

Viatel Technology UK MSA Terms & Conditions

1. DEFINITIONS

In this Contract the following words have the following meanings:

"Affiliate" means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company (**"Holding Company"**): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.

1.1 **"Client Infrastructure"** means the Client's systems and technical infrastructure, including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Supplier's management and control and explicitly identified as Supplier's responsibility under this Contract, including Resold Services but excluding the Connectivity Infrastructure.

1.2 **"Client"** means the 'Client' specified in the Order Form.

"Connectivity Infrastructure" means the internet, telecommunications links, broadband and/or third-party software, and systems which are neither owned or supplied by the Supplier or the Client and which connect the Services to wide area networks.

"Contract" means these MSA Terms & Conditions, the Order Form, and the Schedules.

1.3 **"Costs"** means costs, liabilities, penalties, and charges.

1.4 **"Deliverables"** means the output/deliverables in respect of the Services, excluding any Materials.

1.5 **"Effective Date"** means the contract date specified in the Order Form.

1.6 **"Fees"** means the fees and charges specified in the Order Form and the SOW(s).

"Intellectual Property Rights" means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trademarks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.

1.7 **"Internal Use"** means internal use only in the ordinary course of the Client's business and for the use(s) envisaged in the Supplier's published marketing materials relating to the Managed Services and/or Project Services (as applicable).

1.8 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.

"Live Date" means the date from which the delivery of Managed Services by the Supplier shall commence, which date shall be notified to the Client by the Supplier and shall fall after completion of any associated and preparatory Project Services such as migration services.

1.9 **"Managed Services"** means Viatel 'Managed Services' as described in the Order Form.

1.10 **"Managed Services Fees"** means the Fees in respect of Managed Services, as described on the Order Form.

1.11 **"Managed Services Initial Term"** means the period starting on the Live Date and lasting for the Minimum Term;

1.12 **"Managed Services Service Schedule"** means a Viatel 'Managed Services Service Schedule' as referenced in the Order Form, relating to associated Managed Services.

1.13 **"Materials"** means any tangible materials delivered by Supplier to the Client under this Contract or any SOW(s).

1.14 **"Minimum Term"** means the initial minimum period of years specified in relation to all Managed Services, as set out on the Order Form.

1.15 **"MSA T&Cs"** means these MSA Terms & Conditions.

1.16 **"Order Form"** means an order form signed by the Supplier and the Client and referring to these MSA Terms and Conditions.

1.17 **"Product"** means hardware or perpetual licenses sold by the Supplier to the Client

1.18 **"Product Service Schedule"** means a Viatel Product Service Schedule as described on the Order Form, relating to associated Product.

1.19 **"Project Services"** means professional services to be delivered by the Supplier as set out in the Order Form and/or any SOW, including for example any migration services set out in such documents.

1.20 **"Renewal Term"** means a one-year period beginning on (i) the first day immediately following the end of the Managed Services Initial Term or (ii) any anniversary thereof.

1.21 **"Resold Services"** means software and/or services provided to the Client directly by Vendors under the terms of Vendor Agreements, if and to the extent such Vendors, software and/or services are specified on the Order Form.

1.22 **"Schedules"** means any schedules affixed to or referenced within the Contract by the Supplier including (a) (where so affixed or referenced) any relevant Managed Services Service Schedule, Product Service Schedule, Resold Service Schedule, Break Fix Service Schedule and/or (b) Schedule 1 of these MSA T&Cs.

1.23 **"Services"** means Viatel group services delivered by the Supplier under this Contract including the Managed Services, Break Fix Services and the Project Services but excluding the Resold Services.

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- 1.24 “**SLA**” means a service level agreement set out in a Managed Services Service Schedule.
- 1.25 “**SOW or “Statement of Work”**” means a statement of work specifying one-off / fixed term professional services to be delivered by the Supplier as set out in the Order Form and/or any freestanding statement of work signed by the parties from time to time.
- 1.26 “**Supplier**” means the Viatel group entity specified as ‘Supplier’ in the Order Form.
- 1.27 “**System Access**” the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.28 “**User Data**” means any information, materials, or data provided to the Supplier by (or on behalf of) the Client or its users in relation to the Services.
- 1.29 “**Vendor(s)**” means, if and to the extent specified on the Order Form, third party software and/or services vendor(s) in relation to which (a) the Supplier is a reseller and (b) Client contracts directly with such vendor(s) to receive such third-party software and/or services.
- 1.30 “**Vendor Agreements**” means contracts formed between Vendor(s) and Client for entitlement to Resold Services.

2. MANAGED SERVICES

- 2.1 Managed Services will be provided by Supplier to Client pursuant to this Contract if and to the extent that such Services are specified in the Order Form. The remaining provisions of this Clause 2 are expressly subject to the foregoing.
- 2.2 From the Live Date:
 - (i) the Supplier shall provide Managed Services substantially in accordance with the Managed Services Service Schedule with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract. The Supplier shall use its reasonable endeavours to meet the timescales specified in the SLA.
 - (ii) subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence: (a) for the duration of this Contract to permit its authorised users to receive and use the Managed Services for the Permitted Purpose and at all times in compliance with the Law, subject to the commercial parameters set out in the Order Form; and (b) to use the Materials and Deliverables for Internal Use.
- 2.3 The Supplier shall not be responsible for any failure to provide Managed Services or any other Services as a result of (a) a failure by the Client to comply with its responsibilities under this Contract (b) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the Client’s data; and/or (c) the occurrence of a Suspension Event.
- 2.4 The Supplier reserves the right at its sole discretion to suspend any Services in the event of a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 6) (a “**Suspension Event**”).
- 2.5 In the event of a failure by the Supplier to provide Managed Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly in accordance with the SLA. Subject to any service level payment or service level termination rights arising under the express terms of the SLA, the Supplier’s provision of corrective services in accordance with this Clause 2.5 shall constitute the Client’s exclusive remedy for any breach of Clause 2.2(i). Nothing in this Clause 2.5 purports to limit the Supplier’s liability for any failure of the Supplier to comply with this Clause 2.5 (for which the provisions of Clause 12 shall apply).
- 2.6 If the Client exceeds the commercial parameters in the Order Form relating to Managed Services (e.g., such that the supported number of users of Managed Services exceeds the amount of such users stipulated on the Order Form), then the Supplier may charge the Client for such excess use in accordance with the rates specified in the Order Form. On payment of such fees such excess usage shall be deemed permitted usage for the purpose of this Clause 2.

3. CLIENT’S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice and the Supplier’s reasonable instructions; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data.
- 3.2 The Client recognises that the availability of the Services is, in part, dependent on the stability of the Connectivity Infrastructure, and that changes to the Connectivity Infrastructure may result in the loss of availability of (or the material degradation of) the Services. The Client shall not make changes to those elements of the Connectivity Infrastructure that are within its control, without the authorisation of the Supplier. The parties agree that changes

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to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party; save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Services.

- 3.3 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.
- 3.4 The obligations of the Client set out above in relation to Services shall apply, to the extent technically relevant, also in relation to any Resold Services contracted by the Client.

4. PROJECT SERVICES

- 4.1 Project Services will be provided by Supplier to Client pursuant to this Contract if and to the extent that such Services are specified in the Order Form and/or any SOW.
- 4.2 This Contract operates as a framework under which Project Services may be provided if the parties agree any SOW(s) in the Order Form or by completing an SOW pro forma.
- 4.3 Any written communication is capable of constituting an SOW provided that it is clearly identified as an order for Services. An SOW is deemed completed and binding on the parties if: (a) it is signed or otherwise agreed by both parties; or (b) it is raised by the Supplier in accordance with Clause 4.4 below. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.
- 4.4 In the event that Services are undertaken by the Supplier on the written request of the Client and it is not reasonably practicable to populate and execute an SOW in respect of such services prior to such services commencing, as soon as reasonably practicable thereafter the Supplier shall raise a retrospective SOW capturing the Services ordered by the Client, with the fees calculated either on a time and materials basis or as a fixed price as specified in an SOW. Such an SOW will not require the Client's signature to be binding on the parties.
- 4.5 The Supplier shall provide Project Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to the Supplier's performance.
- 4.6 For the avoidance of doubt, Supplier's right to suspend Services as further detailed in Clause 2.3 applies also to the Project Services.

5. RESOLD SERVICES AND PRODUCT

- 5.1 Resold Services are provided to the Client by the Vendors if and to the extent that such Resold Services are specified in the Order Form.
- 5.2 The parties agree to the provisions of Resold Service Schedule (Resold Services Provisions) in relation to all Resold Services.
- 5.3 The parties agree to the provisions of Product Service Schedule (Product Services Provisions) in relation to all Product Services.
- 5.4 Products and Resold Services are provided to the Client by the Vendors if and to the extent that such Products and Resold Services are specified in the Order Form.

6. PAYMENT

- 6.1 The Client shall pay Fees (a) as and when they fall due for payment, as specified in the Order Form and (b) in the manner specified in the SOW(s) or otherwise fixed as specified under an SOW.
- 6.2 The Supplier shall be entitled to raise invoices for Fees and charges as and when they fall due for payment in accordance with the Order Form and any SOWs.
- 6.3 Save to the extent otherwise indicated on an Order Form, or (in relation to Resold Services only) otherwise provided pursuant to Resold Service Schedule (Resold Services):
 - (i) Managed Services will be invoiced monthly in advance;
 - (ii) Project Services will be invoiced monthly in arrears, on a time and materials basis, based on pricing stipulated in the relevant SOW(s) (unless no such pricing is stipulated in which event the Supplier's then-prevailing rate card shall apply);
 - (iii) Resold Services will be invoiced in accordance with the Order Form and/or Resold Service Schedule
 - (iv) Product will be invoiced upon delivery to the Supplier or Client Premises
- 6.4 Except as otherwise stipulated pursuant to Resold Service Schedule the following will apply in relation to relevant Resold Services:
- 6.5 Resold Services provided on a SaaS basis will be invoiced in advance, and any changes during a prior month shall be invoiced in arrears;

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- 6.6 Resold Services that are IaaS (such as Azure and AWS) will be invoiced monthly in arrears; and
- (i) Annual subscription licences (such as Qlik and Alteryx) shall be invoiced annually in advance.
- 6.7 The Client shall pay the Supplier's invoices either: (a) within twenty-eight (28) days of the date of the invoice (or within such shorter period as specified in the Order Form); or (b) by direct debit or standing order (if applicable; and if specified in the Order Form).
- 6.8 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counterclaim, abatement, or other similar deduction.
- 6.9 All fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order Form) and are exclusive of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on the Supplier.
- 6.10 If any sum payable under this Contract is not paid ten (10) days after the due date for payment then (without prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of five per cent (5%) above the prevailing Bank of England base rate measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.
- 6.11 Managed Services Fees shall be governed as follows:
- (i) during the Managed Services Initial Term, the Managed Services Fees shall remain as specified in the Order Form;
- (ii) at the start of each Renewal Term, all Managed Services Fees shall increase by an amount, as notified by Supplier, that does not exceed the rate of change in the Retail Price Index (for all items) as published by the Office for National Statistics plus two per cent, measured between the date of review and the last review date (or, in the event of the first review date, the Live Date) ("**Indexed Increase**").
- 6.12 Unless otherwise specified in the Order Form, after the expiry of the Managed Services Initial Term, the Supplier shall be entitled by giving the Client not less than ninety (90) days' written notice prior to an anniversary of the Live Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by the Supplier in its sole discretion) ("**Exceptional Increase**"), provided that if the Client objects to an Exceptional Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to the Supplier not less than sixty (60) days' written notice prior to the Anniversary Date.
- 6.13 The Supplier may increase or decrease the Fees for any Resold Service at any time in order to take account of any increase or decrease in the cost to Supplier relating to such Resold Service including, but not limited to, any increase or decrease in relevant Vendor's (or its reseller's) charges to Supplier for such Resold Service (including any such increase or decrease occasioned on account of exchange rate fluctuations). Supplier shall provide not less than thirty (30) days' notice to Client of any such increase or decrease in the Fees, unless a shorter notice is imposed on Supplier by Vendor (or its reseller) in which case Supplier shall provide a shorter notice period to Client reflecting the relevant circumstances.

7. PROPERTY RIGHTS

- 7.1 Title to the Materials is and shall at times remain with the Supplier unless otherwise specified in the Order Form or an SOW. The Supplier and its licensors own and shall continue to own all Intellectual Property Rights in the Services and any Deliverables. Full and unencumbered title (with full title guarantee) in all Deliverables and Services shall vest in the Supplier absolutely upon creation. The Client undertakes at the request of the Supplier at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 7.1.
- 7.2 The Vendors and their licensors shall continue to own all Intellectual Property Rights in the Resold Services, all as further stipulated in relevant Vendor Agreements.

8. TERM AND TERMINATION

- 8.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order Form. This Contract shall commence on the Effective Date and shall continue unless and until all Managed Services, Project Services and Resold Services are terminated in accordance with this Clause 8.
- 8.2 **Managed Services.** The Managed Services commence on the Live Date (as further described at Clause 8.2) and shall continue for the Managed Services Initial Term and thereafter for subsequent Renewal Terms.
- (i) Either party shall be entitled to terminate the Managed Services on expiry of the Managed Services Initial Term or any Renewal Term by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate the Managed Services immediately if the other party commits any material breach of its obligations in relation to the Managed Services and fails to remedy that breach within thirty (30) days of written notice of that breach (the 30 day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Managed Services may be terminated by written notice immediately).
- (iii) Client may terminate the Managed Services immediately by notice in writing to Supplier following the

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occurrence of any Service Level termination threshold expressly defined in the relevant Managed Services Service Schedule, subject always to any stipulations within such Schedule in relation to any such termination threshold (including without limitation as to the manner and timing of the exercise of any such termination right).

- 8.3 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the relevant Project Services or in accordance with this Clause 8.3.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice.
 - (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if that other party commits any material breach of the applicable SOW that is incapable of remedy (if the breach is capable of remedy, the SOW may be terminated immediately if the other party fails to remedy that breach within thirty (30) days of written notice).
- 8.4 **Resold Services.** Each Resold Service shall commence and shall continue in accordance with relevant provisions of the relevant Vendor Agreements, the Order Form and Resold Service Schedule (Resold Services Provisions).
- 8.5 **Insolvency.** Either party shall be entitled to terminate the Managed Services and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of this Contract (a) the rights and duties created under Clauses 6, 7, 10, 11, 12, 13, 16, 17, and 18 shall survive; (b) the rights of the Supplier under Clauses 5 and Resold Service Schedule shall survive; and (c) the rights of either party which arose on or before termination shall be unaffected.
- 9.2 On termination of the Managed Services howsoever caused:
- (i) the SOW(s) shall be unaffected;
 - (ii) the Resold Services shall be unaffected;
 - (iii) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the Managed Services in accordance with that other party's reasonable instructions; and
 - (iv) all licences granted in relation to the Managed Services shall terminate.
- 9.3 On termination of any SOW(s) howsoever caused:
- (i) other SOW(s) shall be unaffected;
 - (ii) the Managed Services shall be unaffected;
 - (iii) the Resold Services shall be unaffected;
 - (iv) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the terminated SOW(s) in accordance with that other party's reasonable instructions.
 - (v) the Supplier shall make such partial delivery to the Client of the relevant Materials and Deliverables as is reasonably practicable, on an "as is" basis;
 - (vi) the Supplier shall be entitled to payment for work done and costs incurred under the SOW(s) up to the date of termination of the SOW(s). In this respect, if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Project Services that had been provided under the SOW(s) and the cost to the Supplier of providing such Project Services.

10. CONFIDENTIALITY

- 10.1 Each party that receives ("**Receiving Party**") non-public business or financial information ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall:
- (i) keep the Confidential Information confidential;
 - (ii) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2, or 10.3; and
 - (iii) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 10.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 10 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 10.

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- 10.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.
- 10.4 The parties agree that any breach of the restrictions contained in this Clause 10 may cause irreparable harm to the innocent party, whereupon the innocent party shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

11. DATA PROTECTION

- 11.1 The parties agree to the provisions of Schedule 1 (Data Protection).

12. LIABILITY

- 12.1 Neither party shall exclude or limit its liability for:
- (i) death or personal injury caused by its negligence;
 - (ii) fraudulent misrepresentation; and/or
 - (iii) any liability that cannot be excluded or limited by Law.
- 12.2 Subject to Clause 12.1, the Supplier shall not be liable for loss of profit, loss of revenue, loss of anticipated savings, or loss of goodwill.
- 12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 12.4 The Supplier's Contractual Liability to the Client shall not exceed one hundred and twenty-five per cent (125%) of the fees paid (plus any unpaid fees that are payable) under the Contract for the services giving rise to the liability (but not any SOW) in the 12-month period prior to the date in which the claim (or series of connected claims) arose. "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract (including any liability in relation to the Resold Services) that is not:
- (i) unlimited by virtue of Clause 12.1; or
 - (ii) excluded pursuant to Clauses 12.2, Clause 12.3 or Resold Service Schedule (Resold Services).
- 12.5 The Supplier's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "**SOW Liability**" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2 and 12.43 and 12.4
- 12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the merchantability, quality, or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.
- 12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by any circumstances beyond its reasonable control. Without limitation, the following shall be regarded as causes beyond either party's reasonable control: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier's hardware, software and/or network infrastructure (g) any government guidance or instruction(s) applicable to either party or its suppliers, arising as a result of any epidemic, pandemic, or outbreak of disease; each an "**Event of Force Majeure**".

13. INSURANCE

- 13.1 Supplier shall during the term of this Contract, and for a period of one (1) year thereafter, effect and maintain insurance cover(s) with reputable insurer(s) in respect of the following risks:
- (i) Employers' Liability - not less than ten million pounds Sterling (£10,000,000) each and every claim and any one occurrence;
 - (ii) Public Liability – not less than ten million pounds Sterling (£10,000,000) each and every claim;
 - (iii) Professional Indemnity – not less than five million pounds Sterling (£5,000,000) in the aggregate; and
 - (iv) Cyber & Data liability – not less than two million pounds Sterling (£2,000,000) in the aggregate.

14. ASSIGNMENT

- 14.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided

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that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.

- 14.2 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

15. CHANGES

- 15.1 Subject to Clause 15.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 15.2 Either party shall be entitled from time to time to request a change to the scope of the Services ("**Change**"). Neither party shall be entitled to charge for considering and/or negotiating a Change unless such consideration requires the Supplier to undertake detailed scoping in which case the Supplier shall be entitled to charge pursuant to an SOW.
- 15.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.
- 15.4 The Supplier reserves the right to make changes to the Managed Services from time to time provided that, in relation to any change that removes material Managed Services elements (a "**Material Change**"), the Supplier shall give the Client not less than sixty (60) days' prior written notice of such Material Change (a "**Material Change Notice**") and provided further that the Client shall be entitled by giving the Supplier not less than thirty (30) days' prior written notice prior to the Material Change taking effect to terminate the Managed Services. If the Client has prepaid Fees covering a period that is shortened by termination by the Client in accordance with this Clause 15.4, the Supplier shall refund to the Client a proportion of the prepaid Fees in respect of such period, pro-rated on a daily basis.
- 15.5 Neither party shall unreasonably withhold its consent to the other's request to re-schedule the date or time of performance of Services. However, given that it will not be practical for the Supplier to re-schedule resources on short notice, the parties agree that: (a) if the Client gives to the Supplier less than two (2) clear days' notice of such a request then the Client must pay to the Supplier the full value of such booked Services; (b) if the Client gives to the Supplier between two (2) and seven (7) clear days' notice of such a request then the Client must pay to the Supplier fifty per cent (50%) of the full value of such booked Services. For the purpose of this Clause 15.5, a "**day**" excludes Saturday, Sunday, and public holidays.

16. NON-SOLICITATION

- 16.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other party, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other party who performed (or is performing) a material function for that party (excluding administrative and secretarial functions).
- 16.2 If a party breaches Clause 16.1, it shall pay the other party an amount equal to the last three (3) months' salary of the applicable individual in recognition of the value of the individual to the other party and the cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

17. DISPUTES

- 17.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the "**Dispute**") through discussions between board-level representatives.
- 17.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 17.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution ("**ADR**") procedure as recommended by the Centre for Effective Dispute Resolution.
- 17.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 17.4 Clauses 17.1 to 17.3 above shall not restrict either party's ability to commence court proceedings in respect of any:
- (i) matter relating to its Confidential Information or Intellectual Property Rights; and/or
 - (ii) unpaid invoice.

18. GENERAL PROVISIONS

- 18.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).
- 18.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 18.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier's behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier's credit.

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- 18.4 Entire Agreement. This Contract supersedes any prior contracts, arrangements, and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 18.5 Severance. If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 18.6 No Waiver. No delay, neglect, or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 18.7 No Bribery. Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.
- 18.8 Counterparts. This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.
- 18.9 Notices. All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first-class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.
- 18.10 Interpretation. In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 18.11 Hierarchy. To the extent there is any inconsistency between the provisions of these MSA Terms & Conditions, the Order Form, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply (ranked from first precedence to last): (a) these MSA Terms & Conditions; (b) the Schedules; (c) the Order Form; (d) the SOW(s); (e) documents incorporated into the SOW(s); and (f) other documents incorporated into this Contract.
- 18.12 Law. This Contract is governed by the laws of England.

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SCHEDULE 1

DATA PROCESSING

1. DEFINED TERMS

- 1.1 For the purposes of this Schedule 1:

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- (i) **“Data Controller,” “Data Subject,” “Personal Data,” “Data Processor,”** and **“Process”** shall have the meaning specified in the Data Protection Legislation;
- (ii) **“Data Protection Legislation”** means the UK GDPR; the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it;
- (iii) **“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016; and
- (iv) **“UK GDPR”** means the GDPR as incorporated in UK domestic law by being Regulation (EU) 2016/679 as incorporated into domestic UK law by the European Union (Withdrawal Agreement) Act 2018 (as amended) and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (as amended))

2. DATA PROCESSING TERMS

- 2.1 This Schedule 1 applies to Personal Data encompassed in the User Data provided by (or on behalf of) the Client to the Supplier in relation to delivery of the Services and the term **“Personal Data”** shall be so interpreted throughout this Schedule 1. In relation to the Processing of any such Personal Data, the parties agree that the Client is the Data Controller, and the Supplier is the Data Processor.
- 2.2 This Schedule 1 sets out the subject matter, duration, nature, and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of the Client.
- 2.3 The Supplier shall in respect of such Personal Data:
 - (i) process that Personal Data during the term of this Contract only on the documented written instructions of the Client (which include this Contract) unless the Supplier is required by Laws to otherwise process that Personal Data. Where the Supplier is relying on Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Laws unless those Laws prohibit the Supplier from notifying the Client;
 - (ii) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (iv) not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Client has been obtained and there are appropriate safeguards in relation to the transfer;
 - (v) assist the Client, at the Client’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (vi) notify the Client without undue delay on becoming aware of a Personal Data breach;
 - (vii) ensure that provisions which are equivalent to those set out in this paragraph 2.3 are imposed upon any subprocessor engaged by the Supplier (acknowledging that the Supplier shall remain primarily liable to the Client for the subprocessor’s compliance with such provisions);
 - (viii) inform the Client of any intended additions to or replacements of the Supplier’s subprocessors;
 - (ix) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Laws to store the Personal Data; and
 - (x) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and allow for audits by the Client on reasonable notice and (but without thereby assuming the primary liability of the Client to only issue lawful instructions) immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

3. DATA

- 3.1 Subject matter and duration of the processing of Personal Data:
 - (i) The subject matter and duration of the processing of Personal Data is set out in this Schedule and is further detailed in the Supplier’s privacy policy (freely available upon request).
- 3.2 The nature and purpose of the processing of Personal Data:
 - (i) Such processing, in accordance with the Client’s instructions, as is necessary to provide the Services pursuant to the Contract, which may include: the collection of data; recording of data; organisation of data; storage of data; alteration of data; retrieval of data; consultation with regard to data; use of data; disclosure of data to permitted third parties; combining data; and/or erasure of data.
- 3.3 The types of Client Personal Data to be Processed:

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- (i) The Client may submit Personal Data in the course of using the Services, the extent of which is determined and controlled by the Client in its sole discretion, which may include, but is not limited to Personal Data relating to the following: name; personal contact details; professional contact details; IP addresses and login credentials.
- 3.4 The categories of Data Subject to whom the Client Personal Data relates:
 - (i) The Client may submit Personal Data to the Supplier, the extent of which is determined and controlled by the Client in its discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects: the Client's customers, employees, business partners and suppliers.
- 3.5 The obligations and rights of the Client:
 - (i) The obligations and rights of the Client are set out in this Schedule and further detailed in the Supplier's privacy policy.

4. CLIENT RESPONSIBILITIES

- 4.1 The Client agrees that, in its role as Data Controller, it:
 - (i) shall ensure that only lawful instructions are issued to the Supplier in respect of the Processing of the Personal Data;
 - (ii) shall obtain and maintain throughout the term of the Contract all necessary permissions, consents, and authorisations to enable the Supplier to process the Personal Data in accordance with the provisions of the Contract;
 - (iii) has reviewed and approved the Supplier's technical and organisational measures as being suitable for the Client's purposes before entering into the Contract;
 - (iv) has granted to the Supplier general authorisation to sub-contract its Processing of Personal Data to third parties on the terms set out in paragraph 2.3(vii);
 - (v) may be considered to have no objections if it has not advised otherwise in writing within ten (10) days of notification under paragraph 2.3(viii); and
 - (vi) shall promptly issue its instructions in writing to the Supplier, regarding return or deletion of the Personal Data, upon termination or expiry of the Contract.
- 4.2 Client consents to Supplier appointing the third parties set out in paragraph 4.3 as third-party processors of Personal Data provided by the Client to the Supplier in relation to Supplier's delivery of the Services. Supplier confirms that it has entered into or (as the case may be) will enter into with the third-party processor a written agreement substantially on that third party's standard terms of business. As between Supplier and Client, Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Paragraph 4.2.
- 4.3 The approved sub-processors for the purpose of paragraph 4.2 are Microsoft Corporation and Amazon Web Services, Inc.

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RESOLD SERVICE SCHEDULE

1. INTRODUCTION

- 1.1 The provisions of paragraph 2 of this Resold Service Schedule apply in relation to all Resold Services and shall, in the event of any conflict, take precedence over any contrary provisions in any other Schedule of the Contract.

2. VENDOR AGREEMENTS

- 2.1 The Client acknowledges that:
- (i) in order to receive the Resold Services, it must enter into Vendor Agreements
 - (ii) the Supplier will have no contractual obligations or responsibilities in respect of the Vendor Agreements, subject to paragraph 2.3 below; and
 - (iii) any termination of the Vendor Agreements (other than as a result of a breach by the Supplier of paragraph 2.32.3 below):
 - (a) will prevent the Client from making use of the corresponding Resold Services; and
 - (b) may prevent the Client from receiving any connected aspects of the Managed Services; however, any such termination shall not entitle the Client to terminate this Contract and/or to receive any refund under this Contract.
- 2.2 The Client agrees that it will enter into Vendor Agreements and will maintain such Vendor Agreements for the duration of the relevant Resold Services and abide by the terms and conditions of the Vendor Agreements.
- 2.3 The Supplier shall ensure that the Vendors do not terminate the Vendor Agreements as a result of the Supplier's breach of paragraph 2.4 below.
- 2.4 The Supplier shall make payment to Vendors in respect of the provision of the Resold Services by Vendors to Client under the relevant Vendor Agreements, subject to the Client's:
- (i) payment to the Supplier of all Fees in respect of all Resold Services and associated Vendor Agreements, including without limitation:
 - (c) any subscription fees that arise in relation to the subscription licences and services granted and/or provided by Vendors under such Vendor agreements; and
 - (d) any consumption-based fees (e.g., as to cloud storage capacity) that arise in relation to such Vendor Agreements; and
 - (ii) compliance, in full, with the terms and conditions of the Vendor Agreements.
- 2.5 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 2, including all Costs associated with handling a Vendor complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 2.
- 2.6 Client shall comply with paragraph 3 and Appendix 1 of this Service Schedule in relation to Resold Services that comprise Microsoft products if Microsoft products are listed on the Order Form.
- 2.7 Client shall comply with paragraph 4 of this Service in relation to Resold Services that are not Microsoft products.
- 2.8 The commencement, duration, termination, and renewal of each Resold Service is subject to the terms of the relevant Vendor Agreements and the Order Form. Each Resold Service is a contract between Client and relevant Vendor and, subject to the relevant Vendor Agreements, is separately terminable in accordance with relevant Vendor Agreement terms and conditions. If the Client elects not to terminate or not to renew any Resold Service, then if the Client requires continued use of the relevant products after such termination or non-renewal, the Client must ensure that such usage rights are directly obtained via new contracts with the relevant Vendor.
- 2.9 If the Client has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts, then without prejudice to paragraph 2.5, Supplier's obligations under paragraph 2.4 shall cease, and Supplier shall have no further responsibility to Client in relation to such Resold Services, save as otherwise required by for compliance with (i) the Vendor Agreements (ii) the Supplier's agreements with Vendors or their resellers (as relevant) or (iii) under Laws.

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3. RESOLD SERVICES - MICROSOFT PRODUCTS

- 3.1 Supplier, either directly or as a customer of a Microsoft appointed reseller (“**Reseller**”) from time to time, is authorised via the Microsoft Partner programme to facilitate the purchasing of certain Microsoft products by Supplier’s customers from time to time.
- 3.2 To the extent Client purchases Resold Services under this Contract that are Microsoft products then the Client does so via the above Partner Programme framework.
- 3.3 In connection with all Resold Services that comprise Microsoft products, Client shall enter into Vendor Agreements with Microsoft in accordance with paragraph 2 above and shall deal with such agreements in accordance with the further provisions of paragraph 2 above.
- 3.4 Appendix 1 to this Resold Service Schedule (the “**Microsoft Provisions**”) sets out various additional essential terms that the Supplier is required to have in place with each of its customers that purchase Microsoft products. Accordingly, in relation to Microsoft products the Client also agrees to the terms of Appendix 1 to this O. Such terms are non-negotiable and are mandatory in order for the Client to purchase its Microsoft product requirements via the Supplier.
- 3.5 The Microsoft Provisions apply in relation to all Microsoft products provided via the Supplier. The Microsoft Provisions are effective only in relation to such Microsoft products and do not apply to any other products or services including (a) any other Resold Services or (b) the Services.
- 3.6 Client shall ensure that, in relation to each Microsoft product supplied via Supplier, it accepts and agrees to the terms of the Microsoft Customer Agreement (“**Customer Agreement**”) located at <https://www.microsoft.com/licensing/docs/customeragreement>, which terms may be updated from time to time by Microsoft along with any other applicable Product Terms applicable to the Microsoft products purchased.
- 3.7 The terms of the Customer Agreement(s) are supplemental to the Microsoft Provisions. Client shall regularly check the above link for any changes or updates which may affect the Client’s and/or Microsoft’s obligations. Failure to do so will not in any way diminish the binding nature of such changes or updates on Client. For the avoidance of doubt, by signing this Contract the Client has fully accepted all provisions of this Clause including the Microsoft Terms and any related Product Terms.
- 3.8 Client acknowledges, accepts, and shall comply with the following terms and conditions (“**Additional Microsoft Terms**”) relating to relevant Microsoft products supplied to it via the Supplier under this Contract:
 - (ii) <https://azure.microsoft.com/en-gb/support/legal>
 - (iii) <https://www.microsoft.com/en/microsoft-365/business/terms-and-conditions>
 - (iv) <https://privacy.microsoft.com/en-gb/privacystatement>
- 3.9 The Client acknowledges that in relation to the Resold Services Microsoft is a sub processor of the Client and not a sub processor of Supplier.
- 3.10 Client shall regularly check the Additional Microsoft Terms for any changes or updates that may affect the Client’s and/or Microsoft’s obligations. Failure to do so will not in any way diminish the binding nature of such changes or updates on Client.
- 3.11 In the event of any conflict between the Additional Microsoft Terms and the Customer Agreement, unless such conflict is expressly resolved by Microsoft’s provisions within such terms, the Customer Agreement shall prevail.
- 3.12 Client shall enter into any further agreements required by Microsoft under the Additional Microsoft Terms and/or Customer Agreement (as amended) and/or as otherwise required by Microsoft from time to time and shall not act (or fail to act) so as to cause Supplier to be in breach of any of its obligations to Microsoft or its Reseller from time to time.
- 3.13 Where a Resold Service encompasses a Microsoft cloud service, the Supplier will be assigned to the cloud subscription/s as the Digital Partner of Record (DPOR) and/or Claiming Partner of Record (CPOR) (as applicable) for the term of such Resold Service.
- 3.14 Client’s Microsoft subscriptions come with a set of admin roles that it can assign to users. Each admin role maps to common business functions and gives people in the Client’s business permissions to do specific tasks in the admin centres. Client agrees on request from the Supplier from time to time, to allocate admin roles to named Supplier personnel to the extent needed for Supplier to deliver services to Client under this Contract.
- 3.15 If Microsoft elects to discontinue a product and/or licence comprised within the Resold Services, the Parties shall coordinate as necessary with a view to enabling continuation of the Resold Services, and Supplier shall notify Client of an amendment to Vendor Agreements in relation to equivalent or alternative Microsoft product(s) and/or licence(s) (as applicable) including the amended pricing to apply in relation to the same. Client shall then promptly enter into such Agreement(s) or Licence(s) (as applicable) on the required timescale to enable such continuity.

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4. RESOLD SERVICES – NON-MICROSOFT PRODUCTS

- 4.1 In relation to Resold Services that are not Microsoft products (“**Other Resold Services**”), Supplier is an authorised reseller via the relevant Vendors’ partner programmes to facilitate the purchasing of certain such Vendors’ products by Supplier’s customers from time to time.
- 4.2 In connection with all Other Resold Services, Client shall enter into Vendor Agreements with relevant Vendors in accordance with paragraph 2 above and shall deal with such agreements in accordance with the further provisions of paragraph 2.2 above. In connection with all Other Resold Services, Client shall enter into Vendor Agreements with relevant Vendors in accordance with paragraph 2 above and shall deal with such agreements in accordance with the further provisions of paragraph 2.2 above.
- 4.3 The Vendor Agreements relating to the Other Resold Services apply only in relation to the relevant Other Resold Services. They do not apply in relation to Microsoft products, nor do they apply in relation to the Services.
- 4.4 Client shall ensure that, in relation to each Other Resold Service supplied via Supplier, it accepts and agrees to the terms of the relevant Vendor Agreements notified to it by Supplier or the relevant Vendor from time to time, which terms may be updated from time to time by relevant Vendors. Without prejudice to the generality of the foregoing, in relation to the following Other Resold Services, Client acknowledges and agrees to the relevant Vendor Agreements set out on the named vendors websites from time to time and as updated from time to time including without limitation:
- (i) For Qlik products:
 - (a) <https://www.qlik.com/us/legal/product-terms>
 - (b) <https://www.qlik.com/us/legal/legal-agreements>
 - (ii) For Alteryx products:
 - (c) <https://www.alteryx.com/wp-content/uploads/media/pdfs/files/alteryxeulav202006.pdf>
 - (iii) For Amazon Web Services (“**AWS**”) products:
 - (d) <https://aws.amazon.com/agreement/>.
- 4.5 Client shall regularly check the above referenced Vendor websites including the above links for any changes or updates which may affect the Client’s and/or the relevant Vendor’s obligations. Failure to do so will not in any way diminish the binding nature of such changes or updates on Client. For the avoidance of doubt, by signing this Contract the Client has, in relation to relevant Resold Products, fully accepted all provisions of this 0 and the above Vendor Agreements.
- 4.6 The Client acknowledges that in relation to the Other Resold Services each relevant Vendor is a sub processor of the Client and not a sub processor of Supplier.
- 4.7 Client shall enter into any further agreements required by relevant Vendors of Other Resold Services and/or as otherwise required by such Vendors from time to time and shall not act (or fail to act) so as to cause Supplier to be in breach of any of its obligations such Vendors from time to time.
- 4.8 Where an Other Resold Service encompasses a cloud service, the Supplier will be assigned to the cloud subscription/s as the Digital Partner of Record (DPOR) and/or Claiming Partner of Record (CPOR) (as applicable) for the term of such Other Resold Service.
- 4.9 Client’s subscriptions to Other Resold Services may have associated admin roles that it can assign to users. Such admin roles may map to common business functions and gives people in the Client’s business permissions to do specific tasks in the admin centres. Client agrees on request from the Supplier from time to time, to allocate admin roles to named Supplier personnel to the extent needed for Supplier to deliver services to Client under this Contract. If a Vendor elects to discontinue a product and/or licence comprised within the Other Resold Services, the Parties shall coordinate as necessary with a view to enabling continuation of the Other Resold Services, and Supplier shall notify Client of an amendment to Vendor Agreements in relation to equivalent or alternative product(s) and/or licence(s) (as applicable) including the amended pricing to apply in relation to the same. Client shall then promptly enter into such Agreement(s) or Licence(s) (as applicable) on the required timescale to enable such continuity.

APPENDIX 1 To Resold Service Schedule (MICROSOFT PROVISIONS)

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in these Microsoft Provisions. Any defined terms used herein and not defined below shall have the meaning ascribed elsewhere in this Contract.
- “**Administrative Access Credentials**” means any administrative log-in credentials Microsoft provides for accessing or managing a Product.
- “**Customer Data**” means any data of the Client, or its users used in Resold Services that are Microsoft products;
- “**Consumption Subscriptions**” refers to one-month OLS Subscriptions that are billed based on actual usage in the preceding month without upfront commitment.

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“**Customer Agreement**” means an agreement between a Customer and Microsoft, or a Microsoft Affiliate, and the associated Microsoft license terms that govern a customer’s use of a Product which may be updated from time to time and as set out at <https://www.microsoft.com/licensing/docs/customeragreement>.

“**Offset**” means the withholding or deduction from the payment of any invoice amount or amount due by offset, counterclaim, or otherwise.

“**OLS Subscription**” means a right to use certain Online Services for a defined term.

“**Online Services**” means Microsoft-hosted services identified as such on a current Price List excluding Software.

“**Order Form**” means the Order Form annexed to this Contract or a Change document relating to it.

“**Price List**” means the then current list of Products.

“**Product Fee**” means the royalty, commission, fee, or price to be paid for a Product.

“**Products**” means Microsoft online services, tools, software, hardware, or professional support or consulting services.

“**Product Specific Terms**” means the additional terms, conditions, or restrictions that apply to specific Products.

“**Product Terms**” means the document that provides information about Products available through volume licensing. The Product Terms document is published at <https://www.microsoft.com/licensing/docs> and is updated from time to time.

“**SLA**” means the service level agreement commitments regarding delivery and/or performance of the applicable Product.

“**Software**” means licensed copies of Microsoft software identified in the Order Form. Software does not include Online Services, but Software may be part of an Online Service.

“**Software Subscription**” means a right to use the Software identified in the Order Form as being available and licensable for a defined term.

“**Subscription**” means a right to use a Product for a defined term.

1.2 Clause and paragraph headings shall not affect the interpretation of these Microsoft Provisions.

1.3 A reference to **writing** or **written** includes e-mail.

1.4 A reference to these Microsoft Provisions to any other agreement or document referred to in this these Microsoft Provisions is a reference to the Microsoft Provisions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Microsoft Provisions) from time to time.

2. PRODUCT FEES AND ORDERING, GENERAL

2.1 By submitting an order through the Order Form, Customer (i) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects and (ii) agrees to pay the Supplier for all orders it submits for Products.

3. REPORTING, INVOICING AND PAYMENT, GENERAL

3.1 **Late Payment.** If (i) the Customer fails to cause the full invoice payment to be received by the Supplier by the payment due date, (ii) an audit reveals an underpayment, or (iii) the Customer Offsets, the Supplier may take any (or any combination) of the following actions to the maximum extent permitted by Law, and without waiving any other right or remedy it may possess:

- (v) charge interest and late fees on the past due amount as more fully set out in the Contract;
- (vi) suspend all pending orders, further shipments, or Customer’s access to Products;
- (vii) require the prepayment of Product Fees on future orders, place Customer’s account on hold, reduce Customer’s credit limit (if applicable), or require that Customer provide a bank guarantee or other form of security; or
- (viii) withhold the past-due amount from any other amounts payable by Supplier to Customer under the Contract.

4. NOTICE OF CHANGES

4.1 The Customer acknowledges and accepts that the Supplier reserves the right to unilaterally modify these terms from time to time. The Supplier will provide the Customer no less than ninety (90) days’ prior notice before such changes become effective; after such time, such changes to these terms will become effective without further action by the parties. Any modification of these terms per this provision will have prospective effect only.

5. CUSTOMER AGREEMENT ACCEPTANCE.

5.1 The Customer may not revise the Customer Agreement in any way. The Customer agrees and acknowledges that if Microsoft updates the Customer Agreement, then the Customer must ensure that it reads, agrees, and acknowledges the terms of the new Customer Agreement prior to or at the submission of a subsequent order (which is not a subsequent adjustment to an existing Subscription) or the renewal of their Subscription. Notwithstanding the foregoing, Microsoft may independently obtain the Customer’s end user acceptance of the Customer Agreement.

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- 5.2 By placing an order with the Supplier, the Customer represents and warrants that the Customer has accepted the Customer Agreement.
- 6. GENERAL PRODUCT RELATED OBLIGATIONS**
- 6.1 Product and Subscription Management. The Supplier will perform certain functions associated with the purchase, activation, support, and management of the Customer's purchased Products. The Customer acknowledges and agrees that from time-to-time Supplier may update, as Supplier in its sole reasonable discretion deems appropriate, the processes and tools needed to perform such functions and the Supplier may be required to implement such updates or changes to continue to perform the functions.
- 7. OLS SUBSCRIPTION OFFER TERMS AND OBLIGATIONS**
- 7.1 **Fixed Term OLS Subscriptions.**
- (i) Products sold under fixed term OLS Subscriptions are sold for a term as specified in the Order Form. The Order Form shall specify if such Subscriptions are to be billed on a monthly or annual basis. Any subsequent adjustments to OLS Subscriptions (e.g., adding seats) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
- 7.2 **Consumption Subscriptions ("Pay-As-You-Go")**
- (i) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period.
- 8. SOFTWARE OFFER TERMS AND OBLIGATIONS**
- 1.2 **Installation of Software.** Customer's installation of certain Software may require the Customer to have a qualifying base license on the Customer's hardware unit. The applicable requirements are set forth in the Product specific terms incorporated into the Customer Agreement.
- 9. PAYMENT, ORDERING**
- 9.1 The Supplier may reject any purchase order for a Software offer, in whole or part, within ten (10) days from the receipt of the Customer's order. The Supplier will notify the Customer if the Supplier rejects any order. Once an order for a Software offer is submitted, the Customer will have sixty (60) days from the order date to submit any revisions to such order. All revision requests must be accompanied by supporting documentation as required by the Supplier and will be subject to the Supplier's review and approval. An approved order revision will result in the full cancellation of the underlying order and a refund. The Supplier may, in its sole discretion, decide to charge a handling fee of 5% of the value of any purchase order revision submitted and approved after sixty (60) days.
- 10. OPERATIONAL AND TECHNICAL SUPPORT**
- 10.1 **Administrative Access.**
- (i) Administrative Access Credentials are the property of the Customer; The Supplier shall provide Customer with any Administrative Access Credentials Microsoft provides with respect to a Product purchased by Customer.
- (ii) If the Supplier (i) retains or obtains any Administrative Access Credentials of a Customer for any purpose, including the fulfilment of its support obligations under the Contract, or (ii) otherwise has access to or processes Customer Data, then the data protection terms found under the Master Services Agreement governing the use of Administrative Access Credentials shall apply.
- (iii) Customer shall supply Administrative Access Credentials to Supplier on request from time to time to enable Supplier to fulfil its support obligations under the Contract.
- 11. CLIENT DATA AND PRIVACY OBLIGATIONS**
- 11.1 **Privacy.** Before obtaining information from data subjects, the Client must obtain their legally valid permission or have another valid legal basis to permit the processing and/or transfer of the data by the Supplier and Supplier Affiliates, Microsoft and Microsoft Affiliates, and each parties' respective subsidiaries and service providers as contemplated under these Microsoft Terms. The Client shall seek the requisite consent to allow the Supplier and Microsoft to collect, use, transfer, disclose, and/or otherwise process Customer's data, including personal data, as described in the Customer Agreement. If obtaining data subject permission, such permission must comply with applicable law as to valid consent.
- 11.2 **Customer Data.**
- (i) The security, privacy and data protection commitments made by Microsoft in any Customer Agreement only apply to the Products purchased from Microsoft and not to any Services or other products provided by the Supplier. Except as the Supplier and Customer may otherwise agree, the Supplier shall not delegate administrative privileges to a Product provided to Customer or otherwise provide access to Customer Data to a third party (other than Customer) without Customer's prior consent or in violation of any Laws, including

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Data Protection Laws.

- (ii) Except as the Supplier and Customer may otherwise agree, the Supplier shall use Customer Data only to provide Customer with the Products and the services specified under this Contract and to assist Customer in the proper administration of the Products.
- (iii) Additionally, the Supplier shall not disclose Customer Data, including the content of communications, to law enforcement or other government authorities without the prior written consent of the Customer, unless required to do so by Law.
- (iv) If the Supplier receives a request for Customer Data either directly from a law enforcement agency or as redirected to the Supplier by Microsoft, then the Supplier shall redirect the law enforcement agency to request that Customer Data directly from Customer. If compelled to disclose Customer Data to law enforcement, then the Supplier shall immediately (i) notify Customer; (ii) cooperate fully with Customer in any reasonable efforts to intervene, quash or limit, or otherwise respond to, such requests; and (iii) after consultation with Customer, only disclose the minimum amount of data necessary to comply with applicable Laws or judicial process.
- (v) The Customer shall (i) notify the individual users of the Products that their Personal Data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities when required by applicable Law as determined by the Supplier; and (ii) obtain individual users' consent to the same.

12. NOTICE OF CHANGES

12.1 Changes to Price List.

- (i) Customer accepts that Microsoft may decrease or increase Product Fees listed on the Price List at any time.
- (ii) Notwithstanding the foregoing:
 - (a) the prices for Microsoft Azure Services may change without notice; and
 - (b) the Supplier will not be required to provide any prior notice before the effectiveness of a decrease or increase in Product Fees.
- (iii) **Changes to Product Specific Terms.** Microsoft may change the terms and conditions of the Product Specific Terms at any time.

13. SUPPORT TERMS.

- 13.1 **Customer Service Level Agreement.** The current Online Services Service Level Agreement can be found at: <https://www.microsoft.com/licensing/docs/view/Service-Level-Agreements-SLA-for-Online-Services>.