

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and phrases with capital letters used in this Agreement and not otherwise defined shall have the meanings set out in **Schedule 1 (Definitions)**, unless the context requires otherwise.
- 1.2 In this Agreement, headings and bold type are for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement, unless the context otherwise requires.
- 1.3 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders, and the term 'include(s)', 'including' or 'in particular' are deemed to have the words 'without limitation' following them.
- 1.4 In the case of conflict or ambiguity, the order of precedence for this Agreement and any documents attached to or referred to in it will be as follows, in descending order of importance:
 - 1.4.1 the Order or Voice Recording (as applicable);
 - 1.4.2 any Service specific terms and conditions contained in the Schedules and Appendices;
 - 1.4.3 the Supplier's Policies;
 - 1.4.4 these General Conditions;
 - 1.4.5 the relevant Tariffs for the Service (where applicable); and
 - 1.4.6 any further conditions relating to specific services (where referenced in the applicable Schedule)together, these documents set forth the agreement between the Customer and the Supplier. All terms and conditions are available at <https://chessict.co.uk/legal/>.
- 1.5 The Supplier agrees to fulfil the Order in accordance with its terms and conditions referred to above to the exclusion of all other terms and conditions, including any terms communicated to the Supplier at any time prior to, with or after acceptance of the Order. Where the Customer provides the Supplier with a Purchase Order in respect of the Services stated on the Order, the Customer will be deemed to have accepted the Order and the applicable terms and conditions of the Supplier to the exclusion of all others in the same way it would had the Customer signed the Order.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the date of this Agreement and shall continue in force for a minimum period of two (2) years from the Commencement Date or as otherwise specified in the applicable Order or Schedule ("Minimum Term") and thereafter shall be renewed automatically for successive periods of twelve (12) months (each a "Successive Term") unless terminated:
 - 2.1.1 by the Customer giving the Supplier not more than ninety (90) days and no less than thirty (30) days written notice, before the end of the Minimum Term or Successive Term; or
 - 2.1.2 in accordance with clause 8.
- 2.2 Certain Services are subject to longer notice periods for termination which are imposed by the Third-Party Supplier. Termination notice provisions for such Services will be as set out in the Order, the relevant **Schedule 3 (Services)** and/or **Schedule 4 (Support Service)**, and in respect of such Services clause 2.1 will be deemed to be amended accordingly.
- 2.3 Any Services used by the Customer during any notice period in accordance with clause 2.1 and clause 2.2 above will be chargeable, and any Third-Party Supplier costs (including

termination fees) incurred by the Supplier within this notice period in accordance with clause 8.7. Termination Charges may apply if the Service is terminated outside of the prescribed timescales set forth in clause 2.1 or clause 2.2 above.

- 2.4 Where certain Services are subject to Industry Regulations, Microenterprise or Small Enterprise Customers and/or Non-for-Profit Customers may have additional rights in respect of contract terms such as renewal periods, contract variations, termination and dispute resolution. These rights will be included within the terms of the relevant **Schedule 3 (Services)**, however further information on such rights can also be found at www.ofcom.org.uk.
- 2.5 Where the Customer has provided notice to terminate for convenience under clause 2.1.1 (or as otherwise expressly provided for in the Agreement), but fails to transfer the services away from the Supplier within 30 days from expiry of the Minimum Term or Successive Term, or provide written confirmation that services are to be ceased upon expiry of such notice, the Customer's conduct shall be deemed acceptance by the Customer of a continuing agreement with the Supplier for a Successive Term or subsequent Successive Term and constitute withdrawal of the notice of termination.

3 SERVICES

- 3.1 The Supplier shall with effect from the Commencement Date provide to the Customer the Services set out in the Order as further detailed in **Schedule 3 (Services)** and **Schedule 4 (Support Services)** for the duration of the Minimum Term and any Successive Term. For the avoidance of doubt, the use of the Services or payment of the Services is deemed as acceptance of this Agreement and the terms and conditions contained herein.
- 3.2 If any element of the Services is provided over MyPortal or any Third-Party Supplier portal or contact platform the following terms shall apply:
 - 3.2.1 the Customer acknowledges that neither the internet nor the server through which the Supplier and/or Third-Party Suppliers provide the internet enables elements of the Services are secure;
 - 3.2.2 the Supplier shall use reasonable endeavours to keep the internet enabled elements of the Services secure, however the Supplier cannot guarantee the security or privacy of the information available through such elements;
 - 3.2.3 any Software or Documentation provided by the Supplier in connection with the provision of the Services shall be subject to the provisions under clauses 3.12 to 3.15 and clause 11;
 - 3.2.4 the Supplier and/or a Third-Party Supplier shall be entitled to modify MyPortal or any other portal or contact platform element of the Services from time to time if the Supplier considers such modification and/or replacement is reasonably necessary for the continued provision of the Services.
- 3.3 Where applicable, the Supplier shall provide to the Customer the Support Services as set out in the Order and further detailed in **Schedule 4 (Support Services)**.
- 3.4 Where the Customer cancels part only of a Service, the Supplier reserves the right to charge the Customer for the Services so cancelled in accordance with clause 8.6 and to amend the Charges to the Customer for the remaining Services to the Supplier's standard published Tariffs.

GENERAL CONDITIONS

SUPPLIER OBLIGATIONS

- 3.5 The Supplier shall provide the Services in accordance with the terms of this Agreement and the Services will be performed:
- 3.5.1 with all due skill, care and diligence;
 - 3.5.2 in compliance with the Service Levels and Good Industry Practice; and
 - 3.5.3 so as to conform with all Applicable Law relating to the provision of the Services.
- 3.6 The Supplier will not be liable under this clause 3 or be required to remedy any problem arising from or caused by the Customer's use of the Services in a manner other than in accordance with this Agreement or as directed by the Supplier.
- 3.7 The Supplier does not warrant, guarantee or represent that the Services will be continuously available or free from errors and interruptions and the Supplier may be dependent upon Third-Party Suppliers when providing the Services.
- 3.8 The Supplier shall be entitled to restrict access to Services, if required, at the sole discretion and opinion of the Supplier, for the safety of the Customer Network, to maintain integrity of the Service, in particular to prevent serious malfunction of the Services, Equipment, Software and any stored information or data. Any restrictions shall be kept to a minimum and the Supplier shall use commercially reasonable endeavours to notify the Customer in advance of such restrictions.
- 3.9 Notwithstanding any other provisions of this Agreement but subject to clause 9.2, the Supplier shall not be liable to the Customer in contract, tort (including negligence) or otherwise for the actions of any Third-Party Supplier that affect or otherwise impact upon the provision of the Services.

CUSTOMER OBLIGATIONS

- 3.10 The Customer shall be responsible for the safe keeping and proper use of the Services and Equipment and the Customer undertakes in particular:
- 3.10.1 to use the Services in accordance with the terms of this Agreement, manufacturers recommendations and any reasonable operating instructions as may be notified to the Customer by the Supplier from time to time;
 - 3.10.2 to use the Services in accordance with the Supplier's Fair Use Policy and Acceptable Use Policy;
 - 3.10.3 to comply with Applicable Law and Good Industry Practice;
 - 3.10.4 not to allow any unauthorised connection, gateway or access to the Services and/or Equipment for any purpose other than that for which the Services and/or Equipment is provided;
 - 3.10.5 not to use the Services and to procure that none of its employees use the Services to transmit or receive any material which is defamatory, offensive or of an abusive or menacing character or otherwise is in breach of this Agreement;
 - 3.10.6 not to use the Services fraudulently or in connection with a criminal offence or in any way that is unlawful;
 - 3.10.7 provide such reasonable assistance to and not to impede the Supplier in the performance of its obligations under this Agreement; and
 - 3.10.8 at its own expense, obtain all relevant licences, permissions, authorisations, registrations and approvals required in connection with or necessary for the use of the Services from the appropriate legislative, regulatory or advisory body and shall provide copies of the same upon reasonable request.

SITE ACCESS, PREPARATION AND INSTALLATION

- 3.11 To enable the Supplier to comply with its obligations under this Agreement the Customer shall:
- 3.11.1 allow or procure permission for the Supplier during Normal Working Hours to have reasonable access to the Site and the connection points or, where network connection services form part of the Services, such location on the Site and/or any neighbouring property as the Supplier reasonably requires and the Customer shall at all times provide such reasonable assistance as the Supplier requests;
 - 3.11.2 prepare the Customer Network for installation of the Services, unless otherwise specified in the Order, by ensuring that it is fully configured in accordance with the Supplier's technical specifications;
 - 3.11.3 where required, provide a continuous mains electricity supply and connecting points;
 - 3.11.4 where at the request of the Customer, the Supplier carries out work outside of Normal Working Hours, the Customer shall be responsible for the Supplier's reasonable additional charges;
 - 3.11.5 at its own expense, obtain all permissions, licences, waivers, consents, registrations and approvals reasonably required and comply with all Applicable Law necessary for the provision of the Services and installation of the Equipment;
 - 3.11.6 take all reasonable steps to provide a suitable and safe working environment on the Site and notify the Supplier in writing of any health and safety rules and regulations and security requirements that apply to the Site;
 - 3.11.7 shall not knowingly or recklessly transmit any material which contains software viruses, or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware; and
 - 3.11.8 at its own expense, prepare and maintain during the term of this Agreement the Site, the Equipment, the environmental conditions of the Site and Equipment and as otherwise the Supplier may reasonably require.

THIRD-PARTY SOFTWARE

- 3.12 Where the Supplier makes available Third-Party Software for the Customer to use with the Services, the Customer shall be required to enter into an End User licence agreement in the form set out at any web-link or other location that the Supplier or the supplier of the Third-Party Software may notify the Customer, as amended or supplemented from time to time ("EULA").
- 3.13 By accepting the terms of the EULA, the Customer agrees to observe and comply with it for any and all use of the Services. If the Customer does not comply with the EULA, the Supplier and/or the supplier of the Third-Party Software may restrict or suspend the Services upon reasonable notice.
- 3.14 Where a EULA has not, for any reason, been entered into for any Third-Party Software made available to the Customer by the Supplier, the Customer acknowledges and agrees that they shall comply with the obligations set out in clause 11.6 to 11.9 inclusive in respect of any Third-Party Software.
- 3.15 All EULA and rights to use the Third-Party Software shall automatically terminate on termination of this Agreement in accordance with clause 11.6.2.

CUSTOMER NETWORK

GENERAL CONDITIONS

- 3.16 If the Supplier is unable to configure the Services due to the Customer Network not being ready to connect to the Services or the Supplier discovers that the pre-defined infrastructure and/or configuration agreed with the Customer is not accurate or is incorrect and additional works are required, then the Customer shall be liable to the Supplier for any and all costs and expenses (including Third-Party Supplier costs and expenses) incurred by the Supplier as a result of any Professional Services undertaken to reconfigure the Customer Network and/or any cancelled or rescheduled engineer visit.
- 3.17 Where applicable, or as specified in the Order, the provision of Services may be subject to a survey of the Site and/or engineering visit by the Supplier to ensure that the Site and/or the Customer Network is in accordance with the Supplier's technical specifications, the Customer shall:
- 3.17.1 allow the Supplier, its subcontractors and/or Third-Party Supplier to carry out a survey of the Site to assess suitability of the Customer Network for the provision of Services in accordance with **Schedule 3 (Services)**;
- 3.17.2 be responsible for the Supplier's reasonable additional charges where a survey of the Site is carried out, including the costs of the survey, provisioning, engineering and all other costs and expenses associated with any Professional Services, including but not limited to Third-Party Supplier costs and expenses associated with ensuring that the Site is suitable for the provision of the Services; and
- 3.17.3 at its own discretion, request the Supplier, its subcontractors and/or Third-Party Supplier to submit a proposal to reprogram and/or remove existing Customer Equipment, upgrade or reconfigure the Customer Network to ensure technical compatibility which is necessary for the provision of the Services.

For the avoidance of doubt, any additional works agreed between the Parties under this clause 3.17 shall be subject to a further charge.

SERVICE LIMITATIONS

- 3.18 The Customer acknowledges and agrees that there may be technical or geographical limitations which restrict or prevent installation and/or provision of the Services, some of which may not be identified until the Services have been installed, and the Supplier shall notify the Customer as soon as reasonably practicable of any limitations affecting the provision of the Services or inability to provide the Service, the performance of the Services and its effect on other services or Equipment.
- 3.19 The Customer acknowledges and accepts that:
- 3.19.1 the Supplier cannot guarantee and does not warrant that the Services will be free from interruptions or will be free from service faults;
- 3.19.2 there may be degradations of the quality of the Service due to matters beyond the reasonable control of the Supplier; and
- 3.19.3 the Supplier may change the technical specification of the Services or interrupt the Services to maintain the quality of the Services, for operational or health and safety reasons, or where there is an emergency.
- 3.20 The Supplier shall use reasonable endeavours to keep such restrictions and/or limitations to a minimum and shall use commercially reasonable endeavours to notify the Customer in advance of such restrictions and/or limitations, however the Supplier shall not be liable for any loss or damage incurred by

the Customer should the Services be interrupted or restricted from time to time.

SERVICE AMENDMENTS

- 3.21 Throughout the Term of the Agreement the Customer may, subject to notifying the Supplier as soon as reasonably practicable, request;
- 3.21.1 to move or transfer Services and/or Equipment to a new Site;
- 3.21.2 configuration changes; or
- 3.21.3 material change to the Service, including but not limited to the addition, upgrade and/or removal of a Service.
- 3.22 If a new installation, configuration changes or moving Site involves the visit of an engineer to facilitate it, the Customer shall be responsible for the costs incurred by the Supplier for the appointment of the engineer together with an administration fee in respect of additional works required to be undertaken by the Supplier to complete the necessary works. Such activity shall be chargeable as a MACD Service.
- 3.23 Where the Customer requests to transfer or move Services and/or Equipment to a new Site or a material change to the Services during the Minimum Term, the Customer and the Supplier will agree an additional Order, which will include a new Minimum Term and the Supplier may at its sole discretion apply early Termination Charges to the existing Services.

4 EQUIPMENT

CUSTOMER EQUIPMENT

- 4.1 The Customer shall be responsible for the provision, installation, configuration, monitoring, support and management of any Customer Equipment connected to or used in the provision of Services and the Customer hereby agrees that:
- 4.1.1 all Customer Equipment shall be connected at the applicable points and adequately protected against viruses and other breaches of security;
- 4.1.2 any Customer Equipment connected to or used for the Services shall at all times be connected and shall be technically compatible with the Service, and shall conform to Quality Standards and/or Applicable Law;
- 4.1.3 it shall maintain the Customer Equipment in good operating condition, subject to normal wear and tear and shall undertake repairs and preventative maintenance on the Customer Equipment in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Customer Equipment to its published specifications, unless otherwise included in **Schedule 4 (Support Services)** which are being provided by the Supplier; and
- 4.1.4 the Supplier shall not be under any obligation to connect or keep connected the Customer Equipment if it does not comply with clause 4.1.1 or if in the reasonable opinion of the Supplier such connection is likely to cause death, personal injury, damage or to impair the quality of the Services.
- 4.2 Clause 4.1 shall not apply where the Supplier provides Support Services but only to the extent that the obligations stated in clause 4.1 is within the scope of the Supplier's obligations as detailed in **Schedule 4 (Support Services)**.

HARDWARE

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- 4.3 The quantity, quality and description of and any specification for the Hardware shall be those as further described in the Order or Third-Party Suppliers and/or manufacturers technical and operational instructions as may be amended from time to time.
- 4.4 The Supplier shall use commercially reasonable endeavours to deliver the Hardware to the Customer on the date and to the address specified in the Order, if no date is specified, within a reasonable period from the date of this Agreement. However, time shall not be of essence in respect of any delivery of Hardware.
- 4.5 Risk in and liability for the Hardware shall pass to the Customer on delivery of each item thereof, however title to the Hardware shall not pass to the Customer until the Customer has paid the Supplier in full for the Hardware.
- 4.6 The Supplier shall warrant that upon delivery and for a period of twelve (12) months from the date of delivery **"Warranty Period"** the Hardware shall:
- 4.6.1 conform in all material respects with the description
 - 4.6.2 be free from material defects in design, material and workmanship; and
 - 4.6.3 be of satisfactory quality
- where additional warranties are provided by Third-Party Suppliers and/or manufacturers of the Hardware, the Supplier shall use reasonable endeavours to notify the Customer as soon as reasonably practicable.
- 4.7 The Customer shall be responsible for installing and supporting the Hardware, unless otherwise specified in the Order or where installation and support is provided by way of Professional Services or Support Services being provided by the Supplier and the Supplier shall not be liable for any loss or damage caused by or repairs required as a result of, installation or misuse of, or damage to any Hardware.
- 4.8 The Customer hereby agrees that it shall maintain the Hardware in good operating condition, subject to normal wear and tear and shall undertake repairs and preventative maintenance on the Hardware in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Hardware to its published specifications, unless otherwise included in **Schedule 4 (Support Services)** which are being provided by the Supplier.

RENTAL EQUIPMENT

- 4.9 The Customer hereby agrees:
- 4.9.1 the Rental Equipment shall at all times remain the property of the Supplier, its subcontractors and/or Third-Party Supplier and the Customer shall (if applicable) enter into a separate lease agreement with the Supplier or a Third-Party Supplier for the provision of Rental Equipment;
 - 4.9.2 only to use the Rental Equipment for the provision of the Services and at all times comply with the terms and conditions of the applicable rental agreement, together with the manufacturer's recommendations and all reasonable instructions from the Supplier in relation to its connection, use, monitoring and support;
 - 4.9.3 it shall maintain the Rental Equipment in good operating condition, subject to normal wear and tear and shall undertake repairs and preventative maintenance on the Rental Equipment in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Rental

Equipment to its published specifications, unless otherwise included in **Schedule 4 (Support Services)** which are being provided by the Supplier; and

- 4.9.4 on expiry or termination of this Agreement, the Customer, where expressly stated within the separate lease agreement, shall return at its own cost, all Rental Equipment, in accordance with the terms and conditions of the separate lease agreement and in good operating condition, subject to reasonable wear and tear to the Supplier, its subcontractors and/or Third-Party Supplier.

ANCILLARY EQUIPMENT

- 4.10 Where the Supplier has provided the Customer with the Ancillary Equipment necessary for the provision of the Service without charge, the Customer hereby agrees that:
- 4.10.1 the property in and ownership of Ancillary Equipment at all times remain the property of the Supplier, its subcontractors and/or Third-Party Supplier;
 - 4.10.2 risk in and liability of Ancillary Equipment passes to the Customer on delivery and during the Minimum Term and any Successive Term and the Customer must insure Ancillary Equipment in respect of all relevant risks from delivery;
 - 4.10.3 it shall maintain the Ancillary Equipment in good operating condition, subject to normal wear and tear and shall undertake repairs and preventative maintenance on the Ancillary Equipment in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Ancillary Equipment to its published specifications, unless otherwise included in **Schedule 4 (Support Services)** which are being provided by the Supplier;
 - 4.10.4 the Supplier has the right to assign or transfer any rights (including but not limited to security interest and/or encumbrance) to Ancillary Equipment without the Customer's consent;
 - 4.10.5 the Supplier reserves the right to modify, upgrade, replace or introduce new technologies and/or Ancillary Equipment during the term of this Agreement;
 - 4.10.6 it must not, nor permit any other person, to sell, let, transfer, dispose of, mortgage, charge, move, add to, modify, repair, service, tamper with or in any way interfere with Ancillary Equipment;
 - 4.10.7 it shall be liable to the Supplier for any loss or damage to Ancillary Equipment, except where the loss or damage is caused by Supplier's negligence, and shall indemnify the Supplier for costs in repairing or replacing Ancillary Equipment;
 - 4.10.8 the Supplier does not provide any warranty in respect of the Ancillary Equipment but, where possible, will provide the Customer with the benefit of any manufacturer's warranty;
 - 4.10.9 upon expiry or termination, the Supplier shall be entitled to:
 - (a) require the Customer (at Customer's cost and risk) immediately return Ancillary Equipment to the Supplier, its subcontractors or and/or Third-Party Supplier; or
 - (b) enter the Site to recover the Ancillary Equipment.
 - 4.11 Notwithstanding the expiry or earlier termination of this Agreement for any reason whatsoever, the

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Supplier shall have no obligation to remove the Ancillary Equipment from the Site. In such circumstances, the Customer shall be responsible for its disposal and any associated costs.

- 4.12 Where the Customer fails to (i) return Ancillary Equipment and/or (ii) facilitate collection of the Ancillary Equipment by the Supplier within 30 days of the request by the Supplier, the Customer will be in breach of the Agreement. In this case the Supplier shall be entitled to charge the Customer a sum equal to the value of the Ancillary Equipment at the date it should have been returned assuming it was kept in good condition and used properly as envisaged by this Agreement (“**Non-Return Charge**”). The Supplier shall be entitled to invoice the Non-Return Charge and will provide reasonable notice for payment.

HARDWARE FREE OF CHARGE

- 4.13 Where the Supplier provides the Customer with Hardware free of charge (as stated on the Order), the Supplier is providing the Hardware in consideration for the Customer fulfilling its contractual commitments as set out in the Agreement including but not limited to
- 4.13.1 paying all Charges due to the Supplier; and
- 4.13.2 achieving any minimum commitments such as Minimum Term, Minimum Spend or other commitment agreed between the Supplier and Customer.
- 4.14 Where the Customer fulfils its commitments as detailed at clause 4.12, then upon expiry or termination of the Agreement, title to the Hardware shall pass to the Customer.
- 4.15 In the event the Customer does not fulfil its commitments to the Supplier as detailed at clause 4.12, the Customer shall be required to return the Hardware to the Supplier upon expiry or termination of the Agreement. Should the Customer fail to return the Hardware within 30 days of a request by the Supplier, the Supplier shall be entitled to invoice the Customer a sum equal to the value of the Hardware as at the date it should have been returned which shall be payable in accordance with clause 6.
- 4.16 For the avoidance of doubt, paragraphs 4.2 to 4.8 apply in relation to Free of Charge Hardware in addition to paragraphs 4.13 to 4.15 above.

5 SECURITY AND PASSWORDS

- 5.1 The Customer acknowledges and agrees that it is the sole responsibility of the Customer to set up and maintain appropriate security measures for use of the Services and/or Equipment, including but not limited to:
- 5.1.1 protecting all passwords and mitigating exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting incidents to the Supplier;
- 5.1.2 maintaining security and confidentiality of authentication details for online service portals and other services;
- 5.1.3 employing security devices, including virus checking software;
- 5.1.4 adequate resilience to protect against loss or connectivity of Services, such as backing up all data, disaster recovery procedures and appropriate power supply; and

- 5.1.5 secure implementation and management of the Customer's systems including any Customer Equipment to identify and mitigate exposure to theft, fraud and/or deception.

- 5.2 Where the Customer is or becomes aware of any matters which it knows or ought reasonably to be expected to know constitutes a threat or breach of security, theft, fraud and/or deception (whether actual or attempted) in relation to the use of the Services and/or Equipment, the Customer will immediately advise the Supplier of such matters and where necessary shall report such incidents to the Police.
- 5.3 The Customer agrees to indemnify and keep the Supplier indemnified for any costs, losses or damages suffered or incurred by the Supplier arising out of or in connection with any claim made or threatened against the Supplier by a third party arising from any Fraudulent Activity due to the Customer's breach of this clause 5, including any costs or expenses reasonably incurred by the Supplier in investigating any such Fraudulent Activity.

6 CHARGES AND PAYMENT

- 6.1 Unless otherwise stated in **Schedule 3 (Services)**, **Schedule 4 (Support Services)** or the Order, Charges for the Services and/or Equipment will be charged in accordance with applicable Tariffs and the Supplier shall invoice the Customer electronically for the Charges payable under this Agreement, unless otherwise specified in writing by the Supplier.
- 6.2 The Customer acknowledges and agrees that where the Services (or any part thereof, including each Site) are being upgraded or replaced with a different Service, the Supplier shall reserve the right to Charge the Customer for both the existing Services, where they remain Connected and the new Services from the Commencement Date.
- 6.3 The Customer shall pay all Charges in accordance with the payment terms stated on the invoice, if not stated then, within thirty (30) days of the Commencement Date.
- 6.4 Unless otherwise stated all amounts due from the Customer to the Supplier under this Agreement shall be paid within seven (7) days of receipt of the Supplier's invoice.
- 6.5 Subject to clause 6.17, the Customer agrees to pay the Supplier in full, without any set-off, counterclaim or deduction, all sums due to the Supplier under this Agreement.
- 6.6 All amounts payable by the Customer under this Agreement are exclusive of value added tax, which the Customer shall be additionally liable to pay the Supplier.
- 6.7 The Customer shall be responsible for all Charges, unless otherwise stated in **Schedule 3 (Services)**, for the use of the Services, by either the Customer or any third party who has gained access to the Services, with or without the Customer's knowledge and consent or other Fraudulent Activity in connection with the use of the Services provided under this Agreement.
- 6.8 The Customer may request a paper invoice or an alternative payment method to direct debit, subject to payment of a reasonable administration fee. Invoices paid by credit card shall incur an additional charge of 1.8% of the payment value.
- 6.9 The Customer acknowledges and agrees that the Supplier can vary the amount, frequency and time of any direct debit to such level as the Supplier deems reasonably appropriate to:
- 6.9.1 take account of either an increase or decrease in the provision of the Services;
- 6.9.2 to reduce such indebtedness of the Customer to the Supplier, and/or;

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6.9.3 such other operational matter effecting the Service as the Supplier shall in its discretion deem reasonable.

The Supplier shall notify the Customer of such variation by giving not less than five (5) Working Days written notice, such notice to be given either on the invoice or on <https://chessict.co.uk> and continued use of the Service is deemed acceptance of the variation.

6.10 The Supplier may vary the Charges at any time by notifying the Customer by post, email, on the Chess Customer Portal, on the Customer's invoice or on www.chessict.co.uk and the revised Charges will apply to all Services provided thirty (30) days after the effective date of the notice.

6.11 The Supplier may invoice the Customer for any Services used under this Agreement at any time following the date on which the Services were used.

6.12 The Charges payable shall be calculated by reference to data recorded by Chess or its Third-Party Supplier and not by reference to any data recorded by the Customer. Chess shall be entitled to estimate the Charges where relevant data is not available to Chess in a timely manner and such estimated Charges will be reconciled on a subsequent invoice.

CREDIT LIMIT/SECURITY

6.13 The Supplier may carry out a credit check on the Customer at any time, prior to the Customer and Supplier entering into this Agreement, and throughout the term of this Agreement where there is:

6.13.1 a material adverse change in the financial position of the Customer; or

6.13.2 recent or subsequent non-payment or partial non-payment.

6.14 The Supplier may impose a Credit Limit on a Customer's account proportionate to the amount of Charges payable under this Agreement and/or require the Customer to pay a deposit or other form of security as a condition in providing the Services and/or Equipment.

6.15 The Supplier may amend any Credit Limit imposed without prior notice to the Customer and if the Customer exceeds such Credit Limit the Supplier may demand immediate payment of all unpaid Charges, whether invoiced or not. The Customer shall remain responsible for all Charges incurred including those exceeding the Credit Limit.

6.16 The Customer acknowledges and accepts that the Supplier may share payment history information with third party credit agencies and by entering into this Agreement hereby provides the authorisation necessary for the Supplier to use payment history information for this purpose.

DISPUTES

6.17 If the Customer in good faith disputes the Charges, the Customer shall give written notice to the Supplier of the amount in dispute and the reason for the dispute within seven (7) days from receipt of the invoice, prior to the Customer not paying any amount to the Supplier. Notwithstanding any dispute raised, the Customer must make payment of the undisputed part of the invoice in accordance with clause 6.3 and 6.4.

6.18 Any rectification or amendment of such disputed Charges already paid are limited to six (6) months prior to the written notice being received and remains at Supplier's sole discretion not to be unreasonably withheld.

6.19 Notice under clause 6.17 must be received prior to the Customer not paying any amounts due to the Supplier, failure of which shall be deemed a material breach of this Agreement

and clause 8.1.1 shall apply, together with clause 6.20 in respect of the entire balance.

REMEDY FOR NON-PAYMENT

6.20 Without limiting any other right or remedy of the Supplier:

6.20.1 if the Customer fails to make any payment due to the Supplier by the due date, the Supplier has the right to charge the Customer (i) an administration fee, late payment fee and/or statutory compensation at the prevailing rates and (ii) interest (both before and after judgement) on the overdue amount at the rate of 8% per annum above Barclays Bank base rate from time to time, until payment in full is made;

6.20.2 if a direct debit is dishonoured or cancelled, the Supplier has the right to charge the Customer a reasonable administration fee; and

6.20.3 Supplier may set off any amount owing to it or its Affiliates by the Customer against any amount payable by the Supplier to the Customer.

6.21 Time for payment is of the essence of this Agreement and a failure to pay on time, a returned or cancelled direct debit, and failure to pay all amounts not in dispute in accordance with clause 6.17 shall be a material breach and the Supplier may terminate this Agreement immediately.

7 SUSPENSION OF SERVICES

7.1 The Supplier may at its sole discretion, without prejudice to any other right under this Agreement and upon giving the Customer written notice electronically, suspend the provision of one or more of the Services under this Agreement, without compensation, until further notice in the following circumstances:

7.1.1 the Customer is in material breach of this Agreement;

7.1.2 the Supplier, its subcontractors and/or Third-Party Supplier in providing the Services to the Customer is obliged to comply with any Applicable Legislation, including but not limited to an order, instruction or request of government, regulatory authority, emergency services organisation or other competent authority;

7.1.3 the Customer exceeds the Credit Limit, fails to give any deposit or other form of security under clause 6.11, or in the reasonable opinion of the Supplier is deemed a debt risk; or

7.1.4 the Supplier has reasonable grounds to believe that the Customer is in breach of its obligations under clause 3 and clause 5.

7.2 Where the Supplier exercises its rights under clause 7.1 as a consequence of the breach, fault, act or omission of the Customer, the Charges will continue to be payable to the Supplier and the Customer shall pay to the Supplier all reasonable costs and expenses (including any Third-Party Supplier costs and expenses) incurred by the implementation of such suspension and recommencement of the provision of Services.

7.3 The Supplier reserves the right to suspend or withdraw the Services or any part thereof at any time for business, operational or technical reasons, where the Supplier is no longer able to provide the Service, including but not limited to:

7.3.1 the suspension, termination or expiry of the agreement in place with its Third-Party Supplier, which the Supplier requires to provide the Services under this Agreement to the Customer;

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- 7.3.2 the withdrawal or significant changes to the technology used to provide the Services; or
- 7.3.3 as the Charges to the Customer are not, in the reasonable opinion of the Supplier, sufficient to ensure that the provision of Services continue to be commercially viable for the Supplier;

and for which the Supplier is unable to find a replacement Third-Party Supplier having used its reasonable commercial endeavours, the Supplier may terminate this Agreement in accordance with clause 8.3.

8 TERMINATION

- 8.1 Either party shall be entitled to terminate this Agreement immediately by giving written notice to the other party if:
- 8.1.1 the other party commits a continuing or material breach of this Agreement and, if the breach is capable of remedy, fails to remedy such breach within fourteen (14) days after written notice giving full particulars of the breach and requiring it to be remedied;
- 8.1.2 an event under clause 9.6 prevents the performance of the whole or a substantial part of the other party's obligations in relation to that Service for a continuous period of ninety (90) days after the date on which it should have been performed;
- 8.1.3 an administrator takes possession, or a receiver is appointed over any of the property or assets of the other party, the other party makes a voluntary arrangement with its creditors or becomes subject to an administration order, the other party becomes bankrupt or goes into liquidation (except for the purposes of a solvent amalgamation, reconstruction or other reorganisation and where the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations of the other party under this Agreement); or
- 8.1.4 the other party ceases, or threatens to cease, to carry on business.
- 8.2 For the purposes of clause 8.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 8.3 The Supplier may terminate this Agreement immediately by giving notice in writing to the Customer if:
- 8.3.1 any licence, approval, agreement or any approval under which the Supplier has the right to provide the Services under this Agreement is revoked, amended or otherwise ceases to be valid;
- 8.3.2 where the Supplier has exercised its rights in accordance with clause 7.3 and has not been able to appoint a replacement Third-Party Supplier;
- 8.3.3 where the Supplier is instructed by any competent legal or regulatory authority to cease provision of the Services to the Supplier;
- 8.3.4 in the reasonable opinion of the Supplier, the Customer is suspected of involvement with fraud or attempted fraud in connection with the use of the Services and/or Equipment or this Agreement;
- 8.3.5 if the Customer is in breach of this Agreement in such a way that the Supplier may be in breach of any Applicable Law and/or in breach of any agreements with its third-party providers required to provide the Services;

8.3.6 where the Customer commits persistent non-material breaches (which in aggregate amount to a material breach);

8.3.7 the Customer fails to pay the Supplier, or the Supplier reasonably suspects that the Customer is unable to pay or is refusing to pay the Charges in accordance with this Agreement; and

8.3.8 a Change of Control takes place or is proposed.

8.4 A waiver by either party of a breach of a provision of this Agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

8.5 The Customer may terminate this Agreement by giving the Supplier not more than sixty (60) days and not less than one (1) months written notice, unless otherwise stated in the applicable Order or Schedule for convenience before the end of the Minimum Term.

8.6 Where the Customer moves the Services or part thereof away from the Supplier, the Supplier reserves the right (in addition to its rights under clause 8.7) to charge the Customer for the Services or part thereof in accordance with clause 8.7 and to amend Charges to the Customer for the remaining Services to its standard published Tariffs.

8.7 If this Agreement is terminated prior to the expiry of the Minimum Term or Successive Term other than where the Customer terminates under clause 8.1, and where the Supplier terminates under clauses 8.3.1 to 8.3.3, the Supplier may invoice the Customer the Termination Charges as further defined in **Schedule 3 (Service)**. The Customer agrees that the Termination Charges are a fair assessment of the losses and damage that the Supplier will suffer as a result of the termination.

CONSEQUENCES OF TERMINATION

8.8 In the event of termination by either party for any reason, the Supplier shall be entitled to recover from the Customer:

8.8.1 any outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

8.8.2 the Ancillary Equipment or the cost incurred effecting the return or collection in accordance with clause 4.9.11 and where the Customer fails to co-operate with such return or collection, payment of the Non-Return Charge;

8.8.3 any Hardware provided free of charge or payment of a sum equal to the value of the Hardware as at the date it should have been returned in accordance with clause 4.12;

8.8.4 all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier;

8.8.5 any committed costs or losses payable to a Third-Party Supplier incurred as a result of such termination, which the Supplier cannot reasonably mitigate;

continued use of the Service following termination will result in the Supplier levying its standard published Tariffs for all Services used, which shall be payable immediately upon demand by the Supplier.

8.9 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

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8.10 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

8.11 Until such time as the Customer has transferred to a new supplier, the Supplier shall be entitled to amend the Charges to its standard published Tariffs upon giving the Customer one (1) months written notice of any such change and shall be effective for the provision of Services after the date of termination or expiry.

9 LIABILITY

9.1 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

9.2 Nothing in this Agreement shall exclude or restrict in any way the liability of either party arising from or in connection with:

9.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or

9.2.2 fraud, Fraudulent Activity or fraudulent misrepresentation by it or its employees, agents or sub-contractors (as applicable); or

9.2.3 any other liability which cannot be excluded or limited by Applicable Law.

9.3 Subject to clause 9.2, neither party shall be liable to the other party in contract, tort or otherwise for any:

9.3.1 loss of business;

9.3.2 loss of revenue;

9.3.3 loss of profit;

9.3.4 loss of use or corruption of software, data or information;

9.3.5 loss of contracts;

9.3.6 loss of anticipated savings;

9.3.7 indirect, consequential or special loss or damage; or

9.3.8 loss arising from the loss or degradation of data

9.4 Each Party's liability in tort, contract or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited in aggregate to a sum equal to the Charges payable under this Agreement during the calendar year which the relevant claim arises or two million pounds (£2,000,000) whichever is the lower.

9.5 The Supplier's liability to pay or credit any Service Credits to the Customer will be counted and calculated for the purpose of the Supplier's maximum liability under clause 9.4 and shall be the Customer's sole remedy for the Supplier's failure to meet the Service Levels.

9.6 Neither party shall be liable for any failure or delay in performance of this Agreement which is caused by circumstances beyond the reasonable control of a party, including without limitation, any act of God, lightening, flood, exceptionally severe weather, subsidence, fire, explosion, war, civil disorder, acts of terrorism, nuclear, biological or chemical incident, national or local emergency, statutory obligation, failure or shortage of power supplies, trade dispute, any act or omission of any competent legal or regulatory authority, or supply of services by third parties.

9.7 In the event that any of the circumstances under clause 9.6 continues for a period of ninety (90) days, the other party will have the right to terminate in accordance with clause 8.1.2.

10 DATA PROTECTION

COMPLIANCE WITH DATA PROTECTION LEGISLATION

10.1 The parties acknowledge and agree that the Customer is the Controller, the Supplier is the Processor for the purposes of Processing Personal Data pursuant to this Agreement.

10.2 The Customer shall at all times comply with all Data Protection Legislation in connection with the Processing of Personal Data and shall ensure that all instructions given to by the Supplier in respect of Personal Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Legislation.

10.3 The Supplier shall process Personal Data in compliance with the obligations placed on it under Data Protection Legislation and the terms of this Agreement.

INSTRUCTIONS

10.4 The Supplier shall:

10.4.1 use Personal Data where needed for the purposes, duration and in accordance with the terms, of this Agreement, or where the Processing is in the Supplier's legitimate interest as further detailed within its Privacy Policy;

10.4.2 only process (and shall ensure Supplier personnel only process) the Personal Data as a Processor for the purposes described in this Agreement, in accordance with the Supplier's Privacy Policy or as otherwise provided by the Data Protection Legislation, in which case the Supplier will inform the Customer of that legal requirement before Processing (unless Applicable Law prohibits the Supplier from doing so on important grounds of public interest);

10.4.3 ensure that all Supplier personnel Processing Personal Data are bound by duties of confidentiality, and shall only Process the same as is necessary for the purposes of this Agreement;

TECHNICAL AND ORGANISATIONAL MEASURES

10.5 The Supplier shall, taking into account the state of technical development and the nature of Processing, implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing, destruction or accidental loss, alteration, or unauthorised disclosure of the Personal Data.

SUB - PROCESSING

10.6 The Supplier shall:

10.6.1 not permit, except where necessary by a Third-Party Supplier for the provision of Services, any Processing of Personal Data by any agent, sub-contractor or other third party (except its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Personal Data) except as stated in the Privacy Policy;

10.6.2 in the event the Customer consents to the use of a Sub-Processor pursuant to sub-clause 10.6.1 above, prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 10 that is enforceable by the Supplier and ensure that each Sub-Processor complies with all such obligations; and

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- 10.6.3 remain liable to the Customer under this Agreement for all the acts or omissions of each Sub-Processor as if they were its own;
- 10.6.4 ensure that all persons authorised by the Supplier or any Sub-Processor to process Personal Data are subject to a binding written contractual obligation to keep the Personal Data confidential.

CO-OPERATION

- 10.7 The Supplier shall (at the Customer's cost):
 - 10.7.1 assist the Customer with the Customer's obligations pursuant to Articles 32 and 36 of the GDPR (and any similar obligations under applicable Data Protection Legislation) taking into account the nature of the Processing and the information available to the Supplier; and
 - 10.7.2 taking into account the nature of the Processing, assist the Customer (by appropriate technical and organisational measures), in so far as is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the Data Protection Legislation in respect of any Personal Data.

NOTIFICATION OF BREACHES

- 10.8 The Supplier shall where required by law:
 - 10.8.1 notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Personal Data; and
 - 10.8.2 co-operate with the Customer and provide assistance as may be reasonably required in the investigation, remediation and mitigation of the Personal Data Breach.

AUDIT

- 10.9 The Supplier shall, in accordance with Data Protection Legislation, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 10 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one (1) audit request in any 12 month period under this clause 10.9).

CONSEQUENCES OF TERMINATION

- 10.10 Upon termination or expiry of this Agreement, at the Customers' cost and the Customers' option, the Supplier shall either return all the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires the Supplier to store such Protected Data. This clause 10.10 shall survive termination and expiry of the Agreement.

INTERNATIONAL TRANSFERS

- 10.11 The Supplier shall not transfer or otherwise process Personal Data outside the UK or EEA unless:
 - 10.11.1 the Supplier is processing Personal Data in a territory which is subject to a current finding by the UK under Data Protection Legislation that the territory provides adequate protection for the privacy of individuals; or

- 10.11.2 the Supplier transfers Personal Data under the UK's Standard Contractual Clauses or the ICO International Data Transfer Agreement approved for the transfer of Personal Data outside the EEA and the UK; or
- 10.11.3 the transfer otherwise complies with Data Protection Legislation.

11 INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property Rights in the Services and/or Documentation will be owned by the Supplier and its Affiliates, save to the extent that any of the same contain Intellectual Property Rights owned by a Third-Party Supplier, where the Supplier shall use all reasonable endeavours to procure the grant of a similar licence.
- 11.2 The Supplier hereby grants to the Customer a non-exclusive, non-transferable royalty free licence to use the Supplier's Intellectual Property Rights within the United Kingdom, subject to the Customers compliance with the terms of this Agreement, solely as necessary for the use of the Services and/or Documentation.
- 11.3 The Customer shall not at any time have the right under this Agreement to sub-license, assign or otherwise transfer the rights granted in clause 11.2.
- 11.4 If this Agreement is terminated for whatever reason, this licence will automatically terminate.
- 11.5 Nothing in this Agreement shall entitle the Customer to any rights in the Intellectual Property Rights of the Supplier, its Affiliates or third-party licensors, nor to any goodwill attached thereto and the Customer further acknowledges that it shall not acquire any rights in respect of the same.

SOFTWARE

- 11.6 Where the Supplier has provided Software and/or Documentation necessary for the Customer to make reasonable use of the Services and/or Equipment, the Customer acknowledges and agrees that:
 - 11.6.1 the ownership of and all Intellectual Property Rights in the Software and Documentation remains with the Supplier or its licensors;
 - 11.6.2 the Supplier grants a non-exclusive, non-transferable limited right to use the Software and/or Documentation to the Customer, solely as necessary for the provision of the Service in accordance with the terms of this Agreement. The Customer hereby agrees to comply with the provisions of any Third-Party Software licence as provided for in clauses 3.12 to 3.15 inclusive, which will automatically terminate on expiry or termination of this Agreement;
 - 11.6.3 it will not make any modifications to the Software or Documentation;
 - 11.6.4 it will not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software in whole or part except as permitted by law;
 - 11.6.5 it will not rent, lease, lend, make available or distribute the Software or Documentation, assign the benefit or subcontract the burden of this Agreement in whole or part or allow the Software to become the subject of any charge, lien or encumbrance;
 - 11.6.6 it shall not (and shall not permit any third party to) export the Software, Documentation or any hardware upon which the Software is embedded, out of the UK

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- without the prior written consent of the Supplier or any licensor;
- 11.6.7 it will not modify, obscure or remove any copyright or proprietary notices on the Software or Documentation;
- 11.6.8 it permits the Supplier or the Software licensor, upon reasonable notice to enter during Normal Working Hours any premises owned or controlled by the Customer in order to review the Customer's use of the Software and/or the Documentation and ensure that the Customer is using the same in accordance with this Agreement;
- 11.6.9 it shall not resell the Services or sub-licence any Software to any third party, without the Supplier's express consent. Such consent shall be at the Supplier's sole discretion and subject to the Customer entering into a separate licence;
- 11.6.10 the Supplier does not warrant that the Software or Documentation is error free and the Customer hereby agrees to make proper back-ups of all data, and;
- 11.6.11 it shall be responsible, unless otherwise included in **Schedule 4 (Support Services)** for applying patches, fixes or other temporary repairs and preventative maintenance to the Software to maintain the Software to the licensor's published specifications or as otherwise applicable to the provision of the Services.
- 11.7 The Customer will not, and will procure that none of its employees, subcontractors, agents or any third party authorised to use the Service and/or Software, infringe any Intellectual Property Rights owned by the Supplier, its Affiliates or third-party licensors.
- 11.8 The Customer shall, at all times during and after termination or expiry of this Agreement, indemnify and keep indemnified the Supplier, its Affiliates or third-party licensors against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Supplier, its Affiliate or third-party licensors arising from any claim made against the Supplier, its Affiliate or third-party licensors due to:
- 11.8.1 the Customer amending or in any way altering the Software or Documentation;
- 11.8.2 using it for a purpose not permitted by this Agreement, and;
- 11.8.3 for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the use of the Services.
- 11.9 If the Customer becomes aware of any breach of third party rights, as a consequence of the Customer's use or possession of the Software and/or the Documentation in accordance with the terms of the Agreement, the Customer agrees that it shall:
- 11.9.1 give the Supplier notice of any such claim within fourteen (14) days of the date on which the Customer is first given notice that the claim has been made;
- 11.9.2 allow the Supplier or its Software licensors to have sole conduct of the defence or settlement of any such claim, and;
- 11.9.3 provide the Supplier with all reasonable assistance in conducting the defence or settlement of any such claim and shall make no prejudicial statement or admission of liability.
- 11.10 For the avoidance of doubt, the Supplier shall have the right at our sole option and expense where there has been a breach as referred to in clause 11.9, to:
- 11.10.1 procure the right for the Customer to continue using the Software and/or the Documentation so that it such use is no longer infringing;
- 11.10.2 modify the Services, Software and/or the Documentation so that they become non-infringing without material diminution in their performance or specification so that the provision of the Services is not materially adversely affected.
- 11.11 Upon termination of this Agreement, the Customer's right to use the Software and/or Documentation shall cease and the Customer shall, at the Supplier's absolute discretion, promptly return, or if requested, destroy all copies of the Software and/or Documentation held by the Customer that is in a tangible form, including Software and/or Documentation stored on electronic or optical devices, whether in digital format or otherwise.
- ## 12 CONFIDENTIALITY
- 12.1 Neither party will disclose the other party's Confidential Information to any person, except such of its employees, officers, representatives or advisers who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, except as permitted by clause 12.2.
- 12.2 Nothing in clause 12.1 shall prevent the use or disclosure of any information which:
- 12.2.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 12;
- 12.2.2 is acquired from a third party who owes no obligation of confidence in respect of the information;
- 12.2.3 is or has been independently developed by the recipient without use of the other party's Confidential Information; or
- 12.2.4 is required by any court, governmental or regulatory authority, relevant stock exchange or where there is a legal duty or requirement to disclose such Confidential Information.
- 12.3 This clause 12 will bind the parties during the term of this Agreement and for a period of two (2) years following termination of this Agreement.
- ## 13 DISPUTE RESOLUTION
- 13.1 The parties shall use all reasonable endeavours to resolve any dispute or claim in accordance with the Customer Complaints Code and in good faith.
- 13.2 Where a dispute or claim arises between the parties that cannot be resolved between the parties as set forth in the Customer Complaints Code, either party may;
- 13.2.1 escalate the dispute to the Director's Office; and
- 13.2.2 if the dispute is not resolved under clause 13.2.1, either party may refer the dispute to an alternative dispute resolution method, which is agreed as appropriate.
- 13.3 Where the Customer is a Microenterprise or Small Enterprise Customer or a Non-for-Profit Customer, the Customer shall have the right to take unresolved complaints to an approved alternative dispute resolution agency eight (8) weeks after the complaint was made. CISAS is an independent approved

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alternative dispute resolution agency which provides this service free of charge.

14 NOTICES

14.1 Unless provided for elsewhere in this Agreement, all formal written notices or instructions given under this Agreement shall be in writing and shall be sent by:

14.1.1 the Supplier to the Customer by post to its principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 14 to the Supplier, and shall be deemed as served on the second day after the same has been posted, on the Customer's invoice, by email, on the Chess Customer Portal or on its website www.chessICT.co.uk ; or

14.1.2 the Customer to the Supplier by recorded delivery to its principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 14 to the Customer and shall be deemed as served at the time of delivery.

15 ASSIGNMENT AND SUBCONTRACTING

15.1 The Customer shall not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Supplier's prior written consent (such consent not to be unreasonably withheld or delayed).

15.2 The Supplier may at any time:

15.2.1 assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, and/or

15.2.2 provide the Services to the Customer directly and/or through its Affiliates, suppliers, subcontractors and agents,

without prior written notice of such dealing to the Customer, provided that the Supplier remains primarily liable for the acts and omissions of its Affiliates, suppliers, subcontractors and agents.

16 AMENDMENTS

16.1 Notwithstanding clause 6.10, the Supplier reserves the right at its sole discretion to change the Service, any features of the Service, Equipment, Charges and/or the terms and conditions of this Agreement by giving the Customer not less than thirty (30) days' notice, by post, email, by publishing a notice on the Customer's invoice, the Chess Customer Portal and/or on its website at <https://chessict.co.uk/legal/>.

17 THIRD PARTIES

17.1 Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

18 WAIVER

18.1 A waiver by either Party of a breach of a provision of this Agreement shall not be considered as a waiver of a subsequent breach of the same or another provision of this Agreement.

18.2 No failure, delay or omission by either party in exercising any right, power or remedy provided under this Agreement or by law shall operate as a waiver of that or any other right or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy.

18.3 The Customer must bring any legal proceedings against the Supplier in connection with this Agreement within twelve (12)

months from the date which the Customer first became aware or ought reasonably to have become aware of the facts giving rise to the liability or potential liability of the Supplier or within the statutory limitation period, whichever is the earlier.

19 SEVERANCE

19.1 If any provision of this Agreement (or part of any provision) is held by a court or other competent authority to be invalid or unenforceable in whole or in part, the validity and enforceability of any other provision of this Agreement and the remainder of the provision shall not be affected.

20 ENTIRE AGREEMENT

20.1 The terms and conditions of this Agreement, together with any terms set out in the Order and/or Schedules constitute the entire agreement between the parties, supersede any previous agreement or understanding and, subject to clause 6.10 and clause 16, may not be varied except in writing and signed by the Supplier.

20.2 All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

20.3 In entering into this Agreement, the Customer acknowledges and agrees that it does not rely on any representations which are not confirmed in the terms and conditions of this Agreement, but nothing in this Agreement affects the liability of either party for fraudulent representation.

21 GOVERNING LAW AND JURISDICTION

21.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 - DEFINITIONS

Acceptable Use Policy shall mean the Supplier's acceptable use policy available at <https://chessict.co.uk/legal/> as may be amended by the Supplier from time to time;

Affiliate means, in relation to either Party, a company which is a subsidiary or holding company of it, or any company which, is a subsidiary of any such holding company, "holding company" and "subsidiary" having the meanings ascribed to them in section 1159 Companies Act 2006;

Agreement means the agreement between the Customer and Supplier, which includes the terms and conditions of this Agreement, the Schedules (including any annex thereto), the Tariffs and the Order;

Ancillary Equipment means the equipment (including any Software) owned and licensed by the Supplier, its subcontractors or Third-Party Supplier and placed on the Customer's premises, which is required to access the Service;

Applicable Law means any legislation, authorisations, permissions, rules, regulations, codes of practice, orders and guidelines relating to the provision and/or use of the Services, including any directives or other requirements issued by any regulator from time to time;

Change of Control means in relation to the Customer where there is a material change in the exercise, control or holding of the voting shares (unless this is due to an internal group reorganisation);

Charges means the fees payable for the Services, Support Services and/or Equipment as set out in the Order, the applicable **Schedule 3 (Services)** and/or **Schedule 4 (Support Services)**, or as published on the Supplier's website at <https://chessict.co.uk/legal/>;

Confidential Information means any information of a confidential nature whether disclosed in writing or orally, is expressly stated to be confidential or can reasonably be expected to have been considered confidential, including without limitation, information in relation to a Party's affairs or business or method of carrying on business and the terms of this Agreement;

Commencement Date means either;

- (a) the date the Customer is notified by the Supplier that the Service (or any part of the Service, including each Site) will be ready to use, or;
- (b) where Service comprises of multiple Connections, a Connection will be Connected to the Network, or;
- (c) if earlier, the date upon which the Customer first uses the Service (or any part of the Service, including each Site) or Connection;

Connection means the connection of the Services (or any part thereof, including each Site) to the Network and "Connected" shall be construed accordingly;

Controller, Data Subject, Personal Data, Processor and Processing shall have the respective meanings given to them in applicable Data Protection Legislation from time to time (and related expressions, including process, processed, processing and processes shall be construed accordingly) and international organisation and Personal Data Breach shall have the respective meanings given to them in the GDPR;

Customer Complaints Code shall mean the Supplier's complaints code available at <https://chessict.co.uk/complaintscode.pdf> as may be amended from time to time;

Customer Equipment means the existing Customer premises equipment and any purchased Hardware (including Software) used by

the Customer in connection with the Service, other than the Ancillary Equipment and Rental Equipment;

Customer Network means the Customer's physical telecommunications and/or data network infrastructure, systems and Equipment located at the Site to which the Services will be connected;

Data Protection Legislation means, as binding on either party or the Services:

- (i) the UK General Data Protection Regulation ("GDPR"), the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (ii) any laws which implement such laws; and
- (iii) any laws or regulations which replace, extend, re-enact, consolidate or amend any of the foregoing.

Documentation means the documentation made available to the Customer by the Supplier or by its suppliers or licensors via MyPortal or such other website address notified to the Customer by the Supplier from time to time, which sets out a technical description of the Services together with manufacturers recommendations and instructions for use of the Services;

Equipment means the Customer Equipment, Hardware, Rental Equipment and the Ancillary Equipment and as listed in the Order, or where applicable further detailed in **Schedule 2 (Equipment)**;

Fair Use Policy shall mean the Supplier's fair use policy available at <https://chessict.co.uk/legal/> as may be amended by the Supplier from time to time;

Fraudulent Activity means any activity which constitutes a threat or breach of security, theft, fraud and/or deception (whether actual or attempted), including but not limited to use of the Services:

- (a) without the Customer's knowledge;
- (b) utilizing the Customer's authentication details; or
- (c) from an authenticated IP address.

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means physical equipment purchased or provided free of charge by the Customer from the Supplier;

Industry Regulations means rules and regulations set by relevant industry governing bodies which control and/or govern specific business activities (e.g. The Office of Communications "Ofcom");

Intellectual Property Rights means any copyright, patent, registered design, design rights, utility models, trademarks, trade secrets, know how, database rights, Confidential Information or any other registered or unregistered intellectual property rights of whatever nature subsisting anywhere in the world;

Minimum Term means the initial period of this Agreement as specified in the Order and if not specified shall be the period calculated in accordance with clause 2.1;

MACD Services means the provision of "moves, additions, changes and deletions" being engineering services within the scope of this Agreement which the Supplier is requested to carry out by the Customer in accordance with sub-clauses 3.17 to 3.19 inclusive;

MyPortal means the Customer's online access to the provision of the Services available through the Supplier's website at <https://chessict.co.uk>;

Network means a Third-Party Supplier telecommunications and/or data network providing connectivity to the Service;

Non-for-Profit Customer means as defined by the Ofcom General Conditions from time to time and currently means a customer of a communications provider which is a body for which no more than (10) individual work (whether as employees or otherwise but excluding

SCHEDULE 1 - DEFINITIONS

volunteers) and which, by virtue of its constitution or any enactment: (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and (b) is prohibited from directly or indirectly distributing among its members any part of its assets (otherwise than for charitable or public purposes);

Normal Working Hours means 09:00hrs to 17:30hrs on a Working Day;

Order means an order issued by the Supplier for the provision of Services, Hardware, Software and/or Ancillary Equipment under this Agreement;

Privacy Policy shall mean the Supplier's privacy policy available at <https://chessict.co.uk/legal/> as may be amended by the Supplier from time to time;

Professional Services means technical engineer support, including but not limited to project management, planning and design, network assessments, business requirement deliverables, configurations of user interfaces, number porting, phone deployment and training, as specified in the Order and further detailed in **Schedule 4.2 (Professional Services)**;

Quality Standards shall mean a series of documents that provide requirements, specifications, guidelines or characteristics that are used consistently to ensure that materials, products, processes and services meet good quality, such as ISO 9001 Quality Management Systems;

Rental Equipment means the Equipment (including any Software) identified in the Order or the applicable Schedule, leased to the Customer under a separate lease agreement for use by the Customer in connection with the Service, other than the Ancillary Equipment and Customer Equipment;

Schedule 3 (Services) means a series of sub-schedules (including any annex thereto) describing the relevant Services provided under this Agreement;

Schedule 4 (Support Services) means a series of sub-schedules (including any annex thereto) describing the relevant Support Services provided under this Agreement;

Service Credits means the amount payable (if any) by the Supplier to the Customer in accordance with the applicable Services as set forth in **Schedule 3 (Services)**;

Service Levels mean the standard of performance (if any) in relation to the Service in accordance with the applicable Services as set forth in **Schedule 3 (Services)**;

Services means the provision of services, together with any Ancillary Equipment, provided by Supplier to the Customer and as set forth in **Schedule 3 (Services)** and/or **Schedule 4 (Support Services)**;

Site(s) means (where applicable) a physical location as specified in the Order and where the Equipment shall be located and/or to which the Service will be provided;

Microenterprise or Small Enterprise Customer has the meaning as set out in the Ofcom General Conditions from time to time and currently means a customer of a communications provider acting in the course of a business which is carried out by that customer, and for which not more than (10) individual work (whether as employees or volunteers or otherwise), but who is not himself a communications provider;

Software means the software to be licensed to the Customer as specified in an Order or Schedule together with any imbedded software, which is necessary for the provision of Services and/or use of the Equipment and may also include Third-Party Software;

Supplier means Chess ICT Limited, whose registered office is at Bridgford House, Heyes Lane, Alderley Edge, Cheshire SK9 7JP, company registration number 04512773, unless otherwise specified on the Order as an Affiliate of Chess ICT Limited.

Supplier's Policies shall mean the Supplier's Acceptable Use Policy, Fair Use Policy, Privacy Policy and any other relevant policy applicable

to the provision of the Services, which are available at <https://chessict.co.uk/legal/> as may be amended by the Supplier from time to time;

Support Services means the provision of support services, provided by Supplier to the Customer as specified in the Order and further detailed in **Schedule 4 (Support Services)**;

Tariffs means the applicable tariffs as referred to in this Agreement and the Order for the provision of the Services available on the Supplier's website <https://chessict.co.uk/legal/> and as periodically updated from time to time or amended under clause 6.10 above;

Termination Charges means any compensatory charges which become due and payable by the Customer to the Supplier on termination of this Agreement before the end of the Minimum Term or Successive Term, in whole or in part, in accordance with clause 8.7 and **Schedule 3 (Services)**;

Third-Party Supplier means a third-party supplier, provider or supplier of services over which the Supplier may utilise for provision of the Services under this Agreement;

Third-Party Software means any Software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a 'click wrap' or 'shrink wrap' licence agreement;

Working Day means Normal Working Hours any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom.

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

1. APPLICATION

- 1.1 This Schedule, which contains a description of the Managed Support Services form part of the for the provision of Services together with the **General Conditions**.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the **General Conditions**.

2 SERVICE DESCRIPTION

- 2.1 The Supplier shall provide the Customer with a range of managed support and services, including incident management and proactive managed support of its Customer Network and End Users, comprising of the Standard Support Services and Managed Support Services as further detailed in **Part A** and **Part B** of this Schedule, as set forth in the Order.
- 2.2 The Supplier shall, where applicable, provide the Customer with the option, subject to an additional charge, to include one or more of the Additional Services, as further detailed in paragraph 6 below in **Part B** of this Schedule and set forth in the Order.
- 2.3 The Supplier shall, where applicable and set forth in the Order, provide to the Customer additional support and management features to provide a fully Managed Service, as further detailed in **Part C** of this Schedule.

INFRASTRUCTURE AUDIT

- 2.4 Where the Supplier deems it practicable to do so, it shall undertake an Audit of the Customer Network and/or the Supported Equipment to assess the Customer's requirements and to confirm the scope of Services and the associated charges prior to the Commencement Date.
- 2.5 Where an Audit under paragraph 2.4 has not been undertaken prior to the Commencement Date, the Charges shall be based solely on the information provided to the Supplier by the Customer and the Supplier shall undertake an Audit as soon as reasonably practicable thereafter.
- 2.6 If an Audit is undertaken after the Commencement Date and the Supplier discovers that the Customer's requirements are greater than those notified to the Supplier prior to the Commencement Date, or where the Supplier deems that the Customer Network and/or the Supported Equipment is in need of repair, the Supplier shall within thirty (30) days of an Audit notify the Customer of the revised scope and associated charges.
- 2.7 The Customer shall within five (5) Working Days of receipt of the revised scope and charges, notify the Supplier in writing of its:
- 2.7.1 acceptance of the revised scope and associated charges, which shall take immediate effect;
- 2.7.2 rejection of the revised scope and associated Charges, in which case the Customer shall continue to pay the original Charges and agrees and acknowledges that the Supplier shall continue to provide the Services in respect of the Customer's requirements as notified to the Supplier prior to the Commencement Date.
- 2.8 For the avoidance of doubt, if the Customer fails to notify the Supplier in accordance with paragraph 2.7 above, then the Customer shall be deemed to have accepted the revised scope and associated charges, which shall take immediate effect

upon expiry of the notice period set out in paragraph 2.7 above.

3. CUSTOMER OBLIGATIONS

- 3.1 On and from the Commencement Date and throughout the Term, the Customer shall:
- 3.1.1 pay the Charges as and when they fall due;
- 3.1.2 make available all such facilities as the Supplier and the Supplier's Personnel reasonably require in providing the Services, including but not limited to:
- (i) direct and remote access to the Customer Network and the Supported Equipment;
- (ii) full and free access to the Site during the applicable Supported Hours; and
- (iii) provide such reasonable assistance as the Supplier may request (e.g. providing sample output and other diagnostic information)
- 3.1.3 notify the Supplier immediately upon failure of any of the Customer Network and the Supported Equipment;
- 3.1.4 ensure that the Customer Network and the Supported Equipment is compliant with Applicable Law;
- 3.1.5 ensure that proper environmental conditions are maintained for the Customer Network and the Supported Equipment and shall maintain in good condition the accommodation of the Customer Network and the Supported Equipment, the cables and fittings associated therewith and the electricity supply thereto;
- 3.1.6 keep and operate the Customer Network and the Supported Equipment in a proper and prudent manner, in accordance with the manufacturer's operating instructions, and ensure that only competent trained employees (or persons under their supervision) are allowed to access the Customer Network and the Supported Equipment;
- 3.1.7 provide a secure, continuous power supply at the Site(s) for the operation of the Customer Network and Supported Equipment at such points with such connections at the Supplier specifies, and in order to mitigate any interruption to the Customer Network, its End Users and the Supported Equipment resulting from failure of the primary power supply, provide back-up power with sufficient capacity to conform to the standby requirements of the applicable standards;
- 3.1.8 ensure that all data held on the Customer Network and Supported Equipment is adequately backed up and keep full security copies of the Customer's programs, data bases and computer records and maintain a disaster recovery process;
- 3.1.9 be responsible for data cleaning, the integrity of any data provided to the Supplier and for all direct and indirect consequences of any errors in such data;
- 3.1.10 put in place and maintain up to date security measures to protect the Customer Network and Supported Equipment from viruses, harmful code, malicious damage and unauthorised direct and remote access to the Customer Network and Supported Equipment in accordance with Good Industry Practice;

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

- 3.1.11 save as set out in paragraph 3.1.12 below, not attempt to adjust, modify, configure, repair or maintain the Customer Network and/or Supported Equipment and shall not request, permit or authorise anyone other than the Supplier to carry out any adjustments, modifications, configurations, repairs or maintenance of the Customer Network and/or Supported Equipment;
 - 3.1.12 ensure that the external surfaces of the Supported Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the Supplier from time to time;
 - 3.1.13 procure and maintain all relevant Licence Agreements and other licences and consents and, always comply with the terms of the relevant Licence Agreements and other licences and consents and all Applicable Law; and
 - 3.1.14 inform the Supplier, in writing, of all health and safety rules and regulations and any other reasonable security requirements in place at the Customer Site(s), including any updates from time to time, and take all reasonable steps to protect the health and safety of the Supplier's Personnel whilst at the Customer's Site(s).
- 3.2 The Customer shall promptly implement recommendations by the Supplier in respect to remedial actions, whether prior to or following an Incident and confirms that it owns or will obtain valid Licence Agreements for all Software which are necessary to grant the Supplier access to and use of the Software for the purpose of fulfilling its obligations under this Schedule.
- 3.3 The Customer shall inform the Supplier of any changes to its applications, underlying Operating System and/or maintenance and support on services not provided by the Supplier, which may affect the validity of the data to be obtained by the Supplier during an Audit.
- 3.4 The Supplier reserves the right, subject to providing the Customer with reasonable notice, to undertake a further Audit of the Customer Network and Supported Equipment, on an annual basis during the Term of this Agreement.

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

4. PART A – STANDARD SUPPORT SERVICES

- 4.1 The Supplier shall provide the Customer with the following;
- 4.1.1 access to MyPortal;
 - 4.1.2 contact details for the Service Desk;
 - 4.1.3 provide Incident Management support in accordance with paragraphs 4.9 to 4.13 below;
 - 4.1.4 use reasonable endeavours to remedy an Incident and in accordance with the relevant Service Level using remote support; and
 - 4.1.5 subject to paragraphs 4.18 to 4.19, facilitate on behalf of the Customer, any claim made under a Third-Party Supplier warranty and/or support contract

hereinafter defined as “**Standard Support Services**”.

MYPORTAL

- 4.2 The Supplier’s service management system is essential to the provision of the Services and is designed to provide the Customer with important information about its account, systems and services.
- 4.3 My Portal enables the self-service management of the Services providing, status updates and responses to assist in the monitoring and reporting of the Customer Network and Supported Equipment.
- 4.4 The Supplier shall provide to the Customer’s designated administrator a unique login ID and password to access the Customer’s account in MyPortal. As a designated administrator, access to MyPortal can be enabled for others, including control of areas and level of access, where required.

SERVICE DESK

- 4.5 The Service Desk provides a single point of contact for all Customer enquiries or queries raised by MyPortal, email or telephone and the logging of all Incidents within the Supplier’s service management system.
- 4.6 The Service Desk will provide support to the Customer during the Standard Support Hours, or where applicable, the relevant Support Hours as set out in the Order, where not specified the Standard Support Hours shall apply.
- 4.7 The Customer must when contacting the Service Desk provide, where available, details of the following:
- 4.7.1 contract number;
 - 4.7.2 serial number or make and model;
 - 4.7.3 details of Supported Equipment;
 - 4.7.4 Customer contact information; and
 - 4.7.5 full description of the problem including Software being used and any error messages.

SUPPORT HOURS

- 4.8 From the Commencement Date, the Supplier shall provide the Service(s) in accordance with the Support Hours selected by the Customer, subject to an additional charge, to extend the Standard Support Hours and as set out in the Order, as further described below:

	DAYS	HOURS	BANK HOLIDAYS
Standard Support	Mon – Fri	08:00 to 18:00 Hrs	Excluded

Advanced Support	Mon – Fri	07:00 to 19:00 Hrs	Excluded
Premium Support	Mon – Sun	24 Hrs	Included

INCIDENT MANAGEMENT

- 4.9 Where the Customer notifies the Supplier of an Incident in relation to the Customer Network and/or Supported Equipment, the Supplier shall log, process and manage Incidents through its Service Desk.
- 4.10 The Service Desk undertakes the following:
- 4.10.1 single point of contact for all requests;
 - 4.10.2 escalation through 1st, 2nd and 3rd line support Engineer; and
 - 4.10.3 Incident Management through to Resolution where possible;
 - 4.10.4 remote Resolution of Incidents, where possible;
 - 4.10.5 on Site Resolution of Incidents, where applicable; and
 - 4.10.6 Third Party Supplier escalation, where applicable.
- in accordance with the Incident Management process and applicable Service Levels, provided always that the Incident is not within any of the Excluded Events or is outside of the scope of the Services as further detailed in paragraph 5.14 below.
- 4.11 All Incident resolutions are verified with the Customer and/or its End Users in accordance with ITIL Methodology, before the Incident is deemed Resolved.
- 4.12 For all Incidents in relation to:
- 4.12.1 Excluded Events;
 - 4.12.2 additional items not listed as Supported Equipment; or
 - 4.12.3 where support is deemed outside of the scope of the Services
- the Supplier shall use reasonable endeavours to respond to such Incidents, and the Customer shall be liable for time spent, costs and expenses incurred by the Supplier which shall be charged in accordance with its standard hourly rates and Tariffs.
- 4.13 Incidents referred to in paragraph 4.12 above shall not be counted or considered in relation to the performance of any Service Levels.

REMOTE SUPPORT

- 4.14 The Service Desk shall provide remote assistance using a non-invasive web and LAN based remote access toolkit reducing the requirement for local, desk side visits.
- 4.15 The Service Desk will aim to resolve Incidents at first line, where this is not possible, the Incident will be escalated to the appropriate 2nd / 3rd line subject matter expert in accordance with the Incident Management process.
- 4.16 Except where the Supplier deems necessary, attendance at Site of an Engineer is not included within the Standard Support Services.
- 4.17 If the Customer requests an Engineer to attend Site, this shall be subject to the Standard Schedule of Rates applicable at the time and will be charged separately on a time and materials basis.

THIRD PARTY WARRANTY SUPPORT

- 4.18 Where the Supported Equipment has a valid Third-Party Supplier warranty and/or support contract in place, the

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

Supplier shall facilitate on behalf of the Customer any claim made under the Third-Party Supplier warranty and/or support contract, in respect of an Incident identified and logged in accordance with paragraph 4.10 above.

- 4.19 Where the Supported Equipment does not have a valid Third-Party Supplier warranty or support contract, or the Third Party Supplier no longer provides appropriate support, the Supplier shall use reasonable endeavours to respond to an Incident, and the Customer shall be liable for time spent, costs and expenses incurred by the Supplier which shall be charged in accordance with its standard hourly rates and Tariffs.

ESCALATION SUPPORT

- 4.20 The Supplier may at the option of the Customer, provide Escalation Support only to compliment the Customer's current support environment, which may include one of the following options:

4.20.1 1st Line Escalation Support – the Service Desk will perform the basic triage, identification and primary actions for any Incident and then escalate to either the Customer or a Third Party Supplier, or;

4.20.2 3rd Line Escalation Support – the Customer shall remain responsible for all 1st line and 2nd line support and shall, where applicable escalate Incidents to the Supplier via its Service Desk to assist in the escalation of 3rd line support to a Third Party Supplier;

as further detailed in **Annex 3**.

INCIDENT BASED BILLING MODEL

- 4.21 Where stated in the Order, Standard Support will be provided by way of an Incident Based Billing Model whereby the Supplier will charge the Customer Incident Based Charges which are fixed Charges per Incident as per its Standard Schedule of Rates.
- 4.22 The Incident Based Billing Model is only available where the Supplier is providing System Monitoring and Patch Management Services as detailed in **Part B**. The Recurring Charges for these Services will be billed annually in advance per Device pursuant to paragraph 10.2.2 in addition to the Incident Based Charges.

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

5. PART B – MANAGED SUPPORT SERVICES

5.1 Where stated in the Order, the Supplier shall provide the Customer with the Standard Support Services as set out in **Part A** of this Schedule, together with one or more of the following options:

- 5.1.1 System Monitoring and Alerts;
- 5.1.2 Network Infrastructure Support; or
- 5.1.3 End User Support

as further detailed in **Part B** of this Schedule and hereinafter defined as “**Managed Support Services**”.

SYSTEM MONITORING AND ALERTS

5.2 The Supplier shall provide real-time monitoring with intelligent alerting, subject to the mandatory installation of the Supplier’s preferred RMM Platform.

5.3 The Supported Equipment will be installed with RMM Agents to monitor and help manage the current state at any time, with data from the Customer Network being securely passed between the Supported Equipment and the RMM Platform and displayed for the Supplier to action or escalate as appropriate.

5.4 Each RMM Agent installed is responsible for monitoring the following details on the Customer Network and Supported Equipment as standard, as well as collecting performance data on the following metrics for reporting purposes:

- 5.4.1 Disc Space Performance – capacity, capacity forecasting, bottlenecking, disc read/write access;
- 5.4.2 CPU Performance – usage, forecasted usage, CPU leak, breach of threshold;
- 5.4.3 Memory Performance – breach of threshold, usage and forecasting, bottlenecking, paging and swap;
- 5.4.4 Event Log Management – application, security and system, and;
- 5.4.5 Operating System Monitoring – current status

5.5 The Supplier shall agree with the Customer criticality and business impact for the Customer Network and Supported Equipment, which will be stored within the RMM Platform for reference by the Service Desk, with required actions and escalation procedures based upon the agreed criteria also agreed and stored on the RMM Platform for reference.

5.6 Any changes or additions to the monitoring requirements shall be made by agreement between the Supplier and the Customer in accordance with the Change control process. A monitoring schedule change shall be undertaken within five (5) Working Days of the request.

NETWORK INFRASTRUCTURE SUPPORT

5.7 The Supplier shall, where applicable, provide the Customer with full Incident lifecycle support of the Customer Network and Supported Equipment which is used by the Customer to support its normal business operations, including one or more of the following options:

- 5.7.1 Hardware – maintain and deliver support in accordance with the Service Levels on applicable Supported Equipment, subject to a valid Third-Party Supplier warranty or support contract, and;
- 5.7.2 Operating System Software – maintain and deliver support in accordance with the Service Levels on applicable Operating System Software, subject to a valid License Agreement

where appropriate and as set out in the Order. The services set out in this paragraph 5.7 may be supplied alongside End User Support or as standalone service.

5.8 Support is focused on the active monitoring and care of the Customer Network and Supported Equipment on which the Customer and the End Users rely upon, through the RMM Platform (subject to the installation of RMM Agents) and is predominately delivered with remote support sessions by use of remote access tools, which enable the Supplier to monitor and alert on various metrics.

5.9 The Operating System Software currently supported by the Supplier are as follows:

- 5.9.1 Microsoft server operating systems within standard or extended support as further defined at <https://support.microsoft.com/en-us/lifecycle/selectindex>;
- 5.9.2 any systems deployed via the Supplier and with a valid Third-Party Supplier warranty;
- 5.9.3 any of the Supplier’s products and services purchased by the Customer and as set out in the Order.

END USER SUPPORT

5.10 The Supplier shall, where applicable, provide support to the Customer focused on the End Users and their Devices which is tailored to provide resolutions to everyday Incidents and to enable End Users to access their Applications and Operating System including the following options:

- 5.10.1 Devices – maintain and deliver support in accordance with the Service Levels on applicable Devices, subject to a valid Third-Party Supplier warranty or support contract, and;
- 5.10.2 Application Software – provide troubleshooting support to identify accessibility or functional problems, with appropriate escalation, in accordance with the Service Levels on applicable Applications, subject to a valid Licence Agreement

where appropriate and as set out in the Order. The services set out in this paragraph 5.10 may be supplied alongside Network Infrastructure Support, Additional Services or as standalone service.

5.11 Support is focused on the active monitoring and care of the Devices on which the Customer and the End Users rely upon, through the RMM Platform (subject to the installation of RMM Agents) and is predominately delivered with remote support sessions by use of remote access tools, which enable the Supplier to monitor and alert on various metrics.

5.12 The Operating System supported by the Supplier as follows:

- 5.12.1 Microsoft windows desktop operating system within standard or extended support as further defined at <https://support.microsoft.com/en-us/lifecycle/selectindex>;
- 5.12.2 Apple Mac OS, current supported version from the Third Party Supplier;
- 5.12.3 other Operating Systems as further detailed in the relevant Order.

5.13 The following Applications (where installed upon the local Device and not streamed or cloud based), can be supported by the Supplier as follows:

- 5.13.1 Microsoft Office applications as stated in **Schedule 3.6(A) On-Line Services**;

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

- 5.13.2 any applications deployed via the Supplier and with a valid Third-Party Supplier warranty;
- 5.13.3 any of the Supplier's products and services purchased by the Customer and as set out in the Order;
- 5.13.4 any other applications may be supported on a reasonable endeavours' basis, subject to an additional charge.

EXCLUSIONS

- 5.14 The Managed Support Services and the associated Charges shall not include the following:
 - 5.14.1 systems engineering services, programming, reprogramming or reconfiguration of the Supported Equipment and operating procedures to provide improved or modified services or facilities;
 - 5.14.2 development, modification or correction of any Software used in connection with the Supported Equipment or provision of the Managed Support Services;
 - 5.14.3 recovery or reconstructions of any data or programs lost or corrupted as a result of any defect in the Supported Equipment;
 - 5.14.4 electrical work external to the Supported Equipment or the support of accessories, ancillary items, including but not limited to, cabinets, infrastructure cabling or other devices not identified in the applicable Order;
 - 5.14.5 any Supported Equipment which the Supplier reasonably considers to be end of life or Beyond Repair or for which consumables, spare parts, drivers or updates are not readily available or require essential maintenance not included in the Services;
 - 5.14.6 defects in design, manufacture, installation or performance of Supported Equipment (except in relation to defects in installation, where the Supplier has carried out installation of the Supported Equipment);
 - 5.14.7 supply of consumables and/or spare parts unless otherwise agreed in writing by the Supplier;
 - 5.14.8 maintenance or repair of any power supply (including without limitation, any battery back-up and/or uninterrupted power supply) to the Supported Equipment; and
 - 5.14.9 all Change Requests as further detailed in paragraph 9 below.
- 5.15 If the Supplier does agree to undertake any of the services set out in paragraph 5.14 above, the Supplier shall charge the Customer for providing such services, which shall be calculated in accordance with the Supplier's Standard Schedule of Rates, applicable at the time, together with any replacement parts and other costs and expenses reasonably incurred. Such services shall not be counted or considered in relation to performance of any Service Levels.

6. ADDITIONAL SERVICES

- 6.1 Where stated on the Order, the Supplier shall provide the Customer with one or more of the following:
 - 6.1.1 Anti-Virus Support
 - 6.1.2 Patch Management
 - 6.1.3 Back Up Management

6.1.4 Technical Attendance

6.1.5 Professional Services

hereinafter defined as **"Additional Services"**.

ANTI-VIRUS SUPPORT

- 6.2 The Supplier shall, where specified in the Order, provide monitoring and support services for all Incidents relating to anti-virus Software provided by the Supplier or where prior agreement with the Supplier, the Customer's legacy anti-virus software, as set out in the applicable Order.
- 6.3 The Supplier requires remote monitoring and access to the anti-virus software installed on the Customer Network and Supported Equipment through its RMM Platform to ensure that the anti-virus software definition files are updated on a regular basis as required.
- 6.4 The Supplier shall maintain and deliver support in accordance with paragraph 6.2 above and the Service Levels, with Incidents being managed through the Service Desk with anti-virus software configured to automatically update definition files. Updates to the anti-virus software is excluded and all updates shall be subject to a Change Request.

PATCH MANAGEMENT

- 6.5 The Supplier offers an automated patch management service as well as scoped patch management services. The automated patch management service is outlined at paragraphs 6.6 to 6.13 below. Where the Supplier provides a scoped patch management service, that service shall be detailed in the Order where it forms part of the Managed Support Service. Ad-hoc bespoke patch management services may also be provided upon request and will be provided as Professional Services and shall be subject to an agreed SOW and **Schedule 4.2 (Professional Services)**.
- 6.6 The Supplier's remote patch management service provides comprehensive proactive service across the Customer Network and Supported Equipment using its RMM Platform, which provides real time monitoring of Customer Network and Supported Equipment to ensure that applicable patches/updates are being used.
- 6.7 Hardware drivers, firmware and associated management Software updates are outside of the scope of patch management services. The Supplier recommends that updates are applied to keep the Customer Network within Third Party Supplier's supported versions, and the Customer can request the Supplier to undertake an infrastructure health check at any time during the Term, subject to an additional charge to the Customer.
- 6.8 Before any patches or updates can be applied to servers, they must have the relevant recovery procedures in place, including but not limited to a full or adequate back up of the data and Operating System. Once the server is updated, testing procedures will be carried out to validate the system and applications have not been adversely affected.
- 6.9 The Customer is responsible for ensuring the backup is in place and viable with respect to automatic patching and will report any failures to the Supplier so the effected patching schedules can be adjusted.
- 6.10 Emergency patches are subject to a Change Request and changes will be raised as and when either the Customer or the Supplier is made aware of the specific patch.
- 6.11 In the event of an error, the Supplier shall remove or roll back the patch identified as causing the problem and snapshots may be used by the Supplier to facilitate the removal but only in instances deemed necessary by the Supplier.
- 6.12 The Supplier shall support the following Operating Systems

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

and Third-Party Supplier Software patching:

- 6.12.1 Microsoft Windows
- 6.12.2 Microsoft Office
- 6.12.3 7-Zip
- 6.12.4 Adobe AIR
- 6.12.5 Adobe Acrobat Reader DC
- 6.12.6 Adobe Flash Player
- 6.12.7 Adobe Shockwave Player
- 6.12.8 Google Chrome
- 6.12.9 Java Runtime Environment
- 6.12.10 Mozilla Firefox
- 6.12.11 Skype for Business

within the current standard or extended support for patching of the applicable Third-Party Supplier. The Supplier reserves the right to amend this paragraph 6.12 and shall only support these products unless otherwise set forth on the relevant Order.

BACK UP SERVICES

- 6.13 The Supplier shall provide remote management, using its RMM Platform, of the Customer's on-premises, or cloud-based solution, identifying issues, remote resolution or escalation to the Customer if an Engineer is required to attend Site.
- 6.14 The Supplier shall configure the RMM Platform to monitor the Customer's back-up solution and alert the Service Desk to any anomalies, so they can be investigated and resolved as follows:
 - 6.14.1 respond to alerts generated (e.g. failed, incomplete, non-started or crashed tasks)
 - 6.14.2 resolve, remotely alert (if possible) and restart the task to maintain the integrity of the data;
 - 6.14.3 escalate to the Customer, via email, if the back-up task fails and cannot be resolved remotely;
 - 6.14.4 modify tasks to remove file types that should not be selected (e.g. temp files, MDF, LDF etc);
 - 6.14.5 produce a data protection report showing the back-ups over the month;
 - 6.14.6 provide a report from the RMM Platform detailing the number of alerts generated.
- 6.15 The back-up report can be generated monthly and is available to the Customer in MyPortal, which consists of a single document which contains a list of back-up tasks, per server, detailing success or failure.
- 6.16 Where the Supplier has agreed, to transfer, duplicate or reinstall data or information as part of the Services, these services shall be subject to a separate Order,
- 6.17 The Supplier shall not be liable for any loss or corruption of data, as the Customer agrees that it is its own responsibility to back up all data and material on relevant storage media on a regular basis in accordance with Good Industry Practice, and it is a condition of the Supplier providing the Services that the Customer complies with the terms of this paragraph 6.17.
- 6.18 The Customer's sole and exclusive remedy for any loss or corruption of data shall be for the Supplier to use reasonable endeavours to restore such data or information to the most recent, uncorrupted copy of such data which the Supplier holds.

TECHNICAL ATTENDANCE

- 6.19 The Customer shall also have the option to purchase in advance, Technical Attendance Day(s), where the Supplier will provide remote support or attendance to Site of an Engineer

to carry out Elective Changes as an addition to the Managed Support Services.

- 6.20 For the avoidance of doubt, Technical Attendance Days are not applicable for Customised Changes, which will be carried out, at the Customer's request, as Professional Services in accordance with paragraph 6.21 below.

HEALTH CHECKS

- 6.21 Where the Supplier provides a health check service as part of the Managed Support Services, the health check service shall be detailed in the Order. Ad-hoc health check services can also be provided upon request and will be provided as Professional Services and shall be subject to an agreed SOW and **Schedule 4.2 (Professional Services)**.

PROFESSIONAL SERVICES

- 6.22 Where the Supplier has agreed to provide Professional Services, these services shall be subject to a separate Order and will be specified and carried out in accordance with **Schedule 4.2 (Professional Services)**.

7. PART C – MANAGED SERVICES

- 7.1 Where stated on the Order, the Supplier shall provide the Customer with the Standard Support Services, Managed Support Services and Additional Services as set out in **Part A** and **Part B** above, together with the following:

7.1.1 Configuration and Optimisation; and

7.1.2 Strategic Planning

hereinafter defined as “**Managed Services**”.

- 7.2 For the avoidance of doubt, the Managed Services shall only be provided where the Customer has taken all services as set out in **Part A** and **Part B** of this Schedule, without exception and has given the Supplier exclusive access to the Customer Network and Supported Equipment.

CONFIGURATION AND OPTIMISATION

- 7.3 The Supplier shall provide six (6) Technical Attendance Days per Contract Year, which is included in the Recurring Charges for the Managed Services, which may be utilised for one or more of the following tasks:

7.3.1 Configuration Management – reactive and proactive configuration and technical support of the Customer Network and Supported Equipment to ensure that the Customer Network and/or the Cloud Services works efficiently; and

7.3.2 Efficiency Optimisation – monitoring of the Customer’s use of the Customer Network and/or the Cloud Services to identify efficiencies that could be made to the Customer Network and/or Cloud Services.

STRATEGIC PLANNING

- 7.4 The Supplier shall provide two (2) Working Days per Contract Year of Professional Services, which is included in the Recurring Charges for the Managed Services, which may be used for technical advice and design development, in accordance with **Schedule 4.2 (Professional Services)**.
- 7.5 Any further technical support services required outside of those included in the Recurring Charges for the Managed Services as set out above, shall be subject to the advance purchase of Technical Attendance Days in accordance with paragraphs 6.19 to 6.20 above and/or **Schedule 4.2 (Professional Services)**.

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

8. UPGRADES AND ENHANCEMENTS

- 8.1 Subject to paragraph 8.4, where Upgrades are made to the Customer Network and/or Supported Equipment by the Supplier, they shall be deemed to be included in the definition of Supported Equipment and shall become subject to the terms of this Schedule for the remainder of the Term from the date of the Upgrade.
- 8.2 The Charges shall be increased to such sum as the Supplier shall require taking account of the Upgrade referred to in paragraph 8.1 above.
- 8.3 The Customer shall notify the Supplier in writing forthwith of any Upgrade made to the Customer Network and/or Supported Equipment or Software which is installed by any Third-Party Supplier.
- 8.4 Upgrades made to the Customer Network and/or Supported Equipment shall be included within the definition of Supported Equipment only after a report prepared by the Engineer of the Supplier on the effect of the Upgrade on the Customer Network and/or Supported Equipment has been produced and the Supplier has confirmed it is satisfied with the report.
- 8.5 The Supplier reserves the right, at its complete discretion, to exclude any such third-party Upgrades from becoming subject to the terms of this Schedule.
- 8.6 The inspection and report referred to in paragraph 8.4 shall be charged to the Customer at the rate specified by the Supplier from time to time and shall be paid in addition to the Charges referred to in paragraph 10 below.

9. CHANGE MANAGEMENT

- 9.1 The Supplier upon request by the Customer can undertake Change Requests and will manage all changes covered under the Services from scoping to release and testing in accordance with the Change Request process.
- 9.2 The Customer shall submit a Change Request through the Service Desk, subject to Additional Charges as follows:
- 9.2.1 Elective Changes on a fixed cost basis for common changes that do not require a detailed scope of works; and
- 9.2.2 Customised Changes are specific to the Customer and are scoped on a case-by-case basis with the Customer being charged on a time and materials basis.
- 9.3 All Elective Changes are completed on a time/materials basis and charged to the Customer as per the Supplier's Standard Schedule of Rates.
- 9.4 The Customer may also purchase, at the Commencement Date, a specific quantity of Technical Attendance Days which will be set out in the applicable Order.
- 9.5 For the avoidance of doubt, Customised Changes under paragraph 9.2.2 above shall be outside of the scope and terms of this Schedule and subject to a separate Order, will be specified and carried out in accordance with **Schedule 4.2 (Professional Services)**.

10. CHARGES AND PAYMENT

- 10.1 The Supplier shall invoice the Customer for the Charges for the Services as set out in paragraph 10.2 in the amounts specified in the applicable Order or as varied under the terms of this Agreement.
- 10.2 Unless stated otherwise in the applicable Order, the Supplier shall invoice the Customer as follows:

- 10.2.1 Installation Charges, on or after the Commencement Date;
- 10.2.2 Recurring Charges annually in advance;
- 10.2.3 Usage Charges monthly in arrears;
- 10.2.4 Licence Fees annually in advance;
- 10.2.5 Additional Charges monthly in arrears;
- 10.2.6 any charges for Hardware, Devices and/or Software at the time of delivery of such Hardware, Devices and/or Software;
- 10.2.7 all reasonable and properly incurred expenses, including but not limited to travel and other out-of-pocket expenses;
- 10.2.8 reasonable time spent by the Engineer(s) in travelling, where the distance travelled is further than 35 miles from the Chess Office closest to the geographical location of the Customer Site; and
- 10.2.9 any Termination Charges upon termination of the Services.

hereinafter defined as **"Charges"**.

- 10.3 The Customer acknowledges and agrees that Licence Agreements can take up to sixty (60) days to be processed with the Third-Party Supplier.
- 10.4 Additional Charges shall be invoiced in arrears at the end of the month in which the Additional Charges are incurred, together with replacement parts and any other expenses and costs reasonably incurred.
- 10.5 The Supplier shall have the right to invoice Additional Charges to the Customer for any expenses and costs reasonably incurred under paragraphs 5.14 and 11, or where the Supplier upon investigation an Incident is caused by something which the Supplier is not responsible for under this Schedule.
- 10.6 Unless otherwise stated in the Order, the Customer shall pay, by direct debit, each undisputed invoice (or such undisputed part thereof) within seven (7) days of the date of the invoice without any set-off or deduction.
- 10.7 Where the Customer in good faith disputes the Charges, the Customer shall notify the Supplier in writing within seven (7) days of the date of the invoice, in accordance with clause 6.17 of the **General Conditions**.
- 10.8 All Charges payable under this Schedule are exclusive of VAT which shall be paid by the Customer at the rate and in the manner prescribed by law.
- 10.9 If in the opinion of the Supplier, the Services are required by the Customer as a result of any misuse or neglect of, or accident to the Customer Network and/or Supported Equipment or due to the Customer not adhering to paragraph 3, or other third-party hardware problems, the Supplier reserves the right to charge Additional Charges in relation to the provision of the Services.
- 10.10 The Supplier reserves the right to charge the Customer an Additional Charge for an Incident where Supported Equipment has been moved to a new location and not installed by the Supplier, if the Supplier reasonably determined that the problem was caused by transportation or re-installation of the Supported Equipment.

11. EXCLUSIONS

- 11.1 Notwithstanding any other provision of this Schedule, the Supplier shall not be obliged to perform or provide the Services in one or more of the following circumstances:

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

- 11.1.1 the Customer is in breach of its obligations under paragraph 3 above or is in material breach of this Agreement;
- 11.1.2 negligence of the Customer or its End Users or the improper use by the Customer or its End Users of the Customer Network and/or Supported Equipment;
- 11.1.3 damage to the Supported Equipment resulting from accident, transportation or relocation, neglect, misuse or causes other than ordinary use (including but not limited to, failure to observe any instructions supplied by the manufacturer regarding the operation and maintenance) of the Supported Equipment;
- 11.1.4 damage caused by consumable items such as recording materials, machine stationary, ribbons, media, laser drum, toner, printer cartridges, paper trays, platen knobs, fuses, batteries, print heads, cathode ray tubes, switch boxes, power adaptor blocks or any other item considered to be a consumable by the Supplier;
- 11.1.5 damage caused by the use of non-manufacturer approved consumables, where this results in abnormal wear or damage to the Supported Equipment;
- 11.1.6 damage caused by virus attacks or failure due to any unauthorised third party Software;
- 11.1.7 alteration, modification, repair or maintenance of the Customer Network and/or Supported Equipment by any person other than the Supplier or its approved Third Party Supplier;
- 11.1.8 the Supported Equipment is removed from Site without the prior written approval of the Supplier;
- 11.1.9 insufficient or improper access to the Customer Network and/or Supported Equipment;
- 11.1.10 failure or fluctuations in electrical power supply and/or unsatisfactory environmental conditions which do not meet manufacturers' requirements;
- 11.1.11 where the Customer's own insurance covers the accidental or malicious damage to the Supported Equipment and costs relating to the Supported Equipment; and
- 11.1.12 damage to the Customer Network and/or Supported Equipment due to accidental damage, theft, vandalism or a Force Majeure Event.
- 11.2 Where the Supplier is called out in connection with any of the matters referred to in paragraph 11.1 or where the Supplier determines that the call was not warranted, the Supplier has the right to charge the Customer for time spent, any expenses and costs reasonably incurred as Additional Charges.
- 11.3 For the avoidance of doubt, the excluded events listed in paragraph 11.1 above shall not be counted or considered in relation to the performance of any Service Levels.
- 12. LIABILITY**
- 12.1 Subject to paragraph 12.2 below, the Supplier shall not be liable for any loss or damage sustained or incurred by the Customer, its End Users, or any third party (including without limitation any loss or use of the Supported Equipment or loss or corruption of the Customer's programs or data) resulting from any breakdown or fault in the Supported Equipment or inherent or pre-existing defects in the Supported Equipment, unless such a breakdown or fault is caused by the negligence or wilful misconduct of the Supplier, its employees, agents or sub-contractors or to the extent that such loss or damage arises from any unreasonable delay by the Supplier in providing the Services and then only to the extent not otherwise excluded by this Schedule.
- 12.2 The Customer shall indemnify the Supplier and keep the Supplier fully and effectively indemnified in full on demand against all costs, charges, damages and or any losses sustained or incurred by it arising directly or indirectly from the Customer's failure to perform or delay in the performance of its obligations under this Schedule or from any fraudulent or negligent act or omission or wilful misconduct of the Customer, its End Users, employees, agents or subcontractors.
- 12.3 Subject to clause 9 of the **General Conditions** (except clause 9.4 which is superseded by this paragraph 12.3), the maximum liability of the Supplier, in tort, contract or otherwise arising out of or in connection with the performance of its obligations under this Schedule shall be limited in aggregate to a sum equal to:
- 12.3.1 the Charges payable under this Schedule during the calendar year in which the relevant claim arises; or
- 12.3.2 Five Hundred Thousand Pounds (£500,000) whichever is the higher.
- 12.4 The Supplier shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up to date security copies of the computer programs and data it uses in accordance with Good Industry Practice.
- 12.5 The Supplier shall not be liable for failing to perform the Services or delaying the Services hereunder by reasons of Force Majeure. If a Force Majeure event prevents the Supplier from providing the Services for more than three (3) months, the Supplier shall, without limiting its other rights and remedies, have the right to terminate this Schedule in relation to any affected Services immediately by giving written notice to the Customer.
- 13. TERMINATION**
- 13.1 This paragraph 13 is supplemental to clauses 2 and 8 of the **General Conditions**. If this paragraph 13 conflicts with clauses 2 and 8 of the **General Conditions**, this paragraph shall take precedence.
- 13.2 The Customer may terminate the Services generally or in relation to any part of the Services at any time by giving the Supplier not less than ninety (90) days' written notice prior to the end of the Minimum Term or Successive Term, such notice to take effect at the end of the Minimum Term or Successive Term.
- 13.3 The termination of one or more element of the Services shall not affect the continuing in effect of the remaining Services, including but not limited to the Supplier's obligation to perform the remaining Services and the Customer's obligation to perform its responsibilities and make payment of the Charges in accordance with this Schedule.
- 13.4 In the event of termination pursuant to paragraph 8.1.1 of the **General Conditions**, the Customer shall not be entitled to reimbursement of any aspect of the Charges as shall have been paid in advance and relate to the Services.
- 14. GENERAL**
- 14.1 The Customer shall not, without the prior written consent of the Supplier, at any time during the Term of this Schedule nor for a period of six (6) months following its expiry or

SCHEDULE 4.4 – MANAGED SUPPORT SERVICES

termination for any reason, solicit or entice away from the Supplier or employ any person who is, or has been, engaged as an employee of the Supplier at any time during such period. Any consent given by the Supplier shall be subject to the Customer paying the Supplier a sum equivalent to one hundred per cent (100%) of the then current annual remuneration of the Supplier's employee.

- 14.2 The Customer acknowledges and agrees that TUPE shall not apply to the Services and prior to the Commencement Date, all considerations, claims, actions or otherwise have been provided to the Supplier in relation to the effects, actions or claims of any TUPE and that the Customer indemnifies in full and holds the Supplier harmless of any such actions or claims of TUPE against the Supplier for business transfers or service provision changes for the Term of this Schedule and for a period of six (6) months following expiry or termination of this Schedule.

15. NON-SOLICITATION

- 15.1 The Customer shall not, without the prior written consent of the Supplier, at any time during the provision of the Service or for a period of twelve (12) months following expiry of the Agreement, solicit or entice away from the Supplier or employ any person who is, or has been, engaged as an employee of the Supplier at any time during such period. Any consent given by the Supplier shall be subject to the Customer paying the Supplier a sum equivalent to one hundred per cent (100%) of the then current remuneration of the Supplier's employee for a 6-month period.

ANNEX 1 - DEFINITIONS

Additional Charges means the additional charges incurred in accordance with terms of this Schedule together with any replacement parts and any other costs or expenses reasonably incurred if not expressly included in the relevant Order;

Additional Services shall have the meaning given to it in paragraph 6;

Applicable Law means any legislation, authorisations, permissions, rules and regulations, codes of practice, orders and guidelines relating to the provision of the Infrastructure Support Services, including any directives or other requirements issued by any regulator from time to time;

Applications means a computer software package that performs a specific function directly for and End User or, in some cases, for another application, also referred to as an application program or application software;

Audit means the infrastructure audit as further detailed in paragraphs 2.4 to 2.8;

Beyond Repair means where the Customer Network and/or Supported Equipment is at the end of its normal, useful working life, for which parts are no longer reasonably, commercially available or which is beyond economical repair;

Change Request means a formal request to change, modify or alter the Services provided by the Supplier to the Customer as set forth in the applicable Order;

Charges has the meaning given to it in paragraph 10.2;

Contract Year means a period of twelve (12) months from the Commencement Date and/or any subsequent anniversary of the Commencement Date;

Customer Equipment means any equipment including purchased Hardware, Devices and Software used by the Customer in connection with the provision of the Services;

Customer Network means the Customer's physical network and server infrastructure, including (if any) servers and switches to routers and firewalls, plus business systems software;

Customised Changes has the meaning given to it in paragraph 9.2.2;

Device means any mobile handset, laptop, tablet, computer or other input item or handheld equipment, including all peripherals, excluding SIM cards and Applications, which are in the scope of the Services, as set out in the Order;

Elective Changes has the meaning given to it in paragraph 9.2.1;

Equipment means the Supported Equipment and any additions and changes as shall from time to time be agreed in writing between the parties;

End User means anyone permitted by the Customer to use or access the Customer Network and/or the Customer Equipment;

Engineer means the Supplier's Personnel who is responsible for carrying out technical engineering duties either remotely or at a Customer's Site;

Escalation Support shall have the meaning given to it in paragraph 4.20 and Annex 3;

Excluded Events shall have the meaning given to it in paragraph 11;

Force Majeure shall have the meaning given to it in Clause 9.6 of the General Conditions;

General Conditions means the Supplier's standard terms and conditions for the provision of the Services as set forth on the Supplier's website at www.chessict.co.uk/legal and which form part of this Agreement;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means any and all computer and computer related hardware, including but not limited to, computers, servers, network switches, UPS units, firewalls and connect peripherals;

Incident means any event which is not part of the standard operation of the Customer Network and/or Supported Equipment and which causes or may cause an unplanned interruption to, or a reduction in the quality of the performance of the Customer Network and/or Supported Equipment;

Incident Based Charges means the Charges payable pursuant to the Supplier's Standard Schedule of Rates where the Customer raises an Incident under Standard Support Incident Billing Model;

Incident Management is the process as further defined in paragraphs 4.9 to 4.12 that the Supplier follows to manage an Incident as set out in Annex 2;

ITIL Methodology means a set of IT Service Management practices that focuses on aligning IT services with the needs of business;

Installation Charges means the charges in relation to the installation of the Services or any Customer Equipment as applicable;

Licence Agreement(s) means any licence or terms under which the Customer is permitted to use third party Software;

Licence Fees means the charges associated with the use of the Software, by the purchase of a Licence Agreement;

Managed Services means the Services to be provided by the Supplier as further defined in **Part C** of this Schedule;

Managed Support Services means the services to be provided by the Supplier as further defined in **Part B** of this Schedule;

MyPortal means the Customer's online access to the provision of the Services available through the Supplier's website at <https://chessict.co.uk>;

Operating System means system software that manages computer hardware, software resources, and provides common services for computer programs;

Order means an order, contract, or agreement issued by the Supplier to the Customer for the provision of the Services;

Professional Services means engineering support as further detailed in **Schedule 4.2 (Professional Services)**;

RMM Agent means a lightweight software program installed on a device that supports agent installation, which gathers up-to-date information about the device's health and status;

RMM Platform means the Supplier's preferred real time, cloud-based system wide monitoring and management tool;

Recurring Charges means the Charges for the Services, or applicable part of the Services, including but not limited to the Standard Support Services, Managed Support Services and/or Managed Services, which are invoiced repeatedly in every billing period as set out in the Order;

Resolved or Resolution means where an Incident has been resolved and the standard operation of the Customer Network and/or Supported Equipment as is expected in accordance with manufacturers' recommendations;

Services means the Standard Support Services, Managed Support Services, Additional Services and Managed Services, where applicable;

Service Desk means the Supplier's service desk that the Customer is able to contact to report an Incident;

Service Levels means the relevant Service Level targets as further defined in Annex 2 of this Schedule;

Site(s) means the Customer's premises at which the Customer Network and/or Supported Equipment is located as specified in the relevant Order;

Software means the software licensed to the Customer as specified in the Order, together with any embedded software which is necessary for provision of the Services and/or operation of the Supported

ANNEX 1 - DEFINITIONS

Equipment, which may be provided by a Third-Party Supplier and governed by a separate Licence Agreement;

Standard Support Hours means 08:00hrs to 18:00hrs on a Working Day;

Standard Support Services means the standard support service as further defined in **Part A** of this Schedule;

Supplier's Personnel means all employees, agents, consultants, sub-contractors and other representatives of the Supplier who are involved, or proposed to be involved, in the provision of the Services;

Support Hours means the various options for support hours available to the Customer as further detailed in paragraph 4.8 in **Part A** of this Schedule and as set out in the applicable Order;

Supported Equipment means the list of Customer Equipment, Hardware and/or Software as further detailed in the relevant Order in respect of which the Supplier shall provide the Services in accordance with this Schedule;

Technical Attendance Days means where an Engineer attends Site to carry out Elective Changes during Standard Support Hours, excluding consumables and spare parts;

Term means the Minimum Term as set forth in the applicable Order, together with any Successive Term;

Termination Charges mean any compensatory charges payable by the Customer to the Supplier upon termination of this Agreement, in whole or part, in accordance with clause 8.7 of the **General Conditions** and as set out in the applicable Order, or if not specified then an amount equal to 100% of the Recurring Charges for all remaining months for the Minimum Term, together with any waived one-off charges or Installation Charges;

Third Party Supplier means a third-party supplier, provider or supplier of services of which:

- (a) the Customer may utilise for the provision of Equipment and the Customer's Network, and;
- (b) the Supplier may utilise for provision of the Services;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Upgrades means an enhancement to features or capabilities or performance of the Customer Network and/or Supported Equipment, such as the addition of memory, co-processors, optional cards, manufacturers modifications or any other changes to the technical specifications or configuration of the Customer Network and/or Supported Equipment;

Usage Charges means the Charges for the Services which are calculated by reference to the Customer's use of the services such as Incident Based Charges where the Customer has contracted for the Standard Support Incident Based Billing Model.

ANNEX 2 – INCIDENT MANAGEMENT PROCESS

1. INCIDENT IDENTIFICATION

- 1.1 The Customer shall report an Incident to the Service Desk as soon as reasonably practicable by telephone, email or MyPortal and tickets generated automatically, via the web/email function or manually inputted by the Supplier will be processed by the Service Desk.
- 1.2 The Supplier shall identify and classify if a request submitted to the Service Desk is either (i) an Incident or (ii) a Change Request as defined in Annex 1. All Incidents shall be managed in accordance with this Annex 2.
- 1.3 Where a request is deemed by the Supplier to be a Change request, the provisions of paragraph 9 of this Schedule 4.4 shall apply and unless otherwise stated in the Order, all Change Requests shall be chargeable to the Customer.

2. PRIORITY CLASSIFICATION

- 2.1 The Supplier shall allocate a unique reference number to each Incident and shall prioritise the Incident as follows:

PRIORITY LEVEL	DESCRIPTION
Priority 1 Critical	A critical service is non-operational, impacting the Customer's business, multiple End Users or multiple Sites; or severe functional error or degradation of Service(s) affecting production, demanding immediate attention. Business Risk is High
Priority 2 Major	The Customer's business is experiencing failure or performance degradation that impairs the operation of a critical business Service, although a work around may exist; or Application functionality is lost; or significant number of End Users or major Site is affected. Business Risk is Medium
Priority 3 Minor	The Customer is experiencing a problem that causes moderate business impact. The impact is limited to an End User or a small Site; or incident has moderate, not widespread impact; or involves partial loss with minimal impact which is non-critical in nature. Business Risk is Low
Priority 6 Change Request	Standard service request (e.g. End User guidance and Change Requests); or updating documentation. Business Risk is Minor localised

- 2.2 Subject to paragraph 1.3 above, the Supplier shall use reasonable endeavours to deliver a Change Request as soon as reasonably practicable during Standard Support Hours.

3. INVESTIGATION AND DIAGNOSIS

- 3.1 Tickets are generated automatically, via the web/email function or manually inputted and processed by the Service Desk through MyPortal. Initial triage of the ticket, fact verification including incident prioritisation and classification are completed.

- 3.2 The Service Desk will then attempt to resolve or direct the Incident to the appropriate service team, which may include Escalation Support.

- 3.3 Escalation Support will include the transfer of a ticket to the appropriate service team, be that 2nd/3rd line field-based Engineers for on Site attendance, billing or provisioning or another internal team and/or Third-Party Suppliers. For Change Requests this may also include account management.

- 3.4 Throughout the Incident or Change Request, updates, notes and where appropriate log files and images will be placed on MyPortal. The status of an Incident or Change Request will change depending on the current actions required.

- 3.5 If an Incident or Change Request requires input from the Customer, the ticket will be placed in a deferred state until a response is received.

4. RESOLUTION AND CLOSURE

- 4.1 When the Incident has been Resolved, the notes, including a description of the resolution will be updated and made available for review by the Customer if required.

- 4.2 Where appropriate communication will be made between all parties before the Incident is closed in accordance with Incident Management deliverables.

- 4.3 Incidents may also be closed, if after reasonable effort has been made to get a response from the Customer, no update has been given on three (3) consecutive occasions. In such cases Incidents can be reopened upon request by the Customer.

5. SERVICE LEVELS

- 5.1 The Supplier shall use its reasonable endeavors to ensure that response times to the Customer's notification of an Incident are not more than:

PRIORITY LEVEL	CATEGORY	RESPONSE TARGET ¹ (NORMAL WORKING HOURS)
Priority 1	Critical	1 Hour
Priority 2	Major	4 Hours
Priority 3	Minor	8 Hours
Priority 6	Minor	5 Working Days

1. calculated from receipt of notification of Incident by Supplier

- 5.2 The response targets in paragraph 5.1 above are standard response targets. Where the Supplier has agreed specific response targets with a Customer, these shall be set out in the relevant Order.

1. 1st LINE ESCALATION SUPPORT

- 1.1 The Supplier shall provide to the Customer 1st line support, including the collation, checks and triage of Incidents by the Service Desk, with actions taken deemed to be moderate impact, low risk activities and dealt with as follows:

- 1.1.1 collecting the inbound request from the Customer via either My Portal or an inbound call to the Service Desk;
- 1.1.2 confirming the name, location, contact details of the End User reporting, are complete (including Data Protection checks completed for phone-based incidents);
- 1.1.3 confirming the specific details of the request are complete, and;
- 1.1.4 assigning a priority status in accordance with paragraph 2 of Annex 2

following the above, the Service Desk shall confirm if an action plan can be written for the request and if it can, then the ticket will be actions identified.

- 1.2 If the action plan fails to resolve the Incident, requires an Engineer on Site, a plan cannot be written or committed to (due to knowledge or access), the ticket will be escalated to the Supplier's customer service team (or nominated contact) to proceed with the initial request and resolve.

2. 3rd LINE ESCALATION SUPPORT

- 2.1 Where escalated tickets that have been logged and triaged by the Customer, then escalated to the Supplier via the Service Desk, due to unsuccessful resolution via the Customer's internal service team, the following must have been completed by the Customer prior to escalation:

- 2.1.1 all steps in paragraph 1 above have been documented in respect of 1st line escalation support;
- 2.1.2 document and supply all actions taken by the Customer's 2nd line or escalated service team;
- 2.1.3 document and supply all logs, screen shots, supporting information, and;
- 2.1.4 ensure that the documented priority for the Incident as stated in 1st line escalation is still current and correct

upon acceptance of the request by the Supplier, the Service Desk will review and manage the Incident.

- 2.2 The Supplier shall communicate with the Customer's service team or nominated contact to the point of Resolution of the Incident.
- 2.3 Where required the Service Desk will call upon the Customer's service team or nominated contact to complete local actions, where appropriate.

SCHEDULE 4.6 – POINTS SUPPORT SERVICE

1. APPLICATION

- 1.1 This Schedule contains a description of the Points Support Service and forms part of the Agreement for the provision of Services together with the **General Conditions**.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the **General Conditions**.

2 SERVICE DESCRIPTION

- 2.1 The Service is a Points Support Service for telephone support, dial in support and on-site resource (call out).
- 2.2 Calls for assistance, within the Cover Period, may be logged via the telephone hotline or e-mail. The call will be allocated a unique call reference number. The Supplier will contact the Customer Contacts listed in the Agreement within the agreed response time.
- 2.3 Upon making contact, the Supplier's Personnel will proceed to give the required assistance, and depending on the level of service agreed and listed in the Agreement, may access The Customer's Network and Equipment until the requirement is Resolved.
- 2.4 If the Equipment or system is of a sensitive nature as decided by the Customer and at the Customer's discretion, then access may be restricted. Where such restriction prevents achievement of any agreed service levels then Calls for Assistance so affected shall be excluded from any service level agreement calculations.
- 2.5 On resolution of a fault call, to the user reasonable satisfaction, the Supplier will close the call. The appropriate quantity of points will be deducted from the point-based account in accordance with the tables in Appendix 2 of the Points Support Contract.
- 2.6 The Service will be provided only in respect of the Equipment listed in Appendix 1 of the Points Support Contract.
- 2.7 When the Customer requests the Service or other services outside this Agreement, the Supplier will use its reasonable endeavours to accommodate the Customer's requirement. This includes services provided for Equipment not listed in the Agreement.
- 2.8 Points can also be used to procure consultancy and project engagements. The daily cost of these services is set out in Appendix 2 of the Points Support Contract. Engagements will be detailed and agreed between both parties in advance of each engagement by way of a Proposal or Statement of Work which will then be subject to the terms of **Schedule 4.2 Professional Services**.
- 2.9 Points may be used to procure any other products and services billed by the Supplier from time to time. The Customer will be required to enter a contract with the Supplier for such products and services and notify the Supplier at the point of entering the contract that it wishes to use Points to pay for the products and services.

3. COMMENCEMENT AND DURATION

- 3.1 This paragraph 3 is supplemental to clause 2 of the **General Conditions**. In the event of express conflict this paragraph 3 shall take precedence.
- 3.2 Points will expire 12 months after the date of purchase ("**Points Expiry Date**") unless the Customer purchases the greater of: i) the number of unused Points which are due to expire on the Points Expiry Date; and ii) 100 Points ("**Minimum**

Order Quantity"), within 30 days of the Expiry Date. Where these additional Points are purchased, the equivalent number of unused Points will carry forward for a further 12-month period.

Worked Examples:

If the Customer has 200 unused Points at the Points Expiry Date, and 200 additional Points are purchased at the Points Expiry Date, the 200 unused Points will carry over for a further 12-month period. If the Customer purchases the Minimum 100 Points, only 100 of the 200 unused Points will carry over for a further 12-month period. The remaining 100 unused Points will expire.

If the Customer has 40 unused Points at the Points Expiry Date, and 100 additional Points are purchased at the Points Expiry Date, the 40 unused Points will carry forward for a further 12-month period.

- 3.3 Points can only be carried over once and be valid for a further 12-month period from the date of purchase of the additional Points. Upon expiry of such 12-month period Points expire and have zero value.
- 3.4 If the Customer terminates the Agreement upon expiry of the Minimum Term or any Successive Term, then unused Points under this Agreement will expire and have zero value.
- 3.5 Where the Customer has unused Points under a Points Support Contract pre-dating 1 October 2025 and enters a new Points Support Contract following that date, all unused Points will carry forward into the new Points Support Contract. Once carried forward, the terms of this paragraph 3 shall apply to the Points. The deemed date of purchase of the existing Points shall be the Commencement Date of the new Points Support Contract.

4. SUPPORT HOURS

- 4.1 Unless otherwise stated in the Agreement, the Services will be provided between 8:30 and 17:00 Monday to Friday excluding Public and Bank Holidays.
- 4.2 Where support outside of Support Hours is required, it should be arranged in advance through the Account Manager and will be subject to Additional Charges.

5. PRIORITY CLASSIFICATION

- 5.1 The Supplier shall allocate a unique reference number to each Incident and shall prioritise the Incident as follows:

PRIORITY LEVEL	DESCRIPTION
Priority 1 Critical	A critical service is non-operational, impacting the Customer's business, multiple End Users or multiple Sites; or severe functional error or degradation of Service(s) affecting production, demanding immediate attention. Business Risk is High

SCHEDULE 4.6 – POINTS SUPPORT SERVICE

Priority 2 Major	The Customer's business is experiencing failure or performance degradation that impairs the operation of a critical business Service, although a work around may exist; or Application functionality is lost; or significant number of End Users or major Site is affected. Business Risk is Medium
Priority 3 Minor	The Customer is experiencing a problem that causes moderate business impact. The impact is limited to an End User or a small Site; or incident has moderate, not widespread impact; or involves partial loss with minimal impact which is non-critical in nature. Business Risk is Low
Priority 6 Change Request	Standard service request (e.g. End User guidance), Change Requests; or updating documentation. Business Risk is Minor localised

5.2 The Supplier shall use reasonable endeavours to deliver a Change Request as soon as reasonably practicable during Standard Support Hours.

6. CUSTOMER OBLIGATIONS

6.1 The Customer shall:

- 6.1.1 promptly report all requests for assistance;
- 6.1.2 provide the appropriate level of access to the Equipment necessary for the purposes of performing the Service and remove and/or restrict such access where it is no longer required;
- 6.1.3 provide safe working environment in accordance with applicable Law;
- 6.1.4 not relocate, remove or re-position the Equipment without advising the Supplier at least 7 (seven) days prior to such activity taking place. Where requested, the Supplier will undertake to carry out such work, which may at its discretion attract Additional Charges;
- 6.1.5 be responsible for ensuring that the Equipment is cared for and operated in accordance with the Manufacturer's recommendations; and
- 6.1.6 take all reasonable precautions to care for and protect any removable magnetic media used on the Equipment. Where applicable this shall include the following:
 - 6.1.6.1 observance of correct handling and storage procedures;
 - 6.1.6.2 ensuring adequate security copies are made of all programmes and data used on the Equipment;
 - 6.1.6.3 be responsible for all software and data back-ups of all servers and PCs and agree to provide such back-ups to the Supplier, when requested, for performance of the Service;
 - 6.1.6.4 PC failures will be re-built to a standard configuration. The Supplier is not

responsible for any data stored locally on the PCs hard disk drives

- 6.1.7 ensure that the Customer Network and the Equipment is compliant with Applicable Law;
- 6.1.8 ensure that only competent trained employees (or persons under their supervision) are allowed to access the Customer Network and the Equipment;
- 6.1.9 ensure that all data held on the Customer Network and Equipment is adequately backed up and keep full security copies of the Customer's programs, data bases and computer records and maintain a disaster recovery process;
- 6.1.10 be responsible for data cleaning, the integrity of any data provided to the Supplier and for all direct and indirect consequences of any errors in such data;
- 6.1.11 put in place and maintain up to date security measures to protect the Customer Network and Equipment from viruses, harmful code, malicious damage and unauthorised direct and remote access to the Customer Network and Equipment in accordance with Good Industry Practice; and
- 6.1.12 procure and maintain all relevant Licence Agreements and other licences and consents and, always comply with the terms of the relevant Licence Agreements and other licences and consents and all Applicable Law.

6.2 The Customer shall promptly implement recommendations by the Supplier in respect to remedial actions, whether prior to or following an Incident. Where requested by the Customer the Supplier may undertake implementation of recommendations which shall be chargeable and subject to an agreed Statement of Work which shall then be subject to the terms of **Schedule 4.2 Professional Services**.

7. CHARGES AND PAYMENT

- 7.1 This paragraph 7 is supplemental to clause 6 of the **General Conditions**. In the event of express conflict this paragraph 6 shall take precedence.
- 7.2 The Charges detailed in the Agreement shall be payable in advance of the Commencement Date of the Service.
- 7.3 Points are charged at £25.00 per Point. The number of Points being provided is as stated in the Agreement. The minimum order quantity is 100 points (£2,500).
- 7.4 Additional Points may be purchased at any time upon request via a further agreement agreed between the parties.
- 7.5 Where the points balance falls into deficit, the Supplier will automatically invoice the Customer for the deficit quantity of points plus a further 100 points. This is to ensure that a working points balance is maintained.
- 7.6 The points value for each service are listed in Appendix 2 of the Points Support Contract.
- 7.7 Services provided outside of core hours will be charged at Points x 1.5 for weekday evening work, Points x 2 for weekend work and Points x 3 for Public Holidays. This is for work scheduled in advance with the Account Manager.
- 7.8 From time to time, it is necessary to vary the Charges. The Supplier will notify the Customer at least 30 days prior to the date the variations will be applied.
- 7.9 The Charges for any additional equipment added during the Term of this Agreement shall be invoiced pro-rata up to the end of the then current invoice period, after which the

SCHEDULE 4.6 – POINTS SUPPORT SERVICE

additional Charges shall be consolidated with the existing Charges in the next invoice to the Customer.

- 7.10 Public Holiday, weekend and out-of-hours call-outs are charged at the rates listed in Appendix 2 of the Points Support Contract. The Company reserves the right to adjust these rates from time to time.
- 7.11 The Customer shall pay the Supplier all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses and reasonable time spent by the Engineer(s) in travelling, where the distance travelled is further than 35 miles from the Chess Office closest to the geographical location of the Customer Site.
- 7.12 Additional Charges shall be invoiced in arrears at the end of the month in which the Additional Charges are incurred, together with replacement parts and any other expenses and costs reasonably incurred.
- 7.13 Where the Customer uses Points to pay for other products and services under a separate contract for services with the Supplier, Points used shall be rounded up to the nearest Point. For example, if the charges for the services are £40 including VAT, 2 Points will be used to pay for such charges.

8. SERVICE LIMITATIONS

- 8.1 The Supplier reserves the right to refuse Service if insufficient points are available in the point-based account.
- 8.2 Then Supplier reserves the right to withdraw support from a particular release of any software supported under this Agreement after the Manufacturer of such software has withdrawn support for the release of the product. Where a current or superseded release of a product has reached stability, i.e. the manufacturer no longer actively releases upgraded versions or software fixes, then where problems occur the Customer accepts that the level of support supplied by the Supplier is limited by this fact.

9. EXCLUSIONS

- 9.1 Notwithstanding any other provision of this Schedule, the Supplier shall not be obliged to perform or provide the support in one or more of the following circumstances:
- 9.1.1 errors resulting from any modifications of the software made by any person other than the Company or its duly authorised representative;
- 9.1.2 use of any versions of the software other than the release or version currently in use from time to time;
- 9.1.3 repeated errors caused by the use of the software other than in accordance with the then current release or version of the software documentation;
- 9.1.4 errors caused by the use of the software on or with equipment other than its designated hardware;
- 9.1.5 any software other than the software supported under this agreement;
- 9.1.6 the Customer is in breach of its obligations under paragraph 6 above or is in material breach of this Agreement;
- 9.1.7 negligence of the Customer or its End Users or the improper use by the Customer or its End Users of the Customer Network and/or Equipment;
- 9.1.8 damage to the Equipment resulting from accident, transportation or relocation, neglect, misuse or causes other than ordinary use (including but not limited to, failure to observe any instructions

supplied by the manufacturer regarding the operation and maintenance) of the Equipment;

- 9.1.9 damage caused by virus attacks or failure due to any unauthorised Third Party Software;
- 9.1.10 insufficient or improper access to the Customer Network and/or Equipment;
- 9.1.11 failure or fluctuations in electrical power supply and/or unsatisfactory environmental conditions which do not meet manufacturers requirements; and
- 9.1.12 damage to the Customer Network and/or Equipment due to accidental damage, theft, vandalism or a Force Majeure Event.

- 9.2 Where the Supplier is called out in connection with any of the matters referred to in paragraph 9.1 or where the Supplier determines that the call was not warranted, the Supplier has the right to charge the Customer for any expenses and costs reasonably incurred as Additional Charges.

10. TERMINATION

- 10.1 This paragraph 10 is supplemental to clause 8 of the **General Conditions**. In the event of express conflict, this paragraph 10 shall take precedence.
- 10.2 Either party may terminate this Agreement upon not less than 90 days' notice in writing to the other party.
- 10.3 Where the Supplier provides notice to terminate the Agreement pursuant to paragraph 10.2 any unused Points will be refunded to the Customer upon termination of the Agreement. Where the Agreement is terminated by either party in any other circumstance any unused Points will automatically expire at the date of termination of the Agreement.

11. LIABILITY

- 11.1 This paragraph 11 is supplemental to clause 9 of the **General Conditions**. In the event of express conflict, this paragraph 11 shall take precedence.
- 11.2 The Supplier shall not be liable for any loss or damage sustained or incurred by the Customer, its End Users, or any third party (including without limitation any loss or use of the Equipment or loss or corruption of the Customer's programs or data) resulting from any breakdown of or fault in the Equipment or inherent or pre-existing defects in the Equipment, unless such a breakdown or fault is caused by the negligence or wilful misconduct of the Supplier, its employees, agents or sub-contractors or to the extent that such loss or damage arises from any unreasonable delay by the Supplier in providing the Services and then only to the extent not otherwise excluded by this Schedule.
- 11.3 The Supplier shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up to date security copies of the computer programs and data it uses in accordance with Good Industry Practice.

12. IPR

- 12.1 This paragraph 12 is supplemental to clause 11 of the **General Conditions**. In the event of express conflict, this paragraph 12 shall take precedence.
- 12.2 The Customer warrants that all source code being supported under the Agreement is owned by or licensed to the Customer. Where the source code is licensed to the Customer, the Customer further warrants that its use of the source code, and

SCHEDULE 4.6 – POINTS SUPPORT SERVICE

the Suppliers use for the purposes of providing the Services, is permitted by the terms of the license.

- 12.3 Where source code is modified by the Supplier in the course of providing the Service, the Supplier grants the Customer a non-exclusive, non-transferable license to use this modified or additional source code within the supported system only. Where a Statement of Work is agreed for the provision of, or modification of, source code the terms of **Schedule 4.2 Professional Services** shall also apply.

13. NON-SOLICITATION

- 13.1 The Customer shall not, without the prior written consent of the Supplier, at any time during the provision of the Service or for a period of twelve (12) months following expiry of the Agreement, solicit or entice away from the Supplier or employ any person who is, or has been, engaged as an employee of the Supplier at any time during such period. Any consent given by the Supplier shall be subject to the Customer paying the Supplier a sum equivalent to one hundred per cent (100%) of the then current remuneration of the Supplier's employee for a 6-month period.

14. TUPE

- 14.1 The Customer acknowledges and agrees that TUPE shall not apply to the Service and prior to the date of the Agreement, all considerations, claims, actions or otherwise have been provided to the Supplier in relation to the effects, actions or claims of any TUPE and that the Customer indemnifies in full and holds the Supplier harmless of any such actions or claims of TUPE against the Supplier for business transfers or service provision changes during the provision of the Service and for a period of six (6) months following expiry of the Agreement.

SCHEDULE 4.6 – POINTS SUPPORT SERVICE

ANNEX 1: DEFINITIONS

Additional Charges means the additional charges incurred in accordance with terms of this Schedule together with any replacement parts and any other costs or expenses reasonably incurred if not expressly included in the relevant Agreement;

Applicable Law means any legislation, authorisations, permissions, rules and regulations, codes of practice, orders and guidelines relating to the provision of the Service, including any directives or other requirements issued by any regulator from time to time;

Applications means a computer software package that performs a specific function directly for and End User or, in some cases, for another application, also referred to as an application program or application software;

Chess Office means any office or hub occupied by the Supplier or its Affiliates;

Customer Network means the Customer's physical network and server infrastructure, including (if any) servers and switches to routers and firewalls, plus business systems software;

Cyber Security Incident means a cyber security threat to a Customer's business may be exposed to, including but not limited to, cyber fraud - including phishing, spear phishing, vishing and whaling. malware attacks - including viruses, worms, trojans, spyware, rootkits, etc. ransomware attacks;

Device means any mobile handset, laptop, tablet, computer or other input item or handheld equipment, including all peripherals, excluding SIM cards and Applications, which are in the scope of the Service, as set out in the Agreement;

Equipment means any equipment including Hardware, Devices and Software belonging to the Customer and which the Supplier has agreed to support in accordance with this Schedule;

End User means anyone permitted by the Customer to use or access the Customer Network and/or the Equipment;

Engineer means the Supplier's Personnel who is responsible for carrying out technical engineering duties either remotely or at a Customer's Site;

General Conditions means the Supplier's standard terms and conditions for the provision of the Services as set forth on the Supplier's website at www.chessict.co.uk/legal and which form part of this Agreement;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of skill and care which could be reasonably expected of a highly skilled and experienced professional;

Hardware means any and all computer and computer related hardware, including but not limited to, computers, servers, network switches, UPS units, firewalls and connect peripherals;

Incident means any event which is not part of the standard operation of the Customer Network and/or Equipment and which causes or may cause an unplanned interruption to, or a reduction in the quality of the performance of the Customer Network and/or Equipment, but excluding a Cyber Security Incident;

Professional Services means engineering support as further detailed in **Schedule 4.2 (Professional Services)**;

Resolved or Resolution means where an Incident has been resolved and the standard operation of the Customer Network and/or Equipment as is expected in accordance with manufacturers recommendations;

Response Time means the elapsed time from receipt of the request from the Customer to the Supplier to the time the Supplier's Personnel makes contact with the Customer as stated in the Agreement;

Site(s) means the Customer's premises at which the Customer Network and/or Equipment is located as specified in the Agreement;

Software means the software licensed to the Customer as specified in the Agreement, together with any embedded software which is necessary for provision of the Services and/or operation of the Equipment, which may be provided by a Third-Party Supplier and governed by a separate Licence Agreement;

Statement of Works has the meaning given to it in **Schedule 4.2 (Professional Services)**;

Supplier's Personnel means all employees, agents, consultants, sub-contractors and other representatives of the Supplier who are involved, or proposed to be involved, in the provision of the Services;

Third-Party Supplier means a third-party supplier, provider or supplier of services of which:

- (a) the Customer may utilise for the provision of Equipment and the Customer's Network, and;
- (b) the Supplier may utilise for provision of the Services;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**The following Terms & Conditions
apply to Customers who have
previously purchased through
Siversands**

Siversands Terms and Conditions for the
supply of Professional Services and
Hardware and Packaged Software

SILVERSANDS

SILVERSANDS TERMS AND CONDITIONS FOR THE SUPPLY OF
PROFESSIONAL SERVICES, HARDWARE AND PACKAGED
SOFTWARE



The parties agree as follows, in this Agreement:

“SILVERSANDS” means Chess ICT Limited trading as Silversands, company registration 04512773, of Bridgford House, Heyes Lane, Alderley Edge, Cheshire, SK9 7JP.

“CLIENT” means the person or body (of whatever legal nature) contracting with Silversands for the supply by Silversands of goods and/or services of whatever type.

Where THE CLIENT, from time to time engages SILVERSANDS to provide consulting services and/or hardware and/or packaged software then these are supplied on the basis of an agreement either in the form of the pro-forma Schedule A attached, which will define each individual assignment under this Professional Services Agreement (“PSA”), or a Silversands proposal that has been accepted by the Client.

Each Schedule A or accepted proposal shall incorporate by reference the terms and conditions of this PSA as may be varied by the Schedule(s) or proposals. Where there is a conflict between the Schedule or proposal on the one hand and this PSA on the other hand, the Schedule or proposal shall prevail. Each Schedule A or accepted proposal shall constitute a separate contract.

These terms supersede any previously issued terms. SILVERSANDS and the CLIENT agree that all orders accepted and contracts between SILVERSANDS and the CLIENT entered into during the currency of this agreement will be subject to the terms, conditions, warranties and other provisions in this agreement (together referred to as the Silversands terms) and to no other terms, conditions, warranties or contractual provisions save any imposed by statute unless specifically agreed in writing signed by authorised officers of each party in relation to a specific order. Any such future variation will apply only to the specific order to which it relates and the Silversands terms will then continue to apply to all subsequent orders.

No standard terms or conditions referenced or contained in the CLIENT’s purchase order, order acknowledgement or specification shall form part of this contract unless SILVERSANDS specifically agrees otherwise in writing.

Article 1. DEFINITIONS

“Acceptance Criteria” means those tests or other acceptance criteria described in the relevant Services Engagement

“Affiliate” means any third party used, employed or contracted by SILVERSANDS to perform any part of the work to be effected under this Agreement, the use of whom need not be notified by SILVERSANDS to the CLIENT and for whose work SILVERSANDS shall have responsibility subject to the terms of this Agreement.

“Agreement” means any of this PSA and any Services Engagement or purchase orders for hardware or packaged software.

“Change Control Process” means the procedure set out in Clause 2.4.

“Daily Services Assignment” means a Project under which SILVERSANDS is retained to carry out tasks generally identified in the Services Engagement but in which the personnel supplied by Silversands shall be managed by the CLIENT and in respect of which the CLIENT shall be charged at the daily rate.

“Commencement Date” means the date specified as such in the relevant Services Engagement

“Deliverables” mean those deliverables described in the relevant Services Engagement

“Due Completion Date” means the date specified as such in the relevant Services Engagement

“Fixed Price Assignment” means a Project where SILVERSANDS will be responsible for the completion of the Project for the Fixed Price and by the Due Completion Date specified in the relevant Services Engagement. Any additional resources needed to complete the Project by the Due Completion Date will be subject to the Change Control Process.

“Hardware” means items of equipment manufactured or assembled by third parties.

“Packaged Software” means software designed and developed by third parties which may be provided to the Client as a software deliverable or licence or Cloud service.

“Person-Day” means one working day of seven hours for one person.

“Product” shall have the meaning ascribed to it in Clause 5.1.

“Project” means each or any of the services or other work to be carried out under and in accordance with this Agreement, as more particularly described under the Services Engagement.

“Project Manager” means the individual assigned by each of the parties as specified in the relevant Schedule A to be the focal point for communications with the other party and who may be substituted from time to time by written notice by one party to the other.

“Public Body” means any local authority or government office or agency.

“Scope of Work” means, in relation to a Project, the work, the services and tasks, referred to in Clause 2.1, as may be varied from time to time in accordance with this Agreement.

“Services Engagement” is an agreement for Silversands to provide services to the Client. This includes, but is not limited to, any statement of work, quotation, proposal or response to tender.

“Silversands Proposal for Services” is the proposal issued to the CLIENT by Silversands setting out the proposed services, outline deliverables and limitations of service.

“Silversands Personnel” means those employees of SILVERSANDS who carry out the tasks set out in the relevant Services Engagement.

“Silversands Materials” means any materials or data (including methodologies, techniques and processes), SILVERSANDS proprietary software (whether written in human or machine-readable format) and any subsequent modifications to the same, owned or created by on behalf of or for the benefit of SILVERSANDS prior to or independently of this Agreement, or outside the engagement under a Services Engagement, which are used to create, are embedded in or are required to operate or maintain the Deliverables (or any part thereof).

“Time And Materials Assignment” means a Project where the resources and Person Days, are provided by SILVERSANDS on a Time and Materials basis.

“Type of Engagement” means the type of fee to be charged by SILVERSANDS for the Project.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations.

“Work Place” means the location(s), as set out in the relevant Schedule A or Proposal, which is the principal place(s) from which the tasks are to be carried out.

“WEEE” means the Waste Electrical and Electronic Equipment regulations.

Article 2. SCOPE OF WORK

2.1 Scope of Work.

Each relevant Services Engagement, together with its exhibits (if any), will define the scope of the work for a particular Project “Scope of Work”.

Additional written and detailed technical specifications for the Scope of Work to be performed may be attached to each Schedule A or proposal as numbered exhibit(s). Each such exhibit, when so attached and signed by the parties, is incorporated by reference and shall become a part of the applicable Schedule A or proposal.

2.2 Work Space and Materials.

THE CLIENT agrees to provide reasonable work space and general office supplies, equipment and other facilities, including telephone and internet access, electricity and water. Any additional or unusual materials needed by SILVERSANDS' Personnel in connection with the performance of services hereunder shall be provided by SILVERSANDS or as otherwise specified in the relevant Services Engagement.

SILVERSANDS will, and will procure that SILVERSANDS' Personnel will, comply with all reasonable requirements applicable to contractors at the relevant Work Place and other CLIENT locations, providing the CLIENT provides details of such requirements in writing to the SILVERSANDS Project Manager in advance.

2.3 Professional Standards.

SILVERSANDS shall procure that SILVERSANDS Personnel carry out each relevant Project using appropriate professional standards. Silversands Personnel will also make reasonable commercial endeavours to maintain full compliance with THE CLIENT's technical standards and procedures providing that the CLIENT provides clear written details of such standards and procedures in writing to the Silversands Project Manager in advance.

2.4 Change Control.

During the course of a Project, THE CLIENT may desire a change in the Scope of Work or SILVERSANDS may identify an appropriate change in the Scope of the Work. Requests for changes will be made in writing and the Project Managers from both parties will review the proposed change and determine the effect (if any) that the implementation of the change will have on the Agreement (for example in relation to price, timescales, and other terms and conditions).

Upon completion of the review, any agreed changes will be documented in writing and signed by the Project Managers on behalf of Silversands and the Client.

2.5 Cancellation.

If in the course of satisfying any CLIENT order, scheduled project activity is cancelled at short notice by the CLIENT, Silversands will endeavour to redeploy the resource elsewhere. If this is not possible and less than two working days' notice has been given by the client, then the cancelled days will be charged to the CLIENT at 100% of the relevant daily rate; if the notice given is three or four working days, the charge will be 50% of the relevant daily rate, and for five to eight days' notice, 25% of the relevant daily rate will be charged.

2.6 Regulatory Compliance.

Silversands does not provide regulatory or compliance advice. This shall remain the responsibility of the CLIENT. The CLIENT should evaluate any recommendations or guidelines provided by Silversands for their effectiveness in the client's regulatory environment. Recommendations from Silversands should not be interpreted as a guarantee of compliance.

Article 3. PERSONNEL

3.1 Subcontracting and SILVERSANDS's Personnel.

SILVERSANDS may subcontract to Affiliates specific assignments hereunder provided the appointment by SILVERSANDS of any Affiliate for all or any part of any relevant Project shall not relieve SILVERSANDS of any liability or obligation under this Agreement.

As between SILVERSANDS and the CLIENT, unless agreed otherwise with the CLIENT in the Services Engagement, SILVERSANDS shall have the sole responsibility for the conduct of its employees or Affiliate employees for controlling, supervising and directing their work in accordance with this Agreement.

SILVERSANDS shall be responsible for all employer obligations towards all of its employees.

3.2 Project Managers.

In relation to any relevant Project, each party appoints its Project Manager to be responsible for representing that party in all matters, including the transfer of the relevant Deliverables, personnel issues, timing and invoicing arrangements and submission, arranging and attending progress review meetings.

3.3 Hiring.

In relation to any employee of SILVERSANDS or its Affiliates who has been engaged on work for the CLIENT under any relevant Services Engagement, the CLIENT shall be precluded from interviewing, offering employment or hiring such SILVERSANDS or Affiliates employee without the prior written permission of SILVERSANDS during the term of the assignment in question and for a period of twelve (12) months thereafter.

3.4 Hiring(2).

In relation to any employee of the CLIENT that has been working with Silversands on a project defined in a relevant Services Engagement, SILVERSANDS shall be precluded from interviewing, offering employment or hiring such CLIENT employee without the prior written permission of the CLIENT during the term of the assignment in question and for a period of twelve (12) months thereafter.

3.5 Independent Contractor.

In carrying out any relevant Project, SILVERSANDS shall be an independent contractor and/or third-party service provider and shall not be an employee or agent or co-venturer of the CLIENT or any of its Affiliates. Neither SILVERSANDS nor SILVERSANDS' Personnel are entitled to participate in any employee benefit programme of the CLIENT or any of the CLIENTS' Affiliates.

SILVERSANDS agrees that the CLIENT is not and shall not become an employer, co-employer or joint employer of SILVERSANDS' Personnel.

3.6 TUPE.

Any proposal or offer of resource or engagement by SILVERSANDS to the Client excludes the costs of satisfying any TUPE obligations that may arise in carrying out the engagement, unless specifically set out in the proposal. Should the Client be, or become, aware that TUPE obligations may arise, then it should advise Silversands promptly. SILVERSANDS reserves the right to charge the client any costs involved in satisfying any TUPE obligations and the client accepts that Silversands' ability to satisfy its performance requirements may be affected where TUPE requirements impact the SILVERSANDS resourcing process.

3.7 AVAILABILITY OF RESOURCE.

SILVERSANDS does not guarantee the availability of resource at all times. Annual holiday, staff changes, availability of resource and sickness are examples of issues that may impact the delivery of a project.

Article 4. FEES, INVOICES, PAYMENT

4.1 Fees/Compensation.

In relation to each Project, the CLIENT shall pay the fees as specified in the relevant Services Engagement.

4.2 Travel and Subsistence Expenses.

The CLIENT shall reimburse SILVERSANDS for reasonable travel, accommodation and subsistence expenses reasonably incurred by SILVERSANDS' personnel in the course of them carrying out work for the CLIENT. Such expenses are claimed at cost and where a vehicle is used, a mileage rate of 45p per mile applies.

4.3 Invoices/Payment.

In relation to each Project or Time and Materials assignment, SILVERSANDS shall invoice the CLIENT monthly in arrears for all work performed in accordance with the details specified in the Services Engagement. All part days shall be rounded to the nearest whole day. SILVERSANDS shall invoice the CLIENT on a monthly basis for travel, accommodation and subsistence expenses. .

Payment is to be made in cleared funds strictly no more than 30 days from date of invoice. Time for payment is of the essence. Where the due sums are not paid in full by the due date SILVERSANDS may suspend the or terminate all or any part of the Services.

Payment of all invoices in respect of any Maintenance and Support Contract shall be received by SILVERSANDS in cleared funds before the commencement of the period to which such invoice relates.

SILVERSANDS shall be entitled to charge interest on invoice sums outstanding for more than 30 days from the date of invoice at the rate of 4% above the Bank of England base rate per month from the date of invoice until payment in full has been received by SILVERSANDS in cleared funds.

Unless otherwise specified, prices quoted are exclusive of VAT which shall be charged at the appropriate rate.

4.4 Taxes.

All charges provided under this Agreement are exclusive of VAT and to the extent that VAT is chargeable, then the CLIENT shall, against delivery of a valid VAT invoice, in addition to any amounts due to SILVERSANDS under this Agreement, pay to SILVERSANDS such VAT.

For overseas engagements, unless otherwise stated in a Services Engagement, the costs exclude any withholding or other local or national tax. If such tax is payable, then such charges to the CLIENT will be in addition to the costs set out in the Services Engagement.

Article 5. PROPRIETARY RIGHTS

5.1 Ownership of Work Product.

In respect of all work products created under this Agreement under any specification created by the CLIENT by SILVERSANDS' Personnel, SILVERSANDS hereby assigns, or shall procure the assignment by SILVERSANDS' Personnel, to the CLIENT and grants the CLIENT all rights to possession of, and all right, title, and interest, including all copyright rights and the right to prepare and exploit derivative works, in the work products created under this Agreement, in whatever form or medium captured, and in and to all physical and electronic materials, papers, and documents (including drawings), hereinafter referred to as "Products", and copies, abstracts, and summaries thereof, which may come into their possession in any manner by reason of assignment under this Agreement provided that the property in such goods and things in action shall not pass to the CLIENT until payment has been made in accordance with Article 4 above. In default of payment

under Article 4 above, SILVERSANDS may remove all or any of the goods or recover the things in action in any manner it deems fit and the CLIENT shall afford SILVERSANDS all the necessary access and facilities to do so.

Except as otherwise expressly provided in this Agreement, neither party shall receive any right, title or interest in or to the Intellectual Property Rights of the other.

SILVERSANDS shall be entitled to use Residuals as hereafter defined to create work product similar to the Products. "Residuals" means technical information in non-tangible form, which is retained in the unaided memories of the relevant SILVERSANDS employees or agents acquired during the performance of any relevant Schedule A or Proposal including ideas, concepts, know-how or techniques contained therein, and which were not intentionally memorised for the purpose of later recording or use, subject always to its obligations of confidentiality hereunder.

The CLIENT acknowledges that SILVERSANDS holds Intellectual Property Rights (IPR) in the techniques, processes and methods it has developed to deliver customer solutions and that it also holds IPR in software, macros and other programmable procedures that it may use as part of the delivered solution to the CLIENT (Silversands Materials). Where this occurs, subject to payment of all outstanding invoices, SILVERSANDS grants to the CLIENT a licence to use such software, macros and other programmable procedures within the CLIENT organisation or its subsidiaries solely for the purpose of receiving the benefit of the delivered solution. For the avoidance of doubt, the granting of this licence does not extend to sale or gift to or usage by any third parties.

The CLIENT grants (and shall procure the grant) to SILVERSANDS of a royalty-free, non-exclusive, non-transferable licence during the Term to use the CLIENT's Intellectual Property Rights solely to the extent necessary for performing the Services in accordance with this Agreement.

5.2 Confidentiality Obligations.

The term "Confidential Information" shall mean all information in the broadest sense in whatever form or medium that relates to past, present, or future research, development, and business activities of the disclosing party, and the disclosing party's procedures, algorithms, and data (including, without limitation, those contained in databases) which are related to these activities, information related to the operations, planning, control, and marketing of the business interests and products of the disclosing party and any other information about its business affairs and which the disclosing party deems to be confidential and/or proprietary, which the receiving party and its employees and agents may acquire possession of or access to by reason of its work with the disclosing party. This term shall also include all information and software belonging to third parties which was provided to the disclosing party in confidence to which the receiving party may have access by reason of its work under this Agreement.

The receiving party acknowledges the confidential nature of the Confidential Information and the disclosing party's valuable proprietary interest in it. The receiving party and its employees and agents shall treat all Confidential Information as confidential and proprietary to the disclosing party and its Affiliates. The receiving party shall limit access to the Confidential Information to its employees and agents working on any relevant Project and to those supervisory personnel with a legitimate need to know such information and shall not use, copy, or remove any Confidential Information except to the extent necessary to carry out any relevant Project, without the prior written consent of the disclosing party.

Upon completion or termination of any relevant Project, at the disclosing party's request, the receiving party and its employees or agents shall return to the disclosing party's relevant Project Manager all documents or other materials in whatever form that contain Confidential Information, destroy all copies thereof, delete all digital copies, and certify to the disclosing party in writing that all copies of such materials have been destroyed or deleted; this commitment shall not extend to data held on computer archive systems but the receiving party shall acknowledge that the duty to preserve the Confidential Information as confidential extends to such archives .

5.3 Confidentiality Exceptions.

Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on the receiving party's right to use, disclose, or otherwise deal with information which:

- is or becomes generally available to the public through no wrongful act of the receiving party or its employees or agents;
- was in the receiving party's possession prior to the time it was acquired from the disclosing party and which was not directly or indirectly acquired from the disclosing party or its Affiliates;
- is required to be disclosed by court order or operation of law, provided the other party is notified immediately in order to contest such disclosure and the disclosing party takes reasonable steps to assist in contesting such request;
- is independently made available as a matter of right to the receiving party by a third party without access to the Confidential Information; or
- is independently developed by or for the receiving party by persons not having access or exposure to the disclosing party's Confidential Information.

5.4 Knowledge of Agreement.

Nothing in this agreement shall prevent either party disclosing that SILVERSANDS provides professional services to the CLIENT.

Article 6. WARRANTIES

6.1 Originality.

SILVERSANDS represents, warrants, and covenants either (i) the originality of any work performed under this Agreement or (ii) that it has all such rights, licences and other interests as may be necessary to allow it to perform the work and deliver the Products and so grant the rights agreed to be granted to THE CLIENT under this Agreement and that no portion of the Product completed on behalf of THE CLIENT under this Agreement violates any patent, copyright, trade secret, or other intellectual property or other rights of SILVERSANDS or any third party. For purposes of this Clause, "Product" shall not include materials supplied by THE CLIENT.

The CLIENT represents, warrants, and covenants in relation to the materials supplied by the CLIENT either (i) the originality of any such materials or (ii) that it has all such rights, licences and other interests as may be necessary to allow it to provide such materials to SILVERSANDS or any Affiliate of Silversands.

6.2 Intellectual Property Rights Indemnity

SILVERSANDS shall indemnify THE CLIENT and keep THE CLIENT and its employees and agents indemnified from and against the costs and expenses of defending any Claim and discharging any settlement or judgement (whether determined by court of competent jurisdiction or otherwise). Any such costs and expenses shall include reasonable legal fees, suffered or incurred by THE CLIENT as a result of any Claim.

For the purposes of this Clause 6.2, a 'Claim' shall mean any claim by a third party that SILVERSANDS Materials infringe or allegedly infringe the intellectual property rights of that party except to the extent that the Claim arises from (i) the use of the Silversands Materials other than as intended for the purposes of the Project, including combination of the Silversands Materials with a software or hardware product, programme or data not supplied by SILVERSANDS, (ii) any adaptation or modification of any Silversands Materials not undertaken by SILVERSANDS, and provided that THE CLIENT:

- Upon becoming aware of any infringement or allegations of infringement promptly notifies SILVERSANDS of the same;
- Makes no admissions or incurs any avoidable costs without SILVERSANDS' consent;
- Supplies all assistance and co-operation that SILVERSANDS may reasonably require.

The CLIENT shall allow SILVERSANDS to conduct the defence of the claim and SILVERSANDS shall consult with and pay due regard to the interest and views of the CLIENT (acting reasonably) in the conduct of such defence, subject always to SILVERSANDS' rights to conduct the defence in its sole discretion. The CLIENT shall provide all reasonable assistance at SILVERSANDS' expense in connection with any negotiations and litigation arising from such claims.

Where there is any Claim of infringement or alleged infringement as referred to in this Clause 6.2 and such Claim causes the CLIENT's use of SILVERSANDS Materials under the relevant Services Engagement to be disrupted or materially impaired, SILVERSANDS shall, at its own expense, following consultation with the CLIENT, but at its own discretion either:

- Procure for the benefit of the CLIENT the right to continue to use the items as referred to in Clause 6.2; or
- Modify or replace the infringing or potentially infringing items as referred to in Clause 6.2 so that there is no infringement or potential infringement provided that such modification or replacement shall not substantially affect the functionality of the items and can be adopted practically by the CLIENT without significant disruption to their business.

If neither of the foregoing alternatives is or would be available on a basis that SILVERSANDS finds commercially reasonable or practically acceptable, SILVERSANDS will remove the infringing items (or relevant part thereof).

6.3 Insurance Coverage.

SILVERSANDS maintains:

- i) Public liability insurance with a limit of £5 million for any one accident or occurrence;
- ii) Professional indemnity insurance with a limit in aggregate of any claim of £3 million.

6.4 Disclaimer.

Except as expressly stated in this Agreement, neither party provides any warranties to the other, either express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

6.5 Waiver of Consequential Damages.

Neither party shall have liability to the other with respect to their obligations under this Agreement or otherwise for consequential, exemplary, incidental, or punitive damages, including loss of profits, even if they had been advised of the possibility of such damages.

6.6 Property Damage and Personal Injury Indemnity.

Provided that THE CLIENT makes no admission nor incurs any avoidable costs without SILVERSANDS' consent, SILVERSANDS hereby agrees to save, protect, defend, indemnify, and hold THE CLIENT harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, including costs of litigation and reasonable legal fees, arising out of any damage to property or injuries (including death) to any persons, caused by SILVERSANDS, its employees, agents, or permitted sub-contractors.

SILVERSANDS, at its option, may control the defence of any claim subject to the foregoing indemnity, and the CLIENT will cooperate with SILVERSANDS in such defence in all reasonable respects, at no cost to the CLIENT.

Provided that SILVERSANDS makes no admission nor incurs any avoidable costs without the CLIENT's consent, the CLIENT hereby agrees to save, protect, defend, indemnify, and hold SILVERSANDS harmless from and against any and all claims, liabilities, demands, damages, judgements, awards, settlements, expenses

or losses, including costs of litigation and reasonable legal fees arising out of any damage to property and injuries (including death) to any person caused by the CLIENT or its employees, subsidiaries, sub-contractors or other associated persons or bodies.

The CLIENT, at its option, may control the defence of any claim subject to the foregoing indemnity, and SILVERSANDS will co-operate with the CLIENT in such defence in all reasonable respects, at no cost to SILVERSANDS.

Article 7. HARDWARE AND PACKAGED SOFTWARE PURCHASE OR LICENSING

7.1 TERMS OF PAYMENT FOR HARDWARE AND PACKAGED SOFTWARE PURCHASE OR LICENSING

SILVERSANDS terms of payment are strictly payment by cleared funds within 30 days of date of invoice.

Any claim or counterclaim or alleged claim or counterclaim shall not entitle the CLIENT to withhold payment.

SILVERSANDS shall be entitled to charge interest on invoice sums outstanding for more than 30 days from the date of invoice at the rate of 4% above the Bank of England base rate per month from the date of invoice until payment in full has been received by the Company in cleared funds.

Unless otherwise specified, prices quoted are ex-works and are exclusive of VAT which shall be charged at the appropriate rate.

If payments received from the CLIENT are not stated to refer to a particular invoice, SILVERSANDS may appropriate such payments to any outstanding invoices.

7.2 FLUCTUATIONS

Where the cost to SILVERSANDS of undertaking the supply has increased for whatever reason since the date of quotation for the supply (or in the absence of a quotation since the date when the price for the supply was agreed) SILVERSANDS shall be entitled by giving notice in writing to the CLIENT to increase its price to cover such increase in cost. In addition (without limiting the foregoing):

- the cost to SILVERSANDS of undertaking the supply shall be deemed expressly to include the cost of labour together with the cost of products;
- if the CLIENT shall requires special testing facilities in the presence of SILVERSANDS or its representatives or on SILVERSANDS' premises, any additional expense shall be borne by the CLIENT;
- SILVERSANDS business includes the supply of goods and materials from outside the United Kingdom and any increase in cost due to devaluation of currencies or increase in any tax levy or impost will be passed on to the CLIENT, SILVERSANDS giving details of such increase in writing.

7.3 SILVERSANDS' RIGHTS

SILVERSANDS shall be entitled:

- to employ the services of any sub-contractor for the purpose of undertaking the supply

- to assign the benefit of any order with the CLIENT to any servant agent or sub-contractor;
- to withdraw or cancel any quotation at any time without penalty or liability before an order is accepted by SILVERSANDS.

7.4 DRAWINGS AND LITERATURE

The property and copyright in all documents, drawings, plans, photographs, designs, specifications, illustrations and other printed matter prepared and submitted to the CLIENT will remain with SILVERSANDS. SILVERSANDS shall not suffer liability for any errors or omissions and reserves the right to change drawings and/or specifications without notice.

7.5 STORAGE AND OWNERSHIP OF THE GOODS

- a) Legal and beneficial ownership of the goods shall remain with SILVERSANDS until payment has been made in full and in the meantime, the CLIENT shall hold such goods in a fiduciary relationship as bailee of SILVERSANDS.
- b) Until ownership of the goods has passed to the CLIENT:
- the goods shall be stored separately from any goods belonging to the CLIENT or any third party, and shall be clearly marked and identifiable as being SILVERSANDS property. SILVERSANDS shall be entitled to enter the CLIENT'S premises upon reasonable notice to verify the CLIENT'S compliance with this clause;
 - On default of payment in accordance with this PSA, SILVERSANDS may at any time require the CLIENT to return the goods to SILVERSANDS in default of which SILVERSANDS shall have an irrevocable licence to enter the CLIENT'S premises to recover the goods and sever the goods from anything to which they are attached without being responsible for any damage caused. Such return or recovery shall be without prejudice to the obligation of the CLIENT to purchase the goods and to make payment therefore;
 - the CLIENT shall keep the goods safe and insured against usual commercial risks and free from any charge lien or other encumbrance.
- c) If the CLIENT fail to take delivery of the goods within 28 days of notification that the goods are ready for despatch, then SILVERSANDS shall have the right to payment for the goods notwithstanding the other rights herein conferred upon the CLIENT.
- d) If the CLIENT shall fail to give SILVERSANDS instructions for delivery within 7 days of notification that the goods are ready for delivery, SILVERSANDS shall be entitled to arrange to store the goods at the CLIENT'S expense.
- e) The risk in the goods shall pass to the CLIENT upon the goods leaving SILVERSANDS premises and the CLIENT shall if requested by SILVERSANDS produce the original of any certificate or policy of insurance covering the goods.
- f) Any recommendations and advice given by SILVERSANDS or the manufacturer or software vendor to the CLIENT with regard to the goods supplied shall be strictly followed.

7.6 SILVERSANDS' LIEN

- a) SILVERSANDS shall have a general as well as a particular lien on all goods, materials or any other property of the CLIENT which shall be in the possession of SILVERSANDS in respect of any unpaid account of the CLIENT (whether or not in relation to the goods materials or other property of the CLIENT) and such lien shall extend to such goods, materials or property in the possession of any agent or sub-contractor of

SILVERSANDS or directly or indirectly under the control or disposition of SILVERSANDS its agents or subcontractors.

b) SILVERSANDS shall have the right to sell in the United Kingdom or abroad any of such goods, materials or property by public auction or otherwise to pay or retain the costs and expenses of maintaining and exercising such lien given to SILVERSANDS hereunder. SILVERSANDS shall not owe a duty of care to the CLIENT in respect of such sale.

7.7 NOTIFICATION OF CLAIMS

SILVERSANDS shall not accept liability for any claim unless within 7 days of the supply or in the case of any defect not reasonably discoverable at the date of the supply, within 7 days after the date of discovery of the defect by the CLIENT, the CLIENT gives SILVERSANDS notice in writing of the matter or thing in respect of which the claim is made. If notice is not given as aforesaid, the CLIENT shall be deemed to have accepted the supply and shall pay for the same accordingly.

7.8 TIME OF SUPPLY

The time for delivery or the performance of the supply by SILVERSANDS shall not be of the essence.

7.9 WEEE

Silversands is not a Producer or Distributor of electrical goods as defined in the WEEE regulations. No offer for supply of hardware, including electrical equipment of any kind, should be implied to include offering any services regarding the removal and/or disposal of the CLIENT'S existing equipment under WEEE regulations, unless this service has been explicitly specified and offered in a written proposal to the CLIENT. Where SILVERSANDS is required by the CLIENT or by law to provide or assist in recycling or asset disposal, then SILVERSANDS will charge to the CLIENT reasonable costs incurred in performing such services or duties.

Article 8. GENERAL PROVISIONS

8.1 LIMITATIONS OF LIABILITY

- a) Subject to clause e) below, while SILVERSANDS makes reasonable endeavours to perform its obligations under this agreement, SILVERSANDS shall not, save where otherwise required by law or ordered by the court, accept any liability for:
- i Any act, negligence or default due directly or indirectly, wholly or partially, to any act or thing outside the control of SILVERSANDS;
 - ii Any inherent or latent defect in any services, goods or materials which SILVERSANDS could not readily have discovered or rectified;
 - iii Loss or damage due to delay on the part of SILVERSANDS or its servants or agents; or
 - iv Statements or information supplied in specifications and drawings referred to in any Silversands proposal which shall be for guidance only.
- b) SILVERSANDS shall not be liable in contract, tort or under any head of legal liability for any damages, costs, claims, expenses or interest arising out of the performance or alleged non-performance of any contract entered into by SILVERSANDS for the supply of hardware or Packaged Software. Save as aforesaid and save as required by law, all conditions warranties or

other terms, whether express or implied, statutory or otherwise, are hereby expressly excluded. Notwithstanding the foregoing, SILVERSANDS accepts liability in the following circumstances:

- SILVERSANDS will replace or repair at its discretion any of the goods or parts of the goods proved to be defective after fair and proper use, provided that the goods shall at the expense of the CLIENT be returned to SILVERSANDS within seven (7) days of the date of supply.
- c) In the event of a dispute, the 'Dispute Resolution' procedure in clause 8.10 of this Agreement will be followed.
- d) CLIENT acknowledges and agrees that, except as expressly provided in this agreement, CLIENT assumes sole responsibility for:
 - i ensuring that the Deliverables meet the CLIENT's business, legal, regulatory and security requirements;
 - ii results obtained from the use of any software or work product by the CLIENT, and for conclusions drawn from such use;
 - iii all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the CLIENT's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - iv loss or damage arising from or relating to any CLIENT acts or omissions.
- e) Neither party excludes or limits liability to the other party for:
 - i fraud or fraudulent misrepresentation;
 - ii death or personal injury caused by negligence;
 - iii a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - iv any matter for which it would be unlawful for the parties to exclude liability.
- f) Subject to clause e) above neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - i any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - ii loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - iii any loss or liability (whether direct or indirect) under or in relation to any other contract.
- g) Subject to clause e), SILVERSAND'S total annual aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the lower of

£500,000 or:

- i in the case of Services, 100% of the amount of the Charges paid for such services that are subject to the claim in the preceding 12 months; or
- ii in the case of hardware or Packaged Software, 100% of the charges paid for such hardware or Packaged Software.

8.2 General.

If the CLIENT submits an order containing terms inconsistent with or purporting to vary or override this PSA, this PSA shall take precedence and the terms of such order shall not take effect. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by SILVERSANDS shall be subject to correction without liability on the part of SILVERSANDS.

8.3 Term and Termination.

Notwithstanding the date of signature of this PSA, this PSA shall be deemed to have commenced on the date when the CLIENT placed the initial order for a Services Engagement with SILVERSANDS and will continue in force unless terminated by either party.

Either party may terminate the PSA by giving 90 days' notice in writing, unless a shorter period is agreed in writing by the parties. Written notice includes notice by e-mail to the Project Manager. All Service Engagements entered into shall terminate on the termination of this PSA

Either party shall be entitled to serve written notice on the other to terminate this PSA with immediate effect in the event that a liquidator (other than for the purpose of amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or a material part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or analogous provision in any other jurisdiction, or other circumstances arise which would entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other party.

In the event that the CLIENT terminates a Fixed Price Assignment pursuant to this Clause, SILVERSANDS shall be entitled to fair compensation for time and materials at a price to be negotiated in good faith by the parties, but in no event to exceed the Fixed Price specified in the relevant Services Engagement. In the case of time and materials engagement, Silversands shall be entitled to submit a final invoice for time and materials to the date of termination and the CLIENT shall pay such final invoice in full within 30 days of receipt of such invoice.

In the event of any termination of any Services Engagement hereunder, THE CLIENT shall be entitled to the possession and use of any and all work in process after payment of the relevant invoices.

8.4 Assignment.

SILVERSANDS may not assign this Agreement without THE CLIENT's prior written consent, which shall not be unreasonably withheld. THE CLIENT may assign its rights or obligations hereunder only to an Affiliate or successor in business, or to any joint venture or entity in which THE CLIENT or any of THE CLIENT's Affiliate has or will have an ownership or equity interest and which agrees in writing signed by a responsible officer to be bound by all terms and conditions of this Agreement.

THE CLIENT may also assign or novate all or any part of this Agreement and any Services Engagement, and SILVERSANDS agrees to join in any such novation, to any third party contracted to provide outsourced services to THE CLIENT or any of its Affiliates providing such novation shall maintain entirely the same terms of agreement and prompt payment schedule to SILVERSANDS.

8.5 Application Software Facilities and Testing.

8.5.1 Where, during the provision of the services, the CLIENT and/or SILVERSANDS makes use of web or other remote-enabled application software facilities, whether provided by SILVERSANDS or a third party, then the CLIENT acknowledges that these facilities are provided on a reasonable endeavour basis and the CLIENT must make its own assessment as to fitness for purpose, the consequences of changes to the service or software or infrastructure that the Vendor of the web service might make and levels of security. SILVERSANDS gives no warranties, expressed or implied, as to fitness for purpose, nor any guarantees regarding ongoing availability of such systems or services, security or freedom from corruption or virus.

8.5.2 SILVERSANDS bases its estimates and quotations on its experience in working in certain technology areas and on the information provided by and requirements of the CLIENT. However, where additional work is necessary resulting from defects, bugs or unexpected behaviour in third-party software, or inter-operability problems between third party software and the CLIENT'S or SILVERSANDS' software, or the failure of third parties to perform tasks set out in project schedules, then SILVERSANDS reserves the right to make additional charges for the additional work required to investigate or remedy or provide work-arounds to resolve such problems.

8.5.3 The CLIENT accepts and acknowledges that the development of software carries with it the likelihood of problems arising over the life of the product and that liability for such problems shall not lie with SILVERSANDS.

8.5.4 The CLIENT accepts and acknowledges that the CLIENT has duties under this Agreement and undertakes to meet all its obligations, including all testing and acceptance obligations and if it fails to do so, resulting in delay or further work by SILVERSANDS, it shall pay to SILVERSANDS the additional costs incurred.

8.5.5 Packaged Software shall be deemed accepted on delivery to the CLIENT. For all other software, the CLIENT shall be deemed to have accepted that any software has met its respective Acceptance Criteria on the earliest of:

- a) the CLIENT'S written agreement to that effect;
- b) the expiry of [two] working days after the completion of the relevant Acceptance Tests, unless the CLIENT has given written notice to SILVERSANDS that the relevant software does not meet the respective Acceptance Criteria, specifying the relevant result and details of the nature of the failure, in each case;
- c) the expiry of [two] working days after SILVERSANDS informs the CLIENT that the sprint backlog items are ready for the relevant Acceptance Tests, if those Acceptance Tests have not been completed; or
- d) the live use of the software by the CLIENT or any of its employees, agents or contractors other than in an Acceptance Testing capacity.

8.5.6 SILVERSANDS shall not be liable for any delay or expense caused by any third party failing to deliver goods or services on time or delivering in any fashion goods and services that are defective, not fit for the purpose required or which in any way adversely affect the goods or services supplied under this Agreement. This includes third parties that are engaged by, or under the control of, the CLIENT.

8.6 Entire Agreement and severability:

8.6.1 The making, execution, and delivery of this Agreement by SILVERSANDS and THE CLIENT have been induced by no representations, statements, warranties, or agreements other than those herein expressed.

8.6.2 This Agreement embodies the entire understanding of the parties relating to SILVERSANDS' services regarding the subject matter hereof and supersedes any previous agreements or understandings,

written or oral, in effect between the parties relating thereto.

- 8.6.3 If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law having jurisdiction over this Agreement, the validity of the remaining portion or portions shall not be affected thereby.

8.7 Changes In Writing, Notices

This Agreement, and any Services Engagement, may be amended or modified only by an instrument of equal formality signed by duly authorized representatives of the respective parties. All notices, requests, demands, or other communications hereunder, other than day-to-day communications within the duties of the Project Managers, shall be in writing and shall be deemed given if sent to and received by the Project Manager by email.

8.8 Waiver of Breach

The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

8.9 Choice of Law and Jurisdiction

This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of England & Wales and the parties submit to the exclusive jurisdiction of the English & Welsh courts in respect of any disputes arising in relation to this Agreement.

8.10 Force Majeure

Neither party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement where and to the extent that such failure or delay results from causes outside the reasonable control of the party. Such causes shall include, without limitation, Acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, civil commotions, labour disputes or strikes or the like. Notwithstanding the above, strikes and labour disputes within either SILVERSANDS or the CLIENT shall not constitute an excusable delay for the relevant party under this Agreement

8.11 Headings Not Controlling

Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

8.12 Dispute Resolution

In the event of any dispute between the Parties arising out of this Agreement, the matter shall be referred immediately to a Director (or other person of equivalent seniority) of the CLIENT and the Managing Director of SILVERSANDS, together with all relevant information, with a view to early resolution.