

xtravirt

Framework Agreement

Consultancy and Managed Services

Agreement valid from 12th September 2023

Previously published agreements located at <https://xtravirt.com/downloads/eula/archive>

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1 Introduction

This Agreement, in conjunction with any applicable terms, shall constitute the complete and exclusive agreement between Xtravirt Limited and Customer. In accepting a Customer Quotation, the Customer acknowledges that they have read and understand this agreement and all attachments hereto and agree to all terms and conditions stated herein.

2 Document conventions

2.1 Glossary of terms

In this Agreement unless the context otherwise requires:

Term	Description
Agreement	Means this Framework Agreement and the latest version of this document and it's appendices
Applicable Laws	all applicable laws, statutes, regulations and codes from time to time in force
Business Day	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business
Change Management Procedure	Means the process for requesting, defining and agreeing changes to the terms of this Agreement or any Subsidiary Agreement(s)
Change Order	A document setting out the agreed terms of a change to the Services
Cloud Services	Means technology services provided by the Supplier on a Subscription basis utilising Supplier or third-party software components
Cloud Services Terms of Service	As published at https://xtravirt.com/downloads/eula/
Customer	Customer and Supplier for the provision of Services pursuant to this Agreement Means the Customer of the Services as defined in this Agreement or Subsidiary Agreement
Customer Content	Means any data, including Customer Data, all text, sound, video, or image files, and software (including machine images), or other information
Customer Data	All information in whatever form relating to the Customer and any member of its Group including without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets, customers and clients and business and financial affairs whether in writing, conveyed visually, orally or by machine readable media, in proposals or presentations or electronic medium, customer data, Corporate, Personal, and Sensitive Personal Data
Customer Specific Instructions	Means Data Processing activities to be performed by the Supplier
Data Protection Legislation	means the Data Protection Act 2018, the General Data Protection Regulation (EU Regulation 2016/679), the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the UK Data Protection Act 2018) and all other applicable laws relating to the processing of Personal Data in force from time to time
Deliverable	any outputs of the Services to be provided by the Supplier to the Customer as specified and defined in a Statement of Work and or Subsidiary Agreement and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services
Fees	the sums payable for the Services as set out in any Subsidiary Agreement.
Force Majeure Event	Means any event beyond the reasonable control of a party including acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, accident, fire, flood, storm

and strikes or any industrial action by employees of any person other than the party relying on the Force Majeure Event

Good Industry Practice	Means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability, prudence and foresight which are generally and reasonably expected from a reasonably skilled and experienced supplier engaged in the same type of undertaking as envisaged under this Agreement
Group	Means any business in means in relation to a company, that company and any company of which it is a Subsidiary (its Holding Company) and any other Subsidiaries of any such Holding Company or company. The term of "Subsidiaries" and "Holding Company" shall have the meaning given in section 1159 of the Companies Act 2006. Unless the context otherwise requires, the application of the definition of "Group" to any company at any time shall apply to the company as it is at that time
Intellectual Property	Means all patents, rights in a database, rights in a design, service marks, circuit lay out rights, rights in semi-conductor chip topography, trademarks, applications for any of the foregoing, copyright, design right, know-how, trade or business names, goodwill associated with the foregoing and any other similar rights or obligations whether or not registered or capable of registration in the UK or any other part of the world
Parties	Means, collectively the Customer and Supplier, and each of them a "Party"
Personal Data	Means any information related to an identified or identifiable natural person
Representative(s)	Means a partner, employee, officer, director, professional advisor, consultant, agents or subcontractors of a Party
Sensitive Personal Data	Shall having the meaning as defined under Data Protection Legislation
Service Framework	Means all sections of this Agreement, excluding Section 6 Terms & Conditions.
Service Term	Means the term for an individual Service delivered under this Agreement as defined in Section 3.3 Pricing
Services	Means the services to be provided by Supplier to the Customer under the terms of this Agreement
Service Schedule	Means the list of services included under the terms of this Agreement
Statement(s) of Work	Means the required statement(s) of work setting out individual deliverables and activities that may be provided by Supplier to the Customer, as part of or in addition to, the Services included under this Agreement.
Subscription	Mechanism under which technology services are provided and charged on a recurring rather than perpetual basis
Subsidiary Agreement	Means Service Schedule, Statement of Work or Quotation
Supplier	Means Xtravirt Limited,
Term	Means the term as defined under clause 4.1 of this Agreement during which Services may be defined and delivered

3 Commercial framework

3.1 Agreement Commencement and Term

This Agreement shall commence on the date at which a Customer Quotation is issued to the Customer and continue in force until replaced or until the completion or expiry of Services provided under all Subsidiary Agreements, whichever is earlier. If the Customer does not enter into a Subsidiary Agreement, this Agreement shall terminate 90 days after the last Customer Quotation issue date

3.2 Service Term

The Service Term for each of the services offered under this Framework shall be as described in the applicable Subsidiary Agreement

3.3 Pricing

The pricing for Services delivered under this Agreement is defined in the applicable Subsidiary Agreement

4 Services

4.1 Provision of Services

This Agreement allows for the provision of the following Services by the Supplier to the Customer, each offered

- Managed Services as defined under a Service Schedule which will include, at a minimum, the following sections and be offered under a Customer Quotation
 - Service Description
 - Service Levels
- Consultancy Services as defined under a Statement of Work which will include, at a minimum, the following sections and be offered under a Customer Quotation
 - Deliverables
 - Customer Responsibilities
- Cloud Services as defined and offered under a Customer Quotation which shall be subject to Cloud Services Terms of Service
- Hardware, software and services as defined under a Customer Quotation which will include, at a minimum, the following sections
 - Deliverables
 - Term (where applicable)
 - Pricing

4.2 Delivery Location

Unless specified or agreed otherwise all Services will be delivered remotely

5 Terms and Conditions

5.1 The Agreement

This Agreement ("Agreement") is made

Between:

- a) **Customer**
- b) **Xtravirt Limited** (known as Xtravirt) a company incorporated in England and Wales (registered no 05585938) whose registered office is at Riverbridge House, Guildford Rd, Fetcham, Leatherhead, KT22 9AD. **(Supplier)**

Whereas:

1. During the course of its business, Supplier enters into agreement with Customer so as to supply product(s)/service(s) to such Customer.
2. Customer requires assistance in supporting and maintaining its IT infrastructure and wishes to obtain and Supplier wishes to provide those support and consultancy services as on the terms detailed in the Service Framework.
3. Supplier hereby agrees to undertake supply of those product(s)/service(s) for Customer (where requested by Customer via a Subsidiary Agreement), and therefore enters into this Agreement with Customer.

Now it is hereby agreed as follows:

- 5.1.1 The use of headings in this Agreement shall be for convenience only and shall not affect the interpretation of any part of this Agreement. Notwithstanding the foregoing, the headings and recitals form part of the operative provisions of this Agreement and shall be construed accordingly. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 5.1.2 Reference to any statute or statutory provision are to that statute or statutory provision as from time to time amended extended or re-enacted whether before or after the date of this Agreement and any subordinate legislation made under it whether before or after the date of this Agreement except to the extent that any such amendment, extension or re-enactment made after the date of this Agreement would increase or alter the liability of any party to this Agreement; and
- 5.1.3 a noun in the singular includes the plural and vice versa.
- 5.1.4 Words or phrases, the definition of which are contained or referred to in the Companies Acts 1985 & 1989 or the Insolvency Act 1986 shall be construed as having the meanings thereby attributed to them (unless the context otherwise requires).
- 5.1.5 Words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and the neuter and vice versa.
- 5.1.6 The expression "person" and words importing "persons" shall include individuals, bodies' corporate or unincorporated, authorities and/or other legal entities.
- 5.1.7 Any phrase in this Agreement introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 5.1.8 Unless expressly stated to the contrary, the rights and remedies set out in this Agreement shall be cumulative and without prejudice to one another.
- 5.1.9 Any reference in this Agreement or any Contract to any act or statutory provision or subordinate legislation shall be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without

modification) and includes all orders and instruments there under.

5.1.10 If there is any conflict, apparent conflict or ambiguity in or between any of the section of this Agreement set out below, the sections shall be applied in the following increasing order of precedence with the sections higher in the order of precedence prevailing over those below it:

1. this Agreement; then
2. any other document referred to in this Agreement
3. a Service Schedule
4. a Statement of Work
5. a Quotation
6. any other document mutually signed between the Parties

For the avoidance of doubt, the above order of precedence will supersede any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by Customer

5.2 Provision of Services

5.2.1 The Customer may agree a Subsidiary Agreement with Supplier specifically relating to the provision of Services. Such Subsidiary Agreement(s) shall be subject to the provisions of this Agreement.

5.2.2 Supplier agrees to provide the Services to the Customer in accordance with the Agreement and Subsidiary Agreements and the terms hereof, and together with and on such other (special) terms as are specifically drawn to its attention by the Customer and/or as are set out in this Agreement and in compliance in all respects with all statutory requirements and regulations relating to the supply of the Services.

5.2.3 Where a Subsidiary Agreement provides for the supply of Cloud Services, this provision shall be subject to the Cloud Services Terms of Service

5.2.4 Without prejudice or limitation to Supplier's undertakings under Section 5.2.2 or contained elsewhere in this Agreement, Supplier warrants that it (and its Staff) shall perform the Services (and fulfil all its obligation(s) hereunder) in good faith, performing the same to the highest professional and industry standards and to the best of its ability using appropriately qualified and trained Staff with that degree of skill care and diligence expected from professional skilled and experienced contractors engaged in similar services. In the event that the Customer reasonably and lawfully believes that any (or all) of Supplier's Staff are failing to comply with this Section 5.2.4, the Customer shall be entitled to request that Supplier replaces such failing Staff; and Supplier shall comply with such request as soon as reasonably possible.

5.2.5 In consideration of Supplier providing Services to the Customer in accordance with the terms of this Agreement, the Customer shall ensure that a purchase order (if applicable) has been raised to cover the costs of the Services as stated in the Subsidiary Agreement.

5.3 Change Management Procedure

5.3.1 A Change Order shall be raised when

- a) either Party proposes changes to the scope or content of this Agreement, a Subsidiary Agreement or any document so referred to within such agreements; or
- b) the required scope of Services or Deliverables within a Subsidiary Agreement are directly or indirectly altered as a result of changes to the Customer environment.

No proposed changes shall come into effect until a relevant Change Order has been signed by both parties.

5.4 Payment

- 5.4.1 Purchase orders (if applicable) should be sent to the Supplier's Accounts team using the email address accounts@xtravirt.com prior to commencement of this Agreement.
- 5.4.2 All Fees payable in respect of the Services provided under this Agreement shall be invoiced by Supplier to Customer for the charges at the intervals specified, or on the achievement of the Milestones indicated, in the Subsidiary Agreements. If no intervals are specified, the Supplier shall invoice Customer at the end of each month for Services performed during that month.
- 5.4.3 All Fees and any other amounts due to Supplier under this Agreement do not include Value Added Tax or any similar sales tax which, if applicable, will be paid additionally by the Customer.
- 5.4.4 If Customer fails to make any undisputed payment to the Supplier under this Agreement by the due date then, without limiting the Supplier's remedies under Section 5.23 Termination, Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Bank of England's base rate which is current at the date the payment became overdue.
- 5.4.5 If Customer disputes a payment in good faith, then the interest payable under Section 5.4.4 is only payable after the dispute is resolved on sums found or agreed to be due, from 7 days after the dispute is resolved until payment. Customer and Supplier shall negotiate in good faith to promptly resolve any disputed payment or invoice and Customer will make payment upon such final resolution.

5.5 Confidentiality

- 5.5.1 Each Party (hereafter the "Receiving Party") undertakes to keep secret and confidential, all the other Party's information of a proprietary and confidential nature ("Confidential Information"), and in the case of the Supplier, Confidential Information shall include Customer Data, disclosed to it by that other party (hereafter the "Disclosing Party") pursuant to this Agreement or any Subsidiary Agreement or any Contract and/or in connection with the provision of the Services.
- 5.5.2 Neither party shall use Disclosing Party's Confidential Information except for the purposes of this Agreement and/or the provision of the Services, and save as permitted by this Agreement, Receiving Party further undertakes not to disclose or otherwise divulge Disclosing Party's Confidential Information to any third party, save to any Representative of/to Receiving Party, or to any Group company of Receiving Party (including Representatives thereof) and provided always such Representatives and/or Group company reasonably require that Confidential Information for the provision of the Services, Representatives first having expressly agreed to be bound by materially similar terms of confidentiality as are contained herein, partners, employees, officers and/or directors (of Receiving Party) having first been made aware of the obligation(s) of confidentiality connected herewith but in any event, the Receiving Party shall be responsible for any breach of any of the provisions of this Agreement by any of its Representatives to whom Confidential Information is disclosed).
- 5.5.3 Receiving Party further undertakes that, if requested in writing by Disclosing Party, it shall return (or if so requested destroy or delete) any Disclosing Party Confidential Information (and any copies of it in any form or media) or information generated using/from that Disclosing Party Confidential Information, in its possession or control (or in the possession or control of any of its respective Group companies); provided always that nothing in the aforementioned shall prohibit:
 - a) Receiving Party from retaining such Disclosing Party Confidential Information (but only for so long) as is reasonably necessary to fulfil any outstanding obligations to Disclosing Party (and whether under this Agreement and/or under the Contract);
 - b) Receiving Party, where such Receiving Party is the Customer from retaining and using Supplier's Confidential Information (but only for so long) as is reasonably necessary for the Customer to fulfil/performance/undertake/

complete or use any of those Services previously provided/undertaken (or which should have been provided/undertaken) by Supplier to the Customer, following any termination of this Agreement;

- c) Receiving Party from retaining one copy of all such Confidential Information in secure archive, only for further use, disclosure or review pursuant to relevant law or regulation or order of court of competent jurisdiction or to comply with the rules of any governmental, tax, or regulatory body or authority.

5.5.4 The provisions of this Section 5.5 Confidentiality shall specifically not apply to any Confidential Information to/for which Disclosing Party has expressly consented to Receiving Party's disclosure of;

1. Any trivial, obvious or other information as is in the public domain at time of disclosure by Disclosing Party, or which subsequently enters the public domain, other than as a result of Receiving Party's breach of this Section 5.5 or any other obligations of confidentiality between the parties;
2. Information, which was (and can be shown to have been) lawfully known to Receiving Party before disclosure by Disclosing Party;
3. Information lawfully obtained from a third party other than the Customer, free from any associated restriction(s) as to further use or disclosure;
4. Information which was/is (and can be shown to have been) independently developed by Receiving Party, free from any use, disclosure or exposure to, Disclosing Party's Confidential Information; and
5. Information required or ordered to be disclosed by any Applicable Laws or regulation or court order, regulatory body or governmental, tax agency of competent jurisdiction.

5.5.5 The terms of this Agreement, the Subsidiary Agreement and other supplied documents shall be considered confidential.

5.5.6 The Customer agrees to support Supplier in the production of case study and supporting Customer quotes relating to the provision of services under this Agreement a minimum of once during the term of this Agreement. The Customer shall retain the right to review and request changes to reflect accuracy and ensure compliance with the overall requirements of Schedule 5.5 of this Agreement, however approval to support publication shall not unreasonably be refused

5.6 Customer Materials

5.6.1 Customer will be the sole and exclusive owner and, subject to the licence granted in 5.7.1, and retains all rights in all Customer Data and the Customer's pre-existing materials including all modifications, enhancements and derivative works thereto.

5.7 Materials

5.7.1 Customer hereby grants to Supplier a non-exclusive royalty free licence to use the Deliverables that it owns to the extent necessary for the purposes of performing the Services in accordance with this Agreement.

5.7.2 Supplier will be the sole and exclusive owner and, subject to the licence granted in 5.7.1, retain all rights in all Supplier pre-existing materials including all modifications, enhancements and derivative works, to the extent that these cannot be severed from Supplier pre-existing materials, used by Supplier in connection with the provision of the Services and any work product that is created by Supplier that is not a Deliverable under a Statement of Work.

5.7.3 Supplier hereby grants to Customer an irrevocable, royalty free, worldwide, perpetual, non-exclusive licence to use, copy, modify, enhance, adapt and maintain Supplier pre-existing materials provided or used by Supplier in the course of performing the Services, to the extent necessary for Customer to receive and make use of the Services and/or the Deliverables or the provision to Customer of equivalent services procured from a third party.

5.8 Intellectual property

- 5.8.1 Supplier warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the provision of the Services.
- 5.8.2 Without prejudice or limitation to the aforesaid, to the extent that any third party software is used or required for support services suggested by Supplier, and for which the Customer doesn't assume direct responsibility for procuring under/in accordance with the Services and Subsidiary Agreements, Supplier agrees to ensure that it has obtained all relevant licences of such third party software and/or where relevant (and further) that it will procure the Customer to enter into all relevant third party software licence(s) necessary
- 5.8.3 Supplier shall indemnify and keep Customer indemnified against all losses, damages, costs, claims or expenses suffered or incurred by Customer as a result or arising, directly or indirectly, out of any claim by a third party that proper use of any Deliverable or any Supplier pre-existing materials infringes that third party's Intellectual Property Rights ("IPR Claim") (whether or not such losses, damages, costs, claims or expenses were foreseeable at the date of this Agreement) except to the extent that such infringement arises from:
- (i) modification of the Deliverable by any person other than the Supplier or use thereof in a manner not contemplated or permitted by this Agreement; or
 - (ii) Customer's failure to use any replacements or modifications made available by and communicated in writing to Customer by Supplier where the use of such replacement or modification would avoid the IPR Claim.
- 5.8.4 If any Deliverable, or any portion thereof, becomes, or in Supplier's reasonable judgment, is likely to become the subject of an IPR Claim or if any such Deliverable or any portion thereof, is found by final, non-appealable order to be such an infringement or misappropriation, Supplier at its option and expense, shall have the right at its option and its sole cost to
- (i) procure for Customer the continued use of such Deliverable where such continuing use is not contrary to any legal judgement or court order or in continuing infringement of the Intellectual Property Rights which are the subject matter of the IPR Claim, or
 - (ii) replace, or modify such Deliverable provided that the replacement or modified Deliverable is capable of performing substantially the same function as the Deliverable.
- 5.8.5 Customer shall:
- (i) promptly notify Supplier of any IPR Claim of which Customer is aware;
 - (ii) not make any prejudicial admission or statement in relation to the IPR Claim;
 - (iii) provide reasonable assistance and co-operation requested by Supplier in the defence and settlement of the IPR Claim; and
 - (iv) allow Supplier primary control of the defence of the IPR Claim and related settlement negotiations.
- 5.8.6 To the extent that Supplier uses, furnishes or develops any of its own Intellectual Property or materials, in or by the provision of the Services and which is not passed to the Customer in accordance with the Contract, any Subsidiary Agreement, or other express agreement Supplier grants to the Customer a perpetual, royalty-free licence to use such Intellectual Property in relation to the Services.

5.9 Data Security

- 5.9.1 Supplier will maintain good and appropriate technical and organizational security measures to protect the security, integrity, confidentiality, and availability of Customer Data ("Security Measures"), and shall regularly review, maintain

and update the Security Measures to comply with all Applicable Laws and regulations.

- 5.9.2 Supplier shall restrict access to Customer Data to those such persons who need such information to deliver the Services to Customer under this Agreement ("Authorized Persons"). Supplier shall not disclose Customer Data or Customer Confidential Information nor allow access to any third party without Customer's prior written consent.
- 5.9.3 At all times during which Supplier or any Authorised Person has access to or retains Customer Data, Supplier shall, and shall cause each Authorized Person to, comply with terms of this Agreement, all Applicable Laws and regulations, and, to the extent they are applicable, industry standards that apply to the protection of specific classes of personally identifiable information. Supplier shall ensure that all Authorized Persons complete adequate and appropriate privacy and data security training prior to having access to Customer Data.
- 5.9.4 Supplier shall promptly correct, amend, delete, return, encrypt and/or destroy any Customer Data in any manner that Customer reasonably requests. If applicable law or regulation prevents Supplier from returning or destroying Customer Data, Supplier shall maintain the security and confidentiality of the Customer Data in accordance with this Agreement and refrain from Processing it any further, unless required by applicable law or regulation. Supplier shall not retain Customer Data beyond the expiration or termination of the Agreement. Supplier shall promptly delete Customer Data as soon as it is no longer required in accordance with Supplier's retention policies. Upon Customer's request, Supplier will promptly certify in writing that it has returned or destroyed all Customer Data.

5.10 Data Processing

For the purposes of this clause, the terms "data controller", "data processor", "data subject" and "personal data" shall have the meanings given to them in the Data Protection Legislation. Each Party shall comply with the Data Protection Legislation in respect of the processing of any Personal Data under or in connection with this Agreement. :

- 5.10.1 The Parties agree that the Supplier is limited in its ability to identify all tasks carried out within the customer environment and using customer systems, which may be classified or consider to be Data Processing. The Parties further agree that it is the Customer's responsibility to ensure that all such activities which process Customer Data are identified and included under Schedule 6 Appendix A: Data Processing Template
- 5.10.2 Where Data Processing is required in order to provide Services under the Agreement, the Customer shall issue the Supplier with Customer Specific Instructions. In this context, Customer is the "data controller" and Supplier is the "data processor" as defined under Data Protection Legislation .
- 5.10.3 To the extent the Supplier processes Personal Data on behalf of Customer, the Customer Specific Instructions shall include the information required under Schedule 6 Appendix A: Data Processing Template
- 5.10.4 Should the Supplier identify possible Data Processing activities which are not included within agreed Customer Specific Instructions, the Supplier shall notify the Customer.

Following notification:

- 5.10.4.1 The Parties will review the activities, and should it be identified that activities are considered data processing, the Parties shall, within 30 days, either
 - a) Agree Customer Specific Instructions for the identified activities, or
 - b) Agree modifications to the Services provided by the Supplier such that Data Processing is not being carried out
- 5.10.4.2 The Supplier shall perform the identified activities in accordance with the requirements of a data processor for a period of 30 days or until the Parties have reached agreement, whichever is the sooner.
- 5.10.4.3 Should agreement not be reached within 30 days, the Supplier may, at it's sole discretion,

- a) suspend performance of the activities
- b) perform the identified activities in accordance with the requirements of a data processor until agreement has been reached.

5.10.5 Supplier shall process Personal Data only to the extent necessary to provide Services under the Agreement and in accordance with Customer's instructions, or as otherwise permitted by or necessary to comply with applicable laws or regulations.

5.10.6 Where Customer authorises Supplier to use subcontractors to Process Customer Data, Supplier shall ensure that its agreement with these subcontractors contains contractual obligations with respect to data protection that are no less stringent than the terms contained in this Agreement. Upon written request, Supplier shall make available to Customer a current list of such subcontractors and provide a summary of Supplier's written agreement with these subcontractors. Supplier shall remain at all times responsible for its subcontractor's compliance with this Agreement. Where Supplier subcontracts any of its obligations under this Agreement with respect to data protection, Supplier shall be liable for the acts and omissions of the Subcontractor and such acts and omissions shall be deemed to be those of Supplier.

5.10.7 Supplier shall cooperate with Customer in dealing with inquiries, complaints and requests from data subjects, other data controllers, supervisory authorities and courts in connection with the processing of Customer Data.

5.10.8 If Supplier receives a request from a third party in connection with any government investigation or court proceeding, then Supplier shall not disclose such information, immediately notify Customer in writing of such request, and fully cooperate with Customer if Customer wishes to limit, challenge or protect against such disclosure, to the extent permitted by Applicable Laws or regulation.

5.10.9 Supplier shall indemnify and keep Customer indemnified against all losses, damages, costs, claims or expenses suffered or incurred by Customer as a result or arising, directly or indirectly, out of any claim relating to data processing and the processing of Personal Data (whether or not such losses, damages, costs, claims or expenses were foreseeable at the date of this Agreement) except to the extent that such infringement arises from:

- a) Supplier performance of data processing activities that have been agreed between the Parties and documented within Customer Specific Instructions under the terms of this Schedule 5.10 Data Processing and Schedule 6 Appendix A: Data Processing Template

5.11 Information Management & Security Notification

5.11.1 Supplier shall maintain records in accordance with ISO 27001 or similar

5.11.2 Each party shall be responsible for the effective performance of their security obligations and shall at all times provide a level of security which:

- a) is in accordance with the Applicable Laws and this Agreement;
- b) as a minimum demonstrates Good Industry Practice;

5.11.3 Any confirmed or suspected event, action, or occurrence that compromises or has the potential to compromise the confidentiality, integrity, or availability of Customer Data shall be defined and managed as a "Security Incident". This may encompass, but is not limited to, unauthorised access, use, disclosure, alteration, or destruction of data; malicious software intrusions; breaches of implemented security policies; or any other anomalies that might pose a threat to the said data. In the event of a Security Incident, each of the Parties shall,

- a) Take all necessary actions to minimise the extent of actual or potential harm caused by any verified or suspected event, act, or circumstance that results in or has the capability to result in the unauthorised access, use, disclosure, alteration, or destruction of Customer Data "a Breach of Security";

- b) remedy such Breach of Security to the extent possible and protect the integrity of the Parties and their systems and services, and the provision of the goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) reasonably cooperate with the other Party to investigate and resolve the Security Incident,
- d) Investigate methods to prevent an equivalent breach in the future exploiting the same cause failure; and
- e) to the extent permitted by applicable law or regulation, notify the other Party of the Security Incident

5.12 Dispute Escalation

- 5.12.1 In the event of any dispute(s), disagreement(s) and/or difference(s) ("Dispute") between the Parties, in connection with this Agreement, and/or provision of the Services, the Parties hereby agree to meet to discuss in good faith that Dispute, such dispute resolution negotiations being escalated to each Parties' respective "sponsoring director" in the event that a mutually satisfactory resolution cannot/has not previously been reached.
- 5.12.2 Where any Dispute cannot be settled by negotiation within twenty-one (21) days after either Party has made a written offer to the other Party to negotiate a settlement to such Dispute, the parties shall, before resorting to court proceedings, attempt to resolve the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

5.13 Liability

- 5.13.1 Supplier (or any of their constituent members) shall not be liable to the Customer for any direct, indirect, consequential or special loss as a result of instructions or requests provided to Customer or other parties contracted to the Customer
- 5.13.2 Neither the Customer or Supplier (or any of their constituent members) shall be liable to the other for:
 - a) any indirect, consequential or special loss; or
 - b) loss of profit, loss of revenue, loss of anticipated savings or loss of goodwill or (except in respect of the cost of reconstituting data to the last back up that the Customer Party ought to have made) loss of data,
 - c) in each case, regardless of whether the first named party knew or had reason to know of the possibility of the loss, injury, or damage in question.
- 5.13.3 Without prejudice to the exclusions referred to in Clause 5.13.2, except as provided for in Clause 5.13.4, the Customer's aggregate liability to Supplier, and Supplier's liability to the Customer, in each case whether based on an action or claim in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising out of or in relation to this Agreement will not exceed 100% of total Fees paid for the individual Services most closely associated with the event or series of related events that gave rise to the liability during the 12 month period immediately preceding the date of such event (or the date of the last in a series of related events).
- 5.13.4 The limits on liability set out in Clause 5.13 Liability shall not apply in respect of:
 - a) any liability for fraud or fraudulent misrepresentation by a party, its employees or agents;
 - b) any liability for death or personal injury to any person caused by its negligence;
 - c) wilful default by Supplier;
 - d) any breach of any obligations or conditions implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - e) any other liability to the extent which it cannot be lawfully excluded.

5.14 Force Majeure

- 5.14.1 If either party is prevented from performing any of its obligations under this Agreement (the "Affected Party") by a Force

Majeure Event, then:

- 5.14.1.1 to the extent that the Affected Party's obligations under this Agreement are prevented (and save to the extent that the Affected Party could reasonably have avoided such circumstances by exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice) in each case to avoid or mitigate the Force Majeure event), its obligations shall be suspended for so long as the Force Majeure Event continues and to the extent that the Affected Party is so prevented;
- 5.14.1.2 as soon as reasonably possible after commencement of the Force Majeure Event the Affected Party shall notify the other party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- 5.14.1.3 the Affected Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement; and
- 5.14.1.4 as soon as reasonably possible after the cessation of the Force Majeure Event the Affected Party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement.

5.14.2 If the Force Majeure Event continues for more than 28 successive days after the commencement of the Force Majeure Event the Party not seeking to rely on the suspension of its obligations as a result of the Force Majeure Event may terminate this Agreement by giving not less than 28 days' notice in writing to the Affected Party.

5.14.3 If the event of Force Majeure results in the suspension of all or any part of the Services, then Customer shall not be obliged to pay the relevant Fees for the suspended Services until such time as the event of Force Majeure shall have ceased to have effect and Services recommenced.

5.15 Insurance

5.15.1 Supplier undertakes throughout the Term of the Agreement and any Contract and for a period of three years thereafter with a reputable insurer or insurers to maintain, at its own cost, adequate public liability insurance and professional indemnity insurance which are adequate to meet its potential liabilities under this Agreement and shall provide the Customer with a copy of such cover upon request..

5.15.2 Supplier will ensure that Subcontractors either maintain equivalent insurance coverages to those specified in Clause 5.15.1 or are covered by Supplier's insurance coverages specified in Clause 5.15.1

5.16 Assignment and Subcontracting

5.16.1 Supplier may, with the prior written consent of Customer, assign, novate or transfer this Agreement and any Subsidiary Agreement to a Group company of Supplier which has (i) a financial standing; and (ii) an operational capability to perform the Services, which is not less than that of Supplier.

5.16.2 Supplier shall be entitled to use a Subcontractor to perform a material part of the Services or a material part of a Subsidiary Agreement with the prior written consent of Customer, such consent to not be unreasonably withheld. Where Supplier subcontracts any of its obligations under this Agreement, Supplier shall be liable for the acts and omissions of the Subcontractor and such acts and omissions shall be deemed to be those of Supplier.

5.17 General

- 5.17.1 Under the terms of this Agreement unless otherwise defined, it is the Customers responsibility to carry out the following in line with good IT practices to minimise service impacting events and information security and data integrity risks.
- a) Monitor, configure, manage and maintain the platforms covered by this Agreement.
 - b) Manage and maintain dependant hardware for the platforms covered by this Agreement.
 - c) Administer and support applications which are deployed within the environment covered by this agreement.
 - d) Ensure that they have the skills necessary to fulfil its responsibilities under this Agreement .
 - e) Identify and record incidents and escalations to Supplier in line with the Services outlined within this Agreement.
 - f) Provide appropriate systems access should it be required for Supplier to provide effective resolution.
- 5.17.2 In the event that operational maintenance has not been carried out, the Customer acknowledges that Supplier may not be able to respond in line with the Deliverables and targets set out in the defined Subsidiary Agreement. In line with common practice, application of patches and upgrades may be required prior to or part of Supplier delivery
- 5.17.3 The Customer may request the Supplier to provide additional Services under this Agreement
- 5.17.4 During the Term, Supplier shall comply with all Applicable Laws including all statutory and other (binding) rules and regulations applicable in the UK to Supplier's performance of its obligations under this Agreement, any Subsidiary Agreement the performance of the Services, and/or applicable to the Contract as relevant to Supplier (and including any (binding) relevant European legislation).
- 5.17.5 The Parties shall comply with: (i) Applicable Laws; and (ii) such policies, processes and procedures (including but not limited to those relating to security, anti-bribery and anti-corruption, data protection, data privacy and health and safety) as may be notified to it in writing by Supplier or Customer from time to time. This includes compliance with the each Party's business ethics policies and the Modern Slavery Act. 2015 and/or where applicable equivalent provisions of local law and the United Nations Global Compact;
- 5.17.6 Supplier agrees that, in the course of performing the Services hereunder, none of the Supplier's, its directors, officers or employees will offer, pay, promise to pay or authorise the payment or transfer, directly or indirectly, of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favours and services, to any government official, including officials (or anyone acting in the capacity of an official) of any governmental department, agency or instrumentality (including government controlled commercial enterprises) or any other person while knowing or having a reasonable belief that all or some portion will be used for the purpose of influencing any act or decision of any government official.
- 5.17.7 Supplier shall and shall ensure, that any person (including any employee, agent, Subcontractor or Group company who performs Services for or on behalf of Customer under this Agreement complies with, and does not through their acts or omissions put Customer in breach of, the Bribery Act 2010.
- 5.17.8 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 5.17.9 No provision of this Agreement creates a partnership or employer/employee relationship between the Parties or makes a Party the agent of the other Party for any purpose. Neither Party nor any of it's respective Group companies', officers, directors, or employees, is an agent of the other for any purpose has any authority or power to bind, to contract in the name of, or to create a liability for the other party in any way or for any purpose.
- 5.17.10 Execution. Neither this Agreement, nor any variation or modifications of it, nor any Subsidiary Agreement will be binding on the Parties hereto or those set out in the Subsidiary Agreement unless it has been signed on behalf of each of the Parties thereto by one of its duly authorised representatives. No variation shall, unless expressly stated, constitute a general waiver of any provision of this Agreement nor shall it affect any rights or obligations under this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under this Agreement shall

remain in full force and effect, except and only to the extent that they are so varied. This Agreement, amendments thereto and each Subsidiary Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute together one Agreement. A counterpart delivered to either of the Parties hereto by electronic means such as pdf and email, will be deemed an original equivalent in all respects to a manually executed counterpart, pending the parties exchanging original executed documents.

- 5.17.11 Where relevant, should Supplier be required to perform Services (or any part thereof) upon the Customer premises, Supplier shall observe (and procure that its Staff observe) all safety and security and other reasonable policies and protocols of the Customer, provided (first) brought to its attention.

5.18 Severability

- 5.18.1 The invalidity or unenforceability of any term, right or provision of or arising pursuant to this Agreement and/or under the Contract shall in no way affect the validity or enforceability of the remaining terms, rights or provisions, such invalid or unenforceable provision(s) (to the extent permitted by applicable law), being deemed severed from the remainder, so long as this Agreement continues to express, without material change, the parties' original intention(s) and/or the Customer continues to be bound under the Contract (and in relation to the Services

5.19 Third Party Rights

- 5.19.1 Save as expressly provided for herein, this Agreement does not create any rights in any other person(s) (and/or entities) that are not a party hereto, for the purposes of The Contracts (Rights of Third Parties) Act 1999..

5.20 Personnel

- 5.20.1 Supplier shall ensure that it provides an adequate number of suitably qualified, skilled and experienced Personnel and shall ensure that they provide the Services and perform their obligations under this Agreement will all due care and skill.
- 5.20.2 The Parties acknowledge and agree that as between the Parties, neither the Transfer of Undertakings (Protection of Employment) Regulations 2006 nor the Acquired Rights Directive 77/187 (or any subsequent legislation in relation to the same) shall apply on the date of this Agreement nor on the Effective Date or during the Term or on termination of this Agreement.
- 5.20.3 The Parties agree that
- (i) all the Customer's employees shall remain in the employment of their current employer notwithstanding the entry into force of this Agreement and
 - (ii) all Supplier's employees shall remain in the employment of Supplier at the end of the Term and following termination of this Agreement and any Subsidiary Agreement and the parties hereby agree to indemnify and hold each other harmless against any against any action, claim, demand, proceedings, award or judgment that may be made or raised by their respective employees in relation to any alleged transfer of employment resulting from the reason or in connection with the commencement or termination of this Agreement including without limitation any claim for unfair dismissal, wrongful dismissal, breach of contract, unlawful deduction from wages, redundancy, discrimination, personal injury, a protective award or a claim or demand of any other nature.
- 5.20.4 Neither Party shall (and each party shall procure that no other company within its respective Group shall), solicit or approach in any way, any of the other party's employees connected with provision or receipt of the Services or managing the parties' relationship hereunder, with a view to offering such employees employment or to solicit services

from them on their own account (whether for themselves or for another party) during the Term and for the period of six (6) months after the termination or expiry of this Agreement.

- 5.20.5 If any employee of a party to this Agreement leaves the employment of that party as a result of a breach by the other party of Section 5.20.4 (the "Poaching Party"), and thereafter (and always within a further period of six (6) months) that leaving employee commences employment with, or provides services to that Poaching Party (or third party as was "introduced" by that Poaching Party), that Poaching Party shall pay (by way of liquidated damages, but in full and final settlement of any claim in connection herewith) the party losing or having lost their employee (and not being in breach), fifty (50) percent of the gross annual salary (including any benefits in kind, bonus payments, commissions and other emoluments) of that relevant leaving employee, as applied at the date that he ceased to be an employee of the party not in breach. Such sum is hereby acknowledged by the parties to be a reasonable and genuine pre-estimate of the loss that will be suffered by the party not in breach, and reflects inter alia, the cost of recruiting and training a replacement employee.
- 5.20.6 In the context of any actual or threatened breach by either party of all or any part of the provision(s) of the above Section 5.20.4, it is expressly acknowledged by the Parties that damages would not be an adequate remedy, and accordingly either party shall be entitled to seek an injunction, interim order or similar equitable relief, to restrain, prevent or avoid same.

5.21 Notices

- 5.21.1 Any notice or other communication which is required to be given to a Party in connection with this Agreement, shall be addressed to that relevant Party's company secretary at their registered office, or to such other person and/or address as that relevant Party shall have previously specified in writing to the Party wishing to give notice. Any such notice may be delivered by hand, or by express courier service, service fee prepaid, or by facsimile transmission, or by email. All notices shall be deemed received
- (i) if given by hand, immediately,
 - (ii) if given by express courier service, three Business Days after dispatch or
 - (iii) if given by facsimile transmission or email, immediately upon transmission.

5.22 Law and Jurisdiction

- 5.22.1 This Agreement, together with any Disputes (including non-contractual disputes or claims) (and in relation to Disputes connected to the Contract, save where the Contract specifically requires otherwise), shall be governed by and construed in accordance with the laws of England and Wales
- 5.22.2 Save for the Dispute Escalation Procedure under Section 5.12 Dispute Escalation and which the Parties agree to first follow) the Parties hereby agree to submit any and all claim(s), action(s), dispute(s) (including non-contractual disputes or claims) or similar between them, to the exclusive jurisdiction of the Courts of England and Wales.
- 5.22.3 Supplier shall promptly notify Customer of any changes in Applicable Laws which have a material impact on Supplier's provision of the Services.
- 5.22.4 Supplier will with Customer's approval, conform the Services to any changes in applicable law or regulation. The conforming of any Services to any changes in Applicable Laws shall be dealt with using the Change Management Procedure.

5.23 Termination

- 5.23.1 Termination of the Agreement.

- 5.23.1.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement forthwith by written notice to the other with immediate effect from the date of service of such notice if the other party:
- a) becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or
 - b) becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.
 - c) if there is a breach by the other Party of any provision of the Agreement which expressly entitles the Party not in breach to terminate the Agreement.
 - d) the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.

5.23.1.2 Without prejudice to its other rights or remedies contained in this Agreement (including any other express rights of termination), Customer may terminate this Agreement in whole or in part any time by giving not less than 20 Business Days' notice in writing to Supplier.

5.23.1.3 On termination under 5.23.1.1 or 5.23.1.2 shall also terminate all Subsidiary Agreements and/or all Contracts.

5.23.1.4 On termination under 5.23.1.1 by Customer, Customer shall be entitled to a refund or credit for the terminated Services proportional to the remaining Term of the Agreement and any active Subsidiary Agreement

5.23.1.5 Supplier will be due all Fees chargeable under this Agreement or any Subsidiary Agreement, less monies already paid to the Supplier

5.23.1.6 On termination under 5.23.1.1 by Supplier or 5.23.1.2 by Customer

- a. Customer shall not be entitled to a refund or credit of any monies paid under the Service Schedule
- b. Supplier will be due an amount equal to the total fees chargeable under the Agreement or any Subsidiary Agreement, less monies already paid to the Supplier

5.23.2 Termination of a Service Schedule (in whole or in part).

5.23.2.1 Either party may terminate a Service Schedule forthwith by written notice to the other effective from the date of service of such notice if there is a material or persistent breach by the other Party of any other term of the Contract, which is not remediable, or if it is remediable has not been remedied within 30 days of the service of written notice to the defaulting Party specifying the breach and requiring it to be remedied.

5.23.2.2 On termination under 5.23.2.1 by Supplier for breach by Customer, Customer shall not be entitled to a refund or credit of any monies paid under the Service Schedule

5.23.2.3 On termination under 5.23.2.1 by Customer for breach by Supplier, Customer shall be entitled to a refund or credit for the terminated Services proportional to the remaining term of the Service Schedule

5.23.2.4 Customer may terminate a Service Schedule in the event of proposed increase to Service Cost following investigation and implementation of actions under the application of a Fair Use Policy

5.23.2.5 On termination under 5.23.2.4 by Customer, Customer shall not be entitled to a refund or credit of any monies paid under the Service Schedule

5.23.3 Termination of a Statement of Work (in whole or in part).

5.23.3.1 Either party may terminate a Statement of Work in accordance with the Postponement, Suspension, and Termination clauses as specified in the Terms and Conditions in the applicable Statement of Work

5.23.4 Termination of Cloud Services

5.23.4.1 Cloud Services may be Terminated as permitted under the Cloud Services Terms of Services

5.23.5 Termination of a Customer Quotation

5.23.5.1 On Termination of a Customer Quotation by Customer,

1. Customer shall not be entitled to a refund or credit of any monies paid under the Customer Quotation
2. Customer shall be liable for payment of all costs under the Customer Quotation for which the Supplier remains liable including but not limited to costs for receipt or restocking of Hardware

5.24 Obligations

5.24.1 On termination, any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect. Termination or expiry 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 the Agreement which existed at or before the date of termination or expiry.

5.25 Entire Agreement and Priority

5.25.1 This Agreement, together with its Subsidiary Agreements, shall constitute the entire agreement between the Parties as concerning the contracting by the Customer to Supplier, of provision of the Services. To the fullest extent permitted by law, and save always in the context of any fraudulent mis-representation(s), it supersedes any prior agreements, arrangements, representations and/or understandings between the Parties as to the provision of those (relevant) contracted Services.

5.25.2 In the event of any inconsistency or conflict between any term of the Agreement, the Subsidiary Agreements and/or any other written instructions from the Customer to Supplier, the order of priority shall be the Agreement, then the Service Schedules then the Subsidiary Agreement, and finally any other written instructions from the Customer to Supplier.

5.25.3 The Agreement is in English, and the English language version governs any conflict with a translation into any other language.

6 Appendix A: Data Processing Template

6.1 Customer Specific Instructions

Where required under a Subsidiary Agreement, the Customer shall complete the following template (or equivalent) confirming the agreed Data Processing activities that the Supplier shall carry out in relation to the processing of Personal Data pursuant to the specific Subsidiary Agreement.

Where appropriate, the Customer may choose to capture Customer Specific Instructions for an individual Subsidiary Agreement in more than one template

Once agreed, this document represents the Customer Specific Instructions and shall be included as an attachment to the Subsidiary Agreement

Issue	Details
Subsidiary Agreement under which specific instructions are to be applied to Services provided	[Name or reference of Subsidiary Agreement]
Subject matter of the processing	[A high level, short description of what the processing is about i.e. the type of services being provided e.g. payroll administration]
Commencement Date of the processing	[Commencement date – may be provided as a specific date or referral to Subsidiary Agreement commencement date]
Duration of the processing	[Length of time processing will be permitted for]
Nature of processing	[Describe the type of processing being undertaken (e.g. data transfer, data storage etc) and its purpose(s)]
Purpose of processing	[Why is the processing required]
Types of Personal Data	[Name, email address, date of birth, address, phone number etc.]
Categories of Personal Data	[who is subject to the processing]