

STERLING DCS MASTER SAAS CONDITIONS

THIS AGREEMENT is made on XXXXX DATE

BETWEEN

- (1) **STERLING DCS LIMITED** incorporated and registered in England and Wales with company number 10425509 whose registered office is at Kenmore House, Navigation Road, Chelmsford, Essex, CM2 6HX (the **Supplier**);
- (2) **[COMPANY NAME]** incorporated and registered in England and Wales with company number [...] whose registered office is at [Address] (the **Customer**).

BACKGROUND

- (A) The Supplier has developed certain software applications and platform which it makes available to subscribers as a Software as a Service based solution via the internet.
- (B) The Customer wishes to use the Supplier's service in its business operations in the Territory.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the Supplier's service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement:

Applicable Data Protection Laws	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
Authorised Users	those employees, agents and independent contractors of the Customer (or, as appropriate, Customer Affiliate) who are authorised by the Customer to use the Software, Services and the Documentation, as further described in clause 2.2.3;
Authorised Purpose	the purpose or purposes set out in Part 3 of Schedule 1;
Benchmark Data	reference data or analytics (including peer group analysis) that are calculated by the Supplier and anonymised that may be licensed under a separate agreement to the Customer or any third party for the purposes of performance and metrics only;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Change of Control	means: (a) the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company; or (b) the direct or indirect acquisition of all, or substantially all, of the assets of a party by another entity in a single transaction or a series of transactions;
Confidential Information	all information which is marked or designated as confidential or should otherwise be considered confidential due to its nature (and includes electronic data or databases, drawings, documents, or computer readable media) which is disclosed by one party to the other including, commercial, financial and technical information and data information in connection with this agreement and any variations, and all data stored in relation to the Services or identified as Confidential Information in clause 12.5;
Customer Affiliate	each member of the Customer's Group to whom the Supplier provides the Services and access to the Software from time to time;
Customer Cause	any of the following causes: (a) any improper use, misuse or unauthorised alteration of the Software by the Customer (any Customer Affiliate, and/or any End User); (b) any use of the Software by the Customer (any Customer Affiliate, and/or any End User) in a manner inconsistent with the then-current Documentation or any relevant term of this agreement; or

- (c) the use by the Customer (any Customer Affiliate, and/or any End User) of any hardware or software not provided by the Supplier or approved by the Supplier in the Specification for use in connection with the Software;

Customer Data	the data inputted by the Customer, Customer Sub- Contractor Users, or End Users for the purpose of using the Software or the Services or facilitating the Customer's use of the Software or the Services;
Customer Personal Data	any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer;
Customer Sub-Contractor User	those employee, agents or independent contractors of a Sub-Contractor that are authorised by that Sub-Contractor to use the Software, the Services and the Documentation;
Data Storage Location	the location where the Customer Data will be held, as specified in Error! Reference source not found. ;
Documentation	the functionality listing and requirements of the Software set out in Error! Reference source not found. and the document made available to the Customer by the Supplier online via the Software or the Support Portal (or such other web address notified by the Supplier to the Customer from time to time) which sets out the user instructions for the Services;
Effective Date	the date of this agreement;
End User	an Authorised User or Customer Sub-Contractor User;
Fault	any failure of the Software to operate in all material respects in accordance with the Specification and Documents;
Group	in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other company that is a subsidiary of such holding company; and each company in a Group is a member of the Group;
Implementation Services	services provided by the Supplier during the course of implementation of the Software with a list of agreed services detailed in Schedule 2;
Initial Subscription Term	the initial term of this agreement as set out in clause 15.1;
Intellectual Property	patents, rights of inventions, copyright and related rights, trade marks, trade names and domain names, rights in get up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights in each case whether registered or unregistered and including all applications or (rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may, now or in the future, submit in any part of the world relating to the Software, the Services, the Documentation or any other document, programme product or item provided or used by the Supplier in connection with this agreement;
Out-of-scope Services	any services provided by the Supplier in connection with any apparent problem regarding the Software reasonably determined by the Supplier not to have been caused by a Fault, but rather by a Customer Cause or a cause outside the Supplier's control (including any investigational work resulting in such a determination);
Normal Business Hours	08:00 to 18:00 GMT on any Business Day; excluding: Good Friday, and Easter Monday, 24/25/26 December and limited support up to 31 st December and 1 st January
Renewal Date	the date on which a Renewal Period commences;
Renewal Period	the period described in clause 15.1;
Services	the subscription services provided by the Supplier under this agreement via https://sterling-dcs.io , the Support Portal or any other website notified to the Customer by the Supplier from time to time, as more particularly described in Schedule 5 and the Implementation Services;
Service Level Agreement	the terms on which the Supplier will provide support services pursuant to this agreement as set out in Schedule 5;

Software	the online software applications provided by the Supplier as part of the Services and as are listed in Error! Reference source not found. ;
Specification	the set of functional characteristics of the Software as described in this agreement and/or the Documentation;
Sub-Contractor	the sub-contractors of the Customer (and where relevant, the Customer Affiliates) as provided for in Error! Reference source not found. (or as otherwise agreed from time to time);
Sub-Contractor Licence	means a sub-contractor licence in the form attached at Error! Reference source not found. ;
Subscription Fees	the subscription fees payable by the Customer to the Supplier for the Services, as set out in paragraph 1 of Part 1, Schedule 1;
Subscription Term	has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
Supplier Data	any data owned by the Supplier used in the provision of the Services, including Benchmark Data, but for the avoidance of doubt, excluding Customer Data;
Supplier Personnel	the individuals engaged (in whatever capacity) by the Supplier who are involved in the provision of the Services;
Supplier Personal Data	any personal data which the Supplier processes in connection with this agreement in the capacity of a controller;
Support Portal	the Supplier online support centre that can be found at https://support.sterling-dcs.io , or such other location as the Supplier may notify the Customer of from time to time;
Territory	the United Kingdom;
UK GDPR	has the meaning given to it in the Data Protection Act 2018;
User Subscriptions	the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle End Users to access and use the Software, Services and the Documentation in accordance with this agreement;
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 **Controller, processor, data subject, personal data, personal data breach** and **processing** have the meaning given to them in the Applicable Data Protection Laws.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a holding company or a subsidiary means a holding company or subsidiary (as the case may be) as defined in Section 1159 of the Companies Act 2006.
- 1.7 Words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 A reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.10 A reference to writing or written excludes faxes and e-mail (unless otherwise expressly stated in the agreement).
- 1.11 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.12 Any words following the terms **including, include, in particular** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13 Any reference to termination shall mean termination or expiry as the context requires.

2. USER SUBSCRIPTIONS

- 2.1 Subject to the terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences (other than as expressly authorised by the terms of the agreement), to permit such number of End Users as set out in Part 1 of Schedule 1 (or such other number of End Users as from time to time agreed including in accordance with clause 3) (Maximum Number of Licences) to use the Services (including for the avoidance of doubt, the Software) and the Documentation during the Subscription Term solely for the Authorised Purpose.
- 2.2 In relation to the End Users, the Customer undertakes that:
 - 2.2.1 the maximum number of End Users that it authorises to access and use the Software, Services and the Documentation shall not exceed the number of User Subscriptions authorised from time to time as specified in Schedule 1 (if any limit is specified); save that for the avoidance of doubt the number of Customer Sub-Contractors shall be unlimited in number;
 - 2.2.2 it will not allow or suffer any User Subscription to be concurrently used by more than one individual End User;
 - 2.2.3 each Authorised User shall, save with the express written consent of the Supplier (which consent may be withheld or made subject to any condition that the Supplier, in its sole opinion, considers appropriate) be an employee, agent or independent contractor of the Customer (or a Customer Affiliate) working exclusively in the Customer's business operations in the Territory and shall use a valid email address within the domain that is owned/operated by the Customer (or any member of the Customer's Group where such member provides services to the Customer);
 - 2.2.4 each Customer Sub-Contractor User shall, save with the express written consent of the Supplier (which consent may be withheld or made subject to any condition that the Supplier, in its sole opinion, considers appropriate) be an employee, agent or independent contractor of the relevant Customer Sub-Contractor and shall use a valid email address within the domain that is owned/operated by the relevant Customer Sub-Contractor and, in accessing and using the Software and the Services shall only provide services to the Customer for an Approved Purpose;
 - 2.2.5 each End User shall keep a secure password for their use of the Services and Documentation (in accordance with the Security requirements and policies of the Customer);
 - 2.2.6 it shall verify in writing (in a form satisfactory to the Supplier) at the request of the Supplier that the list held by the Supplier (such list to be provided to the Customer by the Supplier at the time of any such request) of the current End Users is correct, and that each End User complies with the criteria set out in clause 2.2.3 or 2.2.4 (as the case may be) within 10 Business Days of the Supplier's written request at any time or times;
 - 2.2.7 it shall permit the Supplier to review the Services in order to establish the name and email address of each End User and the nature of the relationship between each End User and the Customer. Such review may be conducted no more frequently than once per half year, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
 - 2.2.8 it shall immediately inform the Supplier in the event that any End User no longer complies with the criteria set out in clause 2.2.3 or 2.2.4 (as the case may be) and shall use its reasonable endeavours to ensure that any such individual is not afforded any further access to the Software, the Services or the Documentation;
 - 2.2.9 if any review referred to in clause 2.2.6 reveal that any password has been provided to any individual who is not an End User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.
- 2.3 If any of the reviews referred to in clause 2.2.7 reveal that any undertaking in clause 2.2 has been breached, the Supplier may, without liability to the Customer, disable the passwords, accounts and access to any part of the Software or the Services or all or any of the End Users and the Supplier shall not be under any obligation to provide any or all of the Services until such breach has been rectified to the reasonable satisfaction of the Supplier.
- 2.4 It is acknowledged and agreed that End Users shall be required to click to accept the Supplier's end user licence agreement. For the avoidance of doubt no Subscription Fee or other payment shall be due or payable to the Supplier for a Customer Sub Contractor's use of the Software, Services or Documentation and the number of Customer Sub-Contractors shall be unlimited in number.
- 2.5 The Customer shall not, and shall procure that no End User shall, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - 2.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.5.2 facilitates illegal activity;
 - 2.5.3 depicts sexually explicit images;
 - 2.5.4 promotes unlawful violence;
 - 2.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.5.6 is otherwise illegal or causes damage or injury to any person or property;
 and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access (or that of an End User) to any material that breaches the provisions of this clause.
- 2.6 The Customer shall not:

- 2.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
- 2.6.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- 2.6.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.6.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 2.6.3 use the Services and/or Documentation to provide services to third parties; or
- 2.6.4 subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the End Users and the Customer's Sub-Contractors in accordance with this agreement, or
- 2.6.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause **Error! Reference source not found.**
- 2.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.8 The rights provided under this clause **Error! Reference source not found.** are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
3. **ADDITIONAL USER SUBSCRIPTIONS AND ENTERPRISE OPTION**
- 3.1 If the Customer requires additional User Subscriptions and/or additional functionality modules as set out in Schedule 3 and/ or wishes to exercise an option to change the terms of the agreement in accordance with Schedule 12 (the Enterprise Option), the Customer shall notify the Supplier in writing (Change Request). The parties shall together evaluate such Change Request and the Supplier shall respond to the Customer with approval or rejection of the Change Request (such approval not to be unreasonably withheld or delayed).
- 3.2 If the Supplier approves the Customer's Change Request in the case of the Enterprise Option the terms of Schedule 12 shall apply and the Parties shall agree any consequential variations to this agreement as shall be necessary to implement the Enterprise Option.
- 3.3 If the Supplier approves the Customer's Change Request for any other change:
- 3.3.1 the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the required additional Subscription Fees calculated in accordance with this agreement; or
- 3.3.2 the Supplier shall recalculate the monthly payment of the Subscription Fees required or, if the Subscription Fees have been paid annually in advance, any rebate due to the Customer shall be provided as a credit against the Subscription Fees to be paid in the next subscription period, but no refund will be paid to the Customer,
- and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
4. **CUSTOMER SUB-CONTRACTORS**
- 4.1 The Customer hereby agrees and accepts that in order to receive the benefit of the Bid Enquiry Receipt and Cost and Carbon Tender Return functionality of the Software, Customer Sub-Contractors must be authorised to access the Customer Data via the Software and that as a result of such authorisation, Customer Sub-Contractor Users will have access to that Customer Data.
- 4.2 The Customer shall have the right to grant a sub-licence to Sub-Contractor with whom the Customer has, at the time of granting such licence, a legally binding agreement (such party hereinafter being a Customer Sub-Contractor) under this agreement provided that:
- 4.2.1 the Customer gives the Supplier not less than one Business Day notice in writing of such sub-licence (during which time the Supplier has the right, acting reasonably and by notice in writing, to refuse the Customer permission to grant a sub-licence to the proposed new Customer Sub-Contractor) and pays to the Supplier any additional Subscription Fee due, as calculated pursuant to clause 3; and
- 4.2.2 the terms of such sub-licence shall be those set out in **Error! Reference source not found.**
- 4.3 It is acknowledged and agreed that:
- 4.3.1 the Customer Sub-Contractors shall be required to enter into the Customer Sub-Contractor Licences Agreement;
- 4.3.2 under the Customer Sub-Contractor Licence Agreement (set out in Schedule 8), Customer Sub-Contractors shall be responsible for the acts and omissions of their Customer Sub-Contractor Users; and
- 4.3.3 no Subscription Fee or other payment shall be due or payable to the Supplier for a Customer Sub Contractor's use of the Software, Services or Documentation.
- 4.3.4 the number of Customer Sub-Contractors shall be unlimited in number
5. **SERVICES**
- 5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Software and Documentation to the Customer (and, where relevant, the Customer Affiliates) on and subject to the terms of this agreement. The Supplier shall provide details of any changes on the Support Portal after any change has been made.
- 5.2 The Supplier shall be entitled to amend the Documentation and/or alter the Software or the Services from time to time, save that no such amendment shall intentionally serve to materially reduce, damage or otherwise diminish the Services or the service level to be provided by the Supplier to the Customer pursuant to this agreement.
- 5.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard support services during Normal Business Hours in accordance with the Service Level Agreement.
6. **CUSTOMER DATA**
- 6.1 As between the parties, the Customer:
- 6.1.1 shall own all rights, title, intellectual property and interest in and to all of the Customer Data. Except as expressly stated herein, this agreement does not grant the Supplier any rights to use, or rights, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Customer Data. The Customer has (and hereby warrants that it has, and will, at all time during the Subscription Term, maintain) all appropriate and/or necessary licences, consents and permissions to up load it to the Software, enable it to use all Customer Data and to provide it to the Supplier in accordance with the Terms of this agreement, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data; and
- 6.1.2 acknowledges and agrees that the Benchmark Data may include data derived from the Customer Data for enhancements of the Software relating to the performance/ metrics of use, security, application and enhancements only.
- 6.2 The Supplier shall follow its back up procedures for Customer Data as set out in Schedule 6. The Supplier may amend the terms of Schedule 6 at its sole discretion from time to time and shall promptly notify the Customer of any material (in the reasonable opinion of the Supplier) amendments. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such data maintained by the Supplier in accordance with the back up procedure described in Schedule 6. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier which liability will be subject always to clause 14).
- 6.3 The Customer warrants and represents that the Customer Data shall not infringe third party Intellectual Property Rights.
7. **DATA PROTECTION**
- 7.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 7.2 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- 7.2.1 the Supplier shall act as controller in respect of the personal data and processing activities set out in Part 1 of **Error! Reference source not found.**; and
- 7.2.2 the Supplier shall act as processor on behalf of the Customer in respect of the processing activities set out in Part 2 of **Error! Reference source not found.**
- 7.3 Should the determination in clause 7.2 change, then each party shall work together in good faith to make any changes which are necessary to this clause 7 or **Error! Reference source not found.**
- 7.4 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.sterling-dcs.com/privacy-policy/> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.
- 7.5 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this agreement.
- 7.6 In relation to the Customer Personal Data, Part 2 of **Error! Reference source not found.** sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 7.7 Without prejudice to the generality of clause 7.1 the Supplier shall, in relation to Customer Personal Data:
- 7.7.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in Part 2 of Schedule 11 unless the Supplier is required by applicable laws to otherwise process that Customer Personal Data. Where the Supplier is relying on applicable laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Supplier from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- 7.7.2 implement the technical and organisational measures set out in **Error! Reference source not found.** to protect against unauthorised or unlawful processing of Customer

- Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 7.7.3 ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- 7.7.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.7.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- 7.7.6 on termination of the agreement return and delete the Customer Personal Data in accordance with the provisions of clause 8 of Schedule 5; and
- 7.7.7 maintain records to demonstrate its compliance with this clause 7 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 7.8 The Customer hereby provides its authorisation for the Supplier to:
- 7.8.1 appoint the processors set out in Part 3 of Schedule 11 to process the Customer Personal Data, provided that the Supplier:
- 7.8.1.1 shall ensure that the terms on which such processors are appointed comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 7;
- 7.8.1.2 shall remain responsible for the acts and omission of such processors as if they were the acts and omissions of the Supplier; and
- 7.8.1.3 shall inform the Customer of any intended changes concerning the addition or replacement of processors, thereby giving the Customer the opportunity to object to such changes, and the provisions of clauses 7.8.1.1 and 7.8.1.2 shall apply to any such additional or replacement processors.
- 7.8.2 transfer Customer Personal Data outside of the UK as required for the purposes set out in Part 2 of **Error! Reference source not found.**, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws and that such transfer is subject to exemption, adequacy regulations and/ or an International Data Transfer Agreement. The Customer hereby confirms its specific authorisation of the transfers of Customer Personal Data outside of the UK set out in Part 4 of **Error! Reference source not found.**
8. **SUPPLIER'S OBLIGATIONS**
- 8.1 The Supplier undertakes that the Services:
- 8.1.1 will be performed in accordance with good industry standards;
- 8.1.2 will be performed materially in accordance with the Documentation;
- 8.1.3 shall be fulfilled by appropriately experienced, qualified and trained Supplier Personnel; and
- 8.1.4 will be performed with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the terms of this agreement, the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents in accordance with clause 5.2. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Except as set out in Schedule 5, such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3 Notwithstanding the foregoing the Supplier:
- 8.3.1 does not warrant that:
- 8.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or
- 8.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- 8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges and agrees that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 8.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 8.6 The Supplier shall comply with all applicable laws and regulations with respect to its activities under this agreement.
- 8.7 Without limiting its responsibilities under this agreement, the Supplier shall insure with a reputable insurance company against all the potential liabilities described in this agreement (and in particular, the Supplier shall take out Employers insurance to the sum of £5,000,000 and Public & Product Liability insurance to the sum of £5,000,000 and Professional Liability insurance to the sum of £3,000,000 per one claim. The Supplier shall provide documentary proof of such insurance cover at the Customer's request.
- 8.8 The Supplier will not unreasonably withhold or decline to give its agreement to add any party to the list of the Customer's Sub-Contractors.
- 8.9 The Supplier shall remove a party from the list of the Customer's Sub-Contractors on the Customer's reasonable request.
9. **CUSTOMER'S OBLIGATIONS**
- 9.1 The Customer shall:
- 9.1.1 provide the Supplier with:
- 9.1.1.1 its full co-operation in relation to this agreement; and
- 9.1.1.2 all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including Customer Data, security access information and configuration services;
- 9.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 9.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the parties shall adjust any agreed timetable or delivery schedule as reasonably necessary;
- 9.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- 9.1.5 obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including the Services;
- 9.1.6 ensure that its network and systems comply with any relevant specifications provided by the Supplier from time to time;
- 9.1.7 procure that each Customer Affiliate complies with the terms of this agreement as though they were the Customer;
- 9.1.8 be liable for the acts and omissions of each Customer Affiliate as if they were the acts or omissions of the Customer; and
- 9.1.9 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
10. **CHARGES AND PAYMENT**
- 10.1 The Customer shall pay in advance (in respect of such period as set out in Schedule 1) the Subscription Fees, to the Supplier for the User Subscriptions in accordance with this clause 10.
- 10.1.1 If the Customer was offered Subscription Fees including a discount from the list price, the discount is only valid if the Customer pays the invoice by the Due Date as defined in clause 10.2. If payment has not been received by the Supplier by the Due Date any previously agreed discounts will be invalidated and the Subscription Fees will revert to the full list price.
- 10.2 The Customer authorises the Supplier to submit an invoice monthly in advance for the Subscription Fees and the Customer shall pay each invoice within 30 days of the date of receipt of such invoice (**Due Date**).
- 10.3 Excluding payments disputed in good faith in accordance with clause 10.5, if the Supplier has not received payment by the Due Date, providing the Supplier has given an additional 10 Business Days' notice of non-payment, without prejudice to any other rights and remedies of the Supplier:
- 10.3.1 the Supplier may, without liability to the Customer, disable the passwords, accounts and access of all or any of the End Users to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 10.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Supplier's bankers in the UK from time to time (subject to a minimum rate of 8% if the lending rate shall be zero or negative), commencing on the due date and continuing until fully paid, whether before or after judgment or other determination; and
- 10.3.3 the Supplier will be entitled to claim any costs incurred relating to the recovery of such due amounts and any accrued interest.
- 10.4 All amounts and fees stated or referred to in this agreement:
- 10.4.1 shall be payable in pounds sterling;
- 10.4.2 are, subject to clause 3.3.2, non-cancellable;
- 10.4.3 are exclusive of value added tax (or any applicable local sales tax), which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.5 Provided the Customer acts in good faith, if the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- 10.5.1 the Customer shall notify the Supplier in writing as soon as reasonably practicable;
- 10.5.2 the Customer's failure to pay the disputed amounts shall not be deemed to be a breach of this agreement;
- 10.5.3 the Customer shall pay the balance of the invoice which is not in dispute by the Due Date;

- 10.5.4 to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then the Supplier may charge interest in accordance with clause 10.3.2 from the original Due Date until the date of payment;
- 10.5.5 to the extent that the Supplier is obliged to refund an amount to the Customer, interest shall be added to that amount in the same manner as under clause 10.3.2; and
- 10.6 once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 10 Business Days and, where the Supplier is required to issue a credit note, it shall do so within 10 Business Days.

10.7 Save in respect to the exercise of the Enterprise Option pursuant to clause 3.1 and Schedule 12 the Supplier shall be entitled to increase the Subscription Fees in respect of each 12 month period of the Subscription Term, the fees payable in respect of the additional User Subscriptions or modules purchased pursuant to clauses 3.1 and 3.2, and any other fees payable by the Customer pursuant to this agreement by any positive variation in the UK Retail Price Index (RPI) (or equivalent local government inflation index) calculated over the period of 12 months ended on the date of last publication of RPI before the anniversary of the Effective Date.

11. INTELLECTUAL PROPERTY

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all of the Intellectual Property. The Supplier warrants that the Customer's use of the Software, the Services and/or the Documentation shall not infringe any third party Intellectual Property Rights. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.

11.2 Subject to the restrictions set out in clause **Error! Reference source not found.**, the rights granted by clause 4.3, and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive licence to:

- 11.2.1 access and use, and to permit End Users to access and use, the Software; and
- 11.2.2 subject to clause 11.3 use the Intellectual Property to the extent necessary for the purposes of using the Software in accordance with this agreement,

in each case during the Subscription Term solely for the Customer's internal business operations within the Territory.

11.3 The Customer shall, and shall procure, that each End User shall:

- 11.3.1 not apply for registration of any of the Intellectual Property (or any small intellectual property that is confusing similar to the Intellectual Property) in its own name, in any part of the world;
- 11.3.2 not licence (or purport the licence) any other person to use any of the Intellectual Property (save in the case of the Customer, in authorising the End Users pursuant to this agreement) (including Supplier Data);
- 11.3.3 not use the Intellectual Property other than as specifically permitted by this agreement; and
- 11.3.4 not do anything that may adversely affect the Intellectual Property or the Supplier's title to it.

11.4 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

12. CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;
- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other party's Confidential Information in confidence and unless required by law or expressly provided or authorised this agreement, not make the other party's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

12.3 Each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

12.4 The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any Customer's Sub-Contractor or Customer Sub-Contractor's User.

12.5 The Customer acknowledges that details of:

- 12.5.1 the Software (including screen design, work flows and/or permissions settings), Specification, Documentation Services under the terms of this agreement, particularly in relation to any fees payable to the Supplier in connection herewith;

12.5.2 any security policies or procedures or the results of any security audits in, carried out by or on behalf of, the Supplier, whether in relation to the Supplier, the Customer or any other third party;

12.5.3 the supplier development methodology and/or implementation plans (including future product roadmaps) the results of any performance tests of the Software or the Services and any Support Requests raised by the Customer with the Supplier;

12.5.4 any third party data used in the Software to provide the Services; and

12.5.5 any Supplier Data,

constitute Confidential Information of the Supplier.

12.6 The Supplier acknowledges that the Customer Data constitutes the Confidential Information of the Customer.

12.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

12.8 The above provisions of this clause 12 shall survive termination of this agreement, however arising.

13. INDEMNITY

13.1 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Software, Services or Documentation in accordance with this agreement infringes third party Intellectual Property Rights, and shall indemnify the Customer for any claims, actions, proceedings, losses, damages, expenses, costs (including without limitation court costs and reasonable legal fees) and amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 13.1.1 the Supplier is given prompt notice of any such claim;
- 13.1.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim; and
- 13.1.3 take such action as the Supplier requests to avoid, dispute, compromise or defend the Claim (at the Supplier's expense).

13.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 10 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer save that on termination pursuant to this clause 13.2 the Supplier shall refund any Subscription Fees paid in advance by the Customer for the period following notice of a claim, unavailability of the Services or termination, whichever is the earlier (on a pro rata basis).

13.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- 13.3.1 a modification of the Services or Documentation by anyone other than the Supplier's; or
- 13.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- 13.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

13.4 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

14.1 References to liability in this clause 14 includes every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. This clause 14 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors under this agreement:

- 14.1.1 arising under or in connection with this agreement;
- 14.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- 14.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under, or in connection with, this agreement.

14.2 Except as expressly and specifically provided in this agreement:

- 14.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, by any third party or any actions taken by the Supplier at the Customer's direction;
- 14.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 14.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

14.3 Nothing in this agreement shall exclude or limit either party's liability for:

- 14.3.1 death or personal injury caused by that party's negligence;

- 14.3.2 for fraud or fraudulent misrepresentation; and
- 14.3.3 any other matter which by law cannot be excluded or limited.

14.4 Nothing shall exclude or otherwise limit the Customer's liability to pay the Subscription Fees to the Supplier.

14.5 Subject to clause 14.3 and clause 14.4, neither party shall be liable for:

- 14.5.1 loss of profits;
- 14.5.2 loss of sales or business;
- 14.5.3 loss of agreements or contracts;
- 14.5.4 loss of anticipated savings (including the costs of an alternative provider or an in-house supply);
- 14.5.5 loss of or damage to goodwill or reputation;
- 14.5.6 loss of use or corruption of software, data or information; and/or
- 14.5.7 any indirect or consequential loss.

14.6 Subject to clause 14.3 and clause 14.4, the Supplier's total aggregate liability shall not exceed:

- 14.6.1 for all liability in aggregate arising from breach of clause 7, a breach of clause 12 and under the indemnity in clause 13, the sum of £3,000,000; and
- 14.6.2 for all other liability which does not fall within clause 14.6.1, a sum equal to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14.7 Subject to clause 14.3 and clause 14.4, the Customer's total aggregate liability shall not exceed:

- 14.7.1 for all liability (in aggregate) arising from breach of clause 6.3, clause 7 or clause 12, the sum of £3,000,000; and
- 14.7.2 for all other liability which does not fall within clause 14.7.1, a sum equal to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14.8 Nothing in this agreement shall restrict or limit the general obligation at law to mitigate a loss or liability that may be suffered or incurred under this agreement.

15. TERM AND TERMINATION

15.1 This agreement shall commence on the Effective Date and (unless otherwise terminated as provided in this clause 15 or amended pursuant to a clause 3.2 Enterprise Option) shall continue for an initial period of one (1) year (the **Initial Subscription Term**) and, thereafter, shall be automatically renewed for successive yearly periods (each a **Renewal Period**), unless:

- 15.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the following Initial Subscription Term or Renewal Period; or
- 15.1.2 otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2 Without affecting any other right or remedy available to it, either party may terminate this agreement without liability to the other with immediate effect by giving written notice to the other party if:

- 15.2.1 the other party fails to pay any amount due under this agreement on the Due Date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;
- 15.2.2 the other party commits a material breach of any other 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 of the breach;
- 15.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 15.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

15.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.3 to clause 15.2.10 (inclusive);

15.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

15.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

15.3 The Customer may terminate this agreement without incurring any liability to the Supplier on written notice to the Supplier if the Supplier fails to meet any Service Level 1 or 2. For the avoidance of doubt, a failure to meet the Service Availability Target set out in paragraph 7.2 of Schedule 5, in any given month shall be material for the purposes of this clause 15.3 if, pursuant to the terms of Schedule 5, 10 days' credit is afforded to the Customer in respect of that month.

15.4 On termination of this agreement for any reason:

- 15.4.1 all licences granted under this agreement shall immediately terminate;
- 15.4.2 each party shall return or, at the option of the other party, destroy and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 15.4.3 subject to clause 8 of Schedule 5 the Supplier shall destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 20 Business Days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data (in accordance with Schedule 5). The Supplier shall deliver the back-up (in .csv or other machine readable format as determined by the Supplier) to the Customer within 20 days of its receipt of such a written request, provided that the Customer has, at that time, paid all undisputed fees and charges outstanding at and resulting from termination. The Customer shall pay all reasonable expenses incurred by the Supplier in returning the Customer Data in bespoke format specifically requested by the Customer; and
- 15.4.4 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 the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. FORCE MAJEURE

16.1 Except as set out in clause 16.2, neither party shall have any liability under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (not involving the workforce of the party seeking to rely on the force majeure clause), failure of a utility service (including any hosting services provided to the Supplier by a third party from time to time) or transport or telecommunications network, data centre, act of God, war, riot, civil commotion, malicious damage (including distributed denial of service attacks, hacking or any other unauthorised access), compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the party not affected is notified of such an event and its expected duration.

16.2 Nothing in this clause 16 shall relieve the Customer from non-payment of any sums due in accordance with this agreement.

17. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

18. VARIATION

Except in relation to Schedules of this agreement which may be amended as agreed between the parties in writing from time to time, no variation of this agreement shall be effective unless it is in writing and signed by a duly authorised representative of each of the parties (which in the case of the Supplier, shall mean a director of the Supplier).

19. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. SEVERANCE

21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

21.2 If any provision or part-provision of this agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. ENTIRE AGREEMENT

22.1 This agreement and any documents referred to in it, and the Schedules attached to it, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

23. ASSIGNMENT

23.1 Neither party shall, except with the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23.2 The Supplier shall be entitled to sub-contract any obligation under this agreement provided that the Supplier shall remain liable for those sub-contracted obligations as if they were performed by the Supplier itself. The Supplier shall give notice of all sub-contracting outside the Territory.

24. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. COUNTERPARTS

26.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26.2 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

26.3 The signature of any party delivered by electronic transmission shall bind such party and such signature transmitted thereby shall be deemed an original, notwithstanding the failure of such party subsequently to deliver a counterpart bearing its signature in ink.

27. NOTICES

27.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand (including commercial courier) or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to such email address as either party may notify to the other from time to time (at the date of this agreement), any email notices should be sent to the Supplier at [\[contracts@sterling-dcs.com\]](mailto:contracts@sterling-dcs.com) and to the Customer at [\[enter Customer recipient email address here\]](#).

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered on the second Business Day following postage. A notice sent by email shall be deemed to have been received at the earlier of:

27.2.1 receipt by the sender of an acknowledgement of receipt (whether automatic or otherwise) from the recipient; and

27.2.2 24 hours after the time of transmission (save where the sender subsequently receives a notification to the effect that the email in question could not be delivered).

28. DISPUTE RESOLUTION

28.1 Any party may give the other party notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of that notice, the receiving party will provide a written response. Within 15 days after delivery of the receiving party's notice, executives of the parties who have authority to resolve the dispute will meet to attempt to resolve the dispute. All reasonable requests for information will be honoured. If the matter has not been resolved within 45 days after this disputing party's initial notice, or if the executives fail to meet within 15 days of the receiving party's notice, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure and the mediation will start, unless otherwise agreed between the parties, within 28 days of one party issuing a request to mediate to the other. The mediation will take place in London and the language of the mediation will be English. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with, the substantive law of England and Wales.

28.2 All negotiations pursuant to this clause 28 will be confidential and therefore treated as compromise and settlement negotiations for the purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions.

28.3 If a dispute is being resolved before the termination of this agreement, each party will, unless otherwise directed by the other party, continue performing its obligations to the other party (other than Customers' obligations to pay amounts disputed in good faith).

28.4 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

29. GOVERNING LAW

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

30. JURISDICTION

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

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Part 1

SUBSCRIPTION FEES

[ENTER DETAILS HERE OR REFER TO A SCHEDULE TABLE]

Part 2

OTHER FEES

1. OUT-OF-SCOPE SERVICES

Out-of-scope Services, where provided, will be chargeable on a Time and Material (T&M) basis. The prevailing rate for this at the Effective Date is as per agreed schedule below + VAT per hour. This is subject to increase on an annual basis at the sole discretion of the Supplier.

2. IMPLEMENTATION CONSULTANCY

- 2.1 The Supplier will assist the Customer in implementing this Software. Unless otherwise agreed this consultancy is provided on a Time and Material (T&M) basis. The prevailing rate for this at the Effective Date is as per agreed schedule below + VAT per hour. This is subject to increase on an annual basis at the sole discretion of the Supplier.
- 2.2 Any costs and reasonable time associated to travelling to a Customer office(s) will be charged on a T&M basis.

3. AD-HOC CONSULTANCY

Ad-hoc consultancy can be provided on a Time and Material (T&M) basis. The prevailing rate for this at the Effective Date is as per agreed schedule below plus VAT per hour. This is subject to increase on an annual basis at the sole discretion of the Supplier.

[RATES SCHEDULE]

Part 3

AUTHORISED PURPOSE

Definition of user requirements for Sterling:

SCHEDULE 2

IMPLEMENTATION SERVICES

1. IMPLEMENTATION SERVICES

The Supplier will provide implementation services on a T&M basis during the course of the implementation. Such services to include:

- 1.1 Project Management from a Supplier perspective;
- 1.2 Building a Customer specific instance of the Software, including whitelisting Customer IP addresses;
- 1.3 Testing required file imports of files to ensure they are in the correct format and that the files can reconcile with Customer Data;
- 1.4 Building data import transformations for data extracted from the Customers existing platform;
- 1.5 Implementation of Customer Data into Customer instance of the Software;
- 1.6 Working with the Customer IT Team to facilitate the implementation process;
- 1.7 Assisting the Customer in importing historic data into the system;
- 1.8 Providing training to the Customer training team.

SCHEDULE 3

THE SOFTWARE

Sterling Cost & Carbon Estimating solution including:

Core

- Cost Planning
- Estimating
- Take-off (2D,3D, Manual),
- Finalisation,
- Resource Manager,
- Libraries,
- Revisioning
- Snapshots
- Integrations (non-custom)

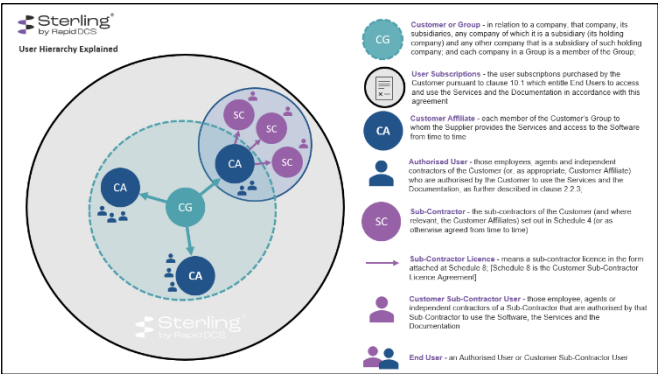
Additional Modules

- Work Package Manager – Preconstruction
- Work Package Manager – Control (Post Contract Applications)
- Life Cycle Cost & Carbon
- Forecasting Cost & Carbon (4D)
- Benchmarking
- Risk & Opportunities

The current Core functionality and additional module functionality and availability is listed on the Supplier website (www.sterling-dcs.com).

SCHEDULE 4

CUSTOMER SUB-CONTRACTORS



SCHEDULE 5

SERVICE LEVEL AGREEMENT

1. SCOPE OF SERVICE

- 1.1 The Supplier is providing a hosted service that provides functionality to the Customer. As part of the delivery of the service, the Supplier will be managing the solution. The following defines the scope of the service.

2. SERVICE AVAILABILITY

- 2.1 The target service availability target is 99.9%, based on 24x7x365 days per year. The measurement is calculated by actual service uptime / potential available service uptime.
- 2.2 Failure to meet the 99.9% service target will require root cause analysis and rectification steps with timelines to be reported to the Customer. Three consecutive period failings in service availability will result in claims for compensation for loss of service.
- 2.2.1 At times it is accepted that there may need to be reasonable downtimes and outages. If these are planned in advance and follow the following criteria they will be excluded from the Planned (RDCS Provide Plan) outage calculation.
- 2.2.2 Outages must be formally notified with two weeks' notice. Examples would be, planned maintenance, software upgrades etc.
- 2.2.3 Exceptional outages may be needed on rare occasions in this situation provided that this is agreed with the Customer.
- 2.2.4 Any user impact of changes is to be provided to the Customer nominated super user(s).
- 2.2.5 All planned outages will be carried outside of the Customer's normal working hours, defined as 07:00 - 19:00 Monday to Friday.

3. SUPPORT

- 3.1 Support of the service will be based on the following principles
- 3.1.1 calls to the Supplier will be filtered by the Customer and only passed onto the Supplier via the nominated Customer's super users;
- 3.1.2 the Customer will ensure their user base pass calls through the super user for local initial triage so that only calls related to the services managed by the supplier are passed to the Supplier.
- 3.2 Normal working hours for the Supplier's support team will Monday to Friday 8:30 – 17:30 except for English Bank Holidays
- 3.3 Call will be passed from the Customer to the Supplier by the following methods telephone or email (or other methods that may be subsequently agreed e.g. chat, IM). All calls will be acknowledged with 30 mins of logging and will be allocated a reference number and categorisation/severity level. If the Customer disagrees with the severity level then this will be discussed directly with the Supplier and reclassified if agreed.
- 3.4 All communications will be in English
- 3.5 ALL support must go through the Supplier's Support Portal for SLA to be met

4. SEVERITY LEVELS

4.1 Severity levels

Severity Level	Definition	Fix time elapsed	Incident Update Frequency
1 Critical	major outage affecting all users	8hrs	every 2 hours
2 Severe	significant impact and large number of users either as performance or business function	24hrs	every 4 hours
3 Degraded	issue affecting a number of making non-core features non-usable	7 days	every 2 days
4 Minimal Impact	small number of users affected, no immediate impact or usable workaround	Next planned release	every week

- 4.2 Fix times will be measured as elapsed time from point of call logged and will pause for weekends and bank holidays based on Suppliers help desk working hours e.g. call logged as "2 Severe" at 17:00 on Friday will pause for the weekend and clock will restart at 08:00 on Monday. This is purely for measurement purposes, the Supplier will be expected to make best endeavours to fix as soon as is reasonably practicable.
- 4.3 Fix times will be measured as elapsed when the helpdesk ticket is raised to when the helpdesk ticket is closed and/or reported to the Customer continual repetitive SLA failure (more than "2 Severe" or fatal incidents within a three month period) will be subject to compensation for loss of service.

5. DEVELOPMENTS, CHANGES FIXES

- 5.1 The Supplier will be expected to manage changes on software developments in a controlled basis minimising risk to the live service. It is expected that the following fundamentals will be followed:

- 5.2 All changes will be developed in a separate development environment
- 5.3 New releases, changes and fixes will be made available in a test environment to allow Customer testing.
- 5.4 All release, changes and fixes will be signed off formally (not verbally) by the Customer prior to the release.
- 5.5 Any interfacing to the service are a joint Customer and supplier responsibility to test prior to release and ensure any changes are completed in line with agreed service release dates.
- 5.5.1 Customer is responsible for supplying test data,
- 5.5.2 Supplier to ensure the data imports without error (except for error checking tests); and
- 5.5.3 the Customer to validate correct import of data.
- 5.6 As part of any software change the Customer will be provided seven days prior to planned release date with release notes describing all changes and any user impacting changes (screen changes, functional changes etc.) These must be specifically highlighted to the Customer.
- 5.7 The Supplier will ensure that the service is compatible and supported on author's supported versions of recognised industry standard browsers (Edge, Firefox, Google Chrome, Safari or their subsequent equivalent products) for the relevant hardware platforms (mobile device, PC and Apple platforms).
- 5.8 The Supplier is responsible for ensuring the platform and all software tools and utilities used to deliver the services are running the platform manufacturer's/software Supplier's current supported release versions of software/firmware. Migration of the Customer's data and subsequent testing to support these platform upgrades is the Supplier's responsibility.

6. USAGE/STORAGE LIMITS

- 6.1 There are no defined storage or usage capacity limits imposed by the Supplier on usage of the service.
- 6.2 The Supplier is responsible for ensuring the service capacity is sufficient to support the usage.

7. PERFORMANCE

- 7.1 The Service should be performant and meet user expectations. This is difficult to define from a user experience viewpoint due to variations in network bandwidth, local device and other issues.
- 7.2 In order to provide a suitable metric that can be maintained by the Supplier to create an acceptable service all measurements of performance should be done as close to processing centre as possible e.g. at data centre or with fastest possible connection (Supplier discretion).
- 7.3 Screen loads and data population of enquiries and input screens should take no longer than one second on an equivalent data volume and service configuration to the live environment. It is accepted that there will increased latency associated with reporting and analysis screens due to processing of data, however these will need to be considered reasonable by the Customer.

8. DATA PROVISION AT CONTRACT TERMINATION

- 8.1 If notice is given under the terms of the agreement to terminate the Services provided by the Supplier then the Customer's data will be returned to the Customer.
- 8.2 Data will be provided on the termination date or an agreed date prior and in the form of
- 8.2.1 a Microsoft SQL database (at a Microsoft supported version of SQL) for structured database data and will include the data dictionary to allow the data to be used and understood by the Customer.
- 8.2.2 PostgreSQL documents in and read write format in a Microsoft Office readable format and structured in a windows folder format or SharePoint library (in a Microsoft supported version of the relevant software).
- 8.2.3 Audit logs for data and documents.
- 8.2.4 The supplier must support this process and the onus is on the supplier to ensure this data is readable by the Customer.

- 8.3 It is the Customer's responsibility to ensure they have suitable resources and capabilities to use the data in this format.
- 8.4 All data belonging to the Customer will be deleted by the Supplier from their service, once data has been successfully imported by the Customer.

9. DISASTER RECOVERY / BUSINESS CONTINUITY

- 9.1 The Supplier is expected to have suitable resilience, failover and contingency plans in place to ensure security and continuity of the Services to the Customer within the terms of this agreement.
- 9.2 The Customer does not define how this should be achieved, but the Supplier should be able to provide details of how this will be achieved and provide evidencing of suitable testing of the process for Customer review.
- 9.3 If the Supplier is unable to provide the Services (e.g. ceases trading, bankruptcy etc). The Supplier must have arrangements in place for the IT service to continue to be available for a period of six months from this point to allow the Customer to be able to enact contingency plans to allow continuation of its business activities (subject to the Customer continuing to pay for the Services at market rates).

10. SERVICE PERFORMANCE METRICS

- 10.1 Monthly performance reporting.
- 10.2 Provision of service performance stats against target response / fix by severity level, call pick up

- 10.3 The Supplier will provide statistics to confirm the service levels as defined in this agreement is being met. This will include the following
- 10.3.1 Rolling monthly analysis reporting calls logged, numbers in and out of fix time metrics by severity level
 - 10.3.2 Calls logged on period
 - 10.3.3 Calls closed in period
 - 10.3.4 Calls logged but still open at end of period, current status an expected fix times

11. APPLICATION PERFORMANCE

- 11.1 Rolling Monthly reporting of uptime
- 11.1.1 11 rolling months, available time in month and uptime in percentage
 - 11.1.2 First page load (FPL) analysis. Daily FPL will be measured on a 15 minute cycle and profiled to show average load profile for each day in the reporting period (month). This data will then be accumulated and averaged by hour, day, calendar month.

12. SECURITY INCIDENTS

- 12.1 Security incidents should be handled as per the Supplier’s ISMS and security incident management process.

13. SERVICE REVIEW / SERVICE IMPROVEMENT PLAN

- 13.1 The Customer sees the relationship with the Supplier as being a long standing partnership and as such we would welcome the joint sharing of plans, improvements and onward development as being a demonstration of this arrangement. The Customer would be happy to participate in the development of a service improvement plan for both the product and service.
- 13.2 All support emails, calls and communication MUST go through the Supplier’s Support Portal.

14. COMPENSATION FOR LOSS OF SERVICE

- 14.1 The Supplier is wholly responsible for the delivery and quality of the IT service and the consequent meeting of agreed SLAs. If these SLAs are failed to be met then there needs to be an agreed compensation to the Customer for the loss / degradation of service. There are three key metrics.
- 14.1.1 Availability – if the availability percentage falls below the agreed uptime as measured above then the supplier will compensate the Customer with 0.5 service day.
 - 14.1.2 Performance – first page load is measured every 15 minutes, if the first page load does not meet the agreed measure four times within a 24 hour period then the supplier will compensate the Customer 0.125 service days.
 - 14.1.3 Service Desk – there are an agreed set off severity, fix and update criteria. If the supplier fails on either the fix or update criteria for three consecutive months then the supplier will compensate the Customer 0.5 service day.
- 14.2 The Supplier is not responsible for events and/or incidents that are beyond their control
- 14.3 Credits may be used by the Customer for training, consultancy or development days.

15. OUT-OF-SCOPE SERVICES

- 15.1 The Supplier may reasonably determine that any services are Out-of-scope Services. If the Supplier makes any such determination, it shall promptly notify the Customer of that determination.
- 15.2 The Customer acknowledges that the Supplier is not obliged to provide Out-of-scope Services.
- 15.3 The provision of support services on a remote, off-site basis (such as over the telephone or by e-mail) shall be included in the Subscription Fees.

SCHEDULE 6

BUSINESS CONTINUITY AND BACKUP POLICY

1. BACKUP POLICY

The Supplier will backup the Customer production environment defined in **Error! Reference source not found.** according to the table defined below:

Policy	Infra-structure Component	Frequency	Retention	Location	Starting hour	Comment
Daily Incremental	Database	Once a day, seven days a week	One month	Data Centre of the Supplier (in territory)	Defined by the Supplier between 6:00 pm and 4:00 am.	Differential incremental backup which will save all data modified compared to the previous full backup
Weekly Complete	Database	Once a week	One calendar month	DB Backup is encrypted and stored in a separate datacentre	Defined by the Supplier between 6:00 pm and 4:00 am.	Starting hour may be changed by the Provider to enhance the backup performance
Rolling Monthly	Database	Realtime for the last 35 days	Rolling 35 days	DB Backup is encrypted and stored in a separate [territory] datacentre to provide redundancy	Defined by the Supplier between 6:00 pm and 4:00 am.	Starting hour may be changed by the Provider to enhance the backup performance

2. BUSINESS CONTINUITY POLICY

- 2.1 Should a site disaster occur, a fail-over sequence is initiated (if this is deemed, in the Supplier’s sole discretion, to be the fastest way of resuming provision of the Software to the Customer) and a member of the Supplier’s operations team will use its Reasonable Efforts to ensure that a disaster recovery environment is brought online with the most recent full backup held. The disaster recovery environment will then be configured to accept new connections; the Customer will be notified of the new connection details and users will be requested to reconnect and use the service on the failover environment. The primary hosting environment failure will then be investigated; a solution sourced and then brought back online, ready for all users to revert back to the primary site.
- 2.2 The Supplier will use its Reasonable Efforts to provide a 2 (two) Business Day RTO from the date a disaster is declared.
- 2.3 The Supplier will use its Reasonable Efforts to provide a RPO that results in data loss of no greater than 2 (two) Business Days prior to the date a disaster is declared.

SCHEDULE 7

ENVIRONMENTS

The Customer will have access to a single “Live” or “Production” environment which will be available to the Customer, any authorised Customer Sub-Contractor and Supplier Personnel. The dedicated database will not be shared with any other Supplier client.

The table below details where the Customer database will be stored:

Database Location	Database Name	URL
[UK]	Production	https://customer.[TBA]
		[TBA]

SCHEDULE 8

CUSTOMER SUB-CONTRACTOR LICENCE AGREEMENT

Please see attached CUSTOMER SUB-CONTRACTOR LICENCE AGREEMENT V.3

[Filename: 50132839.V2 SaaS Agreement v8.2 19042023

347084.00001 4/20/2023]

SCHEDULE 9

THE SOFTWARE FUNCTIONALITY

1. INTERPRETATION

The following definitions and rules of interpretation apply in this schedule.

1.1 Definitions

Two Factor Authentication	Two-factor authentication is a security process in which the user provides two means of identification, one of which is typically a physical token, such as a card, and the other of which is typically something memorised, such as a security code.
----------------------------------	---

2. FUNCTIONALITY

2.1 Supported Web Browsers

2.1.1 The Software will be compatible with the following current web browser software, and the browser used must be within two versions of the latest public release:

- Microsoft Edge
- Google Chrome
- Firefox
- Safari

2.2 User Login

2.2.1 No access to the Software should be granted to any user without using Two Factor Authentication.

2.2.2 User passwords should conform as a minimum patterns:

- 2.2.2.1 be 8 or more characters in length, and must contain 3 out of the following 4 requirements:
- 2.2.2.2 one lower case character
- 2.2.2.3 one numeric
- 2.2.2.4 one uppercase character
- 2.2.2.5 one special character e.g. a symbol

2.3 User Administration

2.3.1 The Software allows a user to be assigned to one or more of the following roles:

- 2.3.1.1 Security Administration – allows administration of user accounts (e.g. resetting passwords) and roles;
- 2.3.1.2 Administrator – allows full access to the system;

2.4 Customer Sub-Contractor - User Access

2.4.1 The Software and the Supplier manage access to the data such that Customer Sub-Contractors will only have access to Customer Data relevant to the projects authorised by the Customer.

SCHEDULE 10

SECURITY AND ACCESS REQUIREMENTS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this schedule.

1.1 Definitions:

Business Continuity Management (or BCM)	means a structured discipline to ensure the continuance of the provision of the Service to the Customer in the event of a Business Continuity Incident (including Pandemic Planning) including a proactive process to identify key operations and the recovery requirements thereof from which plans and procedures may be developed to ensure the continuity of those operations, whatever circumstances are encountered, in order to achieve the uninterrupted availability of the Services and not just the recovery from or resumption of business after a Business Continuity Incident;
Business Continuity Incident	means any event as a result of which the Business Continuity Plan is invoked;
Business Continuity Plan	means the business continuity plan produced by the Supplier invoked upon the occurrence of a Business Continuity Incident;
Customer Systems	means the systems of Customer or any Customer Group Company;
Incident Management (or IM)	means the process for managing the lifecycle of any Major Incident;

IT Service Continuity Management (or ITSCM)

means the lifecycle responsible for managing risks that could seriously impact IT services by ensuring that continuity and recovery plans have been developed in alignment with business continuity plans and business requirements;

Major Incident

means an event (natural or otherwise) that poses a serious risk to the continuation of BAU operations within an organisation that requires the implementation of specific arrangements, beyond the routine, to minimise the disruption to service;

Pandemic Planning

means a specifically tailored and documented response to deal with any major epidemic or pandemic outbreak;

Relevant Systems

means the systems that host Customer Data whether:

- (i) Customer Systems; or
- (ii) systems of:
 - a. the Supplier; or
 - b. any company within the Supplier's group of companies; or
 - c. any Sub-contractor of the Supplier (or, as the case may be, of any Sub-contractor of any company within the Supplier's group of companies);

Supplier Personnel

means any employee, officer, agent or other person whatsoever acting for the Supplier or otherwise under the Supplier's or the control and direction of any sub-contractor to the Supplier

2. ACCESS MANAGEMENT

2.1 The Supplier shall:

- 2.1.1 maintain and implement appropriate security systems, controls, policies and procedures to ensure the secure use of the Relevant Systems and data held thereon against any accidental or deliberate security breach (including a security breach by any unauthorised user) and shall provide visibility of such systems, controls, policies and procedures to the Customer in a reasonable time frame upon request;
- 2.1.2 ensure that access to the Relevant Systems is only granted to those Supplier Personnel who reasonably need it for the purposes of delivering the Services;
- 2.1.3 ensure that access to the Relevant Systems by Supplier Personnel is restricted in accordance with the role or function of the individual;
- 2.1.4 ensure that it has adequate procedures in place so that access to the Relevant Systems by Supplier Personnel is added, modified and deleted in a timely manner;
- 2.1.5 ensure that a process exists to manage joiners, movers and leavers with access to the Relevant Systems which ensures the correct level of access for Supplier Personnel; and

procedures exist to ensure that access to Relevant Systems by Supplier Personnel is regularly reviewed.

3. REMOTE ACCESS SECURITY

3.1 The Supplier shall ensure that controls are in place to prevent unauthorised remote access to the Relevant Systems. Such controls shall include:

- 3.1.1 any remote access to the Administration consoles of such Relevant Systems shall use strong authentication (e.g. two-factor authentication) to authenticate the Supplier's users;
- 3.1.2 data travelling across a remote access mechanism shall be encrypted from the end-point (e.g. laptop) to the network;
- 3.1.3 attempts to connect to the Relevant Systems using an unauthorised remote access mechanism shall be logged, to the extent that they can be reasonably detected; and
- 3.1.4 remote access logs shall be reviewed and any suspicious activity investigated.

4. SECURITY TRAINING AND AWARENESS

4.1 The Supplier shall ensure that all persons accessing the Relevant Systems are trained in and aware of the provisions of this Schedule and their responsibilities this includes:

- 4.1.1 procedures that enable supplier staff to understand the BCM processes and, in particular, the conditions under which they are required to invoke and execute the BCM, ITSCM and IM plans.
- 4.1.2 procedures for proper escalation to senior managers which are designed to promote active communication

5. PORTABLE STORAGE DEVICE SECURITY

5.1 The Supplier shall:

- 5.1.1 not store Customer Data on unencrypted portable storage devices such as USB sticks or laptops;
- 5.1.2 ensure that any portable devices and/or removable media containing Customer Data are secured when not in use;
- 5.1.3 ensure that the use of portable devices (particularly laptops) to process Customer Data in public areas is avoided;
- 5.1.4 ensure that the volume of Customer Data stored on portable media is minimised; and
- 5.1.5 ensure that all Customer Data held on removable media (disks, memory sticks, etc) is encrypted using at least AES 128bit, 3DES 112bit or RC4 128bit whilst at rest. Use of a suitable encryption product (either certified via CESG's CPA or CAPS schemes to at least Foundation grade; validated by FIPS 140-2; or FIPS 197) is expected.

6. DATA TRANSFER SECURITY

- 6.1 The Customer and the Supplier shall ensure that:
- 6.1.1 all Customer Data sent over the internet or via other internet protocols (e.g. FTP) is encrypted using at least AES 128bit, 3DES 112bit or RC4 128bit encryption mechanism whilst in transit. Use of a suitable encryption product (either certified via CESG's CPA or CAPS schemes to at least Foundation grade; validated by FIPS 140-2; or FIPS 197) is expected;
- 6.1.2 any Customer Data is only transferred via pre-configured communications.

7. DATA DISPOSAL

The Supplier shall ensure that any paper documents containing Confidential Customer Data which are no longer required are disposed of by shredding.

8. PASSWORD MANAGEMENT

- 8.1 The Supplier will issue unique user IDs and passwords to the Customer for the purposes of the Services. The Supplier will use reasonable endeavours to ensure that any user IDs and passwords communicated to the Customer, or any authorised Customer Sub-Contractors are communicated to Customer's personnel authorised to access the Customers instance of the software. The Customer shall ensure that each of its personnel:
- 8.1.1 changes their password immediately if they become aware or suspect that it has or may have become known to any other person;
- 8.1.2 keeps passwords confidential, and does not share them with any other person, write them down or store them (including storing them in macros, function keys, batch jobs or any facility that allows for replay of the credentials into the sign on screen(s));
- 8.1.3 enters passwords in full when logging on to the Software;
- 8.1.4 regularly changes their passwords as required by the Software and from time to time as may be necessary to maintain security;
- 8.1.5 secures their terminal/PC when leaving their work area; and
- 8.1.6 does not access or use or attempt to access or use the Software using any other person's credentials.
- 8.2 Passwords will be automatically locked after five consecutive unsuccessful log on attempts. Resetting of the Customer's personnel passwords where revoked or forgotten will be carried out the Customers Security Admin or by the Supplier at the Customers request.

9. PATCHING

- 9.1 The Supplier will have a process for:
- 9.1.1 Ensuring that new patches are automatically made available for systems storing or processing Customer Data;
- 9.1.2 maintaining records of all patching activities;
- 9.1.3 Reversing a patch in the event that it has an impact to the Customers environment that prevents the Customer from materially using the system as intended.

10. WEB SERVICES SECURITY

- 10.1 The Supplier will:
- 10.1.1 conduct or allow external penetration testing of any interfaces to be used by the Customer or any of the Customer's Sub-Contractors.
- 10.1.2 conduct regular vulnerability scans of all:
- 10.1.2.1 internet-facing interfaces;
- 10.1.2.2 internal systems that store or process Customer Data; and
- 10.1.2.3 network components (including firewalls) that protect systems storing or processing Customer Data;
- 10.1.3 ensure that any vulnerabilities identified are remediated and that any associated risks are properly articulated and effectively managed; and
- 10.1.4 ensure that any vulnerabilities identified that cannot or will not be remediated are communicated to the Customer with appropriate explanation.

11. VIRTUAL PRIVATE CLOUD

The Supplier will store, host or process Customer Data or Confidential information in a virtual private cloud hosted with [Amazon Web Services] or similar.

12. BUSINESS CONTINUITY TESTING

- 12.1 The Supplier will:
- 12.1.1 test its BCM, ITSCM and IM plans at least annually.
- 12.1.2 inform the Customer of the results of any tests when requested in writing.
- 12.1.3 complete any remedial action raised as part of testing within a commercially reasonable timeframe

setting up each individual's access to the Software, providing technical support to them and policing usage of the User Subscriptions:

a. Name;

b. Position;

c. Employer details;

d. Work contact details;

e. IP addresses; and

f. User login and credentials (credentials are encrypted) until Single Sign On is active in the Software.

PART 2 – WHERE THE SUPPLIER ACTS AS PROCESSOR

This Part 2 sets out the scope of the processing which the Supplier shall carry out as a processor.

Subject matter and purpose of processing: processing of Customer Personal Data as required in the course of the Customer using the Software.

Nature of Processing: provision of the Software which enables the Customer to record, organise, structure, store, adapt or alter, retrieve, consult, use, disclose and erase personal data.

Duration of Processing: for the Subscription Term or, if longer, until such time as all Customer Personal Data is returned and deleted in accordance with the provisions of clause 7.7.6.

Personal Data Categories: name, company and position held, Company postal address, Company domain email address, contact telephone numbers, user login and credentials,

Data Subject Types: subcontractors or employees of subcontractors of the Customer.

PART 3 – PROCESSORS

[AMEND AS NECESSARY FOR AGREEMENT]

Name of Processor	Nature of Processing

PART 4 – APPROVED TRANSFERS OF PERSONAL DATA OUTSIDE THE UK

The Customer hereby confirms its authorisation of the following transfers of personal data outside the UK by the Supplier in its fulfilment of the Purpose:

[AMEND AS NECESSARY FOR AGREEMENT]

Name of Recipient	Location of Recipient	Reason for Transfer	Appropriate Safeguard
		IT development and support services	UK adequacy regulation

SCHEDULE 11

DATA PROCESSING

PART 1 – WHERE THE SUPPLIER ACTS AS CONTROLLER

1. The Supplier shall process the following categories of personal data of individual employees of the Customer who are Authorised Users of the Software as a controller for the purposes of

SCHEDULE 12

ENTERPRISE PROPOSAL

1. The Enterprise Option shall include:

a. such terms as are consistent with the enterprise terms in the Supplier’s standard terms;
and

b. a negotiated termination right for service level failures to replace the terms of clause 15.3 that reflect the term of the agreement.
2. The Subscription Fees for the Enterprise Option shall reflect the below table proposal [also attached as [Document name] based on the turnover of [Name of the Relevant Company Group/Division that this agreement relates to].
3. If the Customer’s turnover varies positively or negatively by 10% or more, the Subscription Fees will be pro-rated relative to the new turnover. This will be reviewed annually prior to the subscription renewal.
4. In addition to 3. above, where additional companies [or Divisions] within the Customer’s Group are to be added to the Enterprise Option, the additional Subscription Fees shall be calculated at a consistent multiplier based on the turnover related to those additional companies or Divisions.

[ADD TABLE HERE]

Signed by a director for and on behalf of
STERLING DCS LIMITED:

)
)
) Director

Signed by a director for and on behalf of
[COMPANY]:

)
)
) Director