

TERMS AND CONDITIONS

Incline IT Limited

MASTER SERVICE AGREEMENT

This Agreement is made as of [Date of Signing] between Incline IT Limited ("**Supplier**"), having its principal place of business at Century House, Gadbrook Business Centre, Northwich, Cheshire, CW9 7TL and

Name: [Client Name] ("**Client**")
Address: [Client Address]

Client's purchase and use of the Supplier products and services specified in each Order Form mutually entered into hereunder is subject to all terms and conditions in this agreement, and all schedules and attachments hereto (collectively, the "**Agreement**"). Each party represents and warrants to the other that the person entering into this Agreement is authorised to sign this Agreement on behalf of said party.

For the Client:

By: [Signature]

Authorised Signature

By: [Name & title]

Print Name & Title

Date: [Date]

For the Supplier:

By: [Signature]

Authorised Signature

By: [Name & title]

Print Name & Title

Date: [Date]

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1) DEFINITIONS

"Affiliate" means, with respect to a party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with such party.

"Availability" means the percentage of total time during which the Service network is available to Client and Client can access the Service system interface.

"Business Day" means a single working day within the Business Hours

"Business Hours" means the normal working hours of Supplier being 0900 to 1700 on Monday to Friday with the exception of England's Public Holidays.

"Change Control Note" ("CCN") means the document agreed by both parties following approval of a change under the change management process and accessed via the Change Request form in **Annex 2**.

"Client Data" means all data stored by Client or any of its Affiliates in the Service.

"Client Equipment" means Client's and its Affiliates' computer hardware, software and network infrastructure used to access the Service.

"Confidential Information" has the meaning set forth in **Section 9**.

"Control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

"Data Processor" as defined by the Data Protection Act 2018

"Data Protection Act 2018" means United Kingdom Legislation by the same name

"Documentation" means the description of the Service contained in the then current Service datasheet for the Supplier Service specified on the applicable Order Form, as posted on Suppliers website.

"Exit Plan" means the pre-agreed plan in the event of a contract exit either through terminations or cessation of the term.

"Exit Transition" means the enactment of the exit plan and is chargeable to the Client. The Supplier will offer reasonable endeavours to minimise costs without risking business continuity for the Client.

"Extension Term" means each renewal subscription period for which the subscription term applicable to an Order Form is extended pursuant to **Section 11**.

"Force Majeure Event" means an event, including without limitation, a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against.

"Framework" means the procurement framework through which the services are procured.

"Initial Term" means the first subscription term period for the Service defined on an Order Form, or if no such term period is defined, twelve (12) months, commencing on the date such Order Form is executed by the parties.

"Order Form" means an ordering document for the Service signed by Supplier and Client. See Appendix for initial order details.

"Notice Date" means the date upon which notice to terminate is issued.

"Services" means the installation, implementation, training or other professional services provided hereunder by Supplier to Client, not including the Services.

"Taxes" means any direct or indirect taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"Term" means the Initial Term and any Extension Term applicable to each Order Form.

"Termination Date" means the date upon which the service ceases to be delivered by the Supplier.

"Users" means Client's and its Affiliates' employees, agents, contractors or consultants who are authorized by Client to use the Service and who have been supplied user identifications and passwords by Client or by Supplier at Client's request.

"Variation Order" means a contractual change to a service provided by the Supplier following approval through the change management process. This is also may be known as a "Change Note". The format of this commercial

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document is to be agreed between the Parties, however if not such agreement can be reached then the Supplier will provide the format required.

2) TERMS OF SERVICE

Supplier shall make the Service detailed in the accompanying Order Form available to Client in accordance with this Agreement, and each Order Form mutually entered into and, to the extent not in conflict with this Agreement or an Order Form, the **Documentation**. As long as this Agreement is in effect the functionality of the Service will not be materially less than that defined in the **Documentation** in effect as of the **Effective Date**. Subject to the terms of this Agreement, Supplier grants Client and its Affiliates in the United Kingdom, fully-paid, royalty-free, limited term, non-sublicensable, non-transferable, and non-exclusive license to access and use the Service for Client's internal business purposes.

3) CLIENT RESPONSIBILITIES RELATING TO USE OF THE SERVICE

- (a) Client is responsible for obtaining and maintaining any **Client Equipment** and any ancillary services needed to connect to, access or otherwise use the Service. This includes coordination in a multi-supplier model for service delivery.
- (b) Client agrees to use the Service in compliance with applicable law, and not: (a) resell, sublicense, lease, time-share or otherwise make the Service available to any third party other than as contemplated by this Agreement; or (b) use the Service to send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. Either scenario would constitute a material breach of contract.
- (c) Client agrees to not (a) modify, copy or create derivative works based on the Service; (b) redistribute, sell, auction, reverse engineer, decompile or disassemble the Service; (c) access the Service for the purpose of building a competitive product or service or copying its features or user interface; (d) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Client's or its Affiliates' own intranets or otherwise for its or its Affiliates' own internal business purposes; or (e) use the Service, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Suppliers' prior written consent.
- (d) The scope of the Services provided, as prescribed in the Order Forms, are based on the available information at the time of signing the contract and hereunder shall be referred to as **Baseline Information**. In the event that there are deviations to the baseline information then the Supplier reserves the right to adjust pricing and will evidence the reason for the change to the Client.
- (e) Client acknowledges that Internet transmissions are never completely private or secure and understand that any message or information sent by it to the Supplier including through the Supplier's site may be read or intercepted by others.

4) OWNERSHIP

- (a) As between the parties, Supplier shall retain all ownership and intellectual property rights in the Service, the technology, software, hardware, products, processes, algorithms, user interfaces and know-how related to the Service. The above mentioned shall not provide the Supplier with any ownership rights in the Client Information (as defined below). Client shall retain all ownership rights in the Client Data and all data, text, files, output, programs, or other information material that Client or its Affiliates provides, develops, generates, creates, makes available or uses in conjunction with the Service (collectively, "**Client Information**"). Subject to the terms of this Agreement, Supplier hereby grants Client a royalty-free, fully paid-up, non-exclusive, term limited, UK wide, transferable (only to a successor in interest by way of merger,

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reorganization or sale of all or substantially all assets or equity), license to use the Services, only as expressly authorized herein for its internal business purposes. No license, right or interest in any Supplier or Client trademark, copyright, trade name or service mark is granted hereunder and they may not be used without the prior written permission of Supplier.

5) FEES

- (a) Unless otherwise specified on an Order Form, the Fees stated in each Order Form shall be effective during the **Initial Term** specified in that Order Form and Fees for the **Initial Term** and each **Extension Term** shall be payable one month in arrears. Any contractual amendments to scope of service shall be treated as coterminous with the expiration of the Term in the Order Form including any extensions if enacted.
- (b) Unless otherwise specified in writing, all fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice. Any payment not received from Client by the due date may result, at Supplier's sole discretion, in suspension of Client's ability to access the Service until payment is made. Without derogating from the aforementioned, any overdue payment shall be subject to the Late Payment of Commercial Debt (Interest) Act 1998 which entitles a simple interest charge at the rate of Bank of England base rate + eight percent (+8%) on an annualised basis or fraction thereof until paid and Client shall bear all costs (if any) of collection (including reasonable legal fees). All fees and additional payments, if any, shall be payable in the invoice currency stipulated in the Order Form, however the default currency is Pounds Sterling.
- (c) Unless otherwise provided, Suppliers' fees do not include any Taxes, and Client is responsible for paying all Taxes arising from its purchases hereunder, excluding Taxes based on Suppliers' net income or property. The Supplier has the legal obligation to collect Value-Added Taxes (VAT) for which Client is responsible, the appropriate amount of such Taxes shall be invoiced to and paid by Client, unless Client provides a valid tax exemption certificate authorised by the appropriate taxing authority.
- (d) Client shall reimburse Supplier for all pre-approved and appropriately documented, out-of-pocket travel and related expenses incurred by Supplier in performing Services at Client's location. Reimbursement of such expenses shall be due and payable within thirty (30) days of providing Client with proper documentation. Client shall be responsible for its own travel and out of pocket expenses associated with the Service Transition or Business As Usual Services.
- (e) All invoices will be raised in Pounds Sterling and unless otherwise stipulated in the Order Form the invoice will be provided to the Client in PDF format as the default. Recipient details are to be found in the Order Form.
- (f) Pricing will be governed by the Order Form through the **Price & Payment Terms**. Pricing will be subject to Retail Prices Index (RPI) based increases, with RPI set annually on the anniversary of the **Effective Date** on the contract.
- (g) The Supplier reserves to right to apply exceptional price increases if they are imposed on the Supplier by a third party. Where possible the Supplier use reasonable endeavours to negate these price increases either, however the Supplier cannot absorb the burden of exceptional price increases outside of the Suppliers control. In such circumstances, the Supplier will evidence the price increases to the Client before passing it on.
- (h) Payments will be accepted via BACS transfer only. The Supplier does not and will not accept cash, cheques or bankers draft as a valid forms of payment.

6) WARRANTIES

- (a) Each party represents and warrants that
 - i. it has the legal power to enter into and perform this Agreement;

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- ii. it shall comply with all other applicable laws in its performance hereunder.
- (b) Supplier warrants it will provide the Services in a professional and workmanlike manner consistent with good industry standards and practices.
- (c) The Service performance and **Availability** warranties set forth in the Order Form, shall not apply to the extent any problem which results in the Service performance or **Availability** to be other than as warranted is due to:
 - i. third party software, hardware or subcontracted service not under the direct control of Supplier;
 - ii. electrical or internet access disruptions;
 - iii. any actions or inactions of Client in violation of this Agreement;
 - iv. attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties; or
 - v. a Force Majeure event.
- (d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY NOR ITS SUPPLIERS MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE. SUPPLIER DOES NOT WARRANT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

7) INDEMNIFICATION BY SUPPLIER

- (a) Supplier shall defend, indemnify and hold Client, its Affiliates and each of their respective officers, directors, employees and agents (collectively, "**Client Group**") harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against any member of Client Group by a third party alleging that use of the Service, as contemplated in the Order Forms,
 - i. violates any applicable law or regulation or
 - ii. infringes the intellectual property rights of such third party, provided Client (a) promptly gives written notice of the Claim to Supplier; (b) gives Supplier sole control of the defence and settlement of the Claim (provided that Supplier may not settle any Claim without the prior written consent of the Client, which shall not be unreasonably withheld or delayed); and (c) provides to Supplier, at Supplier's cost, all reasonable assistance.
- (b) Should the use of the Service become the subject of any such claim or are believed to so infringe, Supplier will, at its sole option and expense:
 - i. procure for Client the right to continue using the Service under the terms of this Agreement;
 - ii. replace or modify the Service to be non-infringing without material decrease in functionality; or
 - iii. if the foregoing options are not reasonably practicable, terminate with immediate effect the license for the infringing, or believed by Supplier to be infringing, Service and refund Client all prepaid fees for the remainder of its term after the date of termination. Supplier shall not be liable for any costs caused as a result of Client's continuation to use the Service after receiving said notice of termination.
- (c) Supplier shall have no liability for any Claim to the extent the Claim is based upon
 - i. the use of the Service in combination with any other product, service or device not furnished, recommended or approved by Supplier, if such Claim would have been avoided by the use of the Service, without such product, service or device; or
 - ii. Client's use of the Service other than in accordance with this Agreement
 - iii. a modification of the Service by anyone other than the Supplier or its duly authorized agent; or
 - iv. the incorporation into the Service of any information provided by or requested by the Client; or
 - v. the use of a version of the Service other than the then-current or immediately prior version if the infringement would have been avoided by using such version and provided that such non-infringing version was provided to the Client within a reasonable period of time to implement use of such version and such version was identified to the Client as required to avoid the Claim; or

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- vi. any third party hardware, software or service not a part of the Service provider by the Supplier and as designated in the Order Forms.
- (d) THE PROVISIONS OF THIS SECTION SET FORTH SUPPLIERS' SOLE AND EXCLUSIVE OBLIGATIONS, AND CLIENT'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

8) INDEMNIFICATION BY CLIENT

Client shall defend, indemnify and hold Supplier its Affiliates and each of their respective officers, directors, employees and agents (collectively, "Supplier Group") harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with Claims made or brought against Supplier or any member of Supplier Group, by a third party alleging that the Client Data created and stored by Client in the Service or otherwise provided to Supplier in connection with the Agreement

- i) violates any applicable law or regulation;
- ii) infringes any patent, copyright or other intellectual property right of a third party; provided, that Supplier (a) promptly gives written notice of the Claim to Client (provided that the obligations under this Section 7 shall not be reduced by the failure to give such notice except to the extent Client is materially prejudiced by such failure); (b) gives Client sole control of the defence and settlement of the Claim (provided that Client may not settle any Claim unless it unconditionally releases Supplier of all liability and obligation); and (c) provides to Client, at Client's cost, all reasonable assistance.

9) CONFIDENTIALITY

(a) As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in Order Forms), Client Data, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that:

- i. is or becomes generally known to the public without breach of any obligation owed to Disclosing Party;
- ii. was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party;
- iii. was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or
- iv. is received from a third party without breach of any obligation owed to Disclosing Party.

(b) Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Supplier represents and warrants that it will maintain the confidentiality of Client Data in accordance with all applicable laws and, except as required by applicable law, will not disclose Client Data to any third party for any purpose other than to provide the Service or Services to Client, provided, however, that Supplier may compile aggregate data related to Client's usage of the Service and may disclose such aggregate data to third parties to the extent that Client is not identified as the source of such data. Each

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party represents and warrants that it will collect, maintain and handle all personal data in compliance with all applicable data privacy and protection laws. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

- (c) If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.
- (d) Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request and to the extent practicable, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information. Notwithstanding the aforementioned, upon termination, the above mentioned shall apply with respect to all the data or information that was accessible to the Client during the term of this Agreement.
- (e) With effect from the Effective Date of this agreement, the Supplier shall be considered as a **Data Processor** in accordance with the definitions set out in the **Data Protection Act 2018**, or as superseded by any legislative amendments to the aforementioned Act. Unless stipulated otherwise in an Order Form, this will be the default position of the Supplier. For absolute clarity, the default position of the Client is that of **Data Controller** under the terms of **Data Protection Act 2018** unless otherwise stipulated in the Order Form.
- (f) The Supplier hereby undertakes that any personal data provided under this Agreement shall be dealt with in accordance with the instructions of the Client and at all times within the requirements of the EU General Data Protection Register (GDPR) and **UK Data Protection Act 2018** (as amended from time to time).

10) LIMITATION OF LIABILITY

- (a) EXCEPT (i) FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SET FORTH IN SECTIONS 7 AND 8 ABOVE; (ii) EITHER PARTY'S MATERIAL BREACH OF SECTION 9 ("CONFIDENTIALITY"); OR (iii) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (iv) CLIENTS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT OR UNDER ANY ORDER FORM, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES PAID OR PAYABLE TO SUPPLIER DURING TWELVE MONTHS PRIOR TO THE CLAIM.
- (b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (c) OTHER THAN AS SPECIFICALLY SET FORTH HEREIN, IN NO EVENT SHALL THE SUPPLIER BE LIABLE TO THE CLIENT OR ANY OTHER USER ON ACCOUNT OF ANY USE OR MISUSE OF THE SERVICE.

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- (d) ALL DISCLAIMERS, LIMITATIONS OF WARRANTIES AND DAMAGES, AND CONFIDENTIAL COMMITMENTS SET FORTH HEREIN OR OTHERWISE EXISTING AT LAW (1) ARE OF THE ESSENCE OF THE AGREEMENT OF THE PARTIES, AND (2) SURVIVE ANY TERMINATION, EXPIRATION OR RESCISSION OF THIS AGREEMENT.
- (e) THE SUPPLIER SHALL MAINTAIN APPROPRIATE INSURANCE POLICIES AND ACCEPTS LIABILITY: -
 - i FOR DEATH OR PERSONAL INJURY TO ANY PERSON TO THE EXTENT THAT THIS ARISES FROM THE NEGLIGENCE OF THE SUPPLIER OR ITS EMPLOYEES; and
 - ii UP TO A MAXIMUM LIMIT OF £1,000,000 PER PROVEN CLAIM FOR DAMAGE TO TANGIBLE PROPERTY OF THE CLIENT OR ITS EMPLOYEES TO THE EXTENT THAT THIS ARISES FROM THE NEGLIGENCE OF THE SUPPLIER OR ITS EMPLOYEES; and
 - iii THE SUPPLIER SHALL DETAIL SPECIFIC INSURANCE POLICIES HELD WITHIN THE ORDER FORM.

11) TERM AND TERMINATION

- (a) This Agreement commences on the Effective Date and continues for the **Initial Term** as designated in the Order Form and may be extended by reference to the extension conditions stipulated in the Order Form. The **Initial Term** applicable to each Order Form commences upon Client's and Supplier's execution of such Order Form and upon expiration of the **Initial Term** the Service term applicable to such Order Form. Unless otherwise stipulated in the Order Form the termination dates in the Order Forms shall be coterminous with this agreement.
- (b) The term of the contract will automatically be renewed for **Extension Terms** as detailed in the Order Form, unless either party notifies the other party in writing of its desire to terminate such Order Form at least 90 days prior to the expiration of the **Initial Term** or any **Extension Term**, as the case may be.
- (c) A party may terminate this Agreement for cause:
 - i upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains un-cured at the expiration of such period;
 - ii immediately upon written notice if the other party becomes the subject of involuntarily bankruptcy, receivership, liquidation or similar proceeding which are not dismissed within sixty (60) days thereafter;
 - iii immediately upon written notice if the other party becomes insolvent, ceases doing business as a going concern or unable to pay its debts in the ordinary course of its business;
 - iv immediately upon written notice if a voluntary petition under applicable liquidation, bankruptcy or other insolvency law is filed by the other party;
 - v if a receiver is appointed for the business affairs of the other party or the other party makes an assignment for the benefit of creditors or makes some other debt arrangement; or as otherwise provided herein. Upon any termination for cause by Client, Supplier shall refund Client any prepaid fees for the remainder of its service term after the date of termination.
- (d) In any event of termination for any reason the following shall apply:
 - i. Supplier shall be entitled to receive all fees that Supplier has earned for the Services performed prior to the termination date and approved expenses. Such payment shall be paid immediately upon the termination, subject to the submission of an invoice and in accordance with the terms set forth herein and in the applicable Order Form;

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- ii. Except as otherwise specified in an Order Form, if Client notifies Supplier of termination of the Agreement or an Order Form, Supplier shall stop work on such Order Form and refrain from incurring further costs;
 - iii. Client's license to use the Service shall cease and it shall cease all use of the Services
 - iv. Client shall return to Supplier all of its equipment and all documentation related to the Service in electronic form and printed copies thereof unless agreed in writing by both parties prior to the termination date, and
 - v. Any failure by the Client to return all documentation and/or any instances that documentation is found to have been shared with an alternative supplier and/or used to design a solution for the Client may constitute a breach of intellectual property rights law and the Supplier will have the right to pursue the Client for the aforementioned infringement. Liabilities associated with such an infringement shall not be limited.
- (e) The Supplier shall, following the full repayment of the unpaid fees and approved expenses:
- i. allow the Client, for a period of 60 days, to download all data or information that was accessible to the Client during the term of this Agreement. After the termination of the abovementioned 60 days period the Supplier shall no longer have access to data and other material it has stored in connection with any Service and The Supplier may delete it;
 - ii. expediently and cooperatively disengage the Services; and
 - iii. collaborate with the Client or any third party duly appointed by the Client to ensure service continuity.
- (f) The parties' rights and obligations with respect to the fees and payment terms, audit rights, title and protection, confidentiality, patent and copyright, indemnification, warranty disclaimers, limitation of liability, legal fees, and governing law provisions of this Agreement shall survive termination of this Agreement.
- (g) The Supplier shall destroy all Client data twelve (12) months after the Termination Date, unless obliged in law to hold records for a prolonged period of time. In such circumstances, the Client will be notified of the data held and the Supplier will securely store this data for the requisite period required in law or until the Client requests that data be transferred to another party and they sign to release the Supplier of these obligations. The storage of this data will be charged to the Client at cost + 15% and is payable annually in advance.
- i **Exit transition** shall be governed by the pre-agreed **Exit plan** and shall be chargeable to the Client in line with the existing price book. In the event that items are not covered by the price book, then they will be charged at cost + 15%.
 - ii This agreement, or any individual Order Form, may be terminated at any time by mutual agreement of both parties.
- (h) In the event of termination, the Client is prohibited from providing a competitor, or any organisation that the Supplier deems to be a competitor, with any documentation or processes that the Supplier deems, at their sole discretion, to be intellectual property of the Supplier. The Client must seek written confirmation from the Supplier before any material or **documentation** is provided to a third party.
- (i) In the event of early termination the Client agrees to fund any stranded cost or cost commitments made by the Supplier to a third party organisation for the delivery of the service. The Supplier agrees to transfer entitlement to the third party service upon receipt of payment by the Client insofar as this is legally possible under the terms of the agreements with the third party.

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- (j) The Client may cancel this Agreement if the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Client or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Agreement with the Client, or if the like acts shall have been done by any person employed by him acting on his behalf (whether with or without the knowledge of the Supplier) or if in relation to any Agreement with the Client or Supplier or any person employed by the Supplier or acting on the Suppliers behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

12) DISPUTE RESOLUTION PROCEDURE

In the event of any dispute or disagreement between the parties arising from or in connection with this Agreement, the parties will use reasonable endeavours to settle the matter in accordance with the dispute resolution procedure set out below: -

- (a) Any dispute which has not been resolved between the parties within 10 (ten) Business Days of the matter being raised by one to the attention of the other, may be escalated by either party to the Chief Executive of each party, by notice in writing.
- (b) If the dispute has not been resolved within 20 (twenty) Business Days of such notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR and the decision made shall be binding on both parties. To initiate the mediation a party must give notice in writing (the “ADR notice”) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 20 (twenty) Business Days after the date of the ADR notice.
- (c) Escalation of a dispute or the commencement of mediation will not prevent the parties commencing or continuing court proceedings.

In the event of mediation, the Supplier will automatically extend the service period up to final decision date and the Client shall after such final decision pay any amounts in relation to such extended service period which shall be assessed to be a valid service period by the arbitrator’s decision.

13) GENERAL

- (a) The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third-party beneficiaries to this Agreement.
- (b) Notices shall be in writing to the addresses indicated in this Agreement (or to such other address as each party may designate for itself from time to time by like notice) and delivered by nationally recognized overnight delivery service or certified or registered Mail, and are effective upon receipt or 48 hours following the date of the postmark, if sent by prepaid certified mail, return receipt requested.
- (c) No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Client and Supplier. To the extent of any conflict between this Agreement and any other schedule or

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attachment, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in an Order Form, a purchase order or similar ordering document (other than a statement of work or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

- (d) Neither party may issue press releases relating to this Agreement without the other party's prior written consent, however both parties are entitled to include the other's name and/or logo in Client or Supplier lists in accordance with the other's standard guidelines.
- (e) No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.
- (f) Neither party shall be liable to the other for any delay or failure to perform hereunder due to a Force Majeure Event.
- (g) Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms hereunder), without consent of the other party, to its successor in interest resulting from a merger, reorganization, or sale of all or substantially all assets. Any attempted assignment in breach of this section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- (h) Each party agrees to comply with all applicable laws and regulations with respect to the provision and use of the Service.
- (i) This Agreement shall be governed exclusively by the laws of the United Kingdom. The Parties agree that any action at law or in equity arising out of or relating to this Agreement or any Order Form shall be filed only in the United Kingdom, and the Parties hereby consent and submit to the personal jurisdiction of such courts for the purposes of any such action.
- (j) Client acknowledges and agree that Supplier is in the business of providing IT Managed Services and that Supplier may provide services to third parties, including competitors of the Client, which may be the same or like the services that are provided to the Client hereunder.
- (k) Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.
- (l) Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

TERMS AND CONDITIONS

(m) Except as otherwise expressly permitted in these Terms and Conditions, and in addition to other restrictions herein, the Client may not: -

- i. redistribute, encumber, sell, rent, lease, sub-license, copy or use the Service or otherwise transfer rights to the use of the Service to any third party, whether in whole or in part;
- ii. disclose Service features, errors or viruses to any third party without the Suppliers prior written consent in the form of a letter or e-mail from the Suppliers Managing Director; modify the Service without the Suppliers prior written consent in the form of a letter or e-mail from the Supplier's Managing Director.

14) VARIATION ORDERS

From time to time it may be necessary to amend an Order Form due to Service requirements changing. Under such circumstances the change will be presented to the Client that lays out the changes in the following areas:

- i. Scope of Service
- ii. Explanation of why the change is being undertaken
- iii. Integration with other aspects of Service, considering the Client, the Supplier and third parties. In the event that the Client manages the third parties then the Client is responsible for ensuring that the third party is in agreement with the change
- iv. Technical design (if applicable)
- v. Effective Date
- vi. Price to implement
- vii. Price delta to the service

Unless all of the aforementioned elements are included in a variation order (change note) then the change note may be considered invalid. This must be used in good faith between parties and not as a means of leveraging the other Party.

Variation Orders are an addendum to the Order Form to which they relate. They may, on occasion, bridge multiple services provided by the supplier and must be appropriately referenced as an addendum in each service provided.

For Variation Orders to be valid they must be signed by both parties to the agreement by an authorised signature to the organisation.