

## MASTER SERVICES AGREEMENT (the "Agreement")

### BACKGROUND

- (1) **AKITA SYSTEMS LIMITED**, incorporated and registered in England and Wales with company number 03297540, whose registered office is at Unit 15 Nepicar Park, London Road, Wrotham, Kent, TN15 7AF ("**Supplier**") is an IT Services provider and value-added reseller in the UK, and has developed and may provide Managed Services (as defined in Schedule 1), Professional Services (as defined in Schedule 2), NCE Subscription Services (as defined in Schedule 3), Goods (as defined in Schedule 4), Telephony and Internet Services (as defined in Schedule 5), Device as a Service (as defined in Schedule 6), and Deliverables (as defined in clause **Error! Reference source not found.**) ("**Services**").
- (2) The "**Client**", the name of which is set out in the "**Statement of Work**" (the document describing the services proposed in response to a request from the Client to the Supplier, wishes to use the Supplier's Services in its business operations.  
  
(each a "**Party**" and together, the "**Parties**").
- (3) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.
- (4) Multiple Statement of Works may be incorporated under this Agreement.

### INTERPRETATION

Clause, and paragraph headings shall not affect the interpretation of this Agreement.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

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

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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

Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

References to **Clauses** are to the Clauses of this Agreement.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The Parties agree, in consideration of the Parties' respective obligations under this Agreement, as follows:

#### 1. ORDERS AND QUOTATIONS

- 1.1 The Client's order for the Services and Deliverables, shall only be binding on the Parties once they have both signed a Statement of Work.
- 1.2 Any quotation given by the Supplier shall not constitute an offer and is only valid for thirty (30) days or such other period as stipulated by the Supplier in writing.

## 2. ORDER OF PRECEDENCE

- 2.1 In the event of any conflict or inconsistency between the Clauses of this Agreement, the Schedules, any variation, a Licence Agreement (as defined below) and the Statement of Work (including any changes to the Statement of Work), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) A **"Variation Agreement"** (a variation agreement which is sent by the Supplier to the Client to vary the terms of this Agreement and when signed forms part of the terms of this Agreement), which looks to vary the terms of this Agreement;
  - (b) the Statement of Work;
  - (c) a **"Licence Agreement"** (a licence agreement that may have to be entered into by the Supplier and/or the Client in respect of Third Party Services (as defined in Clause 14.1) used, which such terms shall be agreed between the Parties) and the Customer Agreement (as defined in Clause 4.1(m) to the extent applicable to the Services;
  - (d) the Schedules to this Agreement; and
  - (e) the Clauses in this Agreement.

## 3. SUPPLY OF SERVICES

- 3.1 Where the Services include:
- (a) the supply of Managed Services (as defined in Schedule 1), the provisions of Schedule 1 shall apply;
  - (b) the supply of Professional Services (as defined in Schedule 2), the provisions of Schedule 2 shall apply;
  - (c) the supply of NCE Subscription Services (as defined in Schedule 3), the provisions of Schedule 3 shall apply;
  - (d) the supply of Goods (as defined in Schedule 4), the provisions of Schedule 4 shall apply;
  - (e) The supply of Telephony and Internet Services (as defined in Schedule 5), the provisions of Schedule 5 shall apply; and/or
  - (f) the supply of Device as a Service (as defined in Schedule 6), the provisions of Schedule 6 shall apply.
- 3.2 Either Party may request changes to any Statement of Work (in each case, a **"Change Request"**). Any Change Request shall be made in writing (including email) and sent to the other Party, as appropriate and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change. Any agreed to changes shall continue to be subject to this Agreement.
- 3.3 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 3.4 Notwithstanding Clauses 3.2 and 3.3, the Supplier shall have the right to make changes to the Services which are necessary to comply with applicable laws or safety requirements.

## 4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier with access to (i) the Client's premises and other facilities; and (ii) appropriate members of the Client's staff and equipment, (including enabling logons and/or passwords) as such access is reasonably requested by the Supplier, in order for the Supplier to perform the Services;
- (c) provide such information, documentation and data as the Supplier may reasonably request in order for the Supplier to perform the Services in a timely manner and ensure that such information is accurate in all material respects;
- (d) shall remain responsible for the use of the Services under its control, including any use by third parties that the Client has authorised to use the Services.
- (e) shall not provide the Services to third parties without the prior written consent of the Supplier.
- (f) ensure it has suitable licences in place, before the date on which the Services are to start, for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
- (g) keep secure from third parties any passwords issued to the Client by the Supplier;
- (h) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
- (i) permit the Supplier to install the current version of software required to provide the Services from time to time when upgrades or fixes occur (if such is included within the scope of the Services) and to provide a reasonable level of assistance in implementation and testing;
- (j) maintain and allow the Supplier or its designated subcontractors and third parties, necessary admin access to the Client's relevant servers, networking systems and cloud Services portals for the duration of this Agreement;
- (k) agree that if, in the course of performing the Services, it is necessary or desirable for the Supplier to access or use any Client owned equipment, Client software or Client data (or which is in the possession of the Client) then it shall where it is able to under the terms of its existing licences grant to Supplier a nonexclusive, royalty free licence, during the term of the Agreement to use the same solely for the purpose of delivering the Services;
- (l) appoint designated primary contacts who manage any escalation and who shall be the key personnel for the Supplier to co-ordinate with. Further the Client warrants that the designated primary contacts shall have sufficient authority to give instructions on behalf of the Client (including but not limited to adding additional Services) which shall be binding upon the Client if such instructions are agreed by the Supplier;
- (m) (for procurement of Microsoft products only) adhere and agree to the Microsoft Customer Agreement ("**Customer Agreement**") and Schedule 3, which is a direct agreement between Client and Microsoft and is a condition of Cloud Solution Provider Program that the Client enters into this agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time;
- (n) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite, Operations Management Suite or Microsoft 365) the Supplier will be assigned to the cloud subscription/s as the Digital Partner of Record and/or Claiming Partner of Record) Partner Admin Link (PAL) (as applicable) and/or given Delegated Administration Privileges (DAP) and/or Granular Delegated Admin Privileges (GDAP) and/or Admin on Behalf of (AOBO)

(as applicable) for the Term. For the avoidance of doubt, in the event Microsoft adds to, updates and/or replaces any of the foregoing designations, this Clause **Error! Reference source not found.** will apply to any such added, updated and/or replaced designations from time to time ;

- (o) in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in this Agreement;
- (p) keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (q) adhere to the dates scheduled for provision of Services by the Supplier to the Client as stated in the applicable Statement of Work or otherwise agreed between the Parties in writing. If the Client wishes to reschedule or cancel the dates for the provision of the Services, the Supplier will use reasonable endeavours to re-assign allocated resources to other clients. If such re-assignment is not possible and the Client has not provided more than fourteen (14) days advance written notice, then unless otherwise stated in the applicable Statement of Work, the Client shall be liable to pay the following cancellation charges ("**Cancellation Charges**") relating to this action, in addition to any specific costs relating to cancelling pre-booked travel arrangements and to unpaid Fees (if any) for any Services work that has been performed:
  - (i) if dates are changed or cancelled at the Client's request more than fourteen (14) days before the scheduled start date no Cancellation Charges are payable;
  - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Cancellation Charges equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
  - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable,

and as a result of such rescheduling or cancellation, the Supplier may extend any performance timelines specified under a Statement of Work.

- 4.2 The Client will be responsible for obtaining and maintaining the Client's own compatible computer system being all such equipment, software and communications lines, including any public lines required by the Client to access the Services ("**Client's Equipment**"). Supplier has no responsibility for or liability with respect to the Client's Equipment unless such Equipment was supplied by Supplier.
- 4.3 The Client acknowledges that Supplier does not operate or exercise control over, and accepts no responsibility for the content of the Clients Materials received on the System.
- 4.4 If the Supplier considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall be entitled to rely on this as relieving the Supplier's performance under this Agreement if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of it to the Client in writing.

4.5 If the Supplier cannot perform or is delayed in performing any of its obligations in respect of the Services and Deliverables due to an act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

- (a) the Supplier shall (without limiting its other rights or remedies) have the right to suspend supply of the Services until the Client remedies the Client Default, and until the Client Default is remedied the Supplier shall be relieved from performing any of its obligations under the Contract, if such obligations cannot be performed due to the Client Default;
- (b) the Supplier shall have no liability for any costs or losses incurred by the Client which arise directly or indirectly from the Client's failure or delay to perform any of its obligations as set out in this Clause 4; and
- (c) the Client shall reimburse the Supplier for any costs or losses arising directly or indirectly from the Client Default.

## 5. SUPPLIER'S OBLIGATIONS

5.1 In supplying the Services, the Supplier agrees that:

- (a) it shall supply the Services to the Client in accordance with the agreed Statement of Work in all material respects;
- (b) use its commercially reasonable endeavours to meet any dates and timescales set out in the applicable Statement of Work but any dates and timescales specified for performance of a Supplier obligation are estimates only;
- (c) it shall determine where the location of the Services shall be delivered unless agreed to in the relevant Statement of Work;
- (d) it shall use commercially reasonable endeavours to meet any performance timelines specified under a Statement of Work but any such timelines shall be estimates only and time shall not be of the essence for the performance of the Services;
- (e) the Services will be provided in a professional manner using reasonable care and skill; and
- (f) it will comply with all applicable laws, statutes, regulations from time to time in force.

5.2 This Agreement shall not prevent either Party from entering into similar Agreements with third parties, or from commissioning, engaging, independently developing, using, selling or licensing materials, products or Services that are similar to those provided under this Agreement.

5.3 The Supplier shall be under no obligation to provide the Services to the Client in the following circumstances;

- (a) providing the Services outside "**Normal Business Hours**" (being 9.00am to 5.00pm local UK time on "**Business Days**" (a day other than Saturday, Sunday or public holiday in England when banks are open for business)) unless otherwise agreed between the Parties in writing;
- (b) by providing any other Services not included within the scope of the Services set out in the applicable Statement of Work;
- (c) training in use of any upgrades unless otherwise agreed by the Supplier; and
- (d) providing the Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.

## 6. FEES

### 6.1 It is agreed that:

- (a) the Client shall pay to the Supplier the fees, costs, or other costs in accordance with any agreed Statement of Work (the "**Fees**"). Unless otherwise agreed, the Fees are exclusive of any value added tax and travel related expenses and the costs of packaging, insurance and transport of the Goods;
- (b) invoices will be raised as set out in the Statement of Work;
- (c) all invoices related to Services shall be payable in full and cleared funds within thirty (30) days from date of the invoice unless otherwise set out in the Statement of Work, without deduction or set-off, and time for payment shall be of the essence under this Agreement. When making a payment the client shall quote the relevant reference numbers and the invoice number.
- (d) in the event the Client is in breach of its payment obligations, the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Work and/or Service Levels as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.; and
- (e) the Supplier shall obtain the Client's approval before incurring any other costs in relation to the Services, other than costs that are stated in the applicable Statement of Work which are deemed to have been approved by the Client in advance and any expenses not exceeding £500 (excluding VAT) per day. The Supplier shall provide the Client, at the Client's request, with receipts for all expenses submitted for reimbursement.

### 6.2 Any quoted Fees are a best estimate based on the information given to the Supplier by the Client and/or which is available at that time and may be based on a number of assumptions set out in the Statement of Work ("**Assumptions**"). If, in the Supplier's reasonable opinion, the information provided and/or Assumptions are incorrect, inaccurate, or have changed and/or the proposed services are not feasible, the Supplier may charge the Client, in accordance with the Rates, for any additional Services or related expenses incurred by the Supplier.

### 6.3 For all consumption-based subscriptions ("**Consumption Subscriptions**"), the Client agrees and acknowledges that:

- (a) any adjustments or revisions to its monthly use report must be provided within thirty (30) days of the original invoice date together with a detailed explanation of the adjustment or revision;
- (b) Consumption Subscriptions may be subject to a cap. Usage will be billed at the next billing cycle including 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 the applicable Third Party Service sold on a Consumption basis may change during the subscription period;
- (c) where applicable, it shall pay all such usage and is responsible for monitoring its Consumption needs; and
- (d) for the avoidance of doubt, if, in spite of Clause 6.3(b), the Client utilises the applicable Third Party Services in excess of any cap, the Client shall pay to the Supplier the Fees and other expenses in accordance with its actual use.

- 6.4 Clauses 6.5 and 6.6 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 6 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 6.5 Where the Services are provided on a time-and-materials basis, the Supplier's rates will be calculated as follows:
- (a) a 'day' will mean a period of seven (7) hours, which shall include time spent travelling to and from any Client premises or any other location where the Services are performed as well as any lunch and other breaks. The Supplier shall be entitled to charge an overtime rate as specified in the Statement of Work for time worked outside this seven (7) hour period and/or outside of any Business Days, unless otherwise agreed and set out in the Statement of Work;
  - (b) where the Supplier charges are based on an hourly rate, any time spent which is less than one (1) hour shall be charged on a pro-rata basis per thirty (30) minutes; and
  - (c) the Supplier shall be entitled to vary the hourly (or) day rates during the existence of these Term without the consent of the Client. Before implementing new hourly (or) day rates the Supplier shall provide them in writing to the Client.
- 6.6 For consultancy, changes, extras and undocumented ad-hoc work ordered by the Client, the Supplier will invoice charges on a time and materials basis in accordance with Clause 6.5 above, unless a different rate has been provided for in writing by the Supplier, in which case the latter rate will apply. The Client agrees to pay such charges.
- 6.7 The Supplier shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Statement of Work, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 6.8 The Supplier may increase any fees related to any Third Party Services (as defined in Clause 14) in line with any increases imposed upon the Supplier by such third parties.
- 6.9 The Supplier may increase the price of the Services, by giving notice to the Client at any time to reflect any increase in the Fees due to: (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties); (b) any request by the Client to change the delivery date(s), quantities of Services or the specification for the Services; or (c) any delay caused by the Client or any failure on the part of the Client to provide adequate or accurate information or instructions in respect of the Services.
- 6.10 Subject to Clause 6.8, the Supplier reserves the right, on giving the Client thirty (30) days' notice, to increase the Fees once in any twelve (12) month period. If the Client does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.
- 6.11 Subject to Clause 6.8, the Fees may increase on an annual basis with effect from each anniversary of the date of the Statement of Work in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period.
- 6.12 Without prejudice to any other remedy that the Supplier may have, if the Client fails to pay any amount properly due and payable, then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) days of receipt of the corresponding invoice, the Supplier shall have the right to charge interest on the overdue amount at a rate of four per cent (4%) per annum above the Bank of England base rate from time to time, accruing on a daily basis from the due date up to the date of actual

payment of the overdue amount, whether before or after judgment. The Client shall pay the interest, the Supplier's reasonable administration costs and the overdue amount to the Supplier.

- 6.13 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice.

## **7. WARRANTIES AND SERVICE LEVELS**

- 7.1 Except for any warranties and service levels expressly set forth in this Agreement, the Schedules and/or in the Statement of Work, the Services are provided on an "as is" basis, and the Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.
- 7.2 In the event that a defect, fault or impairment in the provision of the service(s) causes a service interruption and the Supplier becomes aware of this either through the Client giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment to the extent it reasonably can.
- 7.3 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Client, (ii) the Client's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Client or (iv) any third party action in response to an act or omission of the Client or any person given access to the service by the Client (including third party hosted software vendors) then the Supplier may recover from the Client all reasonable costs to be incurred by it or on its behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.
- 7.4 Unless otherwise agreed, if the Client accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Client's choice, the Client assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.
- 7.5 If the Client moves from one Client site to another site or makes changes to any Client site or opens a new location to be added to the Client sites, the Client must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Client of any work to bring the IT infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. The Supplier will provide a quotation if it is to provide additional resources or Services in the case of any change at the Client sites or new Client sites for including as part of the Fees. If the Client fails to notify the Client in advance of a change from one Client site to another, and the Supplier attends the wrong Client site, the Client shall pay for the Supplier's wasted time at the Supplier's standard rates and for any expenses incurred.
- 7.6 The Supplier will request approval from the Client before making any significant changes to the Services. The Supplier will arrange any scheduled downtime in advance with the Client. The Supplier is not responsible for unscheduled downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 7.7 The Supplier will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Client in advance.

- 7.8 The Supplier reserves the right to take any action that it perceives necessary to protect the Client's systems even though this may impact on the Client's business activities. The Supplier will make reasonable endeavors to inform the Client by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 7.9 The service levels set out in the Statement of Work are specific to directly provided Services of the Supplier and do not relate to Third Party Services (of which such Third Party Services will be governed by their own relevant service levels).
- 7.10 The Supplier shall not in any circumstances be liable under its obligations in this Clause 7 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 7.11 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services as set out within the relevant Statement of Work will be uninterrupted or error-free.

## **8. TERM AND TERMINATION**

- 8.1 This Agreement shall commence on the commencement of the initial Statement of Work entered into by the Parties under this Agreement ("**Commencement Date**") and each Statement of Work shall commence on the date the Parties enter into the applicable Statement of Work and shall remain in full force for the term specified in the Statement of Work (the "**Initial Term**") or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Statement of Work shall continue to automatically renew for additional successive twelve (12) month term (each renewal a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Initial Term or the relevant Renewal Term, to terminate this Agreement.
- 8.2 Without prejudice to any rights that the Parties have accrued under this Agreement, or any of their respective remedies, obligations or liabilities, either Party may terminate this Agreement and applicable Statement of Work (which is subject to the event listed below) with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so. For the avoidance of doubt, non-payment or late payment of an invoice shall be deemed a material breach of this Agreement;
  - (b) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (c) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **9. CONSEQUENCES OF TERMINATION**

- 9.1 If this Agreement terminates for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
  - (b) the Client shall pay the Supplier, any costs that have been actually and properly incurred by the Supplier including any and all outstanding fees and any termination fees from any Third Party Services (as defined in Clause 14) that the Supplier incurs as a consequence of termination/or as otherwise specified by the Supplier to the Client as being payable, unless otherwise agreed;

- (c) all licences granted under the Agreement will terminate immediately except for fully-paid, fixed term and perpetual licences;
- (d) the Client shall return any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (e) the accrued rights and remedies of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (f) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

9.2 Termination of a Statement of Work shall:

- (a) not by default, terminate other Statements of Work nor this Agreement; and
- (b) be without prejudice to any other rights which any Party may have under any other Statement of Work.

9.3 On termination of this Agreement pursuant to Clause 9.2, all existing Statements at Work shall terminate automatically.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in this Agreement shall limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation made by that Party on which the other Party can be shown to have relied;
- (c) any other liability which cannot lawfully be excluded or limited.

10.2 The Supplier's liability for breach of its obligations under Clause 13 (Intellectual Property Rights) and Clause 15 (Client Personal Data) shall be limited to £250,000 in the aggregate.

10.3 Subject to Clause 10.1, neither Party shall be liable to the other Party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business or business opportunity;
- (c) loss of agreements or contracts;
- (d) loss of actual or anticipated savings;
- (e) loss of reputation;
- (f) loss of, damage to or corruption of data;
- (g) loss of or damage to goodwill; and
- (h) any indirect or consequential loss.

10.4 Subject to Clauses 10.1, 10.2 and **Error! Reference source not found.**, the Parties' total liability to the other, whether in contract (including liability for any indemnities provided hereunder), tort (including

negligence), breach of its statutory duty, or otherwise, arising under or in connection with:

- (a) the Goods, shall be limited to the replacement value of the Goods and strictly in line with the warranties and refund policies of the manufacturer as more fully set out in Schedule 4; and
- (b) the performance or contemplated performance of the specific Service (excluding any Goods), shall be limited to one hundred and twenty-five per cent (125%) of the total Fees paid for the related Service under this Agreement during the twelve (12) months preceding the date on which the claim arose.

10.5 Subject to Clause 10.1, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982, are, to the fullest extent permitted by law, excluded from this Agreement.

## 11. SERVICE REVIEW AND GOVERNANCE

11.1 The Client and the Supplier shall have regular meetings to monitor and review the performance of this Agreement.

## 12. CONFIDENTIALITY

12.1 Each Party agrees and undertakes that it will treat all confidential information disclosed to it by the other Party in connection with the Services as strictly confidential at all times during the Term of this Agreement and for 2 years thereafter and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such confidential information except for the purposes intended by the relevant Statement of Work.

12.2 To the extent necessary to implement the provisions of any Services, each Party may disclose confidential information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 12.1.

12.3 The obligations of confidentiality set out in this Clause 12 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the confidential information.

12.4 For purposes of this Agreement confidential information shall mean all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "**Representatives**") to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

## 13. INTELLECTUAL PROPERTY AND SUPPLIER SOFTWARE

13.1 Subject to Clause 13.2, on creation by the Supplier and upon the Supplier receiving payment in full of the applicable Fees, all Intellectual Property Rights in bespoke materials or code created exclusively under the Services ("**Bespoke IPR**") for the Client shall vest automatically in the Client. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the

Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.

- 13.2 Notwithstanding Clause 13.1, The Supplier and/or its licensors shall retain exclusive ownership of (i) all of its pre-existing intellectual property ("**Background Materials**"); and (ii) any and all ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are not based on or derived from the Client's confidential information ("**General IP**") together with the Background Materials, (the "**Supplier's Intellectual Property**"). The Supplier grants to the Client a non-exclusive, revocable, worldwide, royalty free and non-transferable license to use the Supplier's Intellectual Property in so far as is necessary for the use of the Services.
- 13.3 In relation to any Supplier Intellectual Property, the Client acknowledges that such Supplier Intellectual Property may only be compatible with the current versions of other software and/or hardware as indicated by the Supplier to the Client and the Supplier provides no guarantee that such Supplier Intellectual Property will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the Parties in writing, the Supplier is under no obligation to supply the Client with any updates or add-ons to any Supplier Intellectual Property.
- 13.4 For the purposes of this Agreement, "**Intellectual Property Rights**" shall mean, all patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, 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, 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.
- 13.5 The Client shall pay and indemnify the Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Supplier, arising by reason of claims that (i) the Supplier's possession of or use of the Client's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (ii) the Client or any of its customers, modify, alter, replace combine with any other data, code, documents or other software, which alters the Supplier's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 13.6 The Supplier shall pay and indemnify the Client, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Client, arising by reason of claims that (i) the Client's possession of or use of the Supplier's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (ii) the Supplier, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Client's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 13.7 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 14, the Indemnified Party shall:
  - (a) notify the Indemnifying Party in writing of any Intellectual Property Rights claim ("**IPR Claim**") against it in respect of which it wishes to rely on the indemnity at Clause 13.514.5 or Clause 14.6 (as applicable);

- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
  - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 13.8 The provisions of Clause 14.6 shall not apply to any infringement caused by the Supplier having followed any specification or instructions given by the Client or use of the Services for a purpose prohibited by the Supplier, or to any infringement which is due to the use of the Services in association or combination with any other software or product (other than any software which is supplied by the Supplier as part of the Services).
- 13.9 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Client is still able to use the Deliverables by either:
  - (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or
  - (b) procuring a licence or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 13.10 Except to the extent that the Supplier should reasonably have known or advised the Client the foregoing provisions of Clause 13.9, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
  - (a) any use by or on behalf of the Client of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
  - (b) any modification carried out on behalf of the Client to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.
- 14. THIRD PARTY SERVICES.**
- 14.1 The Client agrees and acknowledges the terms of the applicable licence agreements which shall be set out in the applicable Statement of Work or as notified by the Supplier to the Client from time to time ("**Licence Agreements**") and the terms of the Customer Agreement shall form part of this Agreement. For the avoidance of doubt, the Client shall give express authority to the Supplier to agree and accept any licence Agreements which need to be accepted in order that the Supplier may fulfil the Services and to provide such Third-Party Services and the Client shall not hold the Supplier liable for any loss or damage caused by accepting such Licence Agreements on behalf of the Client. In the event the applicable Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by the Supplier to the Client under this Agreement, such agreements shall not apply.
- 14.2 The Supplier shall (if requested by the Client) procure the third-party licences and or services (together,

**"Third Party Services"**) as set out in the applicable Statement of Work. The Supplier expressly excludes:

- (a) any warranty to the Client that the Third Party Services supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations; and
- (b) Any and all liability in relation to the use of such Third Party Services.

14.3 The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement from the point of acquisition of the licence and until the end of the respective licence terms and shall adhere to any End User Licence Agreements and any other agreements sent by such third party in relation to the Third Party Services.

## 15. CLIENT PERSONAL DATA

15.1 For the purposes of Clauses 15.1 to 15.8, the following definitions shall apply:

**"Applicable Data Protection Legislation"** means:

- a) To the extent the UK data protection law applies: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- b) To the extent the EU GDPR applies: the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;

**"Client Personal Data"** means any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Client;

**"Applicable Laws"** means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable Party;

**"EU GDPR"** means the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law; and

**"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

15.2 The terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Legislation;

15.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Legislation. Clause 15.1 to 15.8 are in addition to, and do not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Legislation.

15.4 The Parties have determined that, for the purposes of Applicable Data Protection Legislation, the Supplier shall process the personal data set out in the Statement of Work, as a processor on behalf of the Client.

15.5 Without prejudice to the generality of Clause 15.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of this agreement.

15.6 In relation to the Client Personal Data, the Statement of Work sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

15.7 Without prejudice to the generality of Clause 15.3 the Supplier shall, in relation to Client Personal Data:

- (a) process that Client Personal Data only on the documented instructions of the Client, which shall

be to process that Personal Data for the purpose as set out in the Statement of Work;

- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of this Agreement unless the Supplier is required by Applicable Laws to continue to process that Client Personal Data. For the purposes of this Clause 15.7(f) Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with Clauses 15.1 to 15.8 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

15.8 The Client hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Client Personal Data, provided that the Supplier:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in Clauses 15.1 to 15.8;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
  - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Legislation, the Client shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Client Personal Data outside of the UK as required to deliver the Services, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Legislation. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses

adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

**16. NO PARTNERSHIP OR AGENCY**

- 16.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any part of the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

**17. ASSIGNMENT**

- 17.1 The Supplier may assign or otherwise transfer the whole or any part of this Agreement, including any of its rights and obligations under this Agreement, without the prior written consent of the Client.
- 17.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

**18. ENTIRE AGREEMENT AND COUNTERPARTS**

- 18.1 This Agreement, each Statement of Work (together with any documents referred to therein), the Licence Agreements and/or the Customer Agreement and any Variation Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each Party agrees that on entering into this Agreement it does not rely on, and it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 18.3 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

**19. SEVERANCE**

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 19 shall not affect the validity and enforceability of the rest of this Agreement.

**20. THIRD PARTY RIGHTS**

- 20.1 No one other than a Party to this Agreement and Microsoft (in respect of enforcing the terms of the Customer Agreement) shall have any right to enforce any of its terms.

**21. NOTICES**

- 21.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business; or shall be sent by electronic mail to the email address set out on the Statement of Work or otherwise notified to either Party by the other Party in writing,
- 21.2 Any notice or communication shall be deemed to have been received, if: (a) delivered by hand, on signature of a delivery receipt, (b) sent by post, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or (c) sent by electronic mail, on the next Business Day to

when it was sent.

- 21.3 This Clause 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause 21, "**writing**" shall include e-mail.

## 22. RELIEF EVENTS

- 22.1 Subject to Clause 10.1, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

- 22.2 For the purposes of this Clause 22, "**Relief Events**" shall mean the following events:

- (a) any failure by the Client to comply with its obligations under this Agreement;
- (b) any error or malfunction in the business systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (c) any failure by the Client or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement;
- (d) failure or down-time of any third party services;
- (e) failure by the Client or any of its users to access or use the Services in accordance with the terms of this Agreement, the applicable Statement of Work, any service specific documentation provided to the Client or the Supplier's instructions;
- (f) any change, addition, variation or repair made to the Services other than those carried out by the Supplier;
- (g) use of the Services in combination with other systems, software or equipment of the Client (or any third party) not approved by the Supplier;
- (h) any telecommunications network defect, delay or failure; or
- (i) any of the causes or events set out in Clause 13.10.

## 23. FORCE MAJEURE

- 23.1 Neither Party to this Agreement shall be deemed to be in breach of this Agreement or any Statement of Work, or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement or any Statement of Work due to a force majeure event. For the purposes of this Agreement, force majeure means any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including, without limitation, act of God, war, future pandemics and epidemics, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lockout of the Party's own staff shall not entitle them to claim that to be a force majeure event ("**Force Majeure**").

- 23.2 A Party shall only be entitled to claim relief under this Clause 23 if it:

- (a) informs the other Party as soon as reasonably possible that an event of Force Majeure has occurred and its expected duration; and
- (b) uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of

Force Majeure concerned,

and that if the period of delay or non-performance continues for six months or more, either Party may terminate the Agreement by giving fourteen (14) days' written notice to the other Party.

**24. NON-SOLICITATION**

24.1 The Client shall not solicit the Supplier's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause 24 "**solicit**" means the soliciting of such person with a view to engaging such person as an employee, director, subcontractor or independent contractor.

24.2 In the event that the Client is in breach of Clause 24.1 above then the Client shall pay to the Supplier by way of liquidated damages an amount equal to thirty percent (30%) of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant Party) of the person so employed or engaged. This provision shall be without prejudice to the Supplier's ability to seek injunctive relief.

24.3 The Parties hereby acknowledge and agree that the formula specified in Clause 24.2 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

**25. ANTI BRIBERY**

25.1 The Parties agree to abide by all applicable laws, regulations and sanctions in respect of anti-bribery and anti-corruption, including the Bribery Act 2010.

**26. MARKETING**

The Supplier reserves the right to refer to the Client in its marketing communications, which may include, at a minimum, a case study and a reference to the Client on the Supplier's and its Affiliates website, without the Client's prior written consent. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier to use the Client's trademarks or proprietary identifying symbols of the Client for the purposes of such marketing communications.

**27. GOVERNING LAW AND JURISDICTION**

27.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

27.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

## SCHEDULE 1 – MANAGED SERVICES

### 1. Interpretation

- 1.1 Except as defined in this Schedule 1 (Managed Services), capitalised terms shall have the meanings given to them in the Agreement.
- 1.2 **Managed Services:** means the managed services described in the Statement of Work to be performed by the Supplier in accordance with the Agreement and this Schedule.
- 1.3 To the extent applicable to the Managed Services, in the event of conflict with the terms of this Schedule 1 and the Agreement, the provisions in this Schedule 1 shall take precedence, and in the event of a conflict with the terms of this Schedule 1 and a Statement of Work, the provisions of the Statement of Work shall take precedence over this Schedule 1.

### 2. Managed Services

- 2.1 The Supplier shall provide the Managed Services in accordance with the service level arrangements (if any) as stated in the Statement of Work.
- 2.2 Unless otherwise specified in the relevant Statement of Work or agreed in writing by the Supplier, the Supplier will provide the Managed Services remotely.
- 2.3 The Client shall remain responsible for the use of the Managed Services under its control including any use by third parties that Client has authorised to use the Managed Services.
- 2.4 The Client must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Client to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 2.5 The Client shall not provide the Managed Services to third parties unless otherwise indicated in the Statement of Work or as otherwise agreed by the Supplier in writing.
- 2.6 The Client acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions are listed below:
  - (a) failure of Client hardware, software or operating system;
  - (b) partial or full failure of Third Party Services;
  - (c) network connectivity issues between local system components and the Supplier's platform;
  - (d) network connectivity issues between local system components and its third party's servers.
- 2.7 The Supplier reserves the right to:
  - (a) modify the Supplier's system, its network, system configurations or routing configuration; or
  - (b) modify or replace any hardware in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on the Supplier's obligations or performance under the Agreement and its provision of the Managed Services or the service level arrangements. If such changes will have an adverse effect, the Supplier shall notify the Client and the Parties shall follow the Change Request.
- 2.8 If required by the Supplier, the Client shall allow the Supplier to install monitoring software on the Client-side equipment, Hardware and/or in the Client's operating environment to enable the Supplier to conduct

remote monitoring and diagnostics and shall ensure that such software remains installed throughout the applicable Term.

- 2.9 If the Supplier breaches its obligations in paragraph 2.1 of this Schedule 1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
  - 2.10 The Managed Services acquired by the Client under the Agreement are solely for the Client's own internal use and not for resale or sub-licensing, unless otherwise agreed in writing.
  - 2.11 The Supplier may suspend, revoke or limit use of the Managed Services, wholly or partly (i) in case of late payments, (ii) if the Supplier in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, the Supplier will provide the Client notice of what actions the Client must take to reinstate the Managed Services and/or products. If the Client fails to take such actions within a reasonable time, the Supplier may terminate the applicable Managed Service.
- 11.1 The Supplier is entitled to amend the terms of the Agreement and this Schedule 1 in order to reflect any changes and updates received from its Third Parties or otherwise if the Supplier has reasonable grounds for such amendment. Hereunder, the Supplier may reasonably change prices, contents of the Managed Services, service hours or service levels.

### **3. Responsibilities of the Supplier**

- 3.1 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Managed Services and products (if applicable) will be:
  - (a) free from faults, interruptions or errors;
  - (b) available one hundred percent (100%) of the time.
- 3.2 Unless otherwise agreed in writing, the Managed Services and products are designed, manufactured and intended for low-risk activities.
- 3.3 In relation to the Managed Services, the Supplier shall:
  - (a) staff the Supplier service desk with a team of skilled individuals (whether subcontracted or not);
  - (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;
  - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
  - (d) where agreed, undertake a regular account review, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
  - (e) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
  - (f) provide the Client with reasonable co-operation in relation to the Agreement.
- 3.4 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances (unless specified under the Statement of Work):
  - (a) unauthorised use of the Services by the Client or use otherwise than in accordance with the Agreement;
  - (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
  - (c) providing any other services not covered herein;
  - (d) training; and

- (e) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client.
- 3.5 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.

#### 4. Responsibilities of the Client

- 4.1 The Client shall (unless otherwise specified in the Statement of Work or as otherwise set out in the Agreement):
  - (a) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
  - (b) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Client-side equipment or Client's operating environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, the Supplier will have to make additional effort to return the Client's systems to an acceptable state for continued support, and will charge accordingly at its then standard rates.

11.2 The Client shall not access, store, distribute or transmit any material through the Managed Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images; and/or
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment;
  - (f) is otherwise illegal or causes damage or injury to any person or property,
- 27.3 and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this paragraph.

#### 5. Security

- 5.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to use reasonable endeavours to prevent unauthorised access or damage to any and all Managed Services, the Supplier's System and related networks or resources and the Client Data, in accordance with "**Good Industry Practice**" (meaning the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed Services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the term, the pricing structure and any other relevant factors).
- 5.2 Each Party shall promptly inform the other if it suspects or uncovers any breach of security.

#### 6. Warranties

- 6.1 The Client warrants it will comply with and use the Managed Services in accordance with the terms of the Agreement and all Applicable Laws, and shall not do any act that shall infringe the rights of any third

party including the publishing or transmission of any materials contrary to Applicable Laws or in breach of the Customer Agreement.

- 6.2 The Supplier is not responsible or liable for the deletion of or failure to store any Client Data and other communications maintained or transmitted through the use of the Managed Services or Products.
- 6.3 The Client acknowledges and accepts that where the Products are provided by Microsoft or a Third Party and that any representations or warranties regarding the use of the Products is set out in the Customer Agreement, applicable Licence Agreement or Third Party Terms (as applicable). The Supplier has no responsibility for the suitability, availability, functionality or otherwise regarding the Managed Services and Products.
- 6.4 The warranties provided in this Schedule 1 are the exclusive warranties from the Supplier in relation to the Managed Services.

## **7. Limitation of Liability**

- 7.1 Subject to Clause **Error! Reference source not found.** of the Agreement, the service level arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 7.2 The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Managed Services, or any actions taken by the Supplier at the Client's direction.

## SCHEDULE 2 – PROFESSIONAL SERVICES

### 1. Definitions

1.1 The following definitions in this paragraph 1 apply in this Schedule 2 (Professional Services).

**Acceptance Criteria:** the acceptance criteria as specified in paragraph 2.2 of this Schedule 2 or referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Statement of Work, are satisfactory and ready to be invoiced.

**Acceptance Tests:** the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties in writing, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**Issues List:** a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

**Professional Services:** means the professional services described in the applicable Statement of Work to be performed by the Supplier in accordance with the terms of the Agreement and this Schedule.

1.2 Except as defined in this Schedule 2, capitalised terms shall have the meanings given to them in the Agreement.

1.3 To the extent applicable to the Professional Services, in the event of conflict with the terms of this Schedule 2 and the Agreement, the provisions in this Schedule 2 shall take precedence and in the event of a conflict with the terms of this Schedule 2 and a Statement of Work, the provisions of the Statement of Work shall take precedence over this Schedule 2.

### 2. Acceptance of the Professional Services

2.1 The relevant Statement of Work shall specify the Deliverables or Services (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

2.2 In relation to any Acceptance Testing:

(a) The Client shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from the Supplier's delivery of each Deliverable under the relevant Statement of Work (the "**Acceptance Period**") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "**Acceptance Criteria**"). If the Client determines that a Deliverable does not conform to the Acceptance Criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria.

(b) The Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in paragraph 2.2 (a) of this Schedule 2) if any of the Deliverables do not conform to the Acceptance Criteria. Once the Deliverable has been accepted by the Client and payment has been settled in accordance with Clause **Error! Reference source not found.** of the Agreement, the Deliverable shall become the property of the Client. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in paragraph 2.2 (d) of this Schedule 2 below.

(c) If:

- (i) the Client does not provide any written comments or otherwise fails to reject any Deliverable in the relevant Acceptance Period;
- (ii) commences live running of the whole or part of such Deliverable other than in the course of undertaking Acceptance Testing; or

(iii) if Deliverables or Services are found to conform with the Statement of Work;

then for all purposes under this Agreement, such Deliverable shall be deemed accepted from the date of delivery by the Supplier pursuant to paragraph 2.2(a).

- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Request or attributable to the Client's acts or omissions including inadequate Acceptance Testing), the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge.
- (e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. The Supplier agrees not to charge Client, any amounts paid or payable by Client to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

## SCHEDULE 3 MICROSOFT NCE SUBSCRIPTION TERMS

### 1. NCE Subscription

The Supplier is a reseller of Microsoft New Commerce Experience subscription services ("NCE Subscription Services"). Where the Services referred to in the Statement of Work include the provision of NCE Subscription Services, the NCE Subscription Services shall be provided in accordance with and governed by the Statement of Work and this Schedule (which is hereinafter referred to as the "NCE Subscription Terms").

Except as defined in these NCE Subscription Terms, capitalised terms shall have the meanings given to them in the Statement of Work and/or the Agreement (as the case may be).

For the avoidance of any doubt, in the event of a conflict in respect of the NCE Subscription Services referred to in the Statement of Work only, between these NCE Subscription Terms and the Agreement, the NCE Subscription Terms shall prevail. For all other Services, the Agreement shall apply.

### 2. INTERPRETATION

The following definitions in this paragraph 2 apply in these NCE Subscription Terms:

**"Cap":** is the total monthly volume of Microsoft services which the Client is permitted to use.

**"Consumption Subscriptions":** refers to the licences that are billed based on actual usage in the preceding month.

**"Minimum Users":** the minimum users as provisioned from time to time.

**"Online Service":** means any of the Microsoft-hosted online services subscribed to by Client under the Agreement, including (but not limited to) Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

**"Products":** means the products as they relate to Microsoft products.

**"Subscription":** any Product licenced to the Client by the Supplier under the Microsoft New Commerce Experience and in accordance with the applicable Statement of Work.

**"Subscription Service":** means a right to use the Product(s) for a defined term.

**"Third Party Distributor":** the third party who sells the Product(s) to the Supplier.

### 3. SERVICE PROVISION

#### 3.1 By placing an order with the Supplier, the Client:

- (a) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects;
- (b) agrees to pay the Supplier for all orders it submits for Products and the NCE Subscription Services;
- (c) agrees to the terms of the Agreement and the Statement of Work; and
- (d) represents and warrants that the Client has accepted the Customer Agreement.

#### 3.2 Once an order for a Subscription has been accepted by the Supplier:

- (a) Subscriptions shall continue for the duration of the Initial Term and any Renewal Term unless terminated in compliance with Clause 8.1 of the Agreement, these NCE Subscription Terms or the Statement of Work; and/or

- (b) adjustments may only be made to increase the Minimum Users and not decrease below any current Minimum User provisioned as more fully set out in the Agreement, these Subscription Terms and the Statement of Work. In the event of an increase to the Minimum Users part way through the Term, the applicable Fees shall be pro-rated for the remainder of the Term and the Minimum Users shall be increased for the remainder of the Term.

#### 4. CLIENT'S OBLIGATIONS

- 4.1 The Client agrees and acknowledges to adhere to the terms of the Customer Agreement which govern the use of the Subscription Services and the Online Services.
- 4.2 Supplier shall take reasonable steps to protect the Clients information, however the Client acknowledges that the Internet is not secure and accordingly that Supplier cannot absolutely guarantee the privacy of the Client's information despite all reasonable safeguards being put into place and maintained.
- 4.3 The Online Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Online Services shall include (without limitation):
  - (a) obtaining, or attempting to obtain, the Online Service by rearranging, tampering with, or making connection with any facilities of Supplier, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Online Services;
  - (b) attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of Supplier or of another client of Supplier;
  - (c) using the Online Services in such a manner as to interfere unreasonably with the use of the Online Services by any other user or authorised person.
  - (d) the resale of the Online Services without Supplier's prior written approval.
- 4.4 The Client shall use the Online Services in accordance with the Acceptable Use Policy (set out in the Statement of Work) of Supplier and in particular (but without limitation) the Client shall not:
  - (a) send any message, email or other communication which:
    - (i) is in breach of applicable laws;
    - (ii) may incite violence, sadism, cruelty or racial hatred;
    - (iii) may facilitate prostitution or paedophilia;
    - (iv) is pornographic, obscene, indecent, abusive, offensive or menacing.
  - (b) knowingly create and/or introduce any malware, virus, worm, Trojan horse or other destructive or contaminating program or advise any other party how to do so;
  - (c) invade the privacy of other users of the Online Services or the Internet, for example by sending unsolicited emails ("spamming") nor collect or transfer personal data on individuals without their consent;
- 4.5 The Client shall maintain confidentiality of its login names, passwords and other confidential information relating to the Client's access to the Online Services.

#### 5. FEES

- 5.1 The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms for the NCE Subscription Services.
- 5.2 Fixed term Subscriptions:
  - (a) Products sold under fixed term Subscriptions are sold for a term as specified in the Statement of Work. The Statement of Work shall specify if such Subscriptions are to be billed on a monthly or annual basis.
  - (b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.

- (c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
- 5.3 For all Consumption Subscriptions, the Client agrees and acknowledges that:
  - (a) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with these NCE Services Terms and the Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
  - (b) the Client further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "**Barrier**"), which prevents the Client from utilization of a Product in excess of the Cap;
  - (c) for the avoidance of doubt, if, in spite of paragraph 5.2(b), the Client utilises a Product in excess of the Cap, the Client shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Client from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Client from utilisation in excess of the Cap.
- 1.1 For the avoidance of doubt, the Supplier may increase any fees related to the Subscription Services in line with any increases imposed upon the Supplier by Microsoft or a Third Party Distributor (as applicable). Notwithstanding the foregoing: (i) the prices for NCE Subscription Services may change without notice; and (ii) the Supplier will not be required to provide any prior notice before the effectiveness of a decrease or increase in the prices for NCE Subscription Services that relates to a currency fluctuation event.
- 5.4 The Supplier may change credit or payment terms for unfilled orders if, in the Supplier's reasonable opinion, the Client's financial condition, previous payment record, or relationship with the Supplier merits such change.

## 6. INTELLECTUAL PROPERTY

- 6.1 The Client acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Client of these rights beyond the scope permitted by the Customer Agreement shall constitute a material breach hereof.
- 6.2 The Supplier is not liable for defects in, or delays related to the Products.
- 6.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Agreement shall apply and is a separate action between the Client and Microsoft.

## 7. CANCELLATION

- 7.1 Subject to paragraph 7.2, where the Client has procured NCE Subscription Services from the Supplier, the Client may cancel the applicable order in line with the Customer Agreement if the Client notifies the Supplier within forty-eight hours (48) of placing the initial order for the applicable NCE Subscription Services. For such notice to cancel to be effective, it must be received by the Supplier within the hours of 9am – 4pm (GMT) on a Business Day.
- 7.2 The Client acknowledges and accepts that any cancellation pursuant to paragraph 7.1 will only be accepted if submitted by the Supplier within Microsoft's designated cancellation period for the applicable NCE Subscription Services and is approved by Microsoft and/or the Third Party Distributor (if applicable) and is in accordance with any other requirements of Microsoft and/or Third Party Distributor (if applicable) at the time of cancellation. If cancellation is approved by Microsoft and/or Third Party Distributor, then the order will be cancelled.
- 7.3 Depending on the service or Product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor (if applicable) to the Supplier, on receipt of the same, the Supplier will pass on any such credit to the Client less any Microsoft and/or Third

Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant NCE Subscription Services. The Supplier is not liable to the Client if Microsoft and/or Third Party Distributor do not issue a credit.

## **8. LIMITATION OF LIABILITY**

- 8.1 For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Client and Microsoft in relation to the use of the Subscription Services and Online Services and the Supplier excludes any and all liability in relation to the use of the Products.
- 8.2 Notwithstanding anything to the contrary in the Agreement, the Client shall indemnify the Supplier from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier, including but not limited to any claim made against the Supplier for actual or alleged breach of the Customer Agreement and/or applicable Third Party Distributor terms and any claim that directly or indirectly arises from the Client's use of the NCE Subscription Services.

## **9. TERM & TERMINATION**

- 9.1 Subject to paragraph 3.2, fixed term subscriptions for Products will automatically renew at the end of the applicable subscription period for a term equal to the initial licence term, unless the Client gives at least thirty (30) days' prior written notice in the case of monthly terms, and ninety (90) days' prior written notice in the case of annual or multi-annual terms, of non-renewal. Such notice to expire at the next renewal date.
- 9.2 The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), as more fully set out in paragraph 3.2 of these NCE Subscription Terms. Unless otherwise specified in the applicable Statement of Work, the Client shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.
- 9.3 Termination of the licences will not affect any other Services provided under these NCE Subscription Terms or the Agreement.
- 9.4 The Supplier shall not be liable whatsoever to the Client following any termination or suspension of the Subscription for legal, regulatory or any other reasons by Microsoft or the Third Party Distributor.
- 9.5 The Supplier may terminate the NCE Subscription Services immediately on giving written notice to the Client if:
  - (a) payment of any amount due from the Client under these NCE Subscription Terms is overdue by ten (10) Business Days or more, provided that the Supplier has given the Client ten (10) days' written notice of such failure to pay; and/or
  - (b) upon termination by Microsoft or the Third Party Distributor of the licence(s); and/or
  - (c) in accordance with the Customer Agreement.
- 9.6 On termination of the Agreement for any reason, in addition to as provided in the Agreement:
  - (a) for metered Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and
  - (b) if Microsoft is in breach and the Client is entitled, the Client will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

**SCHEDULE 4 - SUPPLY OF GOODS TERMS****1. INTERPRETATION**

- 1.1 Except as defined in these Supply of Goods Terms, capitalised terms shall have the meanings given to them in the Agreement
- 1.2 To the extent applicable to the supply of Goods, in the event of conflict with the terms of these Supply of Goods Terms and the Clauses in the Agreement, the provisions in these Supply of Goods Terms shall take precedence and in the event of a conflict with the terms of these Supply of Goods Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these Supply of Goods Terms.

**DEFINITIONS:**

**"Goods":** the goods to be provided as part of the Services (or any part of them), as set out in the Statement of Work in the relevant section or as otherwise agreed in writing between the Parties.

**2. THE GOODS**

- 2.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 2.2 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Client's specification, which do not materially affect their quality or performance.
- 2.3 If the Supplier cannot supply the Goods ordered by the Client, the Supplier reserves the right to offer Goods of equal quality at no extra cost. In such a case, if the Client does not wish to accept the alternative Goods offered, it may cancel the order and require the refund of any money paid to the Supplier in respect of that order, including carriage charges. This shall be the sole remedy of the Client in these circumstances.
- 2.4 To the extent that the Goods are to be manufactured in accordance with the Client's specification, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Statement of Work. This paragraph 2.4 shall survive termination of the Agreement.
- 2.5 Where the Goods are being supplied by a third party supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or third party supplier.

**3. PRICES**

- 3.1 Prices for Goods shall be quoted to the Client upon receipt of an order for Goods. Notwithstanding the Supplier's provision of a quote, prices for Goods shall not be confirmed until such time as the manufacturer has confirmed acceptance of the order at which point the price for the Goods shall be established and the order shall be irrevocable. For the avoidance of doubt, the Supplier's provision of a quote shall not be deemed acceptance of an order by the Supplier.
- 3.2 Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after providing the Client with a quote for the prices for Goods due to an increase in its third party supplier's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but the Supplier shall only increase its price by such level as is necessary to reflect such increases.

- 3.3 Unless otherwise stated, prices exclude any copyright levies, waste and environmental fees, and similar charges that by law or statute may or shall charge or collect upon resale.

#### **4. DELIVERY**

- 4.1 The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date. Time for delivery shall not be of the essence of the contract.
- 4.2 If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:
- (a) a delay from the manufacturer, third party supplier or other third party;
  - (b) a Force Majeure event; or
  - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3 If ten (10) Business Days after the day on which the Supplier attempted to make delivery of Goods the Client has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods, or charge the Client for any shortfall below the price of the Goods.
- 4.4 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Client may not cancel an instalment because of any delay in delivery or defect in another instalment.

#### **5. WARRANTIES**

- 5.1 For Goods supplied to the Client, the Supplier shall pass onto the Client to the extent that it is able to do so, the benefit of any standard warranty or guarantee that is provided to the end user of the Products by the manufacturer/third party supplier(s) ("**OEM Warranty**"). The Supplier's only liability will be limited by the terms set out in such OEM Warranty.

#### **6. TITLE AND RISK**

- 6.1 Risk in Goods shall pass to the Client on delivery.
- 6.2 Title to Goods shall only pass to the Client once the Supplier receives payment in full (in cleared funds) for them.
- 6.3 Until title to the Goods has passed to the Client, the Client shall:
- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (c) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 8.2(b); and
  - (d) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 The Supplier may recover Goods in which title has not passed to the Client. The Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles), in order to satisfy itself that the Client is complying with the obligations in paragraph 5.3, and to recover any Goods in which property has not passed to the Client.

**7. CANCELLATION**

- 7.1 Notwithstanding paragraph 1.4, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Client except with the agreement in writing of the Supplier and on terms that the Client shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

**8. RETURN OF GOODS**

- 8.1 All returns of Goods can only be made, and will only be accepted by the Supplier if they comply with this paragraph 8.
- 8.2 Subject to the provisions of this Schedule 4, Goods may only be returned in accordance with the Supplier or third party supplier's terms and conditions or returns policy.
- 8.3 Prior authorisation for the return of any Goods must be obtained from the Supplier or third party supplier via such method as the Supplier may advise. Such returns authorisation shall be given at the Supplier's or third party supplier's sole discretion.
- 8.4 Goods that are authorised for return must be returned by the Client in accordance with the applicable return instructions provided by the Supplier or third party supplier.
- 8.5 The Supplier or the third party supplier reserves the right to levy a reasonable administration charge in respect of returns.

## SCHEDULE 5 – TELEPHONY AND INTERNET SERVICES

### 1. Interpretation

1.1 The following definitions apply to these Telephony and Internet Terms:

**Activation:** occurs on the Activation Date and 'Activated' shall be construed accordingly.

**Activation Date:** the date notified to the Client by the Supplier as the date the relevant Telephony and Internet Service is available for use.

**Carrier:** any supplier of telecommunications services to the Supplier where such services are used by the Supplier to provide the Telephony and Internet Services.

**Client Equipment:** any hardware provided by the Client to access the Telephony and Internet Service.

**Early Termination Charges:** the early termination charges that are charged by the Supplier to the Client for terminating any Telephony and Internet Services prior to the expiry of the Initial Term or Subsequent Term (as applicable).

**Initial Term:** has the meaning set out in relevant Statement of Work.

**Network:** the network operated to provide the Telephony and Internet Services including any third party networks.

**Service Equipment:** all and any equipment provided and/or installed at the Service Location by or on behalf of the Supplier in connection with the Telephony and Internet Services.

**Service Failure:** the Telephony and Internet Service will be considered to have failed if Client has raised a support call and the modem, when correctly connected and configured, does not respond or a BT line test indicates a fault.

**Service Levels:** the performance service levels as advised to the Client by the Supplier.

**Service Location:** any premises controlled by the Client at which the Telephony and Internet Services are to be provided.

**Telephony and Internet Services:** the telephony and internet services described in the Statement of Work to be performed by the Supplier as set out in this Schedule.

1.2 Except as defined in these Telephony and Internet Terms, capitalised terms shall have the meanings given to them in the Agreement.

1.3 To the extent applicable to the Telephony and Internet Services, in the event of conflict with the terms of these Telephony and Internet Terms and the Agreement, the provisions in these Telephony and Internet Terms shall take precedence and in the event of a conflict with the terms of these Telephony and Internet Terms and Statement of Work, the provisions of the Statement of Work shall take precedence over these Telephony and Internet Terms.

### 2. Activating the Telephony and Internet Service

2.1 Before Activating a Telephony and Internet Service, the Supplier may:

- (a) verify that each Service Location is in an area in which the Telephony and Internet Service is available;
- (b) carry out a line test and/or site survey;
- (c) where appropriate, provide and/or install Service Equipment;
- (d) carry out credit checks.

- 2.2 Where checks and/or surveys and/or installation carried out by the Supplier (or their representatives) require attendance at a Service Location, the Client shall liaise with the Supplier and/or its representatives to permit access to such Service Location. The Supplier and/or its representative shall endeavour to agree a date and time for such attendance but it is acknowledged and agreed that the Supplier shall have no responsibility for the failure by the Carrier to attend on the date or at the time agreed. Installation of certain Telephony and Internet Services may be subject to surveys carried out by the Supplier (a “**Site Survey**”) and the Supplier shall not be obliged to provide the Telephony and Internet Services if a Site Survey is incomplete or unsatisfactory or otherwise identifies a problem with providing the Telephony and Internet Services.
- 2.3 If the Supplier determines at any time before Activation that new infrastructure is needed before Activation can occur, the Supplier will notify the Client of this and of the additional cost associated with this. The Client may terminate the applicable Statement of Work if it does not accept the additional cost.
- 2.4 If the Supplier determines at any time before Activation that the Telephony and Internet Service cannot be Activated or the scope of the Telephony and Internet Services and/or the Fees associated with this needs to change, the Supplier shall notify the Client and any relevant Telephony and Internet Service will be automatically terminated.
- 2.5 The Supplier shall endeavour to notify the Client if Activation is not possible as soon as commercially practicable. In such event, for the avoidance of doubt, paragraph 2.7 shall not apply.
- 2.6 To allow the installation to proceed, the Client shall as and when required by the Supplier and at the Client’s sole cost and expense:
  - (a) obtain all necessary consents, including consents for any necessary alterations to buildings;
  - (b) take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers advised by the Supplier, or the engineer contracted for the installation or Activation of the Telephony and Internet Service; and
  - (c) provide any electricity and connection points required by the Supplier or its agents.
- 2.7 The Client acknowledges that during, and as a result of, the installation and activation of the Telephony and Internet Services at the Service Locations, temporary loss, interference or disruption to other telecommunications services may occur. The Supplier will use its reasonable endeavours to minimise such interruption or interference and it shall undertake checks for such interference in connection with any such installation. To the maximum extent permitted by law, the Supplier will not be liable for any loss, interruption or interference to such other services during installation.
- 2.8 If the Client cancels or terminates:
  - (a) the Telephony and Internet Service at any time after the Statement of Work commencement date and prior to Activation, it shall upon such termination be liable to pay Supplier an amount equal to the Early Termination Charges;
  - (b) the Telephony and Internet Service at any time after Activation, it shall upon such termination be liable to pay Supplier an amount equal to the Fees that would have been payable during the entire Initial Term less any already paid and any other costs incurred by the Supplier by such early termination.
- 2.9 If the Supplier is unable to Activate a Telephony and Internet Service due to the act or omission of the Client (including the provision of incorrect information), the Supplier may treat the Telephony and Internet Service as terminated by giving written notice to the Client and following such notice may levy the charges provided in paragraph 2.7 (and the Client shall be deemed to have terminated the Telephony and Internet Service at the time of such notice for the purposes determining the payment under paragraph 2.7). Where the Client delays the installation or completion of a Telephony and Internet Service for more than sixty (60) calendar days, the Supplier may terminate the Telephony and Internet Service related to that order

by written notice to Client in which event the Client shall be liable to pay the Supplier the Early Termination Charges.

### 3. Provision of the Telephony and Internet Service

- 3.1 The Client shall pay the Fees relating to the Telephony and Internet Service and any other specific charges or costs and fees incurred in relation to its use of the Telephony and Internet Service, including, but not limited to any fraudulent activity and/or other use of the Telephony and Internet Services by unauthorised parties and any roaming charges.

### 4. Mobile Telephony Services

- 4.1 For the purposes of this paragraph 4, the following definitions shall apply:

**Age Restricted Services:** any Mobile Telephony Services for use only by End Users over the age of eighteen (18);

**End User:** any person who is an ultimate recipient or user of the Mobile Telephony Services;

**GSM Gateway:** any equipment containing a SIM Card which enables the routing of call or sending of text messages from fixed apparatus to mobile equipment by establishing a mobile to mobile call or data connection;

**Mobile Equipment:** any phones, SIM Cards and related items (including USB modems and phone chargers packaged along with a phone) or other equipment provided by the Supplier to the Client under this Agreement for use in connection with the Mobile Telephony Service;

**Mobile Telecommunications Network:** a telecommunications network used for the provision of mobile telecommunications services;

**Mobile Telephony Service:** the mobile telecommunications service supplied by the Supplier under this Agreement and applicable Statement of Work; and

**SIM Cards:** the subscriber identity module provided by the Supplier to the Client in accordance with this paragraph 4 and applicable Statement of Work.

#### Use of SIM Cards

- 4.2 Where the supply of Telephony and Internet Services by the Supplier includes the provision of Mobile Telephony Services, the Supplier shall provide such number of SIM Cards as is set out in the Statement of Work. For the avoidance of doubt, title to the SIM Cards shall remain with the Supplier.
- 4.3 Any attempt to use a SIM Card in other equipment that is not Mobile Equipment or otherwise approved by the Supplier in writing may result in serious damage to the Mobile Equipment and may prevent the End User from being able to use it, including the making of emergency calls. In these instances, neither the Supplier nor any Third Party or Network operator shall be responsible for any such damage or usage problems. In addition, the Client agrees not to establish, install or use a SIM Card or an Mobile Equipment, in connection with a GSM Gateway without the Supplier's prior written consent (including devices tethered via cable, Bluetooth or Wi-Fi, to a computer or the Internet when making large volumes of calls, using large volumes of data or sending large volumes of texts). The Supplier reserves the right to withhold its consent for this activity at its sole discretion.
- 4.4 The Supplier will provide the Client with sufficient mobile numbers as are necessary for the Client to receive the Mobile Telephony Service, or (where feasible) use reasonable endeavours to facilitate the porting of mobile numbers from another Mobile Telecommunications Network in accordance with standard porting procedures between Mobile Telecommunications Networks in the United Kingdom. Nothing in this Agreement shall be construed as granting to the Client any right in relation to the mobile numbers other than to receive the Mobile Telephony Service as described in the Agreement and applicable Statement of Work.

- 4.5 The Client may add additional SIM cards throughout the Initial Term or Subsequent Term (as applicable). The Fees for each additional SIM Card will be charged on a pro-rated based on the remaining duration of the Initial Term or Subsequent Term (as applicable). The Fees for the additional SIM Cards will be incorporated into the existing billing cycle and the term of the applicable Statement of Work shall be extended to cover the remaining term of the additional SIM Cards
- 4.6 The Client shall use reasonable endeavours to ensure that SIM Cards are only used with the Supplier's authorisation and shall inform the Supplier immediately if the Client becomes aware that a SIM Card has been lost, stolen or damaged. The Client shall be liable for any loss or damage suffered by the Client and/or the Supplier as a result of any unauthorised used and/or any SIM Card being lost, stolen or damaged.
- Disconnection of SIM Cards
- 4.7 The Client may give the Supplier written notice to disconnect a SIM Card at any time. Within thirty (30) days from receipt of such notice, the Supplier will disconnect the relevant SIM Card from the Mobile Telephony Service subject to the Client paying the Supplier's fees in relation to this.
- 4.8 In the event that the Client provides such disconnection notice prior to the expiry of the Initial Term or a Subsequent Term (as the case may be), the Client shall pay to the Supplier any applicable Early Termination Charges.
- 4.9 The Supplier may reallocate, withdraw or change such SIM Card telephone numbers as a result of applicable law or instructions from a regulatory authority, but will take reasonable steps to minimise any disruption to the Client.
- Services and Coverage
- 4.10 The Supplier shall use reasonable endeavours to facilitate the Client's access to overseas Mobile Telecommunications Networks. The Client agrees that the Supplier is not responsible for the performance of any Mobile Telecommunications Networks that are not controlled by the Supplier (including those within the United Kingdom). Overseas Mobile Telecommunications Networks may be limited in quality and coverage, and the Client acknowledges that access, service availability and security depends on various factors outside of the Supplier's control and, accordingly, the Supplier shall not be liable for any failure or non-performance of the Mobile Telephony Services as a result of the same.
- 4.11 The Client will be able to upload and send its own content using the Mobile Telephony Service. The Client grants to the Supplier, any Third Party and any Network operator a royalty-free, perpetual and worldwide licence to store, transmit or otherwise deal with any content so uploaded.
- 4.12 Where the Client opts in to any international roaming services provided as part of the Mobile Telephony Service, the Client accepts that it is agreeing to opt out of any automatic barring (including any European regulatory barring) and agrees to pay for all roamed usage in addition to all other Fees and bundles for which it is liable.
- Securing pin, passwords and SIM Card
- 4.13 The Client shall ensure that it keeps all SIM Cards supplied by the Supplier safe and secure whilst in its possession and must ensure that it is able to return the SIM Cards to the Supplier immediately on request. The Client acknowledges and agrees that there will be a charge for any replacement SIM Card supplied by the Supplier save only where the original SIM Card is assessed by the Supplier as being defective.
- 4.14 The Client shall immediately change its PIN or password if it or the Supplier becomes aware that someone is accessing Services on the Client's account without the Supplier's permission.
- Age Restricted Services
- 4.15 If any End User is under the age of 18, they are not permitted to access Age Restricted Services (if any) and the Client will ensure that it has deactivated any access to Age Restricted Services in the event that anyone under the age of 18 use the Mobile Equipment. If an End User is under the age of 18 or over and

accesses the Age Restricted Services, they must not show or send content from the Age Restricted Services to anyone aged under 18. The Client shall procure that all End Users comply with this paragraph.

Responsible use of Mobile Telephony Services outside the UK

- 4.16 If the Client uses the Mobile Telephony Services from or in a country outside the UK, its use of the Mobile Telephony Services may be subject to laws and regulations that apply in that other country. The Client shall be solely responsible for compliance with all such foreign laws and regulations and the Supplier shall have no liability whatsoever for the Client's failure to comply with such foreign laws or regulations.

Porting to another provider

- 4.17 If the Supplier receives a written request from the Client to port a number to another provider, the Supplier shall use reasonable endeavours to facilitate the provision of a porting authorisation code ("PAC") to the Client in accordance with current regulatory guidelines. The Supplier shall be entitled to charge the Client an administration fee per number to cover the cost of removing such number from the Telephony Service, at Supplier's then current rates for carrying out such porting request.
- 4.18 If the Client ports a mobile number away from the Supplier then, in addition to the administration fee referred to above at paragraph 4.14, the Client shall be liable for any outstanding Fees due to the Supplier pursuant to this Agreement, including any Early Termination Charges.

**5. Service Equipment and Service Locations**

- 5.1 The Supplier and its agents and subcontractors may during the term of the Telephony and Internet Services: (i) install and keep installed the Service Equipment at each Service Location; and (ii) the right to enter and re-enter each Service Location as and when required in order to install, test, operate, maintain and remove the Service Equipment.
- 5.2 The Client shall (i) prepare and provide reasonable access to the Service Location to enable the Supplier (and/or their sub-contractors) to provide the Telephony and Internet Services (ii) prepare and provide a safe and suitable environment for housing the Service Equipment, including appropriate protection from weather, security, availability of power, cooling, heating and ventilation and (iii) maintain adequate policies of insurance which provide cover for the Service Equipment. The Client shall comply with health and safety regulations and other applicable standards in relation to staff of the Supplier (and/or their subcontractors) attending each Service Location.
- 5.3 The Client shall be responsible for the maintenance of the Client Equipment and cables connected to the Network unless otherwise agreed by the Parties.
- 5.4 The Client shall not make any replacement, interference, modification, adjustment or connection to the Service Equipment save as agreed by Supplier in writing.
- 5.5 The Client shall:
- (a) not stack any equipment or materials on top of Service Equipment;
  - (b) take all reasonable steps to secure against any unauthorised use of the Service Equipment;
  - (c) ensure the safe keeping of the Service Equipment at a Service Location and indemnify Supplier for any loss or damage to the Service Equipment other than arising from the acts or omissions of Supplier or its sub-contractors;
  - (d) ensure that all Service Equipment located in any Service Location or otherwise connected to the Network has the relevant electrical protection and failsafe measures, labelling and instructions for use as may be required by law and is connected to the Network and used in accordance with any applicable laws and instructions;
  - (e) ensure the compatibility of any applications, including Client Equipment, the Client's wish to use with the Telephony and Internet Services and ensure that any such applications do not harm the Network, Telephony and Internet Services, or any other Client's network or equipment; and

- (f) with the exception of Service Equipment the Client shall be responsible for providing computer hardware, software and telecommunications equipment and services to access and use the Telephony and Internet Services.
- 5.6 Ownership and title in the Service Equipment shall remain with the Supplier at all times during the Term of the relevant Telephony and Internet Service, unless agreed otherwise in writing between the Parties. The Client shall not charge, mortgage or otherwise deal with the same and shall use all reasonable efforts to prevent third parties from asserting rights in relation to the Service Equipment.
- 5.7 The Client shall ensure that all equipment connected to a Telephony and Internet Service is connected to and used with the Telephony and Internet Service in accordance with the published instructions and any safety and security procedures notified to the Client.
- 5.8 The Supplier makes no warranty that a Telephony and Internet Service will interoperate properly with any equipment not procured from the Supplier in connection with that Telephony and Internet Service.
- 5.9 The Client shall ensure that the Service Equipment is made available to the Supplier for collection in its original packaging or packaging provided by the Supplier and in good working order within two (2) weeks of cessation of Telephony and Internet Service. If not returned, the Supplier may charge the Client the full cost of replacement at manufacturer's list price at that time.
- 5.10 The Client shall notify the Supplier in writing promptly after becoming aware that it is in breach of this paragraph 5. Where the Client does not comply with this paragraph 5 or any other obligations under the Agreement and such non-compliance results in or is likely to result in a Service Failure or period where there is no network availability, the Supplier will use reasonable endeavours to notify the Client of the matter promptly so that the Client can remedy the non-compliance within a reasonable period, and in any event no later than thirty (30) days from receiving notice of the matter. If the Client does not remedy the non-compliance the Supplier shall have the right to immediately suspend the Telephony and Internet Services, at the Client's expense, until non-compliance has been remedied to the Supplier's reasonable satisfaction. Where non-compliance is not remedied for three (3) or more months following notice of the matter by the Supplier, the Supplier shall have the right to terminate the applicable Telephony and Internet Services, and the Client shall pay the associated Early Termination Charges.
- 5.11 Unless otherwise agreed in Statement of Work, the Supplier shall not be responsible for assessing the Client's, facilities, computer and/or transmission capacity requirements, the Client shall be solely responsible for assessing its requirements, and for the avoidance of doubt, the Supplier shall have no liability under or in connection with the Agreement to the extent that the Client's stated requirements are inadequate or are otherwise not fit for purpose.
- 5.12 The Supplier shall have the right to examine, from time to time, the Client's use of the Telephony and Internet Services and the nature of the data/information that the Client is transmitting or receiving via the Telephony and Internet Services where such examination is necessary: (i) to protect and/or safeguard the integrity, operation and functionality of the networks; and/or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests.
- 5.13 The Client warrants and represents that:
  - (a) it shall not introduce any viruses, and shall not allow any viruses to be introduced, to the Network;
  - (b) it shall comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance, including any health and safety legislation and environmental legislation;
  - (c) upon the Supplier's request, it shall immediately give the Supplier all assistance, cooperation and information necessary in order for the Supplier to comply with its obligations under the Regulation of Investigatory Powers Act 2000 and all laws regarding data protection and data retention.

5.14 The Supplier will have no liability to the Client relating to the provision or performance of any Telephony and Internet Services affected by the any failure by Client to comply with this paragraph 5. The Client shall indemnify the Supplier, its representatives, agents and subcontractors in respect of all and any costs, losses, damages, expenses (including legal expenses), fines and penalties, proceedings, actions, liabilities, and claims incurred by or, brought or threatened against, the Supplier as a result of a breach of this paragraph 5.

5.15 Any breach by the Client of the provisions of this paragraph 5 shall be deemed a material breach of the Agreement.

## 6. Telephony and Internet Service suspension/alternation

6.1 Without prejudice to its other rights or remedies hereunder or generally at law, the Supplier may suspend provision of the Telephony and Internet Services or any part thereof without liability to Client:

(a) forthwith on written notice to Client (i) where the Supplier reasonably believes the Client is in breach of paragraph 5; and/or (ii) where the Supplier has a right to terminate the Agreement, irrespective of whether it has exercised such right; and/or (iii) where the Client fails to pay any Fees, subject to the Supplier giving Client at least fourteen (14) days prior written notice of its failure to pay and threatening suspension and such notice having expired without due payment by the Client) (iv) where Supplier is required to comply with an order, instruction or request of a Government, court, agency or other competent administrative or regulatory authority, (v) if the Client uses the services provided under this Schedule for any purpose that may be abusive, a nuisance, illegal or fraudulent, (vi) if the Client does anything that causes the network to be impaired (vii) if the Client uses the Services to use automated means to make calls, texts or send data provided that Supplier gives written notice to Client where practicable.

(b) as provided in paragraph 6.3; and/or

(c) temporarily with as much notice as is reasonably practicable in the circumstances where such suspension is required for operational or technical reasons as provided in paragraph 6.3. The Supplier shall reinstate the Telephony and Internet Services suspended under this paragraph 6.1.(c) as soon as reasonably practicable.

6.2 The Supplier shall reinstate Telephony and Internet Services suspended under paragraph 6.1 in its absolute discretion which shall in any event be subject to payment by the Client of a charge as set out in the Statement of Work and any direct pass-through costs incurred by the Supplier as a result of suspension and/or reinstatement. If the Supplier has not reinstated a Telephony and Internet Service suspended under paragraph 6.1 within a period of thirty (30) days from the date of suspension, such Telephony and Internet Services shall terminate automatically at the expiry of such thirty (30) day period, in which event the provisions of paragraph 7 of this Schedule and Clause **Error! Reference source not found.** of the Agreement shall apply.

6.3 The Supplier shall be entitled to terminate, suspend or modify a Telephony and Internet Service and related Telephony and Internet Service, without any liability, if any consent, licence or authorisation which the Supplier requires in order to provide that Telephony and Internet Service is not obtained, withdrawn or otherwise cancelled or the provision of the Telephony and Internet Service would result in Supplier being in breach of contract to a third party; in the event of a modification that is materially detrimental to the Telephony and Internet Service, the Client shall have the right to terminate the Telephony and Internet Services by written notice to the Supplier, such notice to have immediate effect. The Supplier shall use its reasonable endeavours to give the Client reasonable notice prior to such termination or modification taking effect. Any charges paid in advance for the terminated Telephony and Internet Services in respect of the period after termination shall be refunded to the Client save to the extent that these are in respect of committed carrier charges that cannot be recovered by the Supplier from the carrier.

- 6.4 Temporary changes may be made to the Network or the technical specification of a Telephony and Internet Service from time to time for operational or technical reasons including to suspend, modify, change, add to or replace any part of the Network or Telephony and Internet Services. If these changes will be materially detrimental to the Telephony and Internet Service, the Supplier will use reasonable endeavours to inform Client in advance.
- 6.5 The Supplier may from time to time carry out maintenance to the Network and/or Telephony and Internet Service for purposes of providing new installations, updating facilities and general maintenance ("**Scheduled Maintenance**"), during which the Telephony and Internet Service will be unavailable. The Supplier will use reasonable endeavours to provide at least seven (7) calendar days' notice of any Scheduled Maintenance.
- 6.6 Where the Supplier needs to carry out emergency maintenance or any maintenance that is not Scheduled Maintenance ("**Emergency Maintenance**") to any Telephony and Internet Service and/or the Network, the Supplier may carry out such Emergency Maintenance and will give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. It may only be possible to give this notification after the Emergency Maintenance has taken place.

## 7. Termination

- 7.1 The Telephony and Internet Services shall commence on the date stated in the relevant Statement of Work and shall remain in full force unless terminated in accordance with this Agreement or such Statement of Work. Notwithstanding any termination of the Telephony and Internet Services, the Client shall remain liable for the Fees payable for all remaining amounts owing up to the end of the Statement of Work term.
- 7.2 On termination:
  - (a) the Client shall permit the Supplier and their authorised representatives, agents and subcontractors access to each Service Location to remove the Service Equipment; and
  - (b) to the extent that the Client has requested in writing that the Supplier ports the Telephony and Internet Services to a third party supplier, the Supplier shall be entitled to charge the Client at Supplier's then current rates for carrying out such porting request.

## 8. Liability

- 8.1 The Supplier is not liable, and will not be liable in any circumstances for any loss or damage, whether direct or indirect, which results or may result from:
  - (a) the Client's, access to, or inability to access, the internet or use therefore for any purpose whatsoever; and/or
  - (b) any reliance on or use of information, service or goods purchased on or through the Telephony and Internet Service or the internet.
- 8.2 Subject to Clause **Error! Reference source not found.** of the Agreement, but notwithstanding anything else in these Telephony and Internet Terms, the Supplier shall not be liable in contract, tort (including negligence or breach of statutory duty) for:
  - (a) losses or claims relating to the transmission or receipt of infringing or unlawful information or content of whatever nature transmitted via the Telephony and Internet Service;
  - (b) loss of, damage to or corruption of data, or files, stored, transmitted or used on the Network;
  - (c) loss or damage suffered by Client as a result of any virus or other hostile computer program, denial of service, spamming, or hacking being introduced via the Telephony and Internet Service.

## 9. Miscellaneous

9.1 Tariffs

- 27.4 Where the Client requests a tariff renew and the Supplier agrees to amend the Client's tariff, a new committed period of the chosen duration will be deemed to start from the date upon which the tariff is amended.

**SCHEDULE 6 – Device as a Service Terms**

1. Interpretation

1.1 The following definitions in this paragraph 1 apply in this Schedule 4.

**Additional Parts:** all additional and spare components supplied in connection with the Rental Devices, including but not limited to, power supplies, sub-assemblies and peripherals.

**Approved Vendor:** the manufacturer or a third party who has been approved by the manufacturer of the Devices to perform repairs and/or adjustments to Devices to restore the Device to the original OEM quality or standard as approved by such manufacturer or third party.

**Approved Warranty:** the warranty provided by the manufacturer as set out in the Statement of Work (as applicable).

**Client Devices:** the Client owned devices which shall be managed by the Supplier in accordance with these Device as a Service Terms and which are identified expressly in the Inventory.

**Corrective Maintenance:** replacing any parts or components of the Device, or the Device itself, as required to restore the Device to Working Order by the Approved Vendor under warranty.

**Delivery:** the transfer of physical possession of the Rental Devices to the Client at the Client Site.

**Deposit:** the deposit amount set out in the relevant Statement of Work.

**Device as a Service:** the services and use related to the provision of devices as a service as set out in the Statement of Work in the relevant section or as otherwise agreed in writing between the Parties.

**Devices:** the Client Devices and the Rental Devices as set out in the Inventory.

**End User:** an employee of the Client that is authorised to access and use the Devices.

**Excluded Cause:** has the meaning given in paragraph 9.3(c)(v).

**Inventory:** a list of Devices.

**Maintenance Services:** the maintenance services that the Supplier shall provide in relation to the Devices, which shall include Corrective Maintenance, as more fully described in the relevant Statement of Work.

**OEM:** the original equipment manufacturer of the Devices.

**Purchase Option:** the Client's option to purchase the Rental Devices as more fully described in paragraph 10.

**Purchase Option Price:** the price of the Purchase Option calculated and paid in accordance with paragraph 10 and the Statement of Work as amended from time to time by the Supplier.

**Rental Devices:** the devices, which shall include all necessary Additional Parts, to be rented by the Client from the Supplier in accordance with these Device as a Service Terms and as identified expressly in the relevant Statement of Work.

**Rental Period:** the term as specified within the Statement of Work.

**System Audit:** an inspection of the Devices or part thereof either remotely or at the Client Site, which does not include repair or replacement.

**Ticket:** an issue logged through the Supplier's portal reporting a defect or malfunction in a Device covered by the Maintenance Services.

**Working Order:** operating in accordance with the applicable specification as set out in the Statement of Work.

1.2 Except as defined in these Devices as a Service Terms, capitalised terms shall have the meanings given to them in the Agreement.

1.3 To the extent applicable to the provision of Devices as a Service, in the event of conflict with the terms of these Device as a Service Terms and the Agreement, the provisions in these Device as a Service

Terms shall take precedence and in the event of a conflict with the terms of these Device as a Service Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these Device as a Service Terms.

## **2. Rental Devices and Rental Period**

- 2.1 Where applicable, the Client shall hire the Rental Devices from the Supplier subject to the terms and conditions of these Device as a Service Terms and the Agreement for the Rental Period. Where the Rental Devices are being supplied by a Third Party supplier, they will be supplied subject to any terms and conditions relating thereto by the relevant manufacturer and/or Third Party supplier.
- 2.2 The Rental Period starts on the Services Commencement Date and shall continue for the period as stated within the relevant Statement of Work unless and until the Agreement is terminated earlier in accordance with its terms. At the Supplier's sole discretion, the Supplier may extend the Rental Period in accordance with the Statement of Work and these Device as a Service Terms.
- 2.3 The Supplier reserves the right to amend the Statement of Work if required by any applicable statutory or regulatory requirements.
- 2.4 The Supplier shall not, other than in the exercise of its rights under these Device as a Service Terms or the Agreement, or applicable law, interfere with the Client's quiet possession of the Rental Devices.
- 2.5 The Deposit is a deposit against default by the Client of payment of any Fees or any loss of or damage caused to the Rental Devices. The Client shall pay the Deposit on the date of the relevant Statement of Work, or as otherwise agreed between the Parties. If the Client fails to pay any Fees due in accordance with the relevant Statement of Work, or causes any loss or damage (fair wear and tear excluded) to the Rental Devices (in whole or in part) in accordance with paragraph 10.3, the Supplier shall be entitled to apply the Deposit against such default, loss or damage. The Client shall pay to the Supplier any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance of the Deposit) shall be refundable within ten (10) Business Days of the end of the Rental Period.

## **3. Delivery of the Rental Devices**

- 3.1 Delivery of the Rental Devices shall be made by or on behalf of the Supplier. The Supplier shall use its commercially reasonable endeavours to effect Delivery of the Rental Devices as set out under the relevant Statement of Work, but any such dates shall be estimates only and time of delivery is not of the essence.
- 3.2 Risk in the Rental Devices shall transfer in accordance with paragraph 4.2 of these Device as a Service Terms.
- 3.3 The Client shall procure that a duly authorised representative of the Client is present at the Delivery of the Rental Devices. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Delivery is accurate and complete. If required by the Supplier, the Client's duly authorised representative shall sign a receipt confirming such acceptance.
- 3.4 The Supplier may make Delivery of the Rental Devices in instalments.
- 3.5 The Client shall provide the Supplier with all relevant information and assistance it may require to make Delivery of the Rental Devices and shall ensure that the conditions at the Client Site allow safe and prompt Delivery of the Rental Devices.
- 3.6 The Supplier shall have no liability for any failure to deliver the Rental Devices to the extent that such failure is caused by:

- (a) a delay from the OEM, third party supplier or other third party;
  - (b) a Force Majeure Event; or
  - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the Delivery of the Rental Devices.
- 3.7 If ten (10) Business Days after the day on which the Supplier first attempted to make Delivery of Rental Devices the Client has not taken delivery of those Rental Devices or otherwise fails to make satisfactory (in the sole opinion of the Supplier) arrangements relating to Delivery of the Rental Devices, and fails to do so for a further ten (10) Business Days' after receiving written notice from the Supplier, the Supplier may hire out the Rental Devices to another party or otherwise dispose of part or all of the Rental Devices and the Supplier shall not be liable to the Client for the delay or failure in provisioning the Rental Devices.
- 3.8 If the Client does not take Delivery of the Rental Devices on time for any reason, the Supplier may store and insure it pending Delivery, and the Client shall be responsible for paying any reasonable costs incurred by the Supplier for the storage and insurance charges.
- 3.9 The Supplier shall install the Rental Devices only to the extent set out under the applicable Statement of Work. If the Statement of Work is silent on installation, this shall be the Client's responsibility.
- 4. Title, Risk and Insurance**
- 4.1 The Rental Devices shall at all times remain the property of the Supplier (or such other third party), and the Client shall have no right, title or interest in or to the Rental Devices (save the right to possession and use of the Rental Devices in accordance with these Devices as a Service Terms) except where the Client purchases the Rental Devices pursuant to the Purchase Option in paragraph 10.
- 4.2 The risk of loss, theft, damage or destruction of the Rental Devices shall pass to the Client on Delivery. The Rental Devices shall remain at the sole risk of the Client during the Rental Period and any further term during which the Rental Devices are in the possession, custody or control of the Client ("**Risk Period**") until such time as the Rental Devices are returned to the Supplier. During the Rental Period and the Risk Period, the Client shall, at its own expense, obtain and maintain the following insurances:
  - (a) insurance of the Rental Devices to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of the Rental Devices would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Rental Devices; and
  - (c) insurance against such other or further risks relating to the Rental Devices as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Client in writing.
- 4.3 The Client shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 4.4 The Client shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Rental Devices arising out of or in connection with the Client's possession or use of the Rental Devices and shall comply with any relevant requirements under the Client's insurance policies relating to such loss, accident or damage to the Rental Devices.

4.5 If the Client fails to effect or maintain any of the insurances as specified in paragraph 4.2, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.

4.6 The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

## **5. Device Inventory and System Audits**

5.1 Subject to paragraph 7.1(a), the Supplier shall maintain an Inventory during the Term including details of the Devices, including serial number, model, asset tag, warranty and purchase information, designated user and location, and any other details as agreed in the Statement of Work.

5.2 Prior to the Services Commencement Date, the Supplier may during Normal Business Hours, inspect the Client Devices, including where necessary at the Client Site, to confirm that they are, in the Supplier's reasonable opinion, in Working Order. If work is required to put the Client Devices into Working Order, the Supplier will notify the Client accordingly.

5.3 The Supplier will be entitled at least once every six (6) months during the Term or as otherwise agreed between the Parties and (except in the event of an emergency), on reasonable notice, to carry out a System Audit within Normal Business Hours to confirm that, in the Supplier's opinion, the Devices are in Working Order. If work is required to put any Device into Working Order, the Supplier will notify the Client accordingly.

5.4 The Supplier will give the Client written notice if, in its reasonable opinion:

- (a) any Client Device is identified as "end of life";
- (b) if a Client Device becomes beyond reasonable repair or spare parts become not readily available;
- (c) if faults in and/or the Client Device's condition are such that overhaul or replacement is necessary;
- (d) if the Client Device is no longer economically viable to maintain; or
- (e) if the Client Device requires upgrading or updating.

5.5 If the Client does not, within twenty (20) Business Days of the Supplier's notification (or such longer period as the Parties agree) and at its own expense:

- (a) have the work referred to in paragraphs 5.2 or 5.3 carried out; or
- (b) overhaul or replace the Client Device as referred to in paragraph 5.4,

2. the Supplier may on written notice exclude that Client Device from the Inventory.

## **6. Payments**

3. The Client shall pay the Fees for the Rental Devices and the Maintenance Services as more fully set out in the relevant Statement of Work.

## **7. Client Obligations**

7.1 The Client shall, and procure that each End User shall, during the Term:

- (a) provide the Supplier (i) before the Services Commencement Date, and (ii) during the Term promptly on request, with a detailed and accurate list of Client Devices and provide reasonable assistance and co-operation to the Supplier in relation to the Client Devices,

including providing information concerning the Client Devices application, use, location and environment as the Supplier may reasonably request to enable it to perform its obligations under these Device as a Service Terms;

- (b) ensure that the Devices are kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier or recommended by the relevant OEM;
- (c) take such steps (including compliance with all safety and usage instructions provided by the Supplier or the relevant OEM) as may be necessary to ensure, so far as is reasonably practicable, that the Devices are at all times safe and without risk to health when a Device is being used, cleaned or maintained by a person at work;
- (d) except where the Supplier is providing Maintenance Services, maintain at its own expense the Devices in good and substantial repair (fair wear and tear excepted);
- (e) make no alteration to the Devices and shall not remove any existing component (or components) nor remove, deface or obscure any identifying mark from the Devices;
- (f) keep the Supplier fully informed of all material matters relating to the Devices;
- (g) at all times keep the Devices in the possession or control of the Client or its End Users;
- (h) not, without the prior written consent of the Supplier, move any of the Devices from the Client Site, or other location agreed in the Statement of Work;
- (i) maintain operating records of the Devices and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- (j) comply with the terms of any applicable end user licence agreement imposed by the relevant OEM that may be included as part of the Devices;
- (k) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Rental Devices or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- (l) not suffer or permit the Rental Devices to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Rental Devices are so confiscated, seized or taken, the Client shall notify the Supplier immediately and the Client shall at its sole expense use its best endeavours to procure an immediate release of the Rental Devices and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (m) not use the Devices for any unlawful purpose;
- (n) ensure that the packaging of the Rental Devices is retained and kept in good condition (fair wear and tear excepted) at the Supplier's sole discretion;
- (o) return the Rental Devices at the end of the Rental Period at such address as the Supplier requires, or if necessary irrevocably grant a licence to the Supplier, its employees and agents to enter any Client Site or any premises where the Devices are located for the purpose of removing the Devices;

- (p) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 15.2(b) of the Agreement;
  - (q) not do or permit to be done anything which could invalidate the insurances referred to in paragraph 4; and
  - (r) not install or use unlicensed software.
- 7.2 The Client acknowledges that the Supplier shall not be responsible for any loss of or damage, defect, fault or impairment of the Devices arising out of or in connection with the Client's negligence, misuse, mishandling of the Devices, breach of these Device as a Service Terms or otherwise caused by the Client or its officers, employees, agents and contractors, and the Client shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Client to comply with the terms of these Device as a Service Terms.

## **8. Warranties and Service Levels**

- 8.1 The Supplier shall carry out any necessary installation or Maintenance Services relating to the Devices using personnel of the required skill, experience and qualifications and with all due skill, care and diligence in accordance with Good Industry Practice.
- 8.2 The Supplier warrants that each of the Rental Devices shall substantially conform to its specification as set out in the relevant Statement of Work.
- 8.3 The Supplier's only liability to the Client if the Devices fail to comply with the warranty set out in paragraph 8.2 of these Device as a Service Terms is as set out in paragraph 9.4 of these Device as a Service Terms.

## **9. Maintenance Services**

- 9.1 The Supplier shall provide Maintenance Services on the Devices, as more fully set out in the relevant Statement of Work.
- 9.2 The Client may raise a Ticket in the event of a defect, fault or impairment of the Devices which shall contain reasonably detailed information relating to the relevant defect, fault or impairment and the affected Device(s).
- 9.3 On receipt of a valid Ticket, the Supplier shall use its commercially reasonable endeavours to complete the Corrective Maintenance as more fully set out in the Statement of Work and to the extent it reasonably can, during the Term (or, in relation to any Rental Devices, the Rental Period, if shorter), provided that:
- (a) the Client notifies the Supplier of any defect in writing within five (5) Business Days of the defect occurring or of becoming aware of the defect;
  - (b) the Supplier is permitted to make a full examination of the relevant Device and granted the required access to provide the Maintenance Services; and
  - (c) the defect, fault or impairment did not materialise as a result of:
    - (i) misuse, neglect, alteration or mishandling by the Client or its End Users or from unauthorised manipulation by any person other than the Supplier's authorised personnel;
    - (ii) use of the Devices with parts or connected with other parts, fittings or accessories, which have not been approved by the Supplier;

- (iii) any disconnection and reconnection of the Devices that has not been approved by the Supplier;
  - (iv) a use of the Devices in breach of these Device as a Service Terms; or
  - (v) or directly attributable to, defective material, workmanship or design (together with (i) and (ii) above, the “**Excluded Causes**”).
- 9.4 In relation to Rental Devices, subject to paragraph 7.2 and other than where the defect is as a result of an Excluded Cause, if the Supplier is unable to remedy any material defect in any Rental Devices in accordance with paragraph 9.1, the Supplier shall, at its sole discretion, (i) make an appropriate substitution for the defective Rental Device; or (ii) accept the return of part or all of the Rental Devices and allow a reduction to the Fees payable during the remaining term of the applicable Statement of Work that is equivalent to the price of the defective Rental Device.
- 9.5 Where, at the Supplier’s sole discretion, the Supplier is performing or has performed the Maintenance Services in circumstances where it is reasonably established that the relevant Device was not in Working Order due to any of the Excluded Causes, the Supplier may charge, and the Client shall pay, any additional fees in respect of that work as set out in the relevant Statement of Work.
- 9.6 A representative of the Supplier shall, at the Supplier’s sole discretion, attend the Client Site to perform the Corrective Maintenance. The Supplier’s representative shall perform the Corrective Maintenance during Normal Business Hours at such times as may be agreed in advance between the Client and the Supplier from time to time.
- 9.7 The Supplier’s representative will use its commercially reasonable endeavours to repair the relevant Device(s) during that visit at the Client site. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) the Supplier’s representative shall either arrange for a further visit to the Client Site within Business Hours to complete the repair, or remove the defective Device(s) (or part of the defective Device(s), if applicable) for repair off-site.
- 9.8 The Supplier shall not be liable for any delay in providing the relevant repair and/or maintenance if in the Supplier’s reasonable opinion it needs to remove the Device (or part of the Device, if applicable) from the Client Site, and the Client unreasonably refuses this request.
- 9.9 The Supplier shall:
  - (a) provide to the Client from time in writing such information as to the application and use of the Devices as received from the relevant OEM or as may be otherwise available to the Supplier and as the Supplier may reasonably determine to be necessary or desirable to be provided; and
  - (b) use commercially reasonable endeavours to respond promptly, during Business Hours, by telephone or in writing, as appropriate, to any request from the Client for information concerning the application and use of the Devices, or the repair of any defect in or malfunctioning of the Devices.
- 9.10 The Maintenance Services do not extend to:
  - (a) any Device not specified in the Inventory including any Device which is in any way changed from that included in the Inventory;
  - (b) any Device which exceeds the term of the Approved Warranty as set out in the Statement of Work;

- (c) refurbishment or repair of casings or outer surfaces caused by accidental or deliberate damage at the Approved Vendor's discretion;
- (d) backup of any Client Data on the Devices;
- (e) reinstatement of customised versions of the standard desktop/operating system;
- (f) deploying security patches or updates unless expressly included in the Services as set out in the Statement of Work;
- (g) network issues or issues with the Client's wi-fi network;
- (h) resolving the consequences of security breaches and incompatibilities in hardware and/or software; and
- (i) any services which are specifically excluded in the Statement of Work.

## **10. Purchase Option**

10.1 The Client shall, subject to paragraph 10.2, have the option, exercisable by not less than thirty (30) days' written notice to the Supplier, to purchase the Rental Devices on the last Business Day of the Rental Period at the Purchase Option Price.

10.2 The Purchase Option may be exercised only if:

- (a) all amounts due to the Supplier under the Agreement up to the date of exercise of the Purchase Option have been paid in full by the Client; and
- (b) the Rental Period has not ended by reason of the Supplier terminating in accordance with Clause 15 of the Agreement.

10.3 The Purchase Option Price shall be calculated as set out in the Statement of Work in accordance with the Supplier's reasonable assessment of:

- (a) the depreciated value of the Rental Device subject to the condition on inspection by the Supplier; and
- (b) the market value of the Rental Devices,

4. at the time of sale.

10.4 The Supplier shall, at its sole discretion, determine the condition of the Rental Devices upon inspection.

10.5 On completion of the purchase of the Rental Devices, and receipt of the Purchase Option Price, under this paragraph 10, such title to the Rental Devices as the Supplier had on the date of transfer shall transfer to the Client. The Rental Devices shall transfer to the Client in the condition and at the location in which it is found on the date of transfer.

## **11. Consequences of Termination**

11.1 On expiry or termination of the Agreement or the applicable Statement of Work (as the case may be), however caused, other than in relation to any Rental Devices the subject of a Purchase Option:

- (a) the Supplier's consent to the Client's possession of the Rental Devices shall terminate;
- (b) the Client shall be responsible for the backup of Client Data before the Supplier retakes possession of the Rental Devices;
- (c) the Supplier may with or without notice and at the Client's expense, request a suitable time, date and location to retake possession of the Rental Devices and for this purpose the Client

irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles) at which the Rental Devices are located; and

- (d) without prejudice to any other rights or remedies of the Client, the Client shall pay to the Supplier on demand:
  - (i) all Fees and other sums due up to and including the date of termination or the date the Client ceases to use the Rental Devices, whichever is the later, together with any interest accrued pursuant to Clause 7.14 of the Agreement;
  - (ii) any costs and expenses incurred by the Supplier in recovering the Rental Devices or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 11.2 The Supplier will inspect the Rental Devices and determine if Client returned the Rental Devices in Working Order and in accordance with its obligation at paragraph 7.1(d) where applicable at the end of the Rental Period or on termination of the Agreement for any reason. If the Supplier, in its sole discretion, finds that the condition of the Rental Devices is not deemed to be in Working Order or in accordance with its obligation at paragraph 7.1(d) where applicable, the Supplier will be entitled to recover any costs or expenses it expects to incur to replace or restore the Rental Devices to Working Order.
- 11.3 The sums payable pursuant to paragraphs 11.1 shall be partly or wholly recovered by the Supplier from any Deposit.