. **VAT**

8.1 The Fees shall be deemed to be exclusive of any amounts payable in relation to VAT or equivalent sales tax or withholding tax, which (if payable) shall be paid by the Client in addition.

8.2 The Supplier shall provide a valid VAT invoice (and other relevant information as is reasonably required) to enable the Client to fulfil its obligations in clause 8.1.

9. **REPRESENTATIONS AND WARRANTIES**

9.1 Save as expressly set out in this Contract, neither Party gives any representation or warranty (express or implied) in respect of the subject matter of the Contract.

10. **CLIENT DATA**

10.1 The Client hereby grants to the Supplier a revocable, royalty-free, non-exclusive and non-transferable licence during the Service Term to access the Client Data.

10.2 The licence granted in clause 10.1:

10.2.1 includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality obligation with the Supplier on comparable terms to those set out in clause 19 (Confidentiality); and

10.2.2 is granted solely to the extent necessary for performing the Services in accordance with the Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, access or in anyway use the Client Data for any other purpose or for the benefit of any person other than the Client.

- 10.3 Except where the Supplier provides Managed Backup Services and/or Hosting Services to the Client pursuant to the Contract, the Client shall, as from the Effective Date, implement an appropriate data protection solution to protect the Client Data and minimise any loss of such Client Data and ensure that the Client Data is fully available to the Supplier as and when reasonably required.
- 10.4 Except as expressly set out in the Contract, the Supplier makes no representations regarding the security of Client Data.
- 10.5 The Supplier shall not be liable for any corruption or loss of data that is caused by any defects in Client Data supplied by or on behalf of Client or which may arise through no fault of Supplier.
- 10.6 Neither party shall without prior written consent of the other, make any announcements concerning the Contract or its subject matter to any third party, save that the Supplier may (i) name the Client as a client for marketing purposes; and (ii) subject to the prior written consent of the Client (such consent not to be unreasonably withheld or delayed) issue a press release on the entering into of the Contract announcing the entering into of this Contract (but not the commercial terms of the same).
- 10.7 In the event of the termination or expiry of the Contract, any licence granted in accordance with clause 10.1 and any sub-licence granted in accordance with clause 10.2.1 shall terminate automatically.

11. **DATA PROCESSING**

- 11.1 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws and Annex Two hereto. Annex Two hereto is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.

12. **INTELLECTUAL PROPERTY**

Pre-Existing IPR

- 12.1 Save as otherwise expressly set out in the Contract, neither Party (nor any Sub-Contractor) shall receive any right, title or interest in respect of the Pre-Existing IPR. For the avoidance of doubt, the Client shall not receive any right, title or interest in the Supplier IPR other than as expressly set out in the Contract.

Developed Materials

- 12.2 Subject to payment of Fees and subject to clause 12.1 (Pre-Existing IPR) and clause 13 (License of Software), the Client shall own and retain all rights, title and interest in and to the Developed Materials.
- 12.3 The Supplier grants to the Client, or shall procure, an irrevocable, non-exclusive, worldwide, licence for the duration of the Agreement to use the Supplier's IPR and the Pre-Existing IPR for its own internal purposes to the extent that the Supplier's IPR and/or such Pre-Existing IPR subsists in, or is required in order to make such use of the, Developed Materials. For the avoidance of doubt, the Client shall have no right to sub-licence the Supplier's IPR and the Pre-Existing IPR to any other party without the prior written approval of the Supplier.
- 12.4 The Supplier hereby waives any and all moral rights in and to the Developed Materials.
- 12.5 The Supplier shall procure any Third Party materials required by the Client for the provision of the Services. The Supplier expressly excludes any warranty to the Client that the Third-Party Materials supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms and shall adhere to any Licence Agreements sent by such third party in relation to the Third-Party Software

13. **LICENSE OF SOFTWARE**

- 13.1 In consideration of the Fee paid by the Client to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Client a non-exclusive, revocable, worldwide, non transferable licence for the duration of this Agreement until terminated to use of the Software.
- 13.2 In relation to scope of use:
- 13.2.1 for the purposes of clause 13, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Client's data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client);
- 13.2.2 for the purposes of clause 13.1, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant

computer, provided that installation on a network server for distribution to other computers is not “use” if the Software is licensed under this licence for use on each computer to which the Software is distributed;

13.2.3 the Client may not use the Software other than as specified in clause 13.1 and clause 13.2.1 without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved in writing by the Supplier; and

13.2.4 except as expressly stated in this clause 13, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier’s reasonable costs in providing that information) before undertaking any such reduction.

13.3 The Client may not use any such information provided by the Supplier or obtained by the Client during any such reduction permitted under clause 13.2.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

13.4 The Client shall not:

13.4.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by the Supplier;

13.4.2 allow the Software to become the subject of any charge, lien or encumbrance; and

13.4.3 deal in any other manner with any or all of its rights and obligations under this Agreement, without the prior written consent of the Supplier.

13.5 The Client shall:

13.5.1 ensure that the Software is installed on designated equipment only;

- 13.5.2 keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - 13.5.3 notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
 - 13.5.4 pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 13.6 The Client shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Client is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.
- 13.7 The Client warrants that it shall not compete with the Software product during the term of this Agreement and for a period of 6 years thereafter.

14. **LIMITATION OF LIABILITY**

- 14.1 The provisions of this clause 14 set out the entire financial liability of either Party (including, without limitation, any liability for the act or omissions of its employees, agents and Sub-Contractors) to the other Party in respect of:
- 14.1.1 any breach of the Contract, howsoever arising;
 - 14.1.2 any use made by the Client of the Services or any part of them;
 - 14.1.3 any representation, misrepresentation, statement or tortious act or omission (including, without limitation, negligence) arising under or in connection with the Contract.
- 14.2 Nothing in the Contract shall exclude or limit the liability of either Party for:
- 14.2.1 death and/or personal injury resulting from the negligence of that Party or its directors, officers, employees, contractors or agents;

14.2.2 fraud and/or fraudulent misrepresentation;

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

14.3 Subject to clauses 14.1 and 14.2, neither Party shall be liable to the other Party whether arising in contract, tort (including negligence), misrepresentation or for breach of any duty (including strict liability) for:

14.3.1 loss of business;

14.3.2 loss of goodwill or similar losses;

14.3.3 loss of profits, anticipated savings, revenue or pure economic loss;

14.3.4 wasted expenditure; or

14.3.5 any special, indirect, consequential losses.

14.4 The Supplier shall not be liable for corruption, integrity, availability or inaccessibility of Client Data.

14.5 Subject to clauses 14.1 through to 14.4 or any specific limitation of liability to the contrary contained in any of the SOFs or SOWs, the maximum aggregate liability of either Party to the other in respect of all Losses under or in connection with all and any Contracts for the entire Term whether in contract, tort (including negligence), misrepresentation, for breach of duty or otherwise, shall be limited to the lesser of 125 per cent of the Fees paid to the Supplier under all Contracts or £250,000 (two hundred and fifty thousand GB pounds).

14.6 Each Party agrees to use reasonable endeavours to mitigate any Loss in respect of which it is indemnified under the Contract and/or breaches or termination of this Contract.

14.7 The Parties agree that any sum that is paid shall be taken into account in any claim, demand, action or proceedings brought against the other Party in respect of the breach of the Agreement or other circumstances which gave rise to its payment so as to avoid any double-recovery of the sum paid.

14.8 This clause 14 shall be without prejudice to Client's obligation to pay the Fees.

15. **INSURANCE**

15.1 Throughout the Service Term, the Supplier shall effect and maintain full and comprehensive insurance in respect of all typically insurable third party risks which are associated with or arise in connection with the performance of its obligations under the Contract to the following levels including professional indemnity risks (£1 million GB Pounds), employer's liability (£1 million GB Pounds) and public and products liability (£1 million GB Pounds).

15.2 The Client shall maintain all necessary insurances to meet its obligations under this Contract.

16. LIQUIDATED DAMAGES

16.1 Where a sum is expressed to be payable or due under the Contract as and by way of liquidated damages:

16.1.1 the Client agrees that each such sum is fair and reasonable in all the circumstances and represents a genuine pre-estimate of the loss that will be suffered by the Client in respect of the breach of the Contract or other circumstances which give rise to its payment; and

16.1.2 the Client agrees that any sum that is paid by the Supplier shall be taken into account in any claim, demand, action or proceedings the Client may bring against the Supplier in respect of the breach of the Contract or other circumstances which gave rise to its payment so as to avoid any double-recovery of the sum paid.

17. TERM AND TERMINATION

17.1 The Agreement shall be effective from the Service Start Date of the first SOF or SOW executed by the Parties and shall continue until expiry or termination of the last SOF or SOW in force between the Parties or a period of five (5) years after the Service Start Date, whichever is longer.

17.2 Either Party (the **Terminating Party**) shall have the right to terminate the Contract with immediate effect by written notice to the other Party (the **Defaulting Party**) if:

17.2.1 the Defaulting Party is in material breach of the Contract been remedied within thirty (30) days of receipt by the Defaulting Party of notice from the Terminating Party requiring such remedy;

- 17.2.2 the Defaulting Party ceases wholly or substantially to carry on its business (or a material part thereof);
- 17.2.3 the Terminating Party is required to do so by direction of a Regulator or court or by Applicable Law; or
- 17.2.4 the Defaulting Party suffers an Insolvency Event. **“Insolvency Event”** for this purpose means:
 - (a) any procedure is commenced with a view to the winding-up or re-organisation of the Defaulting Party (other than for the purpose of a solvent amalgamation or reconstruction);
 - (b) any procedure is commenced with a view to the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy in relation to the Defaulting Party or all or substantially all of its assets;
 - (c) an administrator, liquidator, receiver, administrative receiver or trustee in bankruptcy is appointed in relation to the Defaulting Party or all or substantially all of its assets;
 - (d) in respect of a security interest over all or substantially all of the assets of the Defaulting Party, any procedure is commenced to enforce that security by the holder;
 - (e) all or substantially all of the assets of the Defaulting Party are subject to attachment, sequestration, execution or any similar process;
 - (f) the Defaulting Party is or is deemed to be unable to pay its debts (within the meaning of sections 123(1) and (2) of the Insolvency Act 1986) as they fall due or enters into a composition or arrangement with its creditors generally or any class of them; or
 - (g) the Defaulting Party’s directors take any steps to obtain a moratorium.

- 17.3 The Supplier may terminate the Contract on no less than thirty (30) Business Days’ prior notice to the Client where the Client has failed to pay any undisputed invoiced Fees and such invoiced Fees are:

17.3.1 not disputed in good faith by Client in accordance with the procedure set out in clause 3636 (Dispute Resolution);

17.3.2 due and payable in accordance with clause 6 (Fees) and clause 7 (Payment); and

17.3.3 overdue for a period of at least 30 Business Days,

provided that no such notice of termination shall take effect where the Client has remedied such non-payment within 30 Business Days of such notice being received by it.

17.4 The Supplier may terminate the Contract with immediate effect and without notice if the Client is in breach of Anti-Bribery Legislation, Anti-Slavery Legislation, Equality, Sanctions and/or Competition Laws as applicable.

17.5 Termination of the Contract, SOF or SOW for any other reason during the Initial Period, other than as set out herein, shall be considered termination for convenience and the Client shall be liable for early termination charges calculated as set out as applicable in Service Fees Schedule, Supply of Third Party Products, Services Software and Hardware Schedule and/or Project Schedule (the "Early Termination Charges"). Such early termination charges shall be considered Liquidated Damages. In the event that the Service Fees Schedule, Supply of Third Party Products, Services Software and Hardware Schedule and/or Project Schedule does not set out any Early Termination Charges, the following shall apply whereby if the Client terminates the Services and/or Statement of Work(s) at any time from the date of signature of the Agreement or if the Supplier terminates because of the Client's material breach, the Client will pay early termination charges for the applicable SOF or SOW (or any part thereof) terminated which will equal one hundred (100) percent of the Fees which would have been incurred by the Client during the remainder of the Initial Term of the Services set out in the applicable SOFs or SOWs.

17.6 If a delay or failure to perform any of the Supplier's obligations due to an Event of Force Majeure continues for more than thirty (30) days, the Client shall be entitled to terminate the Contract with immediate effect as it relates to any the Service affected by the Event of Force Majeure (Affected Service). Such termination shall be without prejudice to the rights of the Parties in respect of any breach of the Contract occurring prior to such termination.

17.7 If a delay or failure to perform any of Client's obligations due to an Event of Force Majeure continues for than three (3) Months, the Supplier shall be entitled to terminate the Contract with immediate effect.

18. EFFECT OF TERMINATION

- 18.1 Termination or expiry of the Contract shall not affect any rights, duties, obligations, liabilities, remedies or exclusions arising under this Contract prior to such termination and the Contract shall continue to the extent required to give effect to such rights, duties, obligations, liabilities, remedies and exclusions.
- 18.2 Termination or expiry of any Contract shall be without prejudice to any provision which expressly or by implication is intended to survive termination or expiry. For the avoidance of doubt, clause 6 (Fees), clause 10 (Client Data), clause 11 11 (Data Processing), clause 12 (Intellectual Property), clause 13 (License of Software), clause 1414 (Limitation of Liabilities), clause 15 (Insurance), clause 17.5 (Early Termination Charges), clause 19 (Confidentiality) and clause 20 (Non-Solicitation) shall continue, notwithstanding termination.

19. CONFIDENTIALITY

- 19.1 During the Service Term and for a period of two (2) years following termination or expiry of the Contract for any reason, each Party (the **Receiving Party**) shall:
- 19.1.1 not use the Confidential Information of the other Party (the **Disclosing Party**) for any purpose other than the performance of its obligations under the Contract;
 - 19.1.2 not, without prior written consent of the Disclosing Party, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information of the Disclosing Party to any other person other than as provided in this clause 19;
 - 19.1.3 ensure that the Confidential Information of the Disclosing Party is protected with at least the same security measures and degree of care that would apply to its own Confidential Information;
 - 19.1.4 procure that any of its directors, officers, employees or professional advisers (and, in the case of Supplier, any Sub-Contractor, or any of the directors, officers, employees and professional advisers of such Sub-Contractor) to whom Confidential Information is disclosed complies with, and is aware of, the restrictions set out in this clause 19 as if such person were a Party to the Contract.

- 19.2 Notwithstanding clause 19.1, either Party may disclose another's Confidential Information:
- 19.2.1 to its directors, officers and employees and, in the case of the Supplier, to the directors, officers and employees of any Sub-Contractor and/or its Group;
 - 19.2.2 to the extent required by Applicable Law or by any Regulator; and
 - 19.2.3 to its professional advisers and auditors.
- 19.3 Neither party shall without prior written consent of the other, make any announcements concerning the Contract or its subject matter to any third party, save that the Supplier may:
- 19.3.1 name the Client as a client for marketing purposes; and
 - 19.3.2 subject to the prior written consent of the Client (such consent not to be unreasonably withheld or delayed) issue a press release on the entering into of the Contract announcing the entering into of this Contract (but not the commercial terms of the same).
- 19.4 Notwithstanding the expiry or early termination of the Contract, the provisions of this clause 19.1 shall continue to apply to each Party.
- 19.5 In the event of the expiry or termination of the Contract, within thirty (30) days of such expiry or termination each Party shall return to the other Party (or, at the other Party's election, destroy) all Confidential Information, or where Confidential Information cannot be so returned or destroyed, shall use reasonable endeavours to ensure, so far as is reasonably practicable, that all Confidential Information in electronic, digital or machine readable form ceases to be readily accessible from any computer or other device under the control of that Party.
20. **TUPE AND NON-SOLICITATION**
- 20.1 It is not intended that any staff be transferred from the Supplier to the Client or from the Client to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('the Regulations'). In the event TUPE applies, the terms of any such relevant transfer is as set out in the Employees and TUPE Schedule.

- 20.2 Neither Party shall, for the Service Term and for a period of twelve (12) months after its termination or expiry, solicit or entice away from the other Party or employ or attempt to employ any person who is, or has been, engaged as a director, officer, employee or sub-contractor of the other Party.
- 20.3 If either the Supplier or the Client commits any breach of clause 20.2, the breaching Party shall, on demand, pay to the other Party a sum equal to 40% of one year's basic salary or the annual fee that was payable by the other Party to that employee, worker or independent contractor plus the recruitment costs incurred by the other Party in replacing such person. The Parties agree that this represents a genuine pre-estimate of that Party's loss.
21. **AUDIT AND COMPLIANCE REQUESTS**
- 21.1 Upon reasonable written notice (at least five (5) Business Days) and not more than once during the Initial Term (and at any time in the case of an audit undertaken pursuant to clause 21.1.1), the Supplier shall allow the Client, at the Client's cost, and any auditors of or other advisers to the Client to access during reasonable business hours any of the Supplier Sites and relevant records as may be reasonably required in order to:
- 21.1.1 fulfil any legally enforceable request by any Regulator; or
 - 21.1.2 identify suspected fraud; or
 - 21.1.3 undertake verification of compliance with this Contract in the event that the Client has demonstrable evidence that that the Services are not, to a material extent, being provided or there is a material and proximate risk to the Client's data or operations, it shall supply to the Supplier in writing on request of the Supplier.
- 21.2 The audit rights above shall not apply to the Supplier's data centres or in any form enable access to any Supplier owned multi-tenanted or shared platform which may enable the Client, its auditors or any related third parties to access to such systems. In the case of shared platforms, the Supplier shall enable the Client or its auditors to have guided access controlled by the Supplier (but not in such a way as to obstruct the Client and/or its auditors from being able to conduct an audit in accordance with above).
- 21.3 Should the Client require assistance which is not within scope of the Services under this Contract, the Supplier reserves the right to charge for such assistance in accordance with its then current Rate Card.

- 21.4 The Client shall use its reasonable endeavours to ensure that the conduct of each audit or compliance request does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 21.5 Save as may be required by Applicable Laws and/or legal or regulatory requirements applicable to the Client, the Supplier shall not be under an obligation to provide audit access to commercially sensitive information governed by confidentiality undertakings with third parties.
- 21.6 The Client shall bear its own costs and expenses and those costs of the Supplier reasonably incurred by it in respect of compliance with its obligations under this clause 21, unless the audit or compliance request identifies a material breach of the Contract by the Supplier, in which case the Supplier shall not be able to pass onto the Client costs incurred in the course of the audit.
- 21.7 Without prejudice to any other rights or remedies available under the Contract, if an audit identifies that:
- 21.7.1 the Client has overpaid any Fees, the Supplier shall pay to the Client the amount overpaid within thirty (30) days from the date of receipt of an invoice or notice to do so;
 - 21.7.2 the Client has underpaid any Fees, the Client shall pay to the Supplier the amount of the under-payment within thirty (30) days from the date of invoice for such amount;
 - 21.7.3 the Supplier has failed to perform its obligations under the Contract in any material manner, the Parties shall agree and implement a remedial plan (the plan and any actions undertaken pursuant to the plan shall be at the Supplier's sole cost and expense).

22. **GOVERNANCE AND MANAGEMENT**

- 22.1 Each Party shall comply with its obligations, and shall have the rights provided to it, as set out in the Governance and Service Management Schedule.
- 22.2 Each Party shall comply with the Escalation Process.

23. **SECURITY MANAGEMENT**

- 23.1 The Supplier shall acting in line with Good Industry Practice deliver the Services to the Client in accordance with the Supplier IT Security Policies.
- 23.2 The Supplier shall not be liable for any failure to implement or comply with the IT security policies (or any Service Levels concerning that policy) to the extent that an appropriately authorised representative of the Client expressly requests that the Supplier permit, allow or undertake any activity that would breach the Supplier IT Security Policies (and any Service Levels concerning that policy or related security services), provided that before permitting, allowing or undertaking that activity, the Supplier advises the Client:
- 23.2.1 that such activity would be in breach of the Supplier IT Security Policies; and/or
- 23.2.2 of any potential impact on the security and/or fidelity of the Services (and any Service Levels concerning that policy or related security services) or Client Data that such activity may have.
- 23.3 The Client shall ensure in so far as reasonably practicable, that appropriate safety and security systems and procedures are maintained and enforced within the Clients operations to minimise the risk of unauthorised access or damage to any Client systems or Client Data.
24. **CONTRACT VARIATION PROCEDURE**
- 24.1 Where the Client or the Supplier wishes to implement a Variation, the Client or Supplier may at any time request, and the other Party may at any time recommend, such Variation only in accordance with the Contract Variation Procedure set out in this Clause 24.
- 24.2 Until such time as a Variation is made in accordance with the Contract Variation Procedure, the Client and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms prior to such Variation.
- 24.3 Any discussions which may take place between the Client and the Supplier in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either Party.
- 24.4 Discussion between the Client and the Supplier concerning a Variation shall result in any one of the following: no further action being taken; a request to change this Contract by the Client; or a recommendation to change this Contract by the Supplier.

- 24.5 For each Variation submitted by the Supplier the Client shall, within the period of the validity of the Variation evaluate the Variation and,
- 24.5.1 as appropriate request further information and:
- 24.5.2 arrange for the Variation to be signed by or on behalf of the Client and return to the Supplier; or
- 24.5.3 notify the Supplier of the rejection of the Variation .
- 24.6 A Variation signed by the Client and by the Supplier shall constitute an amendment to this Contract.
- 24.7 Save where the Parties agree otherwise, in proposing charges for implementing any Variation and for any increase or decrease in the Fees as a result of that Variation, the Supplier shall adopt the same pricing principles and/or model as are adopted for the pricing of the Services and in calculating the costs and expenses to be borne by the Client, take into account the existing resources and expenses which would no longer be required, or which could be reasonably re-utilised or deployed without cost to the Supplier, if the Variation were implemented.

25. **COMPLIANCE**

- 25.1 Each Party confirms that at the date of the Contract and to the best of its knowledge, it nor any of its officers, employees:
- 25.1.1 has been convicted of any offence involving slavery and human trafficking; and
- 25.1.2 has been or is the subject of any enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 25.2 Each Party shall comply with all Applicable Laws relating to (i) anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Anti-Bribery Requirements), (ii) anti-slavery and anti-human trafficking (Anti-Slavery Requirements) including the Modern Slavery Act 2015, (iii) Sanctions and Competition Laws, (iv) equality

laws including Equality Act 2010 and (v) competition laws including Competition Act 1998;

26. NOTICES

29.1 Any notice under the Contract shall be in writing and any notice shall, be given as follows:

- 26.1.1 if delivered personally, on delivery if the notice was delivered during Core Hours or otherwise the next Business Day;
- 26.1.2 if sent by first class post, two (2) Business Days after the date of posting.
- 26.1.3 If sent by email, next Business Day after the time and date of transmission. In case of Supplier notices should be sent to legal@advania.co.uk.

27. FORCE MAJEURE

27.1 Neither Party (the **Claiming Party**) shall be liable to the other for any delay or failure to perform any of its obligations hereunder to the extent such delay or failure is due to an Event of Force Majeure provided that:

- 27.1.1 the Claiming Party could not have avoided such circumstances by taking precautions which he ought reasonably to have taken, placing advance orders for the supply of goods or services and the employment of additional staff;
- 27.1.2 the Claiming Party has used its reasonable endeavours to mitigate the effect of such circumstances and to continue to perform its affected obligations; and
- 27.1.3 the Claiming Party shall not be excused performance of its obligations to the extent that they are unaffected by an Event of Force Majeure.

27.2 The Claiming Party shall:

- 27.2.1 on the occurrence of an Event of Force Majeure, promptly notify the other Party (such notice to contain details of the circumstances giving rise to the Event of Force Majeure and its anticipated duration); and
- 27.2.2 upon the cessation of the Event of Force Majeure, promptly notify the other Party and recommence performance of its affected obligations.

27.3 For the avoidance of doubt, on any cessation of a Service (or part thereof) pursuant to this clause 27 (Force Majeure), the Client shall have no liability to the Supplier in respect

of any Fee for such Service (or part thereof) which would have otherwise been payable but for such cessation.

28. **ASSIGNMENT**

- 28.1 Neither Party shall be entitled to transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under the Contract either in whole or part without consent of the other Party, (such consent not to be unreasonably withheld or delayed) subject always that the Supplier reserves the right to transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under the Contract either in whole or part to a company within its Group at any time without the consent of the Client.

29. **SEVERABILITY**

- 29.1 If any term or provision or any part thereof contained in the Contract or this Agreement is or shall be declared or become unenforceable, invalid or illegal for any reason whatsoever (in this clause 29 called the **Offending Provision**) the other terms and provisions of the Contract or this Agreement shall remain in full force and effect as if the same had been executed without the Offending Provision appearing therein and the Parties shall negotiate in good faith to agree an amendment to such Offending Provision, such provision or part to have an equivalent economic and commercial effect to the Offending Provision or part.

- 29.2 In the event that the Parties cannot agree the amendment within 30 days of the date of commencing negotiation in accordance with clause 29.1, the provision shall to the extent of such invalidity, illegality or unenforceability, be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed severable and be deleted and shall not affect the other provisions of the Contract, which shall continue unaffected.

30. **APPLICABLE LAW**

- 30.1 The Parties shall consult on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact the Services. The Supplier shall not implement any change, without the Client's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Services in accordance with the Service Levels.
- 30.2 Any change which impacts any of the Services including the Service Levels shall be agreed and documented in writing in accordance with the Contract Variation Procedure.

31. **NO PARTNERSHIP**

- 31.1 Nothing in the Contract and no action taken by the Client or the Supplier under the Contract shall constitute a partnership, agency, association, joint venture or other co-operative entity between the Client and the Supplier or any Sub-Contractor.

32. **FURTHER ASSURANCE**

- 32.1 Each Party shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the Contract.

33. **WAIVER**

- 33.1 No amendment to the Contract shall be valid unless made in writing and signed by both Parties in accordance with the VCSS and/or the Contract Variation Procedure. The waiver by either Party of a breach or default of any of the provisions of the Contract by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of a Party to exercise or avail itself of any right, power or privilege that it has or may have provided by law or under the Contract operate as a waiver of any breach or default by either Party.

34. **THIRD PARTY RIGHTS**

- 34.1 The Parties do not intend that any term of the Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 Act, by any person.

35. **ENTIRE AGREEMENT**

- 35.1 This Agreement, the respective Schedules, the VCSS and each SOF or SOW (and amended SOF or SOW through the Contract Variation Procedure), contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, contracts, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 35 shall operate to exclude any liability for fraud.
- 35.2 Each Party acknowledges that in entering into the Contract it is not relying upon any pre-contractual statement which is not set out in the Contract.
- 35.3 Except in the case of fraud, no Party shall have any right of action against any other Party to the Contract arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in the Contract.

36. DISPUTE RESOLUTION

- 36.1 The Parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
- 36.1.1 if, in the opinion of either Party, a dispute arises, the Party in question may give written notice to the other Party that a dispute has arisen (**Dispute Notice**);
 - 36.1.2 the referring Party shall, in the first instance, refer the dispute to the Operational Services Managers (as set out in the Governance and Service Management Schedule) of each of the Parties for resolution; and
 - 36.1.3 if the dispute cannot be resolved by Operational Services Managers of the Parties within 14 days after the Dispute Notice, either Party may refer the disputes to the to the Client's and the Supplier's Chief Executive Officers for resolution.
- 36.2 If the Client's and the Supplier's Chief Executive Officers are unable, or fail, to resolve the dispute within 14 days following referral of the dispute to them, then either party may proceed with any other available remedy.
- 36.3 If the dispute cannot be resolved by the Parties in accordance with clause 36 the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle that dispute and that accordingly any proceeding, suit or action arising out of or in connection with the Contract (Proceedings) shall be brought in those courts (and no other courts).
- 36.4 No Party shall commence Proceedings unless it has first given the other twenty (20) Business Days' written notice (a Proceedings Notice) of its intention to do so specifying in reasonable detail the matter which gives rise to the claim, the nature of the claim and the amount claimed in respect thereof. A Proceedings Notice shall also state that it is being given pursuant to this clause 36.
- 36.5 All negotiations connected with any dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

37. GOVERNING LAW AND JURISDICTION

- 37.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

37.2 Each Party irrevocably submits and agrees to submit to the exclusive jurisdiction of the English courts.

Annex One- Definitions



Annex One -
Standard Service Defi

Annex Two- Data Protection



Annex Two - Data
Processing Clauses (s)

