

Terms & Conditions

HTG Terms and Conditions for G-Cloud 15



Howell Technology Group Limited Terms and Conditions of Business

The Customer's attention is particularly drawn to the provisions of clause 13.

1. Interpretation

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

"Activation Date" has the meaning given in clause 5.3.

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

"Commencement Date" has the meaning given in clause 2.2.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 16.1.

"Contract" the contract between HTG and the Customer for the supply of Equipment and/or Software Licences and/or Professional Services and/or Managed Services in accordance with these Conditions.

"Contract Term" the period of time for which the Contract shall remain in force as stated in the Order Confirmation, and in respect of a Contract for Managed Services shall mean the Initial MS Term plus each Renewal MS Term.

"Customer" the person, firm or company who purchases the Equipment and/or Professional Services and/or Managed Services and/or Software Licences from HTG as named in the Order Confirmation.

"Customer Data" any data uploaded to, stored on or processed using the Managed Services by the Customer.

"Customer's Operating Environment" the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with HTG's System in order for the Customer to receive the Managed Services, but excluding the Customer Site Equipment.

"Customer Representative" the contact person set out in the Order Confirmation or Handbook (or as otherwise notified in writing by Customer to HTG) who shall be the Customer's main technical contact.

"Customer Site" any premises occupied by the Customer at which it receives the Managed Services.

"Customer Site Equipment" any equipment located or to be located on a Customer Site but controlled or to be controlled by HTG as part of the Managed Services.

"Data Protection Legislation" means: (i) to the extent the UK GDPR (as defined in the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (ii) to the extent the General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which HTG is subject, which relates to the protection of personal data.

"Data Controller", "Data Processor", "Data Subject" and "Personal Data" shall have the meaning as set out in the Data Protection Legislation.

"Delivery Location" has the meaning set out in clause 3.3.

"Equipment" the IT equipment, hardware and other goods (or any part of them) as set out in the Order Confirmation.

"Force Majeure Event" has the meaning given in clause 16.2.

"Good Industry Practice" the degree of skill and care which it is reasonable to expect of a provider of managed services similar to the Managed Services.

"Handbook" the solution documentation made available to the Customer by HTG from time to time which may set out any additional description of the Managed Services and/or contain the user instructions for the Managed Services.

"Hardware" means all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by HTG to deliver the Managed Services to the Customer.

"HTG" means Howell Technology Group Limited (CRN: 05520670) and having its registered office at 11-12 Blue Sky Way, Monkton Business Park South, Hebburn, Tyne And Wear, NE31 2ES

"HTG Materials" has the meaning set out in clause 7.1.6.

"HTG's System" the information and communications technology system to be used by HTG in performing the Managed Services, including the Hardware, the MS Software, the Customer Site Equipment and communications links between the Hardware and the Customer Site Equipment and the Customer's Operating Environment.

"Initial MS Term" means the initial term for which Managed Services are provided, as specified in or with each Service Level Agreement, measured from the Activation Date.

"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"IT Partner" a third party used by either party in the provision of a Managed Service.

"Maintenance Contract" Hardware or MS Software support contracts held on supported devices and supplied by the manufacturer or recognised vendor support partner.

"Managed Services" the support services which HTG will provide to the Customer as set out in the Statement of Work and/or Order Confirmation.

"MS Software" any software used by HTG to provide the Managed Services to the Customer.

"Normal Working Hours" means 9:00 a.m. to 5:00 p.m. on a Business Day unless stated otherwise in the Statement of Work, Quotation and/or Order Confirmation.

"Order" the Customer's order for the supply of Equipment and/or Professional Services and/or Managed Services and/or Software Licences as set out in the Customer's order form, or the Customer's acceptance of a Statement of Work or Quotation by HTG, as the case may be.

"Order Confirmation" HTG's written acceptance of the Order in accordance with clause 2.2, but excluding any auto-generated emails.

"Out of Hours" means any time outside Normal Working Hours.

"Professional Services" any or all of the services consisting of IT solution design, migration of IT systems, software installation, system implementation, supplied by HTG to the Customer as set out in the Order Confirmation, but excluding the Managed Services.

"Quotation" means the description of the Equipment and/or Software Licences and/or Professional Services and/or Managed Services which may be provided by HTG to the Customer where no Statement of Work is provided.

"Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

"Renewal MS Term" means the period of 12 months from the expiry of the Initial Term and each successive period of 12 months from the expiry of the then current Renewal MS Term;

"Service Level Agreements" means the service level agreement(s) for the Managed Services as set out in or referenced in the Statement of Work and/or Order Confirmation.

"Software Licences" the licences to use third party software, cloud based platforms and other systems set out in or referred to in the Order Confirmation.

"Statement of Work" means the description or specification for the Equipment and/or Software Licences and/or Professional Services and/or Managed Services which may be provided by HTG to the Customer.

"Viruses" any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- 1.3. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.4. A reference to "writing" or "written" excludes fax and email.

- 1.5. In respect of Managed Services, if there is a conflict between these terms and conditions and a Service Level Agreement then the latter shall prevail.

2. Basix of contract

- 2.1. The Order constitutes an offer by the Customer to purchase Equipment and/or Professional Services and/or Managed Services and/or Software Licences in accordance with these Conditions.

- 2.2. The Order shall only be deemed to be accepted when HTG issues the Order Confirmation at which point and on which date the Contract shall come into existence ("**Commencement Date**").

- 2.3. Any descriptive matter or advertising issued by HTG or contained on HTG's website in relation to the Equipment and/or Professional Services and/or Managed Services and/or Software Licences are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Professional Services and/or Managed Services and/or Software Licences described in them. They shall not form part of the Contract or have any contractual force.

- 2.4. Any Quotation and/or Statement of Work given by HTG shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, unless otherwise stated on the Quotation or Statement of Work as the case may be.

- 2.5. These Conditions shall apply to and be incorporated in the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, customer, practice or course of dealing.

- 2.6. Except as set out in this Contract, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose) in respect of the Equipment and/or Professional Services and/or Managed Services and/or Software Licences to be provided by HTG under this Contract are excluded to the fullest extent permitted by law.

3. Equipment

- 3.1. Subject to clause 3.8 and clause 13.2, the Equipment is as described in the Order Confirmation.

- 3.2. Subject to clause 3.8, HTG reserves the right to amend the Equipment ordered by a Customer if required by any applicable statutory or regulatory requirement, and HTG shall notify the Customer in any such event.

- 3.3. HTG shall deliver the Equipment to the location set out in the Order Confirmation or such other location as the parties may agree ("**Delivery Location**") at any time after HTG notifies the Customer that the Equipment is ready.

- 3.4. Delivery of the Equipment shall be completed on unloading the Equipment at the Delivery Location. Risk in the Equipment shall pass to the Customer on completion of Delivery.
- 3.5. Any dates quoted for delivery of the Equipment in the Statement of Work, Quotation and/or Order Confirmation are approximate only, and the time of delivery is not of the essence. HTG shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event, manufacturer or courier lead times or the Customer's failure to provide HTG with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment. HTG shall use reasonable efforts to notify the Customer in the event of a delay.
- 3.6. If the Customer fails to take or accept delivery of the Equipment, then except where such failure or delay is caused by a Force Majeure Event, HTG may at its option:
 - 3.6.1. rearrange delivery of the Equipment, provided that HTG may charge the Customer for any delivery costs incurred and all related costs and expenses (including insurance) of storing the Equipment until delivery takes place; or
 - 3.6.2. resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 3.7. Title to the Equipment shall not pass to the Customer until HTG receives payment in full (in cash or cleared funds) for the Equipment.
- 3.8. If HTG cannot supply the Equipment ordered by the Customer, it reserves the right to offer alternative equipment of at least equal quality to the Equipment at no extra cost to the Customer. In such circumstances, where the Customer does not wish to accept any alternative equipment offered, it shall be entitled to cancel the Order and receive a full refund of any charges paid to HTG (including delivery costs). This remedy is intended to be the sole and exclusive remedy of the Customer in such circumstances.
4. **Supply of Professional Services**
- 4.1. HTG shall supply the Professional Services to the Customer in accordance with the Statement of Work in all material respects.
- 4.2. HTG shall use reasonable endeavours to meet any performance dates for the Professional Services specified in the Statement of Work and/or Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Professional Services.
- 4.3. HTG reserves the right to amend the Statement of Work if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Professional Services and HTG shall notify the Customer in any such event.
- 4.4. HTG warrants that:
 - 4.4.1. the Professional Services will be provided using reasonable care and skill;
 - 4.4.2. for a period of 30 days from the Completion Date (defined below), the Professional Services shall conform in all material respects with their description as set out in the Statement of Work and shall be free from material defects.
- 4.5. Unless specified in the Statement of Work, the Professional Services shall not include any electrical, network or external communications infrastructure, cabling specification or installation.
- 4.6. Upon completion of the Professional Services, HTG will notify the Customer of the same ("**Completion Date**"). If in the reasonable opinion of the Customer, the Professional Services do not conform to the Statement of Work, the Customer shall notify HTG of such failure within 3 Business Days of the Completion Date and HTG shall re-perform or correct the Professional Services to make them compliant. If the Customer fails to give notice within 3 Business Days of completion of the Professional Services, they shall be deemed accepted by the Customer.
5. **Supply of Managed Services**
- 5.1. HTG shall supply the Managed Services to the Customer substantially in accordance with the Statement of Work and Service Level Agreements.
- 5.2. HTG shall use reasonable endeavours to meet any performance dates for the Managed Services specified in the Statement of Work and/or Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Managed Services.
- 5.3. When HTG considers that the Managed Services are ready for activation it shall so notify the Customer. The date on which this notice is provided is referred to as the "**Activation Date**". Within three Business Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Statement of Work. If the Managed Services fail in any material respect to conform with the Statement of Work, the Customer shall give HTG a detailed description of any such non-conformance ("**Error**") in writing, within such three Business Day review period.
- 5.4. HTG shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, notify the Customer that the Managed Services are ready for activation.
- 5.5. If the Managed Services are found to conform with the Statement of Work or if the Customer does not provide any notification of Errors within the three Business Day review period described in clause 5.3, the Managed Services shall be deemed accepted by the Customer as from the date of the notification that the Managed Services conform or expiry of such three Business Day review period without notification of any Errors (in each case the "**Acceptance Date**").
- 5.6. HTG shall provide the Managed Services from the Acceptance Date for the period specified in the Statement of Work and/or Order Confirmation or, if earlier, until termination of the Contract.
- 5.7. The Service Level Agreements shall apply with effect from the start of the first complete calendar month commencing after the Acceptance Date.
- 5.8. HTG undertakes that the Managed Services will be provided to the Customer using reasonable care and skill and in accordance with the Statement of Work and Service Level Agreements in all material respects.
- 5.9. The undertaking in clause 5.8 shall not apply to the extent of any non-conformance that is caused by any breach, failure or non-performance of the Contract by the Customer or any use of the Managed Services contrary to HTG's instructions, including as set out in the Statement of Work.
- 5.10. If the Managed Services do not conform with the undertaking in clause 5.8, HTG shall, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 5.8.
- 5.11. Notwithstanding the foregoing, HTG does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.
- 5.12. HTG reserves the right to amend the Statement of Work and/or Service Level Agreements if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Managed Services and HTG shall notify the Customer in any such event. HTG also reserves the right to modify HTG's System, its network, system configurations or routing configuration, or modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Services over its network, provided that so doing will have no material adverse effect on either party's ability to perform its obligations under the Contract. If such changes will have such a material adverse effect then the affected party will notify the other and the parties will follow the process in clause 8.
- 5.13. The Customer acknowledges that certain risks, such as data loss, are an inherent part of using services such as the Managed Services. HTG can, where agreed with the Customer, provide backup and restore services as part of the Managed Services, which can form part of a Customer's wider business continuity and recovery strategy. However, HTG does not provide general business continuity planning and execution services. Business continuity planning, and the execution and testing of such plans, is the responsibility of the Customer, and the Customer acknowledges that HTG's backup and restore services are not a complete substitute for such arrangements. Therefore, if backup and restore services are not included in the Managed Services, HTG will have no liability for any loss of or damage to Customer Data, however caused. If backup and restore services are included in the Managed Services, HTG will perform such backup and restore services as are set out in the Service Level Agreement to the appropriate Service Level and in accordance with Good Industry Practice. However, the Customer acknowledges that:
 - 5.13.1. HTG is not in a position to develop, evaluate or test the Customer's wider business continuity or disaster recovery arrangements, and can only provide such backup and recovery services as form part of the contracted Managed Services, and the selection and testing of appropriate backup and recovery solutions and strategies is therefore the Customer's responsibility; and
 - 5.13.2. HTG is not in a position to verify the accuracy, completeness or integrity of the Customer Data, and can only back up the Customer Data as of its then-current state. Therefore, HTG will not be liable if any Customer Data backed up or restored by HTG is inaccurate, incomplete or corrupted, provided that the restore and corresponding backup job completed without error.
- 5.14. Notwithstanding clause 5.13 HTG will not itself delete any Customer Data unless specifically permitted to do so by the Contract or instructed to do so by the Customer.
- 5.15. The Customer acknowledges that HTG is not an insurer. Therefore, where Customer Site Equipment must be replaced in the course of a disaster recovery, HTG can provide assistance in doing so, and will provide break/fix services to the extent that such services are within the scope of the Managed Services, but all replacement, relocation and/or reinstallation costs in respect of Customer Site Equipment will otherwise be borne by the Customer.
- 5.16. The Customer Site Equipment is at the Customer's risk from the point of delivery to the Customer Site.
- 5.17. HTG will operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all Managed Services.
- 5.18. Each of HTG and the Customer will promptly inform the other if it suspects or uncovers any breach of security in respect of the Managed Services, and HTG will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.
6. **Software Licences**
- 6.1. The Software Licences are described in the Order Confirmation.
- 6.2. HTG shall procure the provision of the Software Licences to the Customer which are provided under the standard licence terms of the relevant third party owner of the software programme covered by the Software Licences, copies of which shall be provided to or made available to the Customer from time to time by way of these being specified or referenced in the Contract or accepted through "click wrap" terms or other electronic notices, and the Customer agrees to be bound to the relevant third parties by such licence terms and to indemnify HTG against any breach or non-performance of the same. The Customer agrees to allow the upstream supplier of such software sufficient access to its systems and records to allow such upstream supplier to verify compliance with the Software Licences.
- 6.3. The Software Licences may include terms for auto-renewal of the Software covered by that licence. Where this is the case, the Customer is responsible for ensuring that it reads and understands these auto-renewal terms, which apply to all use of Software under the relevant Software Licence. Software Licences will auto-renew in accordance with the standard licence terms of the relevant Software Licence.
- 6.4. The Customer agrees that HTG is not responsible for the performance or non-performance of the software, data centre or hosting services provided

- under the terms of the Software Licences and that its sole remedy is against the providers of the same in accordance with the Software Licences.
- 6.5. The Customer agrees and acknowledges that the third party providers of Software Licences may collect and process Personal Data arising from the use by the Customer and its employees, agents and contractors, of that Software. The Customer is responsible for ensuring that it abides by all data protection obligations set out in or referred to within the third party Software Licences, and for ensuring that it obtains all required licences, permissions and consents for any processing of Personal Data by those third party providers in accordance with those third party terms.
7. **Customer's obligations**
- 7.1. The Customer shall:
- 7.1.1. ensure that the terms of the Order are complete and accurate;
- 7.1.2. provide in a timely manner:
- 7.1.2.1. such access to the Customer's premises, Customer Site and Customer Site Equipment during Normal Working Hours (and Out of Hours where agreed in advance) as is required by HTG to perform the Contract;
- 7.1.2.2. any other facilities and supplies, such as power and computer consumables, as is requested by HTG;
- 7.1.2.3. provide HTG with access (including by remote access and at the Customer Site) to its hardware, software, facilities and networks as required to allow HTG to provide the Managed Services;
- 7.1.2.4. such information and data as HTG may request, and ensure that such information is accurate in all material respects;
- 7.1.3. be responsible (at its own cost) for preparing the relevant premises for the supply of the Professional Services and/or Managed Services, including but not limited to, by:
- 7.1.3.1. ensuring that any networking, cabling and sockets are in the correct location and have been tested by the Customer;
- 7.1.3.2. ensuring that any existing equipment which is being utilised or connected by HTG is fully operational, accessible and free from any Viruses;
- 7.1.3.3. installing the correct management agents for the Customer's Operating Environment, or if HTG installs management agents as part of the Managed Services, not interfere with such management agents;
- 7.1.4. comply with HTG's acceptable use policy in respect of the Managed Services, as notified to the Customer and as HTG may update it from time to time;
- 7.1.5. be responsible for taking reasonable measures to backup or make copies of any data or information provided to or made available to HTG prior to commencement of the Professional Services and/or Managed Services;
- 7.1.6. keep the Customer Site Equipment and all materials, documents and other property of HTG ("**HTG Materials**") at the Customer's premises in safe custody at its own risk, maintain the Customer Site Equipment and HTG Materials in good condition until returned to HTG, and not dispose of or use the Customer Site Equipment or HTG Materials other than in accordance with HTG's written instructions or authorisation; and
- 7.1.7. ensure that any assumptions, dependencies, and obligations under these Conditions and any additional prerequisites, assumptions and obligations as set out in the Statement of Work are fulfilled or complied with as the case may be.
- 7.2. In respect of any Managed Services provided by HTG to the Customer, the Customer:
- 7.2.1. shall not store, distribute or transmit through the Managed Services any material that:
- 7.2.1.1. is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 7.2.1.2. of a junk mail or spam-like nature;
- 7.2.1.3. facilitates illegal activity;
- 7.2.1.4. depicts sexually explicit images;
- 7.2.1.5. promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity; and/or
- 7.2.1.6. infringes the intellectual property rights of HTG or any third party.
- 7.2.2. shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer);
- 7.2.3. shall inform HTG of any new applications and/or services brought onto the Managed Services and ensure that such applications or services are licensed and compliant;
- 7.2.4. shall where relevant properly train, supervise and manage its personnel in the use and application of the Managed Services;
- 7.2.5. shall implement effective and appropriate backup and other procedures for the protection of its data where backup and restore services are not part of the Managed Services;
- 7.2.6. shall comply with all applicable laws and regulations with respect to its use of the Managed Services;
- 7.2.7. shall appoint a Customer Representative who will be HTG's primary contact at the Customer and who must have or promptly be able to obtain sufficient authority to make all necessary decisions in relation to the Contract. The Customer will use reasonable endeavours to ensure continuity of the Customer's Representative;
- 7.2.8. shall use all Managed Services in accordance with the Handbook or HTG's reasonable recommendations;
- 7.2.9. must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by HTG in writing. This includes informing HTG promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, HTG shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services in whole or in part);
- 7.2.10. shall not provide the Managed Services directly or indirectly to third parties; and
- 7.2.11. warrants that: (i) it has the full capacity to enter into and perform the Contract and grant any rights granted to HTG hereunder; (ii) it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for HTG to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Managed Services to the Customer; and (iii) HTG's use of any third-party materials supplied by the Customer in connection with the Contract shall not cause HTG to infringe the rights, including any Intellectual Property Rights, of any third party
- 7.3. If HTG's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, then HTG shall be entitled to adjust the timetable for delivery and performance under the Contract so as to mitigate the impact of the Customer fault (including under any Service Level Agreement), and the Customer shall in all circumstances be liable to pay to HTG on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to HTG confirming such costs, charges and losses to the Customer in writing.
- 7.4. Additionally, and notwithstanding the above, HTG will not be responsible for any failure to provide the Managed Services:
- 7.4.1. unless the Customer has met or observed the following requirements:
- 7.4.1.1. all Customer hardware and software configurations to be supported by HTG have been installed by HTG or have been reviewed by both parties and agreed that the solution presented is both suitable for purpose and within the ability of both parties to sustain;
- 7.4.1.2. the Customer has assumed responsibility for the purchase of associated hardware and software Maintenance Contracts and ensures that all Maintenance Contracts remain in force during the period of the provision of Managed Services.. Where any related Maintenance Contract has been arranged directly with an IT Partner by the Customer, the Customer shall be responsible for advising that IT Partner that HTG will be managing the Customer's systems from the applicable start date and, to the extent required, procuring for HTG a right to use the services provided under such Maintenance Contract;
- 7.4.1.3. the Customer has ensured that the performance or operation of any Customer installed applications have no direct impact upon HTG's ability to deliver the agreed Service Level Agreements; and
- 7.4.1.4. the Customer has advised HTG of its internal procedures of internal escalation and systems maintenance;
- 7.4.1.5. where remote access support is required, the Customer acknowledges that given HTG's ability to perform remote access is dependent on the Internet and third-party telecommunication networks and as these are not controlled by HTG, HTG cannot make any guarantees or provide any assurances that the remote support will be provided at any given time
- 7.4.2. where that failure is an outage, unavailability, delay or other degradation of service which is related to, associated with, or caused by:
- 7.4.2.1. planned maintenance events;
- 7.4.2.2. any service not supported by HTG;
- 7.4.2.3. any third party plugin or ancillary equipment not supplied by HTG;
- 7.4.2.4. a Customer application running on a server (virtual or physical) which is not supported by HTG;

- 7.4.2.5. the introduction of any Virus or malware to the Customer's IT system;
- 7.4.2.6. any section of LAN/WLAN unavailability/instability or misconfiguration or unavailability of connectivity for remote support; and
- 7.4.2.7. unavailability/instability/performance of Customer supported virtualised environment.
- 7.5. If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon HTG's ability to deliver the Managed Services, then the Customer will inform HTG in writing of such works prior to their commencement.
- 7.6. In the event that the Customer, or any third party who is not a sub-contractor of HTG, omits or commits anything that prevents or delays HTG from undertaking or complying with any of its obligations under the Contract, then HTG shall notify the Customer as soon as possible and HTG will have no liability in respect to any delay in the provision of the Managed Service that results from such act omission.
- 7.7. HTG may charge the Customer for any additional reasonable costs and expenses properly incurred by HTG caused by variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this Clause 7.4.
8. **Change control**
If either party wishes to change the scope of the Professional Services and/or Managed Services, it shall submit details of the requested change to the other in writing. HTG shall have no obligation to proceed with any change unless and until HTG has agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.
9. **Charges and payment**
- 9.1. The price for Equipment and/or Software Licences:
- 9.1.1. shall be the price set out in the Statement of Work, Quotation and/or Order Confirmation; and
- 9.1.2. unless stated otherwise in the Statement of Work, Quotation and/or Order Confirmation, shall be exclusive of all costs and charges of packaging, insurance, transport of the Equipment and/or Software Licences, which shall be invoiced to the Customer.
- 9.2. The charges for Professional Services shall be calculated on a time and materials basis:
- 9.2.1. the charges shall be calculated in accordance with HTG's daily fee rates, as set out in the Statement of Work, Quotation and/or the Order Confirmation;
- 9.2.2. HTG's daily fee rates for each individual person are calculated on the basis of Normal Working Hours being worked;
- 9.2.3. HTG shall be entitled to charge Out of Hours rates as set out in the Statement of Work and/or Order Confirmation for any time worked by individuals whom it engages on the Professional Services outside of Normal Working Hours; and
- 9.2.4. HTG shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom HTG engages in connection with the Professional Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by HTG for the performance of the Professional Services, and for the cost of any materials.
- 9.3. The charges for Managed Services shall be set out in the Statement of Work, and/or Order Confirmation; and
- 9.3.1. where a daily fee rate applies, the charges shall be calculated in accordance with HTG's daily fee rates, as set out in the Statement of Work, Quotation and/or the Order Confirmation, and the daily fee rate for each individual person shall be calculated on the basis of Normal Working Hours being worked;
- 9.3.2. HTG shall be entitled to charge Out of Hours rates as set out in the Statement of Work and/or Order Confirmation for any time worked by individuals whom it engages on the Managed Services outside of Normal Working Hours;
- 9.3.3. HTG shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom HTG engages in connection with the Managed Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by HTG for the performance of the Managed Services, and for the cost of any materials; and
- 9.3.4. when the Customer first orders a Managed Service not previously supplied, or it is agreed by the parties as being either an addition to, or change to an existing Managed Service being supplied, then a non-recurring charge may be specified as part of the fees. This non-recurring charge is for installation of additional network infrastructure, cabling, electronics or other materials or consultancy. Non-recurring charges are payable by the Customer after delivery of the relevant Managed Service and will be billed in arrears. If the Customer fails to pay such non-recurring charges within thirty (30) calendar days following HTG's invoice for such non-recurring charges then in addition to its other rights and remedies, HTG may issue a revised Activation Date and/or suspend installation of the Managed Service until receipt of payment.
- 9.4. In addition to the increase in Managed Service charges at clause 9.5 below, HTG reserves the right to increase the price of the Professional Services, the Managed Services, the Software Licences or the Equipment (in the case of the Equipment at any time before delivery), by giving notice to the Customer, to reflect any increase in the cost of the Professional Services, the Managed Services, the Software Licences or the Equipment to HTG that is due to:
- 9.4.1. any factor beyond the control of HTG (including increases in the amounts charged to HTG by its third party suppliers, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.4.2. any request by the Customer to change the delivery date(s), quantities or types of the Professional Services, the Managed Services, the Software Licences or Equipment ordered, or the Statement of Work; or
- 9.4.3. any delay caused by any instructions of the Customer in respect of the Professional Services, the Managed Services, the Equipment or the Software Licences or failure of the Customer to give HTG adequate or accurate information or instructions in respect of the Professional Services, the Managed Services, the Software Licences or Equipment.
- 9.5. The Customer acknowledges that the charges for Managed Services and cloud Services (for example AWS, Azure, VCHS, cloud backup and SIP per-minute billing) are based on the Customer's actual usage, and that the level of usage is controlled by the Customer. The Customer therefore agrees that in respect of such Managed Services and cloud Services to pay such charges as the Customer may incur as a result of its actual usage. The Customer further acknowledges that the charges for Managed Services are subject to variations caused by, among other things, increases in upstream supplier charges and that HTG may therefore vary the charges for Managed Services payable by the Customer at any time in order to reflect increases in upstream supplier charges. In addition to the above rights to increase charges for Managed Services, the Customer acknowledges that the charges for Managed Services may be impacted by general inflation and HTG's own costs, and HTG may therefore vary the charges for Managed Services in respect of each Renewal Term by giving the Customer at least 45 days' notice, before the expiry of the Initial Term or the then current Renewal Term, of any adjustment in the charges for Managed Services which will be payable for the subsequent Renewal Term and such adjusted charges will apply from the start of such Renewal Term, unless the Customer terminates the Contract in accordance with clause 14.1.
- 9.6. HTG shall invoice the Customer on the date(s) as set out in the Statement of Work and/or Order Confirmation, or if none are specified:
- 9.6.1. in respect of Software Licences, on the issue of the Order Confirmation;
- 9.6.2. in respect of Equipment, on shipment;
- 9.6.3. in respect of Professional Services, monthly in arrears;
- 9.6.4. in respect of Managed Services, monthly in advance.
- 9.7. The Customer shall pay each invoice submitted by HTG:
- 9.7.1. within 30 days of the date of the invoice unless stated otherwise in the Statement of Work and/or Order Confirmation;
- 9.7.2. in full and in cleared funds to a bank account nominated in writing by HTG; and
- 9.7.3. time for payment shall be of the essence of the Contract.
- 9.8. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by HTG to the Customer, the Customer shall, on receipt of a valid VAT invoice from HTG, pay to HTG such additional amounts in respect of VAT as are chargeable on the supply of the Professional Services, Managed Services, Software Licences or Equipment at the same time as payment is due for the supply of the Professional Services, Managed Services, Software Licences or Equipment.
- 9.9. If the Customer fails to make a payment due to HTG under the Contract by the due date, then, without limiting HTG's remedies under clause 14, HTG shall have the right to charge the Customer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.9 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.
- 9.10. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.11. If a Statement of Work or Order Confirmation provides that any part of the charges are payable in arrears then HTG may withdraw or vary such arrangements to such payment terms as it sees fit in the event that there is (in the sole opinion of HTG) a material adverse change in the creditworthiness of the Customer, or where the Customer fails to make any payment due to HTG under the Contract by the due date.
- 9.12. If the Customer reasonably disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount within thirty (30) calendar days after delivery of the relevant invoice and shall at all times remain liable for the payment of all items not disputed or not validly disputed as reasonably determined by HTG. Where such dispute turns upon level of usage of the Managed Services, HTG's records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert appointed by HTG or appears to be contrary to Customer's written purchase order for such Services.
10. **Intellectual Property Rights**
- 10.1. All Intellectual Property Rights and all other rights in or arising out of or in connection with the Professional Services and/or Managed Services shall be owned HTG.
- 10.2. HTG hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties.
- 10.3. In so far as HTG provides any third party assets to the Customer in connection with the provision by HTG of any Equipment and/or Software Licences and/or Professional Services and/or Managed Services, any

- Intellectual Property Rights in such third party assets shall vest in the third party provider and the Customer's rights in relation to such Intellectual Property Rights shall be as set out in the relevant third party's terms, copies of which shall be provided to or notified to the Customer, and the Customer agrees to be bound by such third party terms and to indemnify HTG against any breach or non-performance of the same.
- 10.4. The Customer grants HTG a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any information, data or materials provided by the Customer to HTG for the term of the Contract for the purpose of providing the Professional Services and/or Managed Services to the Customer.
11. **Confidentiality**
- 11.1. Each party may be given access to confidential information from the other party concerning the business, affairs, customers, clients or suppliers of the other party in order to perform its obligations under the Contract. A party's confidential information shall not be deemed to include information that:
- 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
- 11.1.2. was in the other party's lawful possession before the disclosure;
- 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2. Subject to clause 11.3, each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than to perform its obligations under this Contract.
- 11.3. Each party may disclose the other party's confidential information:
- 11.3.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
12. **Data protection and data processing**
- 12.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and HTG is the Data Processor. The Statement of Work and/or Order Confirmation, together with any Service Level Agreement sets out the scope, nature and purpose of processing by HTG, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 12.3. Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to HTG for the duration and purposes of this Contract.
- 12.4. Without prejudice to the generality of clause 12.1, HTG shall, in relation to any Personal Data processed in connection with the performance by HTG of its obligations under this Contract:
- 12.4.1. process that Personal Data only on the written instructions of the Customer unless HTG is required by the laws of any member of the European Union or by the laws of the European Union applicable to HTG to process Personal Data ("Applicable Laws"). Where HTG is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, HTG shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit HTG from so notifying the Customer;
- 12.4.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 12.4.4. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.4.5. notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 12.4.6. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 12.4.7. maintain complete and accurate records and information to demonstrate its compliance with this clause 12.
- 12.5. The Customer hereby provides its prior, general authorisation for HTG to:
- 12.5.1. appoint processors to process the Customer Personal Data, provided that HTG:
- 12.5.1.1. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws;
- 12.5.1.2. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of HTG; and
- 12.5.1.3. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to HTG's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify HTG for any losses, damages, costs (including legal fees) and expenses suffered by HTG in accommodating the objection.
- 12.5.2. transfer Customer Personal Data outside of the UK and the EEA as required for the purposes for which the Personal Data is processed by HTG, provided that HTG shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of HTG, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 12.6. HTG may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 12.7. The Customer's attention is drawn to clause 6.4 which refers to the processing of Personal Data under third party Software Licences.
13. **Limitation of liability**
- 13.1. The following provisions set out the entire liability of HTG (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer.
- 13.2. Notwithstanding anything else contained in the Contract, the Customer acknowledges and agrees that HTG was not the manufacturer of any Equipment and did not develop any software which is provided under the Software Licences and the Customer hereby irrevocably agrees that HTG does not itself give any warranty, guarantee, indemnity, condition or other assurance (whether express or implied) in respect of any such Equipment or software, including any warranty or guarantee or indemnity or condition or assurance that the same are free from defects, of satisfactory quality, or fit for any particular purpose or non-infringing. Notwithstanding the foregoing, where reasonably required by the Customer, HTG shall use its reasonable endeavours to pass on to the Customer the benefit of any warranties, guarantees, indemnities, condition or other assurance as may be given by the applicable third party manufacturer or supplier of any such Equipment or software.
- 13.3. Where applicable, if service credits are payable under any Service Level Agreement for a failure on the part of HTG, then subject to clause 13.5, these represent the Customer's entire remedy for such failure, and the payment of the same represents the full and final settlement by HTG of its liability in relation to the event giving rise to the service credit claim.
- 13.4. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5. Nothing in these conditions excludes the liability of HTG:
- 13.5.1. for death or personal injury caused by HTG's negligence;
- 13.5.2. for fraud or fraudulent misrepresentation.
- 13.6. The Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for the conclusions drawn from such use. HTG shall, subject to clause 13.5, have no liability for any damage or loss caused by any errors or omissions in any information, instructions or scripts provided to HTG by the Customer in connection with the Managed Services, or any actions taken by HTG at the Customer's direction.
- 13.7. Subject to clause 13.5:
- 13.7.1. HTG shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 13.7.1.1. loss of profits;
- 13.7.1.2. loss of sales or business;
- 13.7.1.3. loss of opportunity;
- 13.7.1.4. loss of revenue;
- 13.7.1.5. loss of agreements or contracts;
- 13.7.1.6. loss of anticipated savings;
- 13.7.1.7. loss of use or corruption of software, data or information or interference with business (unless and solely to the extent that HTG provides backup and restore services as part of the Managed Services);
- 13.7.1.8. loss of or damage to reputation or goodwill; or
- 13.7.1.9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 13.7.2. HTG shall not be liable for any loss or damage arising to the Customer's systems, data, information, equipment (including the Customer's Operating Environment) or any Intellectual Property Rights if such loss is in any way attributable to any of the following:
- 13.7.2.1. any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or failure to implement back-up procedures;
 - 13.7.2.2. any failure against any applicable Service Level Agreement if in the reasonable opinion of HTG (based on its knowledge of the industry) the solution/systems have been tampered with by the Customer or any third party authorised by the Customer with or without HTG's knowledge;
 - 13.7.2.3. any failure of any Customer-managed IT Partner to provide its services in accordance with the relevant agreements;
 - 13.7.2.4. any Internet failure outside the control of HTG; or
 - 13.7.2.5. any latent defect in any third party equipment or Software, or failure of such equipment or Software to perform in accordance with the manufacturer's specification.
- 13.7.3. HTG's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total charges paid under the Contract.
- 13.8. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.9. This clause 13 shall survive termination of the Contract.
14. **Termination**
- 14.1. The Contract shall commence on the Commencement Date and remain in force for the Contract Term, unless terminated earlier in accordance with clause 14.2 or 14.3 or unless extended by agreement in writing between the parties. With respect to Managed Services, the Contract will (unless terminated otherwise in accordance with clauses 14.2 or 14.3) continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless either: (i) either party notifies the other part of termination, in writing, at least 90 days before the end of the Initial Term or the then current Renewal Term; or (ii) the Customer notifies HTG in writing at least 40 days before the end of the Initial Term or then current Renewal Term where HTG has given the Customer notice of an increase in the charges of the Managed Services in accordance with clause 9.5 and where that increase in the charges is an increase of more than 20% against the then current prices, in each of which case the Contract for Managed Services will terminate upon expiry of the Initial Term or the then current Renewal Term (as the case may be).
- 14.2. Without limiting the other rights or remedies available to it under this Contract, HTG may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.2.1. the Customer commits a material breach of any term of this Contract and (if such a breach is remediable) fail to remedy that breach within 30 (thirty) days of being notified in writing of the breach;
 - 14.2.2. the Customer takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), a person becomes entitled to appoint a receiver over its assets or a receiver is appointed to any of its assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 14.2.3. the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 14.2.4. the Customer's financial position deteriorates to such an extent that in HTG's reasonable opinion, the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3. Without prejudice to any other rights or remedies to which HTG may be entitled, HTG may suspend the provision of any Professional Services, Managed Services and/or Software Licences and/or suspend the Customer's access to any third party platforms where: (i) the Customer fails to pay any amount due under this Contract on the due date for payment; (ii) any of the circumstances in clauses 14.2.1 to 14.2.4 (inclusive) apply; (iii) HTG is required to do so by law or a regulatory or government body; (iv) HTG reasonably believes that the Customer has permitted the Managed Services to be accessed or manipulated by a third party without HTG's prior written consent; (v) HTG reasonably believes that Customer applications, databases or operating systems hosted on the Managed Services have been hacked or compromised, except where such hack or compromise is reasonably attributable to HTG's failure to perform its obligations under the Contract. If the Customer remains in default of payment for more than 7(seven) days after being notified in writing by HTG to make such payment, HTG may terminate the Contract without any liability to the Customer. In the event that HTG receives charges from third party suppliers (where those third party suppliers cannot also be suspended by HTG without cost), then the Customer shall indemnify HTG in full against any and all such third party charges, costs and expenses.
- 14.4. If HTG suspends any Managed Services pursuant to clause 14.3, then HTG may continue to charge the Customer for the Managed Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Managed Services. If HTG suspends any Managed Services pursuant to clause 14.3(v), then the Customer must address the underlying vulnerability prior to HTG placing the Managed Services back in service. If the Customer requests, HTG may be able to perform this work for the Customer as a supplementary service on a time and materials basis at HTG's standard hourly rates.
- 14.5. On termination of the Contract and/or any licence under the Contract:
- 14.5.1. the Customer shall immediately pay to HTG all of HTG's outstanding unpaid invoices and interest and, in respect of Professional Services, Managed Services and Equipment supplied but for which no invoice has been submitted, HTG shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.5.2. the Customer shall return all of HTG's Materials and any Equipment which has not been fully paid for. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and in relation to the Managed Services:
 - 14.5.2.1. the Customer must discontinue use of the Managed Services and relinquish use of the IP addresses and server names assigned to the Customer by HTG in connection with Services, including pointing its domain name(s) away from Managed Services. The Customer agrees that HTG may, as it determines necessary, make modifications to DNS records and zones on HTG managed or operated DNS servers and services;
 - 14.5.2.2. HTG will provide the Customer with one electronic copy of the Customer Data, in the format it is then in and on an "as-is" basis. Thereafter, subject to clause 14.5.4 HTG may delete the Customer Data at its discretion;
 - 14.5.3. HTG will, reasonably promptly following expiry or termination of any Managed Services:
 - 14.5.3.1. provide to the Customer copies of existing technical documentation of the Managed Services;
 - 14.5.3.2. hand over to the Customer all relevant passwords specific to the Managed Services provided to the Customer; and
 - 14.5.3.3. provide the Customer with such reasonable assistance and information in transitioning the Managed Services to a replacement supplier ("**Replacement Supplier**") as the Customer may request, free of charge for a period of up to 30 days following such expiry or termination, and thereafter chargeable to the Customer on a time and materials basis at HTG's then-current rates for a further period of no more than 90 days following such expiry or termination.
 - 14.5.4. If requested to do so by the Customer, upon expiry or termination of the Contract for reasons other than those set out in clause 14.2 and subject to continuing payment by the Customer of the applicable charges, HTG may agree to continue to provide such of the Managed Services as the Customer may request for up to 30 days following such termination or expiry so as to allow the Customer to transition to a replacement supplier. The Customer acknowledges that certain upstream suppliers may not permit such transitional provision, and therefore agrees that this clause will not apply in respect of Managed Services which are dependent upon such upstream suppliers.
- 14.6. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.7. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
15. **TUPE**
- 15.1. The Customer warrants, undertakes and represents that none of its employees, nor any employees of any "**Customer Party**" meaning any of the Customer's group companies, contractors, or suppliers will transfer to HTG pursuant to the Regulations on commencement of the Contract or on commencement of the provision of any of the Services hereunder.
- 15.2. If any contract of employment of any person employed by a Customer Party transfers, or is alleged to have transferred, to HTG, under the Regulations, then HTG shall be entitled to terminate the employment of any such employees, and the Customer shall indemnify HTG in full for and against all claims, costs, expenses or liabilities whatsoever arising incurred or suffered by HTG including all damages, notice pay and compensation, and all legal expenses and other professional fees and VAT thereon, arising from:
- 15.2.1. HTG's termination of employment of those employees;
 - 15.2.2. anything done or omitted to be done in respect of those employees which is deemed to have been done by HTG by virtue of the Regulations;
 - 15.2.3. anything done or omitted to be done by HTG in respect of any of those employees whether before or after their alleged transfer date to HTG.

16. General

- 16.1. **Variation:** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.2. **Force Majeure Event:** HTG shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 16.3. **Waiver:** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy; or prevent or restrict the further exercise of that or any other right or remedy.
- 16.4. **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.5. **Entire agreement:** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 16.6. **Assignment:** HTG may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent. The Customer shall not, without HTG's prior written consent, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 16.7. **Third party rights:** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 16.8. **Notices:**
- 16.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, or commercial courier.
- 16.8.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.8.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.8.3. The provisions of this clause 16.8 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.8.4. For the purposes of this clause, "writing" shall not include email.
- 16.9. **Non-solicitation:** The Customer shall not (unless with the written consent of HTG) at any time from the date of the Contract, nor within 12 (twelve) months after the termination of the Contract, make direct or indirect unsolicited offers of employment to an employee of HTG who has been engaged in a managerial or technical capacity in connection with the Contract.
- 16.10. **Governing law and jurisdiction:** The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 16.11. **Anti-bribery:** Neither party will commit, or do or omit to do any act or thing which would result in the other party committing, an offence under sections 1, 2 or 6 of the Bribery Act 2010.