

Managed247 Limited: General Terms & Conditions

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1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these General Terms and Conditions:

"Affiliate" means, in relation to a person, each and any subsidiary or holding company of that person, and each and any subsidiary of a holding company of that person (and references to "holding company" and "subsidiary" shall mean those terms as they are defined in section 1159 of the Companies Act 2006).

"Applicable Laws" means all applicable regional laws, regulations, rules, requirements and binding guidance, standards and directions, including those imposed by any governmental or regulatory or judicial authority, in each case which apply from time to time to the person or activity in the circumstances in question.

"Business Day" means any day other than Saturday or Sunday or a bank or public holiday in England.

"Confidential Information" means technical and commercial know-how, specifications, inventions, processes, initiatives and software code which is or are of a confidential nature together with any information concerning a party's business, finances, customers, products and services and any other information specified by either party as being confidential in nature.

"Contract" has the meaning given in clause 2.2.

"Customer" means the contracting party who will be receiving the Products and/or Services as identified in the Proposal and Service Delivery document and a reference to **"You"** or **"Your"** shall be construed accordingly.

"Customer Data" means all data (including Customer Personal Data), information, documents, drawings and other materials which are embodied in any medium including all electrical, optical, magnetic or tangible media and which are supplied to Us by or on behalf of any Customer Group Member or which We are required to generate, collect, process, store or transmit in connection with the Contract.

"Customer Group" means You and Your Affiliates from time to time, and references to a **"Customer Group Member"** shall be construed accordingly.

"Customer Personal Data" means all Personal Data processed by Us on behalf of any Customer Group Member under or in connection with the Contract.

"Data Controller" and **"Data Processor"** have the meaning given to the term "controller" and "processor" (respectively) in Article 4 of the GDPR.

"Data Protection Laws" means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 (the **"GDPR"**); (ii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR (including, in the UK, the Data Protection Act 2018 (**"DPA"**)); (iii) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC) (including, in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003); and (iv) any guidance or codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, as updated, amended or replaced from time to time.

"Data Subject Request" means a request from a Data Subject to exercise its rights under the Data Protection Laws in respect of that Data Subject's Personal Data.

"DP Regulator" means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

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

"Employees" means those persons wholly or mainly employed by You in the provision of the Services immediately before the Go-Live Date and whose employment will transfer to Us pursuant to the Transfer Regulations as a result of this Agreement and who have been identified as transferring within information supplied by You prior to the Go-Live Date;

"Employment Liabilities" means all damages, losses, liabilities (including any redundancy payments or payments in lieu of notice), claims, actions, compensation, awards, costs, expenses (including the cost of legal or professional services on a full indemnity basis), proceedings, demands, penalties, fines including any liability to taxation and charges whether arising under statute, contract or at common law;

"Effective Date" has the meaning given to it in clause 2.3.

"Exit Period" has the meaning given in clause 18.1.

"Exit Plan" means the exit plan relating to the Services, as compiled in accordance with clause 19;

"Exit Services" the services to be provided by Us following expiry or termination of any applicable Services, as specified in clause 18 and an Exit Plan.

"Force Majeure Event" has the meaning given in clause 22.1;

"Go Live Date" means the day that the supply of Managed Services commenced;

"Good Industry Practice" means exercising that degree of skill, care and prudence which would be expected from a reasonably and suitably skilled, trained and experienced person undertaking the relevant services or activities.

"General Terms and Conditions" means the terms and conditions set out in this document.

"Initial Term" means the initial term of the Contract as specified in the Proposal or, if no such period is referred to in the proposal, the relevant period of time set out in the Schedule that relates to that Service and/or Product and charge clauses within the contract.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Managed247" or **"Us"** or **"Our"** or **"We"** means Managed247 Limited, a company registered in England & Wales with company number 07019261 and whose registered office number is located at 100 Avebury Boulevard, Milton Keynes, Buckinghamshire, MK9 1LH

"Managed Services" means Our service support calls services, onsite support services, data management services, cloud advice and management services, data and infrastructure security services, onsite repair services, service management services, Vendor Management Service, image holding services and any other managed services as applicable to the Customer and as are described and set out in more detail in our proposal.

"Monitoring Services" means Our service reporting, network monitoring and management, cloud monitoring and management, infrastructure monitoring and management, application monitoring, VoIP telephony monitoring, data monitoring and management, and any other monitoring services as applicable to the Customer and as are described and set out in our proposal.

"Our Personnel" means all personnel that We or a Subcontractor engage to perform the Services and/or provide the Deliverables or Products.

"Permitted Personnel" has the meaning given in clause 5.1.

"Pre-existing IPR" has the meaning given in clause 12.1.

"Pre-existing Materials" means all documents, information and materials provided by Us relating to the Service which existed prior to the Effective Date, including data, reports and specifications and any such pre-existing materials specified in the Proposal.

"Premises" means the premises specified in paragraph 3.2 that Permitted Personnel require access to for the purposes of the onsite support services, as may be updated from time to time by You.

"Priority" a category used to identify the relative importance of something.

"Process" a structured set of activities designed to accomplish a specific objective.

"Products" means the products supplied by Us to You as detailed in the Service Delivery document and, where applicable, as may be further set out in the relevant Schedule.

"Proposal" means Our document which sets out the commercial terms on which the Services and/or the Products will be provided to You, as will be appended to these General Terms and Conditions

"Renewal Term" has the meaning given in clause 16.1.

"Relevant Transfer" means a relevant transfer for the purposes of the Transfer Regulations;

"Proposal response" means Our response and proposal document which sets out the commercial and service descriptions on which the Services and/or the Products will be provided to You.

"Schedule" means a Schedule which contains terms and conditions that apply specifically to the Products and/or Services to which that Schedule relates, as will be appended to these Terms and Conditions, as applicable.

“Security Breach” means any actual loss, unauthorised or unlawful processing, destruction, damage, or alteration, or unauthorised disclosure of, or access to the Customer Personal Data.

“Services” means the services, including (where relevant) the Deliverables, supplied by Us to You as detailed in the Service Delivery Document and as further set out in the relevant Schedule.

“Service Credits” means the sums payable in respect of any failure to meet or comply with a Service Level, as specified in respect of the corresponding Service Level and set out in the relevant Schedule appended at Schedule 1.

“Service Failure” means any failure, error or defect in the provision of the Services by Us (including any failure to meet or comply with a Service Level) but excluding:

(a) any failure, error or defect to the extent caused by Your acts or omissions in breach of the Contract; or

(b) any failure, error or defect arising as a result of a Force Majeure Event.

“Service Levels” means the service levels in respect of the applicable Services, as detailed in the relevant Schedule appended at Schedule 1.

“Standard Contractual Clauses” means the standard contractual clauses set out in the European Commission's Decision 2010/87/EU of 5 February 2010 for the transfer of Personal Data to processors established in third countries.

“Subcontractor” means a third party other than Us to whom We subcontract the performance of any of Our obligations under the Contract, in accordance with clause 24;

“System” means Your information technology system including hardware, software, operating systems and interfaces (if any) (but excluding any such systems and equipment provided to You by Us under the Contract).

“Term” has the meaning given to it in clause 16.1 unless a specific Schedule applies to the Services in which case it shall have the meaning given to it in that Schedule, if different (and the definition in the Schedule shall prevail over the definition in these General Terms and Conditions).

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and as amended from time to time or as replaced by any other legislation or regulation;

“VAT” means Value Added Tax chargeable under English law for the time being and any similar additional tax.

“Virus” means anything 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, crypto locker viruses and other viruses and other similar things or devices.

“Your Equipment” means any equipment, systems, cabling or facilities provided by You and used directly or indirectly in the supply of the Services.

“You”, “Your” meaning Our Client as defined within, or by, a Proposal, Quotation or Agreement for the supply of goods and services.

1.1. In these General Terms and Conditions, the terms **“Data Subject”, “Personal Data”, “process”, “processing”, “transfer”** (in the context of transfers of Personal Data) and **“technical and organisational measures”** shall have the meanings set out in and otherwise be interpreted in accordance with the GDPR.

1.2. A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.5. Any words following the terms **“including”, “include”, “in particular”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. CONTRACT TERMS

2.1. These General Terms and Conditions set out the basis on which We and You will do business

2.2. Following agreement between the parties and execution of a Proposal and or Service Delivery Document in accordance with clause 2.3, such Proposal will create a separate contract (referred to as the “Contract”) between You and Us with regard to its subject matter and will incorporate these General Terms and Conditions.

2.3. From time to time, You may request Services from Us or provide a purchase order for the purchase of Products (or any document of equivalent nature). We will prepare and send a draft of the relevant Proposal to You. Both parties shall discuss and agree the content of the Proposal and, following such agreement, We shall provide you with a final draft of the agreed Proposal for Your signature. The Contract shall be formed between You and Us upon Our countersignature of the applicable Proposal as signed by You and shall incorporate the terms as prescribed in clause 2.2 to the exclusion of all other terms. The date of Our countersignature shall be the “Effective Date” which is the date that the Contract is formed.

2.4. Any terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, shall be excluded from the Contract.

2.5. You shall be responsible for providing Us with all such relevant information requested by Us concerning the Services and/or Products so as to assist Us in producing the Proposal.

2.6. If there is a conflict or inconsistency between some or all of the documents which make up the Contract, the order of priority for interpretation shall be as set out in clause 2.2, save that where a document with a lower order of precedence expressly amends the terms of a document with a higher order, effect shall be given to that amendment.

2.7. The General Terms and Conditions, Schedules and or the Proposal on their own create no obligation or right on behalf of either party, except where expressly stated otherwise. For a Contract to exist, a Proposal and Service Delivery Document must be provided incorporating the relevant terms in accordance with clause 2.2 and executed by the parties in accordance with clause 2.3.

3. SERVICES & PRODUCTS

3.1. The Products are as described in the Proposal and Service Delivery document. We shall provide the Products in accordance with the terms of the Contract and shall ensure that the Products and any Deliverables shall be fit for any purpose expressly made known to Us by You. You shall comply with any manufacturer's recommendations regarding the Products and Deliverables that We provide to You.

3.2. We (or Our nominated third-party supplier) shall ensure that delivery of the Products is accompanied by a delivery note which shows all relevant Customer and Managed247 reference numbers, the type and quantity of the Products and special storage instructions (if any).

3.3. We (or Our nominated third-party supplier) shall deliver the Products to the location set out in the Proposal or such other location as the parties may agree in writing (“Delivery Location”).

3.4. Delivery of the Products shall be made on the applicable delivery date specified for the Products in the Proposal or as agreed between the parties in writing and delivery shall be completed on the Products' undamaged arrival at the Delivery Location. We shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the delivery of the Products to the Delivery Location.

3.5. Unless otherwise agreed or elsewhere explicitly stated, our product delivery charge is £20 per individual shipment for direct-to-You UK mainland deliveries. In exceptional circumstances, and where our delivery costs exceed either this or any other agreed amount, we reserve the right to recover all delivery charges and/or freight and import levies.

3.6. If You fail to accept or take delivery of the Products on the delivery date specified for the Products in the Proposal (or as agreed between the parties in writing), then, except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract in respect of the Products, We shall be entitled to:

3.6.1. re-deliver the Products to the Delivery Location at such reasonable time as We shall set and notify to You; and/or

3.6.2. store the Products until delivery takes place and charge You for all reasonable related costs and expenses (including insurance), provided that We use all reasonable efforts to rearrange delivery of the Products on such date as is as soon as reasonably practicable thereafter.

If You fail to take delivery of the Products within 10 Business Days after the delivery date agreed between the parties (in the Proposal or otherwise as agreed in writing), We may resell or otherwise dispose of part or all of the Products. If You have paid for the Products in advance, We shall refund You the charges in respect of such affected Products, provided that We can deduct any reasonable transportation and storage costs incurred.

3.7. We (or Our nominated third-party supplier) may deliver the Products by instalments, which shall be invoiced and paid for in line with the terms of the original Proposal.

- 3.8. Each Product shall be supplied subject to the manufacturer's published specification and shall only be subject to amendment if the parties have agreed to such amendment in the Proposal. We (or Our suppliers or Product manufacturers) reserve the right to make changes to the Products where necessary to comply with any legal requirements and which do not materially affect quality or performance.
- 3.9. The risk in the Products and/or Deliverables shall pass to You on completion of delivery at the Delivery Location.
- 3.10. Title to the Products and/or Deliverables shall not pass to You until We receive payment in full (in cash or cleared funds) for the Products and/or Deliverables.
- 3.11. Until title has passed to You, You shall:
 - 3.11.1. hold the Products and/or Deliverables on a fiduciary basis as Our bailee;
 - 3.11.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Products and/or Deliverables and take all reasonable steps to store the Products and/or Deliverables safely and in such a way that they can be identified as Our property;
 - 3.11.3. maintain the Products and/or Deliverables in satisfactory condition, not mix them with other products and keep them insured against all risks for their full price from the date of delivery;
 - 3.11.4. notify Us promptly if You become subject to any of the events listed in clause 16.3; and
 - 3.11.5. give Us such information relating to the Products and/or Deliverables as We may reasonably require from time to time.
- 3.12. If You become subject to an event described in clause 16.3 then We may at Our absolute discretion recover the Products and/or Deliverables from You and You grant Us permission to enter Your premises or any premises where the Products and/or Deliverables are located solely for the purpose of and to the extent necessary for recovering such Products and/or Deliverables.
- 3.13. Unless otherwise agreed or elsewhere explicitly stated, we shall review consumption of services and devices on a quarterly basis and average your consumption across that period. Any excess usage or consumption shall be recharged to you at the prevailing price plus 20% uplift.

4. YOUR OBLIGATIONS

- 4.1. You shall:
 - 4.1.1. obtain and maintain all necessary licences, permissions and consents which may be required for Your receipt of the Services before the date on which the Services are to start;
 - 4.1.2. where necessary, comply with any reasonable and lawful instructions from Us which relates to Your use of the Services;
 - 4.1.3. co-operate with Us as necessary to enable us to provide the Services in accordance with the Contract, which may include providing reasonable security access and access to Your System, data and configuration services (as will be agreed in advance between the parties);
 - 4.1.4. make sure that Your System meets the minimum technical specifications for compatibility with the Services as set out in the relevant Proposal;
 - 4.1.5. comply with all Applicable Laws with respect to Your activities under the Contract; and
 - 4.1.6. perform any of the obligations and observe any restrictions imposed on You in any applicable Schedule.
- 4.2. You agree that You will not use the Services in a way which You are or should reasonably be aware would:
 - 4.2.1. materially adversely compromise the security of any aspects of the Products or the Services; or
 - 4.2.2. do anything which does or could cause a material degradation of service to any of Our other customers.
- 4.3. You shall not:
 - 4.3.1. access, store, distribute or transmit any data or materials if their transmission using the Service would constitute a breach of the Contract;
 - 4.3.2. access all or any part of the Services in order to build a product or service which competes with the Services; or
 - 4.3.3. sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party (other than as permitted to other Customer Group Members under the Contract).
- 4.4. Where You are or become aware of any matters which You know constitute a material threat to the security of the Services, You will promptly notify Us of such matters in writing.
- 4.5. You shall not access, store, distribute or transmit any material during the course of Your use of the Services that:
 - 4.5.1. are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.5.2. facilitate illegal activity;
 - 4.5.3. depict sexually explicit images;
 - 4.5.4. promote unlawful violence;
 - 4.5.5. are discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or
 - 4.5.6. are otherwise illegal or cause damage or injury to any person or property;
 - 4.5.7. and We reserve the right, without liability or prejudice to Our other rights to You, to disable Your access to any material that breaches the provisions of this clause.

5. PERSONNEL

- 5.1. In respect of any of Our Personnel, We shall:
 - 5.1.1. in respect of any of Our Personnel that may require access to any Customer Group Member's premises (the "Permitted Personnel"), notify You in writing of such Permitted Personnel from time to time in sufficient time in advance of such Permitted Personnel requiring access to the Customer Group Member's premises so as to allow for any security, on-boarding or such other processes as may be required to be completed by the relevant Customer Group Member;
 - 5.1.2. provide You with such information in respect of Our Personnel as You may reasonably request from time to time, including details of employment history, training, experience and qualifications;
 - 5.1.3. before each member of Our Personnel commences performance of any Services, have carried out pre-employment and screening checks as are necessary to ensure compliance with, as a minimum, Good Industry Practice and Applicable Laws. Where it has not been possible to conduct such checks or the relevant member of Our Personnel has not passed the checks, We shall only be able to engage such of Our Personnel with Your prior written consent (which shall be at Your discretion); and
 - 5.1.4. take all reasonable steps to maintain continuity in relation to Our Personnel and to ensure the timely replacement (on a temporary or permanent basis) of any of Our Personnel no longer able to perform the Services for whatever reason (including due to Your action pursuant to clause 5.2) with a suitably qualified and competent replacement.
- 5.2. You may:
 - 5.2.1. require that any of Our Personnel is not (or ceases to be) engaged or employed in the provision of the Services in any capacity; and/or
 - 5.2.2. refuse admission to any of Your premises to any of Our Personnel, if You consider that You have reasonable grounds for such decision. We shall comply (and shall ensure that all of Our Personnel comply) with any such decision by You as soon as reasonably practicable.

We may:

 - 5.2.3. require that any of Your Personnel is not (or ceases to be) connected with, or has involvement with, the provision of the Services in any capacity;
 - 5.2.4. failure to comply with this requirement within seven (7) days will result in service suspension. Should the matter not be resolved within thirty (30) days, we reserve the right to terminate the contact without providing further notice. Clause 17 will then apply.
- 5.3. We shall indemnify You for any losses, claims, costs, damages, fines and expenses (including reasonable legal costs) suffered by You, directly or indirectly as a result of any claim which may be brought by any of Our Personnel against You in connection with the Contract, or the termination of the same.
- 5.4. The parties agree that We shall each comply with all aspects of the Transfer Regulations throughout the term of this Agreement including but not limited to Our obligations to inform and consult on commencement and termination, in whole or in part.
- 5.5. You shall, where necessary, invite the Employees to elect employee representatives and shall ensure that the requirements of the Transfer Regulations in respect of such elections are satisfied.
- 5.6. You shall give Us reasonable access to the appropriate representatives (as defined within the Transfer Regulations) and ensure that the appropriate representatives have access to the Employees, are provided with reasonable paid time off and protection from detriment and are provided with appropriate accommodation and facilities.
- 5.7. The parties agree that the provision of the Services from the Go-Live Date will constitute a Relevant Transfer for the purposes of the Transfer Regulations and that therefore the contracts of any Employees together with any collective agreements relating to the Employees, may transfer to Us with effect from the Go-Live Date which shall be the time of transfer under the Transfer Regulations.
- 5.8. You shall indemnify and keep Us fully indemnified from and against any and all Employment Liabilities incurred or suffered by Us arising out of or in connection with:
 - 5.8.1. any claim or other legal recourse by all or any or on behalf of all or any of the Employees in respect of any fact or matter concerning or arising from their employment prior to the commencement of this Agreement;

- 5.8.2. any claim or claims by or on behalf of any Employees or any former employees or workers of Yours in respect of an underpayment of holiday pay by You in respect of the period prior to the Go-Live Date;
 - 5.8.3. the termination by You of the employment of any Employee;
 - 5.8.4. anything done or omitted to be done by You in respect of any Employee which is deemed to have been done by Us;
 - 5.8.5. any claim or other legal recourse by any trade union, works council, information and consultation forum or staff association recognised by You or appropriate employee representatives in respect of all or any of the Employees arising from or connected with any failure by You to comply with your legal obligations to such trade union, works council, information and consultation for staff association or employee representatives;
 - 5.8.6. any failure to provide full and accurate information regarding the Employees and in particular any failure to comply with Regulation 11 of the Transfer Regulations being in any material respect inaccurate or incomplete; and
 - 5.8.7. any compensation for which We may become liable as a result of any breach of the duty by You to inform and consult with the Employees in accordance with the Transfer Regulations howsoever arising.
 - 5.9. You warrant that in respect of all Employees you have carried out the correct checks to provide You and Us with a statutory defence/excuse to any future liability for employing an illegal migrant under the Asylum and Immigration Act 1996 and/or the Immigration, Asylum and Nationality Act 2006 and all Employees who require authorisation to work in the UK have obtained such authorisation covering the entire period of their employment with You. You also warrant and undertake that You have maintained adequate records in respect of the Employees and will make these available to Us on the Go-Live Date.
 - 5.10. Where applicable, the Service Delivery Document or Proposal shall set out any members of Our Personnel to be considered "Key Personnel" for the purposes of certain Services. In respect of any one of the Key Personnel, We shall:
 - 5.10.1. ensure that such Key Personnel devotes a sufficient amount of time and effort to the performance of the applicable Services for the duration of such Services;
 - 5.10.2. retain the services of that Key Personnel for the duration of the provision of the applicable Services and shall not remove or change that Key Personnel unless: (i) such Key Personnel ceases to be employed by the Us or is on long-term sick leave, paternity/maternity or adoption leave (or any other leave to which they are legally or contractually entitled); or (ii) You have provided prior written approval to such removal or change; and
 - 5.10.3. in circumstances where We have been entitled to remove or change the Key Personnel in question, ensure that the role of the Key Personnel is not vacant for longer than is reasonably practicable and shall provide a suitably qualified, experienced and competent replacement for such Key Personnel.
- 6. GOVERNANCE AND REPORTING**
- 6.1. Both parties shall operate on the basis of open lines of communication between peers in both organisations, through appropriate forms of communication and through attending appropriate governance meetings, as reasonably required by You. Each party shall ensure that any such meetings are attended by representatives suitably qualified and experienced in relation to the subject matter of the applicable meeting.
 - 6.2. We shall provide You with regular reports in respect of Our progress in relation to Our performance of the obligations set out in the Contract (and, in any event, such reporting shall be carried out by Us on at least a monthly basis). Such reports shall be presented in the format and layout reasonably requested by You from time to time. We shall provide You with any assistance reasonably requested by You to assist You in interpreting and understanding the reports.
 - 6.3. If We become aware, or reasonably believe, that Our obligations under the Contract are not going to be met within any agreed timescale (including in respect of any Service Level or delivery date for Products), We shall advise You of this as soon as reasonably practicable.
 - 6.4. In such circumstances, We shall (at Our own cost):
 - 6.4.1. implement a plan of action to prevent, or mitigate the impact of, any failure or delay, including by committing such additional resources as may reasonably be required or implementing appropriate workarounds; and
 - 6.4.2. investigate, assemble and preserve information with respect to the causes of the failure, delay or issue; and
 - 6.4.3. remedy or prevent the causes of the failure, delay or issue as promptly as possible.
 - 6.5. If the disruption to the Services has not been brought to an end within the timeframe agreed by the parties (and where any undue delay is caused by you or third-party dependencies or by any external factors) or if they have not been able to agree such a timeframe, you may do one or more of the following:
 - 6.5.1. Where You consider it necessary to do so, suspend our right and obligation to provide some or all the Services to the extent specified by You.
 - 6.5.2. engage other service providers to take such steps to resolve the issue.
 - 6.5.3. locate one or more members of your appointed Personnel to work with our personnel and to oversee the provision of the Services.
 - 6.5.4. itself provide any Services or engage other service providers to provide part or all the Services.
 - 6.6. Any of the above steps will require Director level approval for both You and Us and is limited to the specific services that triggered the failure.
 - 6.7. Other than in respect of any failure by Us to meet or comply with a Service Level, where We have notified You of events that will result in, or have already resulted in, Us not being able to meet Our obligations under the Contract within any agreed timescales, You may, at Your sole discretion and without prejudice to any other rights or remedies You may have in respect of such failure or delay:
 - 6.7.1. agree to an extension of time in respect of the relevant timescales, and the parties shall act reasonably in agreeing a reasonable reduction in the corresponding charges to be paid in recognition of the delayed performance (provided that, if the parties are unable to come to agreement on the appropriate reduction in the applicable charges, We shall be entitled to make an election under clause 6.7.2); or
 - 6.7.2. in circumstances where You reasonably consider that an extension of time will not be possible in light of the Services and/or Products, notify Us that no extension will be possible, in which case, You shall be entitled to elect to:
 - 6.7.2.1. obtain substitute Services (including any Deliverables) and/or Products from a third-party provider and reclaim any additional costs incurred in doing so from Us;
 - 6.7.2.2. obtain a refund of all sums already paid by You to Us in respect of the affected Services and/or Products; or
 - 6.7.2.3. terminate the Contract under clause 16.3.1 (for a material breach which is not remediable).
- 7. CHARGES & PAYMENT**
- 7.1. Specific terms regarding invoicing, payment and charges for the Services and/or Products are set out in the relevant Proposal or Agreement;
 - 7.2. In the absence of any agreed specific invoicing terms between the parties, our default invoicing terms are always to be invoice on order receipt with payment terms to be no more than 30 days from date of invoice issuance;
 - 7.3. Payment for Managed247 Services are to be quarterly in advance of service;
 - 7.4. The terms set out in this clause 7 are applicable to all Services and/or Products unless varied by Schedules which relate to the Services and/or Products supplied. Where such charges are on a time and materials basis in respect of Services:
 - 7.4.1. the charges shall be calculated in accordance with Our standard daily or hourly fee rates, as set out in the Proposal and Service Delivery Document, if no specification is given in, as available from Our sales representatives;
 - 7.4.2. Our standard daily fee rates for each individual person are calculated on the basis of a 7-hour working day from 9.00 am to 5.00 pm with a 1-hour lunch break worked on Business Days; and
 - 7.4.3. We shall only be entitled to charge You for any expenses reasonably incurred by the individuals whom We engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and as required by Us for the performance of the Services, where these have been notified by us, in advance, in writing, to You.
 - 7.5. You must pay all invoices no later than the due date for each invoice, which, subject to the agreement of credit terms, will be no later 30 days from the date of receipt by You of the applicable invoice.
 - 7.6. The charges for the Services and/or Products are set out in the Proposal and/or Agreement. We will raise an invoice for the Products on delivery of the Products to You by Us or the manufacturer or supplier in accordance with the applicable provisions of clause 3. In respect of Services, the invoicing terms set out in the relevant Proposal shall apply.
 - 7.7. If We have not received Your payment of Our charges by the due date in respect of any properly submitted and undisputed invoice (or part of an invoice):
 - 7.7.1. We may suspend the supply of Services in this Contract until the applicable outstanding invoice is paid, provided that:
 - 7.7.1.1. We provided You with written notice that such charges were overdue and unpaid; and
 - 7.7.2. such overdue charges remained unpaid for a period in excess of 15 days following receipt by You of the notification specified in clause 7.7.1.1 above; and
 - 7.7.3. We may charge interest which shall accrue on such undisputed amounts from the date it became overdue, until payment, at an annual rate of 8% above the base rate of the Bank of England from time to time.
 - 7.7.4. We may collect any overdue monies through any direct debit mandate that you may have previously issued to Us
 - 7.8. All charges, amounts and fees are exclusive of VAT which shall be added to Our invoices at the current rate.

- 7.9. If at any time You dispute the validity of any invoice, You shall notify Us in writing of the amount in dispute and the nature of the dispute. You shall be entitled to withhold payment of the amounts in dispute, provided that You shall pay any undisputed amounts of the applicable invoice in accordance with the payment terms set out in clause 7.5. The parties will work together, both acting reasonably and in good faith, to resolve the dispute in accordance with the procedure set out in clause 25.
- 7.10. Where We provide Services or Products to You which are exposed to fluctuations in the exchange rates, We reserve the right to revisit Our charges where there is a fluctuation affecting the currency in which We sell or buy the Services or Products by more than one (1) per-cent during any month prior to the Effective Date. Where this occurs and we intend to amend the charges agreed with You for the Services and/or Products within a Proposal, We will notify you in writing of the same as soon as reasonably practicable, and the parties will discuss and agree any amendment to be made to such charges for the Services and/or Products and the date from which any such amended charges will apply. Following agreement by the parties, the amendment to the applicable charges and the date from which such will apply shall be recorded in writing by the parties.
- 7.10.1. Unless otherwise agreed in the Proposal or relevant Agreement, We may review and increase Our charges for the Services and/or Products, provided that (i) such right shall not apply until the first anniversary of the Effective Date, (ii) any increase to Your charges shall only apply from the anniversary of the Effective Date, and, in turn, each applicable anniversary thereafter, (iii) We will provide you with at least one (1) months' prior written notice of Our intention to increase Your charges, including details as to the updated charges, (iv) Our charges shall not exceed the percentage increase (if any) of the United Kingdom rate of the retail prices index as published by the Office for National Statistics from time to time plus 2.5% and (v) the updated charges shall be advised, recorded and agreed by both parties.
- 7.11. Clause 7.10.1 shall not apply to third party costs over which We have no Control. Any agreed third-party provision or license agreements which are subject to party cost increase during the term of the contract shall be passed on promptly by Us.
- 7.12. Our charges will be determined on the basis of our Proposal or relevant Agreement. If You require Us to exceed this, then We reserve the right to request an increase to Our charge to reflect the extra work required should You exceed the stated amount of service incidents as detailed in the Service Delivery Document and Proposal documentation over a period of three (3) months.
- 7.13. Overuse charges will be charged the following month of use in arrears at the rate same rate detailed in the proposal uplifted by no less than 15%, subject to events described in clause 7.12. All service use including but not limited to incidents, requests and changes will be reported the following month to indicate trends and any excess use.
- 7.14. 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).
- 7.15. Customer acknowledges and agrees that it is solely responsible for the following:
- 7.15.1. Customer use of products or services delivered by Managed247 under this Agreement;
- 7.15.2. Compliance with terms and conditions of this Agreement, any Proposals existing under this Agreement, and all other agreements applicable to Customer use of products or services delivered by Managed247 under this Agreement;
- 7.15.3. Monitoring consumption of Azure and other products and services subject to metered billing and enabling consumption warnings and governance of all metered products and services. Customer acknowledges and agrees that Managed247 is not responsible for costs incurred by Customer from metered products and services, including Microsoft Azure;
- 7.15.4. Validating Azure Reserved Instance types prior to provisioning. Any problems or other issues with such Reserved Instances must be disclosed to Managed247 no later than five (5) business days of provisioning.
- 7.15.5. Where the Customer remains in contract and monthly invoicing for any service falls below a de minimis level of £100 per calendar month, We reserve the right to charge an administration fee of up to £250 per month for oversight of the aforementioned service.
- 7.15.6. Payment of all amounts billed to Customer accounts by Microsoft or other vendors for products or services delivered by Managed247 in accordance with this Agreement;
- 7.15.7. All other Client responsibilities specifically identified in a Proposal.
- 8. INDEMNITIES**
- 8.1. Where Managed247 is the reseller or where Managed247 is licensing Products or Services (for example, off the shelf products) which are owned or manufactured by a third party, We will indemnify You in respect of any third-party claims that such Products or Services infringe any third party's Intellectual Property Rights but only to the extent of any indemnity We receive from Our licensor, supplier or manufacturer (as the case may be).
- 8.2. We shall indemnify and keep indemnified Customer Group Members on demand from and against any and all losses, claims, costs, damages, fines and expenses (including reasonable legal costs) suffered or incurred by any Customer Group Member arising out of, or in connection with, any third-party claim that the receipt and use of the Services (including any Deliverables) in accordance with the provisions of the Contract infringes that third party's Intellectual Property Rights.
- 8.3. You will indemnify Us against claims by any third party that data and information provided by You in relation to the Services or Products provided by Us and used by Us in accordance with the terms of the Contract infringe the Intellectual Property Rights of any third party. You are solely responsible for excluding any such infringing material.
- 8.4. On receipt of a third-party claim relating to Intellectual Property Rights covered by clauses 8.2 or 8.3, the indemnified party shall:
- 8.4.1. promptly notify the indemnifying party of the third-party claim upon becoming aware of the same;
- 8.4.2. allow the indemnifying party to have sole conduct of the defence, settlement negotiations and settlement of the claim;
- 8.4.3. provide reasonable cooperation to the indemnifying party in the defence and settlement of the claim (provided that the indemnified party is reimbursed for its reasonable costs and expenses in doing so); and
- 8.4.4. not make any admissions or settlements concerning the claim without the prior written consent of the indemnifying party.
- 9. LIABILITY**
- 9.1. This clause 9 sets out the parties' entire financial liability (including any liability for the acts or omissions of each party's respective employees, agents and sub-contractors) to the other party. This clause must be read in conjunction with any liability clauses contained in the applicable Schedule for the relevant Services and/or Products.
- 9.2. Except as expressly and specifically provided in the Proposal or relevant Schedule:
- 9.2.1. You assume sole responsibility for results obtained from the use of the Services and/or Products by You; and
- 9.2.2. other than as set out in the Contract, all other warranties, conditions and other terms implied by statute or common law are excluded from the Contract.
- 9.3. Nothing in this Contract excludes either party's liability for:
- 9.3.1. death or personal injury caused by its negligence;
- 9.3.2. fraud or fraudulent misrepresentation; or
- 9.3.3. any other liability that cannot be excluded as a matter of law.
- 9.4. Neither party shall be liable whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with the Contract for any:
- 9.4.1. direct or indirect loss of profit;
- 9.4.2. direct or indirect loss of goodwill;
- 9.4.3. direct or indirect loss of business or contracts;
- 9.4.4. direct or indirect loss of business opportunity;
- 9.4.5. direct or indirect loss of anticipated saving;
- 9.4.6. direct or indirect loss or corruption of data or information (save to the extent that any such loss or corruption of data or information arises due to a party's breach of the provisions of clause 11); or
- 9.4.7. special, indirect or consequential damages.
- 9.5. Unless an alternative liability cap is provided in the relevant Schedule to which the Services and/or Product giving rise to the claim relates, Our total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise in respect of each claim arising in connection with the performance or contemplated performance of the Contract shall in respect of each claim be limited to:
- 9.5.1. where the claim relates to any Services supplied under the Contract, the lower of
- 9.5.1.1. 30% of the Annualised Charges for the Services in question provided invoiced under the Contract across the last 12 months, or
- 9.5.1.2. 30% of the Services in question to be invoiced across the remaining contract term; or
- 9.5.2. where the claim relates to any Products supplied under the Contract, 25% of the charges for those Products as set out in the Proposal.
- 10. CONFIDENTIALITY**

- 10.1. Both parties undertake:
 - 10.1.1. to keep confidential all Confidential Information of the other party (including information related to the provision of Services or supply of Products);
 - 10.1.2. not to divulge or communicate Confidential Information of the other party to any person (other than in accordance with this clause 10);
 - 10.1.3. not to use any Confidential Information of the other party other than as is necessary to exercise its rights or fulfil its obligations under the Contract; and
 - 10.1.4. to procure that any person to whom any Confidential Information is disclosed by it are made aware of and complies with the restrictions in this clause 10 as if such person were a party to the Contract.
- 10.2. Clause 10.1 shall not apply to the extent that:
 - 10.2.1. the information was in the lawful possession of the receiving party without obligation of confidentiality prior to its disclosure by the disclosing party;
 - 10.2.2. such information was obtained from a third party without obligation of confidentiality;
 - 10.2.3. such information was (otherwise than by breach of the Contract) already in the public domain at the time of disclosure; or
 - 10.2.4. such information was independently developed by the recipient party without access to the other party's Confidential Information;
- 10.3. Notwithstanding clause 10.1, each party may disclose Confidential Information of the other party to:
 - 10.3.1. (in Your case) any other Customer Group Member;
 - 10.3.2. its personnel directly involved in the provision of the Services or supply of the Products and who need to know the information for that purpose, and any other employees, agents, subcontractors and professional advisers, where such disclosure is required for the performance of its obligations, or the preservation or exercise of its rights, under the Contract;
 - 10.3.3. its auditors, lawyers and other professional advisers;
 - 10.3.4. any court of competent jurisdiction or any regulatory or administrative body to the extent that disclosure is required to fulfil its obligations under Applicable Laws (provided always that, where legally permitted to do so, the party making such disclosure gives as much notice as possible to the other party prior to such disclosure); and/or
 - 10.3.5. the extent the other party has given prior written consent to the disclosure.

11. PERSONAL DATA

Compliance with Data Protection Laws:

- 11.1. We shall comply with Our obligations under the Data Protection Laws as they apply to Us as a Data Processor of the Customer Personal Data. You shall comply with Your obligations under the Data Protection Laws as they apply to You as a Data Controller of the Customer Personal Data.
- 11.2. We shall maintain records of all processing operations under Our responsibility that contain at least the minimum information required by the Data Protection Laws and shall make such information available to any DP Regulator on request.
- 11.3. The parties acknowledge that for the purposes of the Data Protection Legislation, You are the Data Controller, and We are the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- Processing and Security
- 11.4. In the course of performing the Services and Our obligations under the Contract, We shall only process the types of Personal Data, and only in respect of the categories of Data Subjects, and only for the nature and purposes of processing and duration, as is set out in the Proposal response or relevant Schedule.
- 11.5. In processing the Customer Personal Data, We shall:
 - 11.5.1. process the Customer Personal Data only in accordance with the terms of the Contract and any written instructions given by You from time to time;
 - 11.5.2. not process the Customer Personal Data for any purpose other than those set out in the Contract or otherwise expressly authorised by You in writing;
 - 11.5.3. notify You within twenty-four (24) hours if We receive a Data Subject Request in respect of Customer Personal Data;
 - 11.5.4. provide You with Our full co-operation and assistance in relation to any Data Subject Request in respect of Customer Personal Data;
 - 11.5.5. not disclose any Customer Personal Data to any Data Subject or to a third party (including any Subcontractor or Affiliate) other than at Your written request or as expressly provided for in the Contract;
 - 11.5.6. considering:
 - 11.5.6.1. the nature, scope, context and purposes of the processing; and
 - 11.5.6.2. the risk and severity of potential harm, protect the Customer Personal Data by ensuring it has in place appropriate technical and organisational measures, including measures to protect the Customer Personal Data against risks of a Security Breach; and
 - 11.5.7. ensure that only persons authorised by Us process Customer Personal Data and that such persons are (i) subject to binding obligations to maintain the confidentiality of the Customer Personal Data; and (ii) trained on both (1) the requirements of the Data Protection Laws, and (2) their obligations in respect of Customer Personal Data under the Contract.
- 11.6. To protect Customer Personal Data, we take reasonable precautions and follow industry best practices to make sure it is not subject to any Security Breach.
- 11.7. If You provide us with Personal Data, the information is encrypted using secure socket layer technology (SSL) and stored with industry-standard encryption. Although no method of transmission over the Internet or electronic storage is 100% secure, we implement generally accepted industry standards, which, as a minimum, comply with Good Industry Practice.
- 11.8. We shall, without undue delay (and in any event within twenty-four (24) hours) after discovering any Security Breach or any failure or defect in security which leads, or might reasonably be expected to lead, to a Security Breach (together a "Security Issue") notify You of the same.
- 11.9. Where a Security Issue arises, We shall:
 - 11.9.1. as soon as reasonably practicable, provide You with full details of the Security Issue, the actual or expected consequences of it, and the measures taken or proposed to be taken to address or mitigate it;
 - 11.9.2. co-operate with You, and provide You with all reasonable assistance in relation to the Security Issue; and
 - 11.9.3. unless required by Applicable Laws, not make any notifications to a DP Regulator or any Data Subjects about the Security Issue without Your prior written consent (not to be unreasonably withheld or delayed).
- Return or destruction of Personal Data
- 11.10. Subject to clause 11.11, We shall (at Your option) return or irretrievably delete all Customer Personal Data in Our control or possession when We no longer require such Customer Personal Data to exercise or perform Our rights or obligations under the Contract, and in any event on expiry or termination of the Contract.
- 11.11. To the extent that We are required by any Applicable Laws to retain all or part of the Customer Personal Data (the "Retained Data"), We shall:
 - 11.11.1. cease all processing of the Retained Data other than as required by the Applicable Laws;
 - 11.11.2. keep confidential all such Retained Data in accordance with clause 10; and
 - 11.11.3. continue to comply with the provisions of this clause in respect of such Retained Data.
- Co-operation and Assistance
- 11.12. We shall promptly co-operate with You, and promptly provide such information and assistance as You may reasonably require, to enable You to:
 - 11.12.1. comply with Your obligations under the Data Protection Laws (including Articles 32-36 of GDPR) in respect of Customer Personal Data; and
 - 11.12.2. deal with and respond to all investigations and requests for information relating to the Customer Personal Data from any DP Regulator.
- 11.13. If We receive any complaint, notice or communication from a DP Regulator or other third party (excluding a Data Subject Request) which relates directly or indirectly to Customer Personal Data or to either party's compliance with the Data Protection Laws, We shall notify You as soon as reasonably practicable.
- 11.14. Where any provision of this clause 11 places an obligation on Us, that obligation shall be construed as an obligation on Us to procure that all of Our applicable Subcontractors, and Our own and Our Subcontractors' personnel, comply with such obligation.
- Sub-Processors
- 11.15. We shall obtain Your prior written consent to the appointment of any Subcontractor (including Our Affiliates) appointed by Us to process Customer Personal Data.
- 11.16. If We appoint such a Subcontractor, We shall ensure that:
 - 11.16.1. such Subcontractor shall only process Customer Personal Data in order to perform one or more of Our obligations under this Agreement; and
 - 11.16.2. We enter into a written agreement with that Subcontractor, prior to any processing by the Subcontractor, requiring the Subcontractor to:
 - 11.16.2.1. process Customer Personal Data only in accordance with Our written instructions or Yours; and
 - 11.16.2.2. comply with data protection obligations equivalent in all material respects to those imposed on Us under this clause 11.
- 11.17. Notwithstanding the appointment of any Subcontractor by Us to process Customer Personal Data, We are responsible and liable to You for any processing by such a Subcontractor in breach of this clause 11.
- Transfer of Personal Data
- 11.18. We will not transfer Personal Data outside of the UK and the European Economic Area without the prior written permission of the Customer.

12. SECURITY AND BUSINESS CONTINUITY AND DISASTER RECOVERY

- 12.1. It is understood that within the Services provided, it is not the intent, nor does Managed247 provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for the Client unless otherwise specified in the defined Services. As cyber threats are always evolving it is strongly recommended that Client engage the services of a cyber protection third-party vendor to independently monitor the cyber controls and cyber activities in Client System.
- 12.2. For all devices with active, ongoing vendor support, We shall ensure that We have appropriate practices and policies in place in respect of information security and continuity and storage of data, which, at a minimum, shall be in accordance with Good Industry Practice and include the use of up-to-date anti-Virus and anti-malware programmes and software.
- 12.3. We shall ensure that, to the extent reasonably possible, any Customer Data shall be technically or logically segregated from any other data held by Us and shall be appropriately encrypted or otherwise protected so as to prevent unauthorised access or disclosure during any transit of the Customer Data by Us for the purposes of performance of the Contract.
- 12.4. We shall ensure that We have in place and maintain throughout the Term a business continuity and disaster recovery plan with respect to the Services and Products at least compliant with Good Industry Practice (the "BCDR Plan"). We shall review, test and update Our BCDR Plan on a regular basis (and, in any event, at least annually) in accordance with Good Industry Practice.
- 12.5. We shall provide You with a copy of the BCDR Plan promptly upon Your request and shall notify You of any material update or amendment to the BCDR Plan.
- 12.6. If You reasonably object in writing to any part of the BCDR Plan:
 - 12.6.1. We shall respond in writing within 30 days, setting out the actions We intend to take to address Your objection(s); and
 - 12.6.2. the parties shall discuss whether the BCDR Plan needs to be amended accordingly.
- 12.7. Without prejudice to any of Our other obligations under the Contract, We shall implement, and comply with, the BCDR Plan to ensure the continuity of the Services and Products under the Contract and ensure orderly recovery from disasters or other incidents affecting Our ability to deliver the Services and Products.
- 12.8. We shall not ordinarily be responsible for any costs arising from security incidents, ransomware attacks or network security breaches; remedial action and the provision of such services as security outbreak remediation and vulnerability scanning are always subject to additional costs

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. Subject to clause 12.2 and the Schedules and save for any Intellectual Property Rights which are owned by Our suppliers or licensors, all Intellectual Property Rights in or arising out of or in connection with the Services, Deliverables and/or Pre-Existing Materials shall be owned by Us. Any Intellectual Property Rights in developments to the Pre-Existing Materials or Deliverables shall vest automatically in Managed247.
- 13.2. To the extent that We generate any reports for You on Our performance of the Services which are specific to You, the content of any such reports (and the Intellectual Property Rights in such content) shall be owned by You. All Customer Data and any Intellectual Property Rights subsisting in Customer Data shall be owned by You.
- 13.3. To the extent that any Intellectual Property Rights do not vest in the relevant party as envisaged by clauses 12.1 and 12.2, the other party hereby assigns to the relevant party (including by way of present assignment of future rights) any such Intellectual Property Rights which it has acquired contrary to clauses 12.1 and 12.2.
- 13.4. You and/or Your third-party licensors retain ownership of any Intellectual Property Rights owned by You and/or Your third-party licensors prior to the effective date, or which have been developed independently of the Contract (whether prior to the Effective Date or not) without reference to Our Intellectual Property Rights ("Pre-Existing IPR").
- 13.5. Except in respect of Deliverables, which shall be dealt with under clause 13.6, We hereby grant each Customer Group Member a non-transferrable, royalty-free licence during the Term to use any Intellectual Property Rights provided by Us to You in Our provision of the Services (including such as contained in the Pre-Existing Materials and any derivative works, modifications, enhancements or improvements to such Pre-Existing Materials) strictly for the purposes of and to the extent necessary in enabling each Customer Group Member to receive and use the Services in accordance with the Contract and to exercise any of their rights under the Contract.
- 13.6. We hereby grant to each Customer Group Member a perpetual, non-exclusive, transferable, sub-licensable, royalty free right to use the Deliverables and any derivative works, modifications, enhancements or improvements to such Deliverables for the purposes of enabling Customer Group Members to use, and receive the benefit of, the Deliverables as they see fit.
- 13.7. You hereby grant to Us a royalty-free, non-exclusive, non-transferrable licence for the Term to use any of Your Pre-Existing IPR made available to Us (and any derivative works, modifications, enhancements or improvements to such Pre-Existing IPR), and any Customer Data, solely for the purposes of, to the extent necessary and for as long as is necessary, in order for Us to provide the Services and perform Our obligations under Contract. We may only sublicense Our rights under this clause 12.7 to approved Subcontractors solely to the extent necessary and for as long as is necessary in order for such Subcontractor to provide any Services and perform any obligations under Contract.
- 13.8. The licences granted by clauses 13.5 and 13.7 shall immediately cease when the Contract is terminated or expires. Clause 13.6 shall survive termination of the Contract, for whatever reason.
- 13.9. Neither party shall use or reproduce any names, trademarks or logos owned by the other party or its Affiliates for the purposes of advertising or promotional materials (including, for the avoidance of doubt, press releases) without the other party's prior written consent.

14. SUSPENSION OF SERVICES AND/OR DELIVERY OF PRODUCTS

- 14.1. We may suspend the Services and/or delivery of Products immediately:
 - 14.1.1. if You commit a material breach of any of the terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 days of You being notified by Us in writing of the breach;
 - 14.1.2. where fraud or illegal misuse of the Services has taken place; or
 - 14.1.3. We are required to do so by law or by any court or applicable regulator.
- 14.2. We shall, where reasonably practicable given the circumstances requiring the exercise of Our suspension right under clause 14.1, notify You in advance of any suspension to be carried out.
- 14.3. Following rectification of the circumstances entitling Us to suspend any of the Services pursuant to clause 14.1, We shall, promptly upon becoming aware of the same, reinstate the suspended Services.

15. WARRANTIES

- 15.1. We warrant that the Deliverables shall conform in all material respects with the description provided to You in respect of such Deliverables for a period of 30 days from the date of delivery. We will use all reasonable endeavours to transfer to You the benefit of any warranty that We receive from the Products manufacturer but otherwise give no warranty under this clause 15.1 regarding the Products.
- 15.2. In order to make a valid claim regarding a Product or Deliverable that fails to comply with the warranty in clause 15.1:
 - 15.2.1. You must give Us notice in writing within 30 Business Days of discovery that some or all of the Deliverables do not comply with the warranty set out in clause 15.1 or that there are issues with the Products which give rise to a warranty claim against the manufacturer;
 - 15.2.2. We or the Product manufacturer must be given a reasonable opportunity of examining such Products or Deliverables; and
 - 15.2.3. You must return such Products and/or Deliverables (at Our or the applicable Product manufacturer's cost) to Our place of business at Our request or return the Products to such third-party address as notified to You in writing by Us or the Product's manufacturer.
- 15.3. We shall not be liable for the Deliverables' failure to comply with the warranty in clause 15.1 if:
 - 15.3.1. You make any further use of such Deliverables after giving Us notice in accordance with clause 15.2.1
 - 15.3.2. the defect arises because You or Your employees, agents or subcontractors failed to follow the instructions regarding storage, installation, commissioning, use or maintenance of the Deliverables that were provided to You; and
 - 15.3.3. You alter or repair such Deliverables without Our prior written consent.
- 15.4. Without prejudice to any other rights or remedies You might have, where a valid warranty claim is presented, Our obligations arising under a breach of clause 15.1 shall be limited to repairing or replacing the defective Deliverables or, where such is not possible, refunding that part of the price that relates to the affected Deliverables.
- 15.5. We warrant to You that:
 - 15.5.1. the Services shall be provided using reasonable care and skill;
 - 15.5.2. We shall provide the Services and deliver the Products to You in accordance with the Proposal and Service Delivery Schedule;
 - 15.5.3. We have all necessary licences, consents and approvals required to grant the rights We provide under the Contract and Your receipt and use of the the Services, Deliverables and Products in accordance with the Contract shall not infringe the Intellectual Property Rights of any third party or cause You to be in breach of any Applicable Laws;

- 15.5.4. all user and operational documentation provided in respect of the Deliverables, Products and Services will be complete, up to date, accurate (in all material respects) and sufficient so far as is reasonably necessary to enable You to make use of them;
- 15.5.5. any hardware or equipment supplied or recommended by Us in conjunction with the provision of any software by Us will be compatible with the applicable software such as to enable the software to perform in accordance with the requirements of the Contract, and shall be of satisfactory quality and conform to any description or specification relating to such hardware or equipment;
- 15.5.6. all information We have provided or will provide to You in connection with Contract (including responses to pre-contractual questionnaires, tender documents or sales literature), are complete, true, accurate and not misleading in all material respects (and We shall notify You promptly if any such information ceases to be complete, true, accurate or not misleading for any reason);
- 15.6. All other warranties that are implied by statute, regulation or by custom and practice are excluded from the Contract.
- 16. TERM AND TERMINATION**
- 16.1. Unless specified otherwise in the applicable Schedule or Proposal, the Services shall commence on the Effective Date or Go Live Date. Unless the Contract is terminated in accordance with this clause 16, the Contract shall continue for the Initial Term and, thereafter, the Contract shall automatically renew for successive periods of 12 months (each a "Renewal Term"), unless:
- 16.1.1. either party notifies the other party of termination, in writing, at least three (3) months before the end of the Initial Term or any Renewal Term, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or
- 16.1.2. the Contract is otherwise terminated in accordance with the provisions of the Contract and these Terms & Conditions. Where the Contract and these Terms & Conditions contradict one another, the conditions contained herein shall take priority unless explicitly agreed otherwise.
- 16.1.3. and, in respect of the Services, the Initial Term together with any subsequent Renewal Term shall constitute the "Term".
- 16.2. In the event of an automatic renewal, We reserve the right to include the following charges at our discretion:
- 16.2.1. RPI uplift – such increase to not exceed the prevailing Retail Prices Index plus 2.5%
- 16.2.2. An 'out of contract' levy to encompass Our additional costs and risk, such charge not to exceed 3%
- 16.3. Without prejudice to any accrued or other rights or remedies to which both parties may be entitled, either party may (by written notice to the other) terminate this Contract (either as a whole or in respect of any affected Products and/or Services) with immediate effect without further liability to the other if:
- 16.3.1. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 16.3.2. an order is made or a resolution is passed for the dissolution or winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its trustees, officers, directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 16.4. You shall be entitled to terminate the Contract (either as a whole, or in respect of any affected Products and/or Services) by written notice to Us (and without further liability):
- 16.4.1. with immediate effect where entitled to do so under clauses 7.10 or 22.4;
- 16.4.2. where entitled to do so in accordance with clause 19.4;
- 16.4.3. where entitled to do so in accordance with any termination provisions in a Schedule;
- 16.4.4. where the continued performance of Your obligations under the Contract in accordance with its terms, or receipt of the Services or the benefit of the Contract, would place You in breach of any Applicable Laws; or
- 16.4.5. where required to do so by any applicable regulator.
- 16.5. Expiry, termination or cancellation of this Contract or any part of the Contract shall not automatically result in the expiry, termination or cancellation of any other contracts between You and Us or, in respect of any termination of part of the Contract, affect the continuing validity or operation of the remainder of the Contract and the provision of the continuing Products and/or Services.
- 16.6. In the event of continuous SLA breach or poor service delivery reported over a six (6) month consecutive period to our Chief Operations Officer, You will have the additional right to terminate the affected service without penalty, following executive escalation.
- 16.7. An SLA or service failure should not be deemed to have occurred in situations where the failure is due to a customer-controlled issue or is otherwise out of Our control. All poor service reporting is to be raised with your Service Delivery Manager, either verbally and or via electronic means. SLAs and KPIs are all reported on by Managed247 and are closely controlled by the Service Operations Team, ensuring You receive the service agreed in the Service Descriptions.
- 16.8. Any request to terminate any service, regardless of Contract status, will be managed by Our cancellations team and must, in the first instance, be emailed to cancellations@managed.co.uk. We will acknowledge receipt, review Your request and confirm, via email, the appropriate contractual cessation date and any charges associated with this. You will then be requested to confirm your acceptance back to the cancellations team. Only then will your request be accepted and processed accordingly. For the avoidance of doubt, any request to cease, pause or downgrade a service will be invalid unless emailed to cancellations@managed.co.uk and subsequently confirmed between the parties. All cancellation requests relating to a Product or Service with an annualised supply value in excess of £5,000 must be signed for, and submitted by, a director of the Customer or a suitably authorised employee of the Customer.
- 17. EFFECT OF TERMINATION**
- 17.1. In addition to any specific rights set out in the relevant Schedule, on expiry, termination or cancellation of the Contract for any reason:
- 17.1.1. any outstanding invoices shall become promptly payable;
- 17.1.2. the remaining term of the relevant service(s) shall be invoiced immediately; where invoicing liability is calculated on consumption, we shall be entitled to charge for the remaining term by relying the higher of either the latest invoiced charges between the parties or the average of the past three months invoiced charges.
- 17.1.3. (save to the extent expressly stated) any licences or other permissions granted by (or on behalf of) either party shall immediately terminate;
- 17.1.4. You shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to Us and which are supplied as part of the Contract;
- 17.1.5. We shall deliver to You or otherwise dispose of (as directed by You) any and all of Your Equipment, Customer Data and Confidential Information of any Customer Group Member, and all copies of the same then in Our possession, custody or control, and shall certify in writing to You that the same has been done; and
- 17.1.6. subject to Our obligations in respect of any Exit Services, We may destroy or otherwise dispose of all and any of the data collected from the supply of the Services and the Products, unless We receive no later than 30 Business Days after the expiry of the Contract a written request for its delivery to You in which case:
- 17.1.6.1. We will deliver the items to You within 30 days of receipt of the written request, provided that You have paid all fees and charges outstanding at termination, cancellation or expiry; and
- 17.1.6.2. You shall pay all reasonable expenses incurred by Us in returning or disposing of the items.
- 17.2. The accrued rights of both parties as at expiry, termination or cancellation, or the continuation after expiry, termination or cancellation of any provision expressly stated to survive or implicitly surviving shall not be affected or prejudiced.
- 18. EXIT ASSISTANCE**
- 18.1. Within a time period as agreed between the parties in writing, We shall prepare and provide to You a draft of a detailed Exit Plan for the orderly transition of the Services from Us to You or your nominated replacement supplier. We shall ensure that the draft Exit Plan includes:
- 18.1.1. the period within which Exit Services shall be provided by Us in respect of the Services (the "Exit Period");
- 18.1.2. the proposed timetable for the Exit Period, together with details of (as applicable):
- 18.1.2.1. the activities to be performed by Us;
- 18.1.2.2. the activities to be performed by You;
- 18.1.2.3. the activities to be performed by any replacement supplier you have nominated; and
- 18.1.2.4. any dependencies; and
- 18.1.3. reasonable information in relation to compliance with applicable Service Levels during provision of the Exit Services.

- 18.2. Thereafter, the parties shall, acting reasonably, discuss the contents of the draft Exit Plan and We shall update such draft Exit Plan to reflect any reasonable amendments proposed or concerns raised by You as to the contents of the relevant draft Exit Plan. Once the content of the draft Exit Plan is agreed between the parties, We shall prepare a final version of the Exit Plan based upon the agreed draft and shall provide You with a copy of such Exit Plan.
- 18.3. Where necessary from time to time, We shall update the Exit Plan as reasonably required to reflect any changes or developments to the Services made under clause 19 or otherwise by the parties. Following any amendment or update to the Exit Plan for whatever reason, We shall provide You with a copy of the updated Exit Plan and make any such amendments as You may reasonably request as to its updated contents, following which we will provide you with a final version of the updated Exit Plan.
- 18.4. On termination or expiry of the Contract, each party shall execute the tasks assigned to it in the Exit Plan and take such actions as are required to bring the Exit Plan into effect.
- 18.5. Throughout the Exit Period, We shall provide a weekly report (or such other frequency as may be reasonably agreed between the parties from time to time) confirming progress against the applicable Exit Plan.
- 18.6. The charges for our provision of Exit Assistance are to be agreed between the parties, prior to any works being undertaken.
- 19. CHANGE CONTROL**
- 19.1. No change shall be made to the Services unless it is in accordance with the provisions of this clause 19. Either party can request a change to the Services by giving written notice to the other at any time during the Contract.
- 19.2. Within 10 Business Days of receipt of such notice (where You have made the request) or along with Our notice where We have made the request, We shall prepare for You a written estimate of any increase in the charges, and of any effect that the requested change would have on the overall supply of the Services to You under the Contract.
- 19.3. Within 10 Business Days of receipt of the written estimate referred to in clause 19.2, You shall inform Us in writing of whether or not You wish the requested change to be made. The Services shall continue without variation until both You and We have agreed and signed a written agreement based upon the written estimate provided specifying the agreed changes to the Services and charges and amending the terms of the Contract.
- 19.4. Where any change to the Services is necessary to comply with any change or amendment in Applicable Laws or any other mandatory regulatory requirement (a "Regulatory Change"), We shall provide You with an estimate in accordance with clause 19.2 and You shall either: (a) inform Us that You consent to the requested Regulatory Change in accordance with clause 19.3, or (b) provide Us with notification of your intention to terminate the Contract, in which case, the Contract shall terminate 1 month following the date of Your notification of termination. We shall not be entitled to withhold Our agreement to a Regulatory Change.
- 20. AUDIT**
- 20.1. We shall permit You and any regulator (by their duly authorised representatives from time to time or nominated auditor) (an "Auditor") to inspect and audit Our compliance with the provisions of the Contract (including in respect of audit and verification of Our or Our applicable Subcontractors' compliance with Our obligations under the Contract and Data Protection Laws in relation to Customer Personal Data). We shall allow a reasonable right of access to any of Our premises, Our Personnel and relevant records, materials and files as may be reasonably required in order to conduct such an audit and provide other reasonable information, co-operation, assistance and support (including office space, telephones and copying facilities) and comply with such reasonable requests as may be made by an Auditor during such an audit.
- 20.2. Subject to clause 20.3, the audits referred to in clause 20.1 shall only be conducted where You have provided reasonable prior notice to Us (where reasonably practicable and taking into account the adverse impact that prior notification of the audit may have).
- 20.3. You shall not be required to provide prior notice of the audit where the audit is required by a regulator or Applicable Laws or where You are subject to a data or security breach or where You have reasonable grounds to suspect that We are in material breach of Our obligations under the Contract.
- 20.4. If the audit identifies non-compliance with Contract and recommends that action is required by Us to address such issues, the parties shall act reasonably in agreeing a remedial plan and timetable in respect of the non-compliance in question ("Remedial Plan"). Where the parties are unable to come to agreement within ten (10) days of the completion of the audit in question, We shall comply with the Remedial Plan proposed by You (with such plan having taken into account the reasonable representations of the Us). Following agreement, or otherwise, of the Remedial Plan, We shall promptly implement such Remedial Plan and confirm its completion to You by notice in writing and shall allow an Auditor to conduct a further audit to verify that the terms of the Remedial Plan have been implemented and that the identified non-compliance has been rectified. This process shall be repeated until You, acting reasonably, are satisfied that the identified problems causing non-compliance to have been dealt with in a satisfactory manner, or the matter has been resolved through the dispute resolution procedure set out in clause 26.
- 20.5. All and any costs incurred in compliance of clause 20 by Us are recoverable from You
- 21. NON-SOLICITATION OF EMPLOYEES**
- 21.1. Neither party will solicit, entice away, employ or attempt to entice away from the employment of the other, any person employed or engaged by it in the provision or receipt of the Products and/or Services at any time during the Term and for a further period of 12 months after the termination, cancellation or expiry of the Contract.
- 21.2. If a party ("Hiring Party") becomes aware that a person employed or engaged with the other party is, or was within the past 12 months, or is to be employed or engaged by the Hiring Party in breach of clause 21.1, it shall notify the other party in writing of this event immediately.
- 21.3. The Hiring Party shall be obliged to pay to the other party a sum equal to 100% of the gross annual remuneration of the hired person during their employment with other party.
- 22. FORCE MAJEURE**
- 22.1. Neither party shall have any liability to the other under the Contract if the party is prevented from or delayed in performing its obligations under the Contract by acts, events, omissions or accidents beyond such party's reasonable control, including, strikes, lock-outs or other industrial disputes (except, in Our case, any strikes, lock-outs or other industrial disputes by Our or Our Affiliates' or Subcontractor's employees), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm ("Force Majeure Event") provided that the affected party complies with clause 21.2.
- 22.2. The affected party shall give written notice to the other party as soon as reasonably practical on becoming aware of a Force Majeure Event. Such notice shall contain details of the circumstances giving rise to the Force Majeure Event.
- 22.3. Neither party shall be liable for any delay or failure in performance of its obligations due to a Force Majeure Event and the time for performance of the affected obligations will be suspended for the duration of the Force Majeure Event.
- 22.4. If a Force Majeure Event prevents Us from performing Our obligations under the Contract for a continuous period in excess of 12 weeks or for a total of more than 16 weeks in any 12-month period, You shall be entitled to terminate the Contract with immediate effect by written notice provided a Force Majeure Event remains subsisting at the time of the notice.
- 22.5. You shall have no obligation to pay any associated charges in respect of any Services or Products to the extent that they are not provided or are impaired or degraded as a result of any Force Majeure Event.
- 23. ADDITIONAL TERMS**
- 23.1. Entire Agreement - the Contract forms the entire agreement between the parties with regard to its subject matter and no other terms, conditions, warranties or statements will apply. Each party acknowledges that in entering into the Contract it does not do so on the basis of, and does not rely on any representation, warranty or other provision not expressly contained in the Contract. This clause 23.1 does not exclude or limit any liability for fraudulent misrepresentation.
- 23.2. Where applicable, both Parties are bound by the terms Microsoft Customer Agreement. This supplemental Agreement commences when You obtain a licence to use Microsoft Products from Us and applies solely to those the usage of those Microsoft Products.
- 23.3. Variation. Any variation to the terms of the Contract must be in writing and signed on behalf of both parties.
- 23.4. Severability. If a court decides that any part of the Contract cannot be enforced, that particular part of the Contract will not apply, but the rest of the Contract will.
- 23.5. Waiver. A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under the Contract shall not prevent the exercise of that or any other right.
- 23.6. Third Party Rights. The provisions of the Contract shall be enforceable by each Customer Group Member. Subject to the foregoing sentence, no person other than a party to the Contract shall have any rights to enforce any terms of the Contract.
- 23.7. No Partnership. Nothing in the Contract shall create (or be deemed to create) a partnership or agency between the parties.
- 23.8. Language. The language of the Contract (including any notices and correspondence) shall be the English language.
- 23.9. Non-Exclusive. The Contract shall not prevent Us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 23.10. Freedom of Information. Where You are a public authority and are under an obligation to comply with the Freedom of Information Act 2000 as amended from time to time, including any related guidance or codes of practice ("FOIA"), We shall provide You with reasonable assistance in meeting any requests form information in relation to this Contract in return for a reasonable fee notified by Us to You within 5 Business Days of receipt of any such written request.

23.11. Services. Where a Proposal, Managed Services Agreement, Contract or any other valid Agreement between the parties is silent with regard to the volume of services to be supplied and/or consumed, the quantum deemed to be supplied by Us shall be the equivalent of our total price for that Service divided by the prevailing daily charge for that Service.

24. NOTICES

- 24.1. Any notice given under the Contract shall be in writing and shall be delivered by email or hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business as set out in the Proposal or relevant Schedule.
- 24.2. Any notice shall be deemed to have been received:
- 24.2.1. if delivered by hand, at the time the notice is left at the proper address;
 - 24.2.2. 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; or
 - 24.2.3. if sent by email to the correct address provided that the notice is also sent via pre-paid first-class post or by hand within two (2) Business Days from the date that the email is sent.
- 24.3. This clause does not apply to the service of any proceedings or other documents in any legal action.

25. DISPUTE RESOLUTION

- 25.1. We shall attempt to resolve any dispute with You arising in relation to the Contract through negotiation between respective senior staff who have authority to settle such dispute. If the matter is not resolved through negotiations, then the procedure set out below will apply.
- 25.2. If a dispute cannot be resolved in accordance with the procedure in clause 25.1 within 30 days of the dispute arising, then either party can refer the dispute to an Alternative Dispute Resolution (ADR) procedure recommended by the Centre for Effective Dispute Resolution (CEDR) acceptable to both You and Us before pursuing any other remedies available. If either party fails or refuses to participate in the ADR procedure, or if in any event the dispute is not resolved within 30 days after reference to the ADR procedure, legal proceedings may be instituted in accordance with this clause. The ADR procedure shall be conducted in English in London (unless otherwise agreed by the parties).
- 25.3. This clause 25 shall not:
- 25.3.1. prevent either party from seeking from any court of competent jurisdiction, an interim order restraining the other party from doing any act or compelling the other party to do any act; or
 - 25.3.2. apply to any action taken to recover any unpaid invoices or debts due to Us.

26. REGULATORY COMPLIANCE

- 26.1. We shall promptly provide You with any information reasonably requested by You for the purposes of complying (or verifying Our compliance) with any Applicable Laws and shall provide all reasonable assistance to You and/or Your Affiliates in connection with any communication with or investigation by any applicable regulator.
- 26.2. You shall be responsible, unless otherwise agreed in writing between You and Us, for all communications and correspondence with any regulator in relation to the Contract. We shall direct all enquiries or contact from a regulator relating to the Contract to You. Notwithstanding the foregoing, if We receive any communication or request from a regulator in respect of the Contract, You and/or Your Affiliates, We shall inform You promptly in writing and provide a copy of such communication or request, unless prohibited by the regulator or Applicable Laws.

27. ANTI-BRIBERY

- 27.1. Without prejudice to Clause 28, each party shall:
- 27.1.1. not give, nor offer to give, anyone employed or otherwise engaged by the other party or an Affiliate of the other party an inducement of any kind, or any gift or any favour that could be perceived by others to be a bribe or to influence any such person in any manner, or make any payment to any such person in any way;
 - 27.1.2. comply with all Applicable Laws relating to anti-bribery and anti-corruption (the "Bribery Requirements");
 - 27.1.3. have and shall maintain in place throughout the Term its own policies and procedures to ensure compliance with the Bribery Requirements, and will enforce them where appropriate;
 - 27.1.4. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of the Contract or the receipt or use of the Services, as applicable;
 - 27.1.5. immediately notify the other party if a foreign public official (as determined in accordance with the Bribery Requirements) becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and each party represents and warrants that, as at the Effective Date, it has no foreign public officials as officers, employees or direct or indirect owners).
 - 27.1.6. have in place, and shall maintain in place throughout the term of this Agreement, Anti-Bribery policies and procedures and will enforce them where appropriate.

28. GOVERNING LAW AND JURISDICTION

- 28.1. This Contract and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Both parties irrevocably agree that the courts of England and Wales have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).