

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

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- 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.

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 4.2 – PROFESSIONAL SERVICES

1. APPLICATION

- 1.1 This Schedule contains a description of Professional Services and forms part of the Agreement for the provision of Services, together with the **General Conditions** and the documents referred to in clause 1.4 of the **General Conditions** where applicable.
- 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**.
- 1.3 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 it signed the **Order**.

2. SERVICE DESCRIPTION

- 2.1 The Supplier shall provide the Customer with one of more of the following professional and/or consultancy services as set forth in the applicable **Order** and/or **Statement of Work**;
- 2.1.1 technology advice, design and development;
 - 2.1.2 installation, configuration, testing and associated project management of Equipment and Software; and
 - 2.1.3 system handover
- herein after referred to as “**Professional Services**”
- 2.2 This Schedule consists of the terms and conditions in the body of this Schedule and, where applicable, the following supporting documents incorporated by reference into this Schedule once agreed by both parties in writing and signed by the Customer:
- 2.2.2 Statement of Work (“**SOW**”); and
 - 2.2.3 Acceptance into Service.
- together defined as “**Working Documents**”.
- 2.3 The Working Documents form part of this Schedule, and any additional documents agreed by the Parties in future which are not referred to in this Schedule shall not form part of this Schedule or the Agreement.
- 2.4 In the event of any conflict between this Schedule and any of the Working Documents, unless this Schedule expressly provides that it takes precedence over the terms in the Working Documents, the terms of the Working Documents will take precedence.
- 2.5 Subject to the above, later versions of the Working Documents once agreed between the parties in writing and signed by the Customer shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 2.6 All Professional Services shall be provided on a time and material basis. Unless otherwise set forth in the Order or Statement of Work, all Professional Services will be chargeable at the Supplier’s current **Tariffs**.
- 2.7 The Customer shall be responsible for providing the Supplier with full and accurate details of the Customer’s requirements in accordance with paragraph 3.5 below and such Customer requirements shall form the basis of the SOW.

- 2.8 For the avoidance of doubt the Supplier shall not be obliged to provide the Professional Services until the SOW has been signed by both the Customer and the Supplier and the Supplier has received a written Order from the Customer.
- 2.9 The Professional Services will be delivered during Normal Working Hours unless otherwise agreed.
- 2.10 Where the SOW provides for deployment of Software or Equipment, the Customer acknowledges and accepts server reboots and/or downtime are to be expected.
- 2.11 Where the SOW does not include the supply of Software or Equipment as deliverables, it is the Customer’s responsibility to provide all necessary Software and Equipment prior to the commencement of the Professional Services.
- 2.12 Where the SOW relates to Software installation only, it is the Customer’s responsibility to ensure that the equipment the deployment will take on is compatible.

3. CUSTOMER OBLIGATIONS

- 3.1 The Customer shall:
- 3.1.1 provide the Supplier with all necessary information, facilities, support and services reasonably required by the Supplier for the performance of its obligations under this Schedule, including without limitation at no charge to the Supplier adequate office accommodation, a secure workspace, telephone services, access to the applicable computers, software, hardware and systems of the Customer at each relevant Site;
 - 3.1.2 provide the Supplier’s personnel with full access to the areas in which the Professional Services are to be performed at each relevant Site;
 - 3.1.3 take all reasonable steps to ensure the health and safety of the Supplier’s Consultants, employees, agents or subcontractors while they are at Site and maintain adequate insurance in respect of its potential liability to the personnel performing the Professional Services on behalf of the Supplier;
 - 3.1.4 ensure that the Customer’s Representatives cooperate fully with the Supplier and use only skilled and competent personnel in relation to the provision of the Professional Services;
 - 3.1.5 make available all such facilities and timely and appropriate access to information and its personnel as the Supplier shall reasonably require, to provide the Professional Services;
 - 3.1.6 where a Project Manager is appointed by the Supplier (as detailed in the SOW), ensure that the Customer’s Representative, liaises and attends meetings with the Supplier’s Project Manager where requested; .
 - 3.1.7 ensure that any computer and operating system and any other hardware or software maintained by a third party on behalf of the Customer has been configured and is operating correctly without intervention of the Supplier, otherwise the Supplier will be entitled to recover any costs associated in such involvement, at the Suppliers standard **Tariffs**;
 - 3.1.8 permit the Supplier access to the Customer’s Site and the Equipment during Normal Working Hours;
 - 3.1.9 be fully responsible for all applications, data, interfaces, hardware and equipment within it control, including but not limited to, appropriate back-ups of all data, software, configuration and other information stored on any computer and operating system or any

SCHEDULE 4.2 – PROFESSIONAL SERVICES

other hardware or software, and maintain an adequate disaster recovery plan, unless agreed otherwise;

- 3.1.10 ensure that all prerequisites set out in the Working Documents are completed prior to the Supplier attending the Customer's Site and/or performing the Professional Services;
- 3.1.11 ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to any computer and operating system and any other hardware or software at the Site;
- 3.1.12 make available all passwords and/or digital certificates required for the Supplier to perform the Professional and Consultancy Services, or make personnel available with access to such information at the appropriate time; and
- 3.1.13 only dispose of packaging for Deliverables that are accepted as being in full working order.

THIRD PARTY SOFTWARE

3.2 The Customer warrants that:

- 3.2.1 in respect of any Third Party Software;
 - (i) it has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement;
 - (ii) the Supplier and its subcontractors are permitted to use, modify, adapt, install and alter the Third-Party Software for the purpose of providing the Professional Services; and;
 - (iii) consent to such use, modification, adaptation, installation and alteration by the Supplier has been obtained by the relevant Third-Party Licensor.
- 3.2.2 the computer and operating system and any other hardware or software has been and will be used entirely in accordance with manufacturer's instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of any manufacturer warranty and/or Licence Agreement in place;
- 3.2.3 it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any Equipment to be installed and cables laid.

3.3 Where personnel are supplied by the Supplier on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Customer, the Customer shall:

- 3.3.1 ensure that such instructions are provided with sufficient notice and detail to enable completion to the Customer's required standards;
- 3.3.2 approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;
- 3.3.3 approve and sign off personnel weekly activity reports on a weekly basis.

3.4 Following commencement of Professional Service, the Customer agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges and in any event the same Working Day. The Customer further acknowledges that the Supplier will not be responsible for any delays, failure to complete items of work

or additional time spent in obtaining information and assistance sought.

- 3.5 The Customer guarantees the accuracy, correctness, completeness and reliability of the data, information and documents made available to the Supplier, including those which originate from third parties. Unless set out in the Order or Working Documents, the Supplier may rely on and use this data, information and documentation without further verification.
- 3.6 Where project management is undertaken by the Customer, the Customer shall ensure that time scales and targets (including performance related targets and milestones) it sets are reasonably achieved.
- 3.7 The Customer shall at all times perform its obligations hereunder with due skill and care in a timely professional and reliable manner, use its reasonable endeavours to comply with any agreed timescales. .
- 3.8 The Customer shall promptly sign off the task sheet or Acceptance into Service upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant documents.
- 3.9 The Customer is fully responsible for evaluating the adequacy of and accepting any Deliverables.
- 3.10 The Customer hereby warrants, represents and undertakes that in so far as the Customer is aware, use by the Supplier of any information, software, hardware, documentation, drawings, Specifications, data or other materials made available by the Customer to the Supplier for the purposes of providing the Professional Services will not infringe the Intellectual Property Rights of any third party.
- 3.11 The Customer shall indemnify and hold the Supplier harmless from any and all loss, costs, damages and expenses arising out of any breach of paragraph 3.10.

4. SERVICE CONDITIONS

4.1 The Supplier shall perform the Professional Services:

- 4.1.1 using appropriately qualified and skilled personnel;
- 4.1.2 in accordance with this Schedule and the SOW;
- 4.1.3 with reasonable care and skill and in accordance with Good Industry Practice; and
- 4.1.4 to conform with all statutory requirements and applicable regulations relating to the Professional Services.

4.2 Where a Project Manager is appointed by the Supplier (as detailed in the SOW), the Project Manager will be chargeable and shall be responsible for the management of all Professional Services under this Schedule and will organise and attend regular meetings with the Customer's Representative as required by the Parties from time to time.

4.3 The Supplier shall use reasonable endeavours to:

- 4.3.1 provide the Professional Services on the date or dates and to meet any milestones specified in the SOW;
- 4.3.2 ensure that the Deliverables conform with the requirements set out in the SOW;
- 4.3.3 ensure that it has sufficient, suitable, experienced and appropriately qualified personnel to perform the Professional Services;
- 4.3.4 ensure that throughout the provision of the Professional Services, the Supplier's personnel remain the employees or subcontractors of the Supplier and will remain under the overall control of the Supplier, if

SCHEDULE 4.2 – PROFESSIONAL SERVICES

not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale;

- 4.3.5 procure that its personnel shall, at all times while on the Customer's Site, comply with the Customer's regulations regarding health, safety, disciplinary and security matters as reasonably notified to the Supplier from time to time.

- 4.4 Without prejudice to the Customer's right to terminate this Agreement for material breach, the Customer's sole remedy against the Supplier for any failure on the part of the Professional Services and/or the Deliverables to meet the requirements set forth in the SOW will be to require the Supplier to use reasonable endeavours to correct such failure, free of additional charge and within a reasonable time.

STATEMENT OF WORK

- 4.5 The Supplier shall prior to the Services Start Date, confirm the scope of the Professional Services including the Deliverables, the Customer's obligations, data gathering tasks, project management processes and procedures and any special requirements or actions the Supplier may reasonably take in performing the Professional and Consultancy Services.
- 4.6 The Supplier will provide the Customer a draft of the Statement of Works for discussion purposes and any drafts will be superseded by the final written SOW. The Supplier shall not be responsible if the Customer chooses to rely on, act or refrain from acting on the basis of the drafts or discussions between the Customer and the Supplier.
- 4.7 The Supplier agrees to provide the Professional Services in accordance with the SOW, where specific dates are agreed between the Parties and the Supplier fails to meet such dates, the Supplier will reschedule the dates within a reasonable time, however unless set out otherwise in the Order or the Statement of Work, all time is indicative and shall not be of essence.
- 4.8 The Supplier shall undertake a systems handover to the Customer as set out in the applicable Order or SOW and recorded in the Acceptance into Service documentation. Any additional training required by the Customer thereafter shall be provided by the Supplier in accordance with the Supplier's current **Tariffs**.

ACCEPTANCE OF SYSTEMS

- 4.9 Acceptance of the Systems shall be deemed to have occurred on whichever is the earliest of:
- 4.9.1 the signing by the Customer of the Acceptance into Service documentation for the Systems following successful completion of the relevant Acceptance Tests; or
- 4.9.2 the expiry of five (5) Working Days after a request from the Supplier to the Customer to perform Acceptance Tests unless the Customer has provided a written report detailing the basis upon which the Acceptance Tests had not been successfully completed with reference to the SOW or Order.
- 4.10 Acceptance of the Systems constitutes agreement by the Customer that the Services and Deliverables have been completed, delivered, and comply with any requirements specified within the Order and/or SOW.
- 4.11 The Services shall not be deemed to have failed the Acceptance Tests by reason of any failure to provide any criteria, function or requirement not specified in the SOW.

- 4.12 The Supplier shall use reasonable endeavours to remedy, free of charge, any error or non-conformity relating to the services delivered with reference to the Order and/or SOW where the Customer notifies the Supplier within 10 Working Days from the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 4.9 above.

EXCLUSIONS

- 4.13 The Supplier will not be responsible for any delay in the provision of the Professional Services or failure to achieve targets set by the Customer arising out of
- 4.13.1 any breakdown in project management by the Customer; or
- 4.13.2 as a consequence of any breach by the Customer of its obligations under this Schedule;
- 4.13.3 any non-acceptance, delay or non-payment by the Customer of any charges due under this Schedule; or
- 4.13.4 as a result of an extension offered.
- 4.14 If the Supplier's performance of its obligations under this Schedule are prevented or delayed by any act or omission of the Customer, its employees, agents or subcontractors, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.15 The Supplier shall not be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within seven (7) days of the scheduled delivery date. Any liability of the Supplier for non-delivery of Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note against any invoice raised for such Equipment.
- 4.16 The Supplier's obligation to provide the Professional Services is subject to any applicable Licence Agreements being in force.
- 4.17 Where the Supplier has not provided the core, underlying licences or applications to the Customer, the Supplier will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Supplier to issues found to be or related to, such core software, will be out of the scope of the Professional Services being provided and subject to separate charges.
- 4.18 Where the Customer purchases Professional Services in advance and without reference to an agreed SOW, the Services must be used by the Customer within twelve (12) months from the Effective Date unless another period is specified in the Order. The Professional Services and Agreement will be deemed to have expired 12 months from the Effective Date or such other period stated within the Order.

5. CHARGES AND PAYMENT

- 5.1 Where the Order or SOW provides for payment milestones upon completion of work, the Supplier will use reasonable endeavours to invoice the Customer for the Charges relating to the Professional Services which have been delivered within 5 Working Days of the date Acceptance of the Systems has been deemed to have occurred in accordance with paragraph 4.9. In all other cases the Supplier shall be entitled to invoice the Customer monthly in arrears for Charges as detailed in the Order and/or Statement of Work relating to Professional Services delivered.
- 5.2 In consideration for providing the Professional Services, the Customer shall pay the Supplier the Charges as set forth in the applicable Order or SOW, together with any of the following:

SCHEDULE 4.2 – PROFESSIONAL SERVICES

- 5.2.1 all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses;
- 5.2.2 reasonable time spent by the Consultant(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;
- 5.2.3 the requisite deposit;
- 5.2.4 any work completed by the Supplier at the Customer's request outside the scope set out in the SOW and if no fee is agreed for this work the Supplier shall be paid on a time and materials basis at the Supplier's **Tariffs** applicable at the time, unless the Parties otherwise agree in writing; and
- 5.2.5 cancellation or additional fees and/or expenses that might arise due to breach of this Schedule by the Customer.
- 5.3 The Charges are based upon the Supplier's assessment of work involved, taking into account any assumptions set out in the Order or SOW and where necessary the Supplier will agree any adjustment to the Charges with the Customer.
- 5.4 The Supplier may invoice the Customer for any of the following Charges in addition to those set out above;
 - 5.4.1 Cancellation Charges, Rescheduling Charges and/or Termination Charges in accordance with paragraphs 10 and 11;
 - 5.4.2 charges for expediting provision of the Professional Services at the Customer's request; or
 - 5.4.3 any change to the scope of the Professional Services in accordance with paragraph 6.
- 5.5 This paragraph 5 is supplemental to clause 6 of the General Conditions and if this paragraph 5 conflicts with clause 6 of the General Conditions, this paragraph shall take precedence.
- 6. CHANGE CONTROL PROCEDURE**
 - 6.1 The Customer may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change in the scope of a SOW.
 - 6.2 Within seven (7) Working Days of receipt of such notice, subject to the change being viable and receipt of all information reasonably requested by the Supplier, the Supplier shall prepare for the Customer a written quote for any increase or decrease in the Charges payable by the Customer under this Schedule, and any effect that the requested change would have on the scope of the and/or SOW. The Supplier also reserves the right to charge the Customer in accordance with its Tariff in relation to any work undertaken in preparing its quote in response to a change request.
 - 6.3 Should the request made not be viable, the Supplier shall within seven (7) Working Days of the request, notify the Customer, qualifying why and where possible suggest an alternative. The Supplier also reserves the right to charge the Customer in accordance with its Tariff in relation to any work undertaken in preparing its response to a change request.
 - 6.4 Within seven (7) Working Days of receipt of the written quote referred to in paragraph 6.2, the Customer shall inform the Supplier in writing of whether the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a SOW specifying any changes to the scope of the Professional Services and the Charges payable to the Supplier.

7. INTELLECTUAL PROPERTY

- 7.1 Unless otherwise expressly agreed in this Agreement (or the Working Documents as appropriate) or as set out below, no Intellectual Property Rights of either Party are transferred or licensed as a result of this Agreement.
- 7.2 Subject to any other terms expressly agreed by the Parties, each Party grants the other a licence of such Intellectual Property Rights as are necessary to enable the other Party to fulfil its obligations under this Agreement and provide or make use of the Professional Services supplied under this Agreement (as the case may be) but not otherwise.
- 7.3 Except where in relation to Third Party Software, the Customer acknowledges and agrees that any and all Intellectual Property Rights in the Tools and Deliverables are owned by and shall remain at all times the exclusive property of the Supplier, unless otherwise expressly agreed between the Parties in the SOW.
- 7.4 If any Third-Party Software is used, the Supplier shall obtain all necessary consents, approvals or licences, and shall advise the Customer of any conditions or terms or costs attached to the same.
- 7.5 The Customer shall indemnify and keep indemnified and hold harmless the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the Intellectual Property Rights of any third party.
- 7.6 If any part of the Professional Services provided by the Supplier to the Customer, infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Supplier will at its own expense, as soon as it is reasonably practicable:
 - 7.6.1 procure for the Customer the right to continue using and possessing the Deliverables; or
 - 7.6.2 modify or replace the infringing part of the Deliverables, to avoid the infringement or alleged infringementunless such infringement or alleged infringement is from the use of Customer Materials.
- 7.7 Unless otherwise agreed, all Intellectual Property Rights arising from or relating to the Bespoke Software shall remain the exclusive property of the Supplier.

8. LIMITATION OF LIABILITY

- 8.1 Subject to clause 9 of the **General Conditions** (except clause 9.4 which is superseded by this paragraph 8.1), in no event shall the maximum liability of the Supplier (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses or damages arising out of or in connection with the Professional Services, or performance or non-performance of the Supplier's obligations under this Agreement, exceed:
 - 8.1.1 one million pounds (£1,000,000) in respect of each incident or series of connected incidents giving rise to damage or loss to the Customer's tangible property; or
 - 8.1.2 the greater of one hundred thousand pounds (£100,000) and 100% of all Charges paid or payable by the Customer under the applicable Order and/or SOW

SCHEDULE 4.2 – PROFESSIONAL SERVICES

in aggregate in all cases not falling within paragraph 8.1.1.

8.2 The parties agree that if any limitation or provision contained or expressly referred to in this paragraph 8 and as detailed in the applicable sub-clauses in clause 9 of the General Conditions are held to be invalid under any applicable statute or rule of law, it shall, to the extent, be deemed to be omitted. If either party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this paragraph 8.

8.3 Nothing in this Schedule 4.2 shall be taken in any way reducing or affecting a general duty to mitigate loss suffered by a party.

9. STATEMENTS

9.1 Statements are made based on the information available at the time.

9.2 Statements, including those made about Third Party Software, Equipment or services, are not a representation, undertaking or warranty as to outcome or achievable results.

9.3 Statements are provided for information only and are not:

9.3.1 legal advice; or

9.3.2 advice about how any regulation or compliance requirement may apply to the Customer.

9.4 The Supplier makes no warranties, express, implied or statutory as to the information in any Statement.

9.5 The Supplier will not be responsible for the way in which the Deliverables, Statements or any other output from the Professional Services is used.

10. SUSPENSION, CANCELLATION AND POSTPONEMENT

10.1 Subject to clause 7 of the **General Conditions**, the Supplier reserves the right to suspend provision of the Professional Services in accordance with the provisions therein.

10.2 If the Customer gives notice in writing cancelling an Order not less than ten (10) Working Days before the Professional Services are due to commence, no Charges will be applied by the Supplier.

10.3 If the Customer gives notice in writing cancelling an Order not more than nine (9) Working Days and not less than five (5) Working Days before the Professional Services are due to commence, the Supplier reserves the right to invoice the Customer fifty percent (50%) of the agreed Charges as stated in the Order or where applicable the SOW or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW. In all other cases the Supplier reserves the right to invoice the Customer one hundred percent (100%) of the Charges stated in the Order or where applicable the SOW or if no Charges are stated one hundred percent (100%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW ("**Cancellation Charges**").

10.4 Once the Supplier commences delivery of the Professional Services then no cancellation of an Order for the Professional Services will be permitted unless the Supplier agrees in writing.

10.5 Should the Customer wish to proceed with the provision of Professional Services following service of a notice of cancellation, the Customer will be required to enter a new Agreement with the Supplier.

10.6 If the Customer gives notice in writing, to re-schedule or postpone the delivery of the Professional Services from the

date agreed with the Supplier to a date no later than 3 months from the date agreed.;

10.6.1 not less than ten (10) Working Days before the Professional Services are due to commence then no additional Charges will be applied in relation to the rescheduling of delivery;

10.6.2 not more than nine (9) Working Days but not less than five (5) Working Days before the Professional Services are due to commence then the Supplier reserves the right to invoice the Customer rescheduling charges calculated at twenty-five percent (25%) of the agreed Charges stated in the Order (or where applicable the SOW) or if no Charges are stated twenty-five percent (25%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW; and

10.6.3 less than five (5) Working Days before the Professional Services are due to commence then the Supplier reserves the right to invoice the Customer rescheduling charges calculated at fifty percent (50%) of the Charges stated in the Order (or where applicable the SOW) or if no Charges are stated fifty percent (50%) of the Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW

("Rescheduling Charges").

10.7 The Customer agrees that the Cancellation Charges and Rescheduling Charges are a fair assessment of the of the losses and damages the Supplier will suffer in the event of Cancellation of the Order or Postponement of delivery of the Professional Services.

10.8 The Supplier may at its sole discretion apply a reduction to the Charges payable for Professional Services that have been rescheduled where the Customer has paid the Rescheduling Charges in full. Save for where a reduction is agreed by the Supplier and confirmed in writing, payment by the Customer of Rescheduling Charges does not extinguish or otherwise affect the Customer's liability to pay the Charges for the Professional Services in accordance with the Order and/or SOW.

11. TERMINATION

11.1 This paragraph 11 is supplemental to clauses 2 and 8 of the **General Conditions**. If this paragraph 11 conflicts with clauses 2 or 8 of the **General Conditions**, this paragraph shall take precedence.

11.2 The Agreement shall commence on the date of this Agreement and shall automatically expire upon completion of the Order and/or SOW unless otherwise terminated earlier in accordance with this paragraph 11 and/or clause 8 of the **General Conditions**.

11.3 Following commencement of the Professional Services either party may terminate the Agreement, an Order or a SOW without cause by giving at least thirty (30) days' written notice to the other party.

11.4 Where the Agreement, an Order or a SOW is terminated following commencement of the Professional Services, other than where the Customer terminates the Agreement under clause 8.1 of the **General Conditions** or where the Supplier terminates under paragraph 11.3 above or pursuant to clauses 8.3.1 to 8.3.3 of the **General Conditions**, the Supplier reserves the right to invoice the Customer one hundred percent (100%) of the remaining Charges stated in the Order or where applicable the SOW or if no Charges are stated one hundred

SCHEDULE 4.2 – PROFESSIONAL SERVICES

percent (100%) of the remaining Charges that the Supplier anticipated charging in respect of the Order or where applicable the SOW ("**Termination Charges**").

- 11.5 Immediately following suspension or termination of the Professional Services (whether partial or in respect of all the Professional Services) the Customer shall forthwith pay to the Supplier:
- 11.5.1 all outstanding fees and charges (together with VAT where appropriate) and interest;
 - 11.5.2 in respect of all Professional Services delivered but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately upon receipt;
 - 11.5.3 any outstanding fees and charges payable by instalments, which would have become due and payable by the Customer if the Professional Services had not been terminated;
 - 11.5.4 all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier, and;
 - 11.5.5 any committed costs or losses payable to a Third-Party Supplier incurred as a result of such suspension or termination, which the Supplier cannot reasonably mitigate.
- 11.6 Termination of the Professional Services shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Schedule which existing on or before the date of termination.
- 11.7 Upon termination of the Agreement, the Customer shall within fourteen (14) days cease all use of the Supplier Software and return Supplier Software (and all copies of the whole or any part thereof) to the Supplier, or if requested by the Supplier, destroy all copies of the same.

12. NON-SOLICITATION

- 12.1 The Customer shall, during the continuance of the Agreement, or within a period of six (6) months from termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the Supplier or Third-Party Supplier. In the event of a breach of this paragraph 12, the Customer shall pay a sum equal to six (6) months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

ANNEX 1 - DEFINITIONS

“Account Manager” means the Supplier’s account manager as may be agreed from time to time between the Customer and the Supplier;

“Acceptance Tests” means any tests or criteria stated in a Statement of Work in relation to any Deliverables or Bespoke Software;

“Bespoke Software” means any computer software, applications or programmes which have been developed by the Supplier for the Customer;

“Chess Office(s)” means Chess’ offices located in Alderley Edge, Burnley, Glasgow, Bury St Edmonds, or Borehamwood (as applicable).

“Customer Materials” means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the provision of Professional Services;

“Deliverables” means all Equipment, products, documents and materials developed or provided by the Supplier in relation to the provision of the Professional Services;

“Equipment” means the hardware at the Site whether or not such hardware is situated at the Site prior to commencement of the Agreement, and whether provided by the Supplier or not;

“License Agreement” shall mean any license or terms under which the Customer is permitted to use Third Party Software;

“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 and which forms part of the Agreement;

“Licence Agreement” shall mean any licence or terms under which the Customer is permitted to use Third Party Software;

“Professional Services” means the services set forth in this Schedule 4.2 as further defined in paragraph 2.1;

“Project Manager” means the project manager appointed by each the Customer and the Supplier for the purposes of managing the relationship between the parties under the Agreement;

“Software” means the Bespoke Software and the Third Party Software;

“Specification” means the description (if any) of the Professional Services set out or referred to in any Working Document;

“Statements” means the surveys, statements, presentations, recommendations, advice, reports, opinions and other communication provided by the Supplier as part of the Professional Services;

“Systems” means Equipment, Bespoke Software, Third Party Software or any other software owned or used by the Customer in relation to which Professional Services are provided by the Supplier;

“Third Party Licensor” means any third party with which the Customer has entered into a Licence Agreement in the terms of which the Customer uses software;

“Third Party Software” means the object code from software, applications and programs used or to be used on the Equipment or which the Supplier shall make available to the Customer during the course of providing the Professional Services, including any improvements of the same developed from time to time, where such software has been created by a Third-Party Licensor pursuant to the terms of a License Agreement between the Third Party Licensor and the Customer;

“Tools” means any software, specifications, reports, diagrams, instructions, materials or other know how used by the Supplier for the purposes of providing the Professional Services to the Customer;

“Working Document” means any), Statement of Works (SOW), Acceptance into Service, or Order detailing work to be completed, which may be paper or electronic format (email);