



Your Trusted

Technology Solutions and Services

Partner

Master Services Agreement

Cloud

Modernise

Infrastructure

Consolidate

Data

Accelerate

Security

Protect

Monitoring

Optimise

Contents

MASTER SERVICES AGREEMENT	3
1 INTERPRETATION	4
2 BASIS OF CONTRACT.....	4
3 THE SERVICES, PERSONNEL AND THIRD-PARTY SUPPLIERS	5
4 CHANGE CONTROL.....	6
5 SET-UP OF SERVICES.....	6
6 SUPPLIER'S OBLIGATIONS	7
7 CUSTOMER'S OBLIGATIONS	7
8 SYSTEM CAPACITY AND PERFORMANCE.....	8
9 FEES AND PAYMENT.....	8
10 NO RESALE RIGHTS.....	10
11 INTELLECTUAL PROPERTY	10
12 CONFIDENTIALITY.....	11
13 LIMITATION OF LIABILITY.....	12
14 SUSPENSION OF THE SERVICES	13
15 TERMINATION.....	13
16 FORCE MAJEURE	15
17 TUPE.....	15
18 WAIVER.....	16
19 CAPACITY.....	16
20 SEVERANCE.....	16
21 ENTIRE AGREEMENT.....	16
22 DISPUTE RESOLUTION	16
23 NOTICES	16
24 GOVERNING LAW AND JURISDICTION	17
SCHEDULE 1: DEFINITIONS	18
SCHEDULE 2: SERVICE CONTRACTS	22

MASTER SERVICES AGREEMENT

This Master Services Agreement (MSA) is entered into as of the Effective Date by and between Qnetix Ltd and Customer.

Qnetix Limited ("Supplier") Quatro House, Lyon Way, Frimley Road, Camberley, GU16 7ER, United Kingdom, Company Number: 13327755

wishes to supply certain Services, and the Customer,

[Customer Name] ("Customer") <address>, Company Number: <company number>

wishes to have the right to receive the services in accordance with the terms set forth below from the

Commencement & Effective Date: <date>

Agreement on behalf of Qnetix Ltd:

Signed: _____

Name: _____

Position: _____

Date: _____

Agreement on behalf of Customer:

Signed: _____

Name: _____

Position: _____

Date: _____

1 INTERPRETATION

- 1.1 The headings used in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- 1.2 A person or company includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms including any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.7 References to writing or written includes email.
- 1.8 In this MSA and any other ancillary documents attached to this MSA, “you” and “your” refer to the Customer; similarly, “we”, “us” and “our” refer to the Supplier.

2 BASIS OF CONTRACT

- 2.1 This MSA shall apply to and be incorporated into each Service Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. A separate Service Contract will be formed in respect of each service or order. Except for Service Contracts that clearly state that they are governed by another written agreement between the parties, this MSA shall apply to all Service Contracts even if they do not specifically reference this MSA. In the event of a conflict between the MSA and the Service Contract, the order of precedence shall be as follows: (a) the MSA, (b) the Service Contract and (c) the Customer Purchase Order. Notwithstanding the foregoing, the terms of a Service Contract may prevail for purposes of that Service Contract if the Service Contract expressly identifies and supersedes or modifies a provision in this MSA and the Service Contract is signed by an authorized signatory of Qnetix Ltd.
- 2.2 No contract shall be created between the Supplier and the Customer for the provision of Services unless and until the Customer has counter-signed the relevant Service Contract and sent it to the Supplier, except (if earlier) the Supplier has commenced providing the Services relating to that Service Contract, in which case a contract will be deemed to have come into existence on the basis of this MSA (and, if applicable, the terms of the Service Contract) from the date on which the provision of the Services by the Supplier commenced.
- 2.3 This MSA shall commence in accordance with the Commencement Date. Each Service Contract shall commence on its respective Service Commencement Date. Both the MSA and the Service Contracts shall continue until they expire in accordance with their terms, unless suspended or terminated earlier in accordance with Clause 15.
- 2.4 Each Service Contract shall continue for the Initial Term. Thereafter, unless otherwise expressly stated

in the Service Contract, it shall automatically be extended for successive twelve (12) month periods (each an “**Extended Term**”) and shall continue to do so unless a party gives written notice to the other party to terminate, not later than ninety (90) days before the end of the Initial Term or the relevant Extended Term.

- 2.5 Either party may terminate an individual Service Contract in accordance with Clause 2.4, in which event the Service Contract shall remain in full force and effect in relation to all of the Services not so terminated. The Customer agrees and acknowledges that each individual Service may have its own Ready for Service Date and accordingly, its own specific Initial Term. In the case of termination by the Customer hereunder, the Customer shall ensure that an authorised signatory terminates a Service by completing the Supplier’s “Request to Terminate” form. The Customer must ensure that the Supplier acknowledges receipt of the same.
- 2.6 In the event of termination or cancellation by the Customer of any Service Contract or Service, whether before or after the Ready for Service Date and prior to the expiry of the Initial Term or an Extended Term other than in accordance with Clauses 2.4 or 2.5, or in the event of termination by the Supplier in accordance with Clause 15, the Customer remains liable to pay for the Services for the entire Initial Term and/or Extended Term except where the Customer rightfully terminates under Clauses 15.2 and shall promptly pay such sums to the Supplier on demand.
- 2.7 Subject to the due and punctual payment of the Fees by the Customer and the performance of its obligations under the Service Contract, the Supplier shall provide the Services to the Customer on and subject to the terms and conditions of the Service Contract.

3 THE SERVICES, PERSONNEL AND THIRD-PARTY SUPPLIERS

- 3.1 The Customer shall use the Services in accordance with the Acceptable Use Policy (where applicable). Without prejudice to the foregoing, the Customer shall not use the Services for any purpose, or store, distribute or transmit any material through any part of the Services, that
- i. is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - ii. facilitates illegal activity;
 - iii. depicts unlawful sexual imagery;
 - iv. promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; and
 - v. constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality).
- 3.2 The Supplier shall not be responsible for any failure to meet any obligation under any Service Contract, to the extent that such Event and/or failure is due to any:
- i. act or omission of the Customer, its employees, agents, or subcontractors;
 - ii. failure of Customer Equipment and/or of any software other than Supported Software;
 - iii. failure caused by Customer Equipment and/or of any software other than Supported Software;
 - iv. Force Majeure;

- v. failure of the Customer to report an Event in accordance with the relevant Service Contract; or
 - vi. Planned Maintenance notified to the Customer.
- 3.3 The Supplier shall perform the Services using such personnel as it considers suitable, whether by reason of experience or qualification. The Supplier will, where reasonably possible, maintain continuity of personnel throughout the provision of the Services but reserves the right at any time to vary personnel assigned whilst always using reasonable endeavours to maintain continuity of provision of Services. The Supplier reserves the right to sub-contract any part of the Services.
- 3.4 The Supplier personnel engaged in the performance of the Services shall at all times remain under the direction and control of the Supplier and the terms and conditions of employment or engagement of the Supplier shall exclusively continue to apply to such personnel. Nothing in this MSA shall operate so as to prevent the Supplier from assigning the Supplier's personnel involved in the performance of the Services to the provision of similar services for third parties or in any way restrict the use of such personnel by the Supplier.
- 3.5 The Customer agrees that for the duration of this MSA and each Service Contract and for the period of twelve months following its termination, the Customer shall not employ or engage as an independent consultant or otherwise offer employment or work whether directly or indirectly to any Supplier employee, contractor or other Supplier personnel involved in providing Services to Customer in the preceding twelve months, without prior written agreement from the Supplier. In the event that the Customer breaches this agreement, the Customer agrees to pay to the Supplier, by way of liquidated damages, a sum equal to the gross remuneration paid to the relevant Supplier personnel for the preceding 12 months. The parties hereby agree that this sum is a genuine pre-estimate of loss. The provisions of this Clause shall, for the avoidance of doubt, not apply to the recruitment of the relevant Supplier personnel who respond to a bona fide public advertisement for a vacancy.
- 3.6 The Supplier may use third-party suppliers ("**Subcontractors**") to assist in the provision of the Services to the Customer and may pass to the Customer the benefits of any service level agreements from such Subcontractors. The Customer agrees to be bound by the terms of business of each Subcontractor engaged by the Supplier which shall be included in the Service Contract either by reference, or by annexing the relevant terms and conditions to the Order Form. Subject to receipt of any benefits of the Subcontractor's service level agreement, the Customer agrees not to hold the Supplier liable for any failure or delay of such Subcontractor.

4 CHANGE CONTROL

- 4.1 If either party wishes to change the scope of the Service Contract (including Customer requests for additional services), it shall submit details of the requested change to the other in writing. During the initiation of the first Service Contract the parties will agree the change control process and once agreed, shall form part of this agreement.

5 SET-UP OF SERVICES

- 5.1 Where appropriate, the Customer and the Supplier shall agree a plan for the implementation and provision of Services.
- 5.2 The Supplier shall use reasonable endeavours to meet the dates set out in the Service Contract (including, but without limitation, the Ready for Service Date) but any such dates shall be estimates only, and time shall not be of the essence in respect of the Supplier's obligations.
- 5.3 When the Supplier considers that the relevant Service is Ready for Service it shall so notify the

Customer. Unless otherwise described in the appropriate Service Contract, within five (5) Business Days of such notification, the Customer shall review the operation of the Service to confirm that there are no Faults. The Customer shall give the Supplier a detailed description of any Fault in writing within the five (5) Business Days review period.

- 5.4 The Supplier shall use reasonable efforts to correct any Fault within a reasonable time and, on completion, the provisions of Clauses 5.3 shall then apply again.
- 5.5 If the Customer does not provide any written notification of Faults in the five (5) Business Days period described above, or if the Service is found to conform to the Service Contract, or if the Customer shall commence the live operational use of the Service, the said Service shall be deemed accepted from that date.

6 SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier warrants that each of the Services (as described in Service Contract) will be performed with reasonable skill and care and that it will be provided substantially in accordance with the relevant Service Contract.
- 6.2 The Supplier agrees to respond to and use its reasonable endeavours to comply with the Customer's reasonable requests and written instructions and act in a professional manner.
- 6.3 The warranty shall not apply to the extent of any non-conformance which is caused by use of any of the Services contrary to the Supplier's instructions or the Service Contract.
- 6.4 If a Service does not conform with the warranty, the Supplier will use reasonable efforts to correct any such non-conformity as soon as reasonably practicable.
- 6.5 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or fault free.
- 6.6 The Supplier shall use reasonable endeavours to procure the installation of any Service within the lead-times quoted to the Customer. The Customer accepts that these quotes lead-times could be subject to delays relating to, for example, site surveys, Customer staff availability, capacity checks any third-party delays outside of the control of the Supplier.
- 6.7 Save as expressly provided in the relevant Service Contract, all representations, warranties, and other terms, whether express or implied by law or otherwise, are strictly excluded to the fullest extent permitted by law. In particular, the Supplier does not give any warranties, guarantees or assurances regarding the performance of Services when used with, or run in conjunction with, any particular operating systems and/or software of the Customer or any third parties.

7 CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall at all times:
 - 7.1.1 co-operate with the Supplier in all matters relating to the Services and carry out all other Customer responsibilities set out in the Service Contract in a timely and efficient manner;
 - 7.1.2 provide to the Supplier, in a timely manner, such materials, documentation, instructions and other information ("**Customer Materials**") as the Supplier may reasonably require in order to perform the Services, and ensure that all materials and information provided is complete and accurate in all material respects in order to carry out the Services;
 - 7.1.3 ensure that, without cost or charge to the Supplier, it has obtained and maintained all

necessary underlying rights, wayleaves, licences and consents and complies with all relevant legislation in relation to its use of the Services;

- 7.1.4 comply with all Applicable Law;
 - 7.1.5 not publish or cause anything to be published, whether in hard copy or by any electronic medium, which contains adverse or derogatory comments about the Supplier;
 - 7.1.6 provide the Supplier with the names and e-mail addresses of all persons who are authorised to issue instructions to the Supplier and, where any of those persons cease to be so authorised, notify the Supplier immediately;
 - 7.1.7 ensure that no data received or transmitted via any of the Services will adversely affect, interfere with or be malicious to any of the Supplier's or any third party networks, equipment or software;
- 7.2 In the event of any delays in the Customer's compliance, the Supplier may adjust any timetable or delivery schedule set out in a Service Contract as reasonably necessary and the Customer agrees and acknowledges that any such delays or non-compliance shall relieve the Supplier of any obligation or liability in respect of any delays to the Ready for Service Date and/or any failure to meet Service Levels.

8 SYSTEM CAPACITY AND PERFORMANCE

- 8.1 Should the Customer's usage of the Services, or any component of the Services, be in excess of capacity specifications which are detailed in the Service Contract, recommended by the Supplier and/or published by any vendor of the relevant components, then the Supplier will advise the Customer of any upgrades recommended by the Supplier, and the Supplier will not be liable for any degradation in Service caused by such usage. The Supplier reserves the right to suspend the provision of the Services, giving as much notice as is reasonably practicable in the circumstances, in the event that the said usage exceeds the relevant capacity specifications.
- 8.2 If the Customer chooses not to upgrade as recommended by the Supplier, then the Supplier may notify the Customer in writing that all support in respect of such Services or component is thereafter provided on a reasonable efforts, discretionary and no liability basis, and following such notice any provision to the contrary of the Service Contract shall be deemed to be suspended to that extent unless and until such time as the Supplier's recommended upgrades are implemented.
- 8.3 Where the Service performance continues to be impacted due to a capacity issue as referred to in Clause 8.1, and as a result the Service is considered by the Supplier to be unsustainable, then without prejudice to Clause 8.2 the Supplier may at its sole discretion terminate the Service Contract in question upon giving no less than three (3) month's written notice to the Customer.

9 FEES AND PAYMENT

- 9.1 The Customer shall pay the Fees as set out in the relevant Service Contract, The Service Contract will detail the applicable Fees. In the absence of a Service Contract specific structure, the Fees shall be payable as follows:
- 9.1.1 any set up fees are invoiced at the Ready for Service Date;
 - 9.1.2 any Recurring Fees are invoiced at the Ready for Service Date, thereafter, invoiced monthly in advance;
 - 9.1.3 any Usage Fees are invoiced monthly in arrears;
 - 9.1.4 any additional Fees pursuant to this MSA are invoices as the Ready for Service Date.

- 9.2 The Supplier shall be entitled to charge for any further Fees reasonably incurred for all time spent in reasonably resolving any issues that have arisen as a result of the Customer's failure to use the Service in accordance with applicable user instructions, or the Customer's unauthorised attempts to maintain or alter any Service other than in accordance with the Service Contract (including any breach of the Acceptable Use Policy) and in accordance with the Applicable Law.
- 9.3 The Customer shall pay the Fees by the Invoice Due Date. If the Customer has a genuine dispute about any Fees, it must provide details to the Supplier within 15 days of receipt of the relevant invoice, stating the invoice item which is disputed, and must pay all other elements of the relevant invoice by the Invoice Due Date.
- 9.4 If no notice of a disputed invoice is given within the 15 days referred, the Customer shall be deemed to accept the invoice in full.
- 9.5 Any sum payable under the Service Contract is exclusive of VAT which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the Customer of a valid VAT invoice.
- 9.6 The Supplier may request that the Customer and the Customer agrees to pay a deposit, or to pay in advance as security for the Fees, and/or to set a total credit limit for amounts due from time to time.
- 9.7 If any sum payable under a Service Contract is not paid on or before the Invoice Due Date then, without prejudice to any other rights it may have, the Supplier will be entitled to charge the Customer interest on that sum at the rate of four per cent (4%) per annum above the base lending rate from time to time of The Royal Bank of Scotland plc from the Invoice Due Date until the actual date of payment, such interest to accrue on a daily basis. The Customer shall reimburse all costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount. If the Customer is committed to making a number of payments pursuant to this MSA, then all payments still to be made at the date of default shall immediately fall due and owing to the Supplier.
- 9.8 If Customer fails to make full payment by the Invoice Due Date the Supplier may notify the Customer in writing of such payment default and unless the amount of the invoice is paid in full within ten (10) Business Days of the Customer's receipt of the notice, the Supplier may, without prejudice to any other rights it may have:
- 9.8.1 suspend the Services immediately until it has received payment in full of all sums due; and/or
- 9.8.2 terminate the Service for material irremediable breach immediately; and/or
- 9.9 The Supplier reserves the right to increase the Fees (such increase shall be effective following expiry of the Initial Term) by giving not less than ninety (90) days' notice in writing to the Customer. The Supplier reserves the right to increase the Fees in relation to each Service on each anniversary of the Ready for Service Date for that Service by a sum equal to any percentage increase in the published Retail Prices Index (or any replacement method of indexation).
- 9.10 All payments by the Customer shall be made in pounds sterling (£) except where the Service Contract specifies otherwise.
- 9.11 Fees in relation to any particular Services may be amended at any time by the Supplier giving not less than two (2) months' notice to the Customer if:
- 9.11.1 the scope of, or functionality required in, the Services changes or increases as a result of the Customer's changes, requirements or instructions; or
- 9.11.2 there is any material increase in the cost of the Services or other items that the Supplier

must procure from third parties for the provision of the Services.

- 9.12 The Fees specified in the Service Contract are exclusive of and may be increased without notice as a result of, the imposition by any relevant authority of any tax, impost, levy or charge including any 'green levy' such as the carbon reduction commitment or the climate change levy.

10 NO RESALE RIGHTS

- 10.1 Except by prior written agreement of the Supplier which shall be set out in the relevant Service Contract, the Customer shall not offer, whether by way of resale or otherwise, services which are like or competitive to those provided by the Supplier.

11 INTELLECTUAL PROPERTY

- 11.1 Subject to payment in full of all sums due from the Customer, the Supplier shall grant the Customer a non-exclusive, non-transferable licence for the term of the Service Contract, to use any software, reports, information, drawings, or other original material produced by the Supplier pursuant to this Service Contract for its own internal purposes but for no other purpose. The copyright and any other intellectual property rights in such material shall be vested in and remain the absolute property of the Supplier or its licensors. Nothing in this MSA shall operate to prevent the Supplier from making use of know-how acquired, principles learned or developed, or experience gained during the performance of the Services.
- 11.2 Nothing in this MSA shall be deemed to, or require the Supplier to transfer, assign or license any intellectual property rights to the Customer.
- 11.3 Where the Customer requires the use of licensed software, code, access control lists or other configuration information ("**Licensed Software**") to use the Services supplied under any Service Contract, then such Licensed Software shall be identified in the Service Contract and the Supplier will provide the Customer with either:
- 11.3.1 Where the Licensed Software is owned, customised, or created by the Supplier; for the duration of the term of the Service Contract, a non-exclusive, non-transferrable licence to use such Licensed Software for its internal purposes only and solely to the extent required to permit delivery of the Services. The Customer will in no event be entitled to claim title to or any ownership interest in the Licensed Software (or any derivations, modifications, or improvements thereto), and the Customer will execute any documentation reasonably required by the Supplier to memorialise the Supplier's existing and continued ownership of or rights to the Licensed Software, or
- 11.3.2 Where the Licensed Software is licensed by the Supplier from a third-party provider, the benefit of the extent of the licence granted to the Supplier by the licensor of the Licensed Software, the scope of which shall be specified in the Service Contract or otherwise notified in writing to the Customer.
- 11.4 The Customer agrees that it will not, and will not allow others for whom it is responsible to: copy the Licensed Software except as allowed and permitted by the express written consent of the Supplier; reverse engineer, decompile or disassemble the Licensed Software, except where the Customer may decompile the Licensed Software only to the extent expressly permitted by law; sell, pledge, lease, license, sublicense or otherwise deal in the Licensed Software; create, write or develop any derivative software or any other software program based on the Licensed Software or any Confidential Information of the Supplier; or take any action prohibited by the owner of the Licensed Software,

provided that the Supplier notified the Customer in advance of such prohibitions.

12 CONFIDENTIALITY

- 12.1 The Supplier and the Customer will each treat as confidential all Confidential Information obtained from each other under or in connection with this MSA and any Service Contract.
- 12.2 The Supplier and Customer shall not use the other's Confidential Information except for the purpose of exercising or performing its rights and obligations under a Service Contract and shall not disclose such Confidential Information in whole or in part to any third party, except as expressly permitted.
- 12.3 The Supplier and Customer shall not use the other's Confidential Information except for the purpose of exercising or performing its rights and obligations under a Service Contract ("**Permitted Purpose**") and shall not disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.
- 12.4 The Customer acknowledges that the Supplier's Confidential Information includes any designs, plans, software, or other materials created by the Supplier in connection with the Services and the Customer agrees not to make use of any such material for any purpose other than receipt of the Services from the Supplier.
- 12.5 The Supplier acknowledges that the Customer data is the Confidential Information of the Customer.
- 12.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 12.6.1 it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
 - 12.6.2 at all times it is responsible for such Representatives' compliance with the confidentiality obligations.
- 12.7 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 12.8 The restrictions set out in this Clause do not apply to information which:
 - 12.8.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause);
 - 12.8.2 was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
 - 12.8.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - 12.8.4 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 12.9 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this MSA or a Service Contract are granted to the other party or may be implied.

- 12.10 The provisions of this Clause (Clause 12) shall continue to apply after termination of the last Service Contract to expire, for a period of three (3) years.

13 LIMITATION OF LIABILITY

- 13.1 This Clause (Clause 13) sets out the entire liability of each party (including any liability for the acts or omissions of its employees, agents and subcontractors) to the other in respect of:
- 13.1.1 any breach of contract;
 - 13.1.2 any representation, misrepresentation (whether innocent or negligent), statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this MSA or a Service Contract; and
 - 13.1.3 in each case whether or not the liable party was made aware of the possibility of any loss or damage.
- 13.2 Except as expressly and specifically provided in a Service Contract:
- 13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use; and
 - 13.2.2 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, or any actions taken by the Supplier at the Customer's direction.
- 13.3 Nothing in any Service Contract excludes or limits the liability of a party for:
- 13.3.1 death or personal injury caused by the party's negligence;
 - 13.3.2 fraud or fraudulent misrepresentation;
 - 13.3.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 13.3.4 any other liability which cannot lawfully be excluded or limited.
- 13.4 Further, no limitations on liability in a Service Contract apply to the Customer's liability to pay any Fees due under a Service Contract or interest due thereon.
- 13.5 The Service Contract states the Customer's full and exclusive rights and remedies, and the Supplier's only obligations and liabilities in respect of the performance and/or availability of the Services to be provided thereunder, or their non-performance and non-availability.
- 13.6 Subject to Clauses 13.3 and 13.4, neither party will be liable to the other or to any third party for:
- 13.6.1 indirect or consequential loss or damage;
 - 13.6.2 any loss arising from or in connection with loss of revenues, profits, contracts, data or business or failure to realise anticipated savings; and
 - 13.6.3 any loss of goodwill or reputation.
- 13.7 Subject to Clauses 13.3 and 13.4, the total cumulative liability of either party arising under or in connection with any Service Contract shall be limited to an amount equal to the sum equal to 100% of the Fees paid or payable by the Customer under the relevant Service Contract in the twelve (12)

months preceding the date on which such liability arose.

14 SUSPENSION OF THE SERVICES

- 14.1 The Supplier may, at its sole discretion upon giving notice to the Customer as soon as reasonably possible either orally (confirming such notification in writing) or in writing, elect to suspend immediately the provisions of the Services until further notice where:
- 14.1.1 the Supplier is entitled to terminate any Service Contract pursuant to Clause 15.1;
 - 14.1.2 the Supplier suspects that the Services are being used fraudulently or otherwise unlawfully;
 - 14.1.3 the Supplier is entitled to suspend provision of any other service under the terms of any other agreement between the Supplier and the Customer; or
 - 14.1.4 the Supplier is obliged to do so in order to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority.
- 14.2 Any exercise by the Supplier of its right of suspension in respect of an event referred to in this Clause 14 shall not exclude the Supplier's right subsequently to terminate a Service Contract or to claim any remedies in respect of the Customer's breach (if any).
- 14.3 Suspension of the Services for any reason will not alter the period of service for the current chargeable invoice and all fees and sections of each Service Contract will remain in effect.
- 14.4 In the event that a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse the Supplier for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.
- 14.5 The Supplier shall not be liable to the Customer for any fees incurred by the Customer for the use of other services, whether provided by the Supplier or any other person during any period of unavailability, occurring as a result of implementing a suspension pursuant to Clause 14.1.

15 TERMINATION

- 15.1 The Supplier shall be entitled to terminate any Service Contract at its immediate discretion if:
- 15.1.1 the Customer fails to pay any amount due under the Service Contract on the Invoice Due Date for payment and fails to pay such amount within fourteen (14) days after being notified in writing of such failure;
 - 15.1.2 the Supplier has terminated, or is entitled to terminate, any other contract that it has entered into with the Customer on any grounds which are the same as, or are analogous to, those set out in this Clause 15.
- 15.2 Either party shall be entitled to terminate a Service Contract on notice in writing to the other party if:
- 15.2.1 the other party commits a material breach of the Service Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 15.2.2 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, enters bankruptcy or (being a partnership) has any partner to whom any of the foregoing apply;

- 15.2.3 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 (in the case of a company) 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;
 - 15.2.4 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 (being a company) 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 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);
 - 15.2.6 the holder of a qualifying charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 15.2.7 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;
 - 15.2.8 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 fourteen (14) days;
 - 15.2.9 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 clauses 15.2.2 – 15.2.8 (inclusive);
 - 15.2.10 the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 15.2.11 the other party threatens, whether orally or in writing (whether in hard copy, by any electronic medium or otherwise) to adversely affect the on-going operations of the first party's business or that of any of its Group Companies (provided that this Clause shall not apply to any action taken by the Supplier in accordance with a Service Contract or at any time that the Customer has not paid the Fees by the due date or is otherwise in breach of a Service Contract).
- 15.3 If a party has the right to terminate any Service Contract pursuant to Clauses 15.1 or 15.2, it may instead elect to terminate one or more of the individual Services provided under that Service Contract, in which event such Services shall be so terminated but the Service Contract will continue in full force and effect in relation to all the other Services provided thereunder.
- 15.4 Any provision of a Service Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Service Contract shall remain in full force and effect.

- 15.5 Termination of a Service Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties accrued before the date of termination or expiry.
- 15.6 On termination of a Service Contract for any reason, then without prejudice to any other right the Supplier may have, the following provisions shall apply to such termination as appropriate:
- 15.6.1 the Supplier shall immediately cease provision of the Services;
 - 15.6.2 all amounts payable by the Customer to the Supplier shall become immediately due (subject to receipt by the Customer of a valid invoice in respect of the same);
 - 15.6.3 the Customer shall pay all costs relating to the decommissioning of the Service;
 - 15.6.4 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 15.7 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession. Notwithstanding its obligations in Clause 15, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under Clause 15, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 12 shall continue to apply to any such retained documents and materials.
- 15.8 Clauses 9, 11, 12, 13 and 22 shall continue in full force and effect after the expiry or termination of this agreement.

16 FORCE MAJEURE

- 16.1 The Customer acknowledges and agrees that the Supplier does not and cannot control the flow of data to or from its networks or the storage of data held outside its networks. Such flow and/or storage depend, in large part, on the performance of internet services and/or telecommunications networks provided or controlled by third parties. At times, actions, or inactions of such third parties can impair or disrupt the Supplier's ability to deliver the Service (or portions thereof). Although the Supplier will use reasonable efforts to take all actions reasonably necessary to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, save as provided expressly in a Service Contract, the Supplier gives no warranty in relation to such events and any occurrence of such will be classed as an Event of Force Majeure.
- 16.2 Each party will give notice forthwith to the other party upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 16.3 If a default due to an Event of Force Majeure shall continue for more than sixty (60) days, then either party will be entitled to terminate any affected Service Contracts by giving not less than thirty (30) days written notice to the other. Neither party shall have any liability to the other in respect of the termination of a Service Contract because of an Event of Force Majeure save and except for the Customer's payment obligations up to and including the effective date of termination of the Service Contract.

17 TUPE

- 17.1 Both parties warrant that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), and each party hereby indemnifies the other party against all losses, damages, liabilities, and reasonable costs and expenses arising in connection with any claim (whether successful or not) arising under, or in connection with

the application of TUPE.

18 WAIVER

- 18.1 No failure or delay by a party to exercise any right or remedy provided under a Service Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19 CAPACITY

- 19.1 Each party warrants to the other that:
- 19.1.1 it has full capacity and authority to enter into and perform its obligations under any Service Contract; and
 - 19.1.2 each Service Contract is executed by its duly authorised representatives.
- 19.2 The Customer warrants that it is the owner or permitted user of the Service.

20 SEVERANCE

- 20.1 If any court or administrative body finds that any provision of a Service Contract (or part of any provision) is invalid, illegal, or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Service Contract shall not be affected.
- 20.2 If any invalid, unenforceable or illegal provision of a Service Contract would be valid, enforceable, and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid, and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

21 ENTIRE AGREEMENT

- 21.1 Each Service Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings, and agreements between them relating to its subject matter.

22 DISPUTE RESOLUTION

- 22.1 The parties agree to use reasonable endeavours to resolve any dispute or claim relating to a Service Contract in accordance with this Clause 22 in good faith. Each party must follow the procedures in Clause 22 before starting court proceedings (except for urgent injunctive or declaratory relief).
- 22.2 If a dispute or claim arises between the parties that cannot be resolved promptly between the parties at an operational level, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within fifteen (15) Business Days of the date of the notice (or any other agreed period) to resolve the dispute or claim.

23 NOTICES

- 23.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing.

- 23.2 Any notice or communication shall be deemed to have been received if delivered by hand and signed for or delivered electronically. In all cases, the notice or communication is only agreed as received if formally acknowledged by an authorized representative.

24 GOVERNING LAW AND JURISDICTION

- 24.1 Each Service Contract 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 and Wales.
- 25** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any Service Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1: DEFINITIONS

The definitions in this Appendix apply in this MSA.

Acceptable Use Policy means the Supplier's acceptable use policy relative to the Service and may be amended and updated from time to time.

Accepted Standards means using the standards practices and methods and exercising the skill, diligence, prudence, foresight, and judgement which would be expected from a highly skilled, qualified, and experienced person engaged in a similar undertaking under similar circumstances.

Applicable Law means any relevant statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or industry code of conduct or guideline.

Business Day means a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.

Business Hours means 9am to 5.30pm on a Business Day.

Co-location Space means the Supplier data centre named on the Service Contract.

Commencement Date or **Service Commencement Date** means the date that the Service Contract is executed by the Customer (provided that this occurs within one month of the completed Service Contract's delivery to the Customer).

Confidential Information means all confidential information (however recorded, stored, preserved or communicated, including orally) disclosed by a party or its Representatives (a "disclosing party") to the other party and that party's Representatives (a "receiving party") including the trade secrets, operations, processes, plans, intentions, services, product information, know-how, designs, market opportunities, transactions, business affairs and any information (whether or not included in the above examples) which is either labelled as confidential or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure, and includes the terms of each Service Contract.

CPE means any equipment located or to be located on a Customer Site but controlled or to be controlled by the Supplier as part of the Service.

Customer means the party entering into the Service Contract that has a contractual relationship with the Supplier.

Customer Data means all data provided by the Customer.

Customer Equipment means the equipment owned by the Customer to be located at the Facility and as applicable and as specified in the Service Contract managed and/or maintained by the Supplier.

Customer Purchase Order means a written confirmation of an order being placed as a legal offer by the Customer to buy the goods or services from the Supplier at a specified price.

Customer Site means any premises belonging to or occupied by the Customer at which it receives a Service.

Data Protection Legislation means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations, and

secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Emergency Maintenance means a projected service outage initiated by the Supplier where it is not reasonably possible to provide five (5) days' notice to the Customer; the Service will be degraded or suspended for a short period of time to allow for maintenance activities to take place out of Business Hours where reasonably possible.

Equipment means CPE and Customer Equipment, including cabling and systems provided by the Supplier in connection with the Services.

Event means an act, event, omission, or circumstance.

Facility means any building belonging to or occupied by the Supplier used for the provision of the relevant Services.

Fault means a failure of a Service in any material respect to conform with the Service Contract.

Fees means all fees due to be paid to the Supplier by the Customer for any Service Contract, including, but not limited to, the Set-Up Fees, the Recurring Fees, and the Usage Fees.

Force Majeure means any cause beyond the Supplier's reasonable control including fires, floods, lightening, war, revolution, act of terrorism, riot, civil commotion, act of God, industrial disputes, strikes (of another person's employees), casualties, accidents, power failure, breakdown in equipment, failure of suppliers, failures of transportation, telecommunications failures or internet downtime or available bandwidth shortage.

Group Companies means in relation to a party, any subsidiaries or holding companies of that party, or subsidiaries of such holding companies.

Initial Term means the period for the supply of the Services indicated on the relevant Service Contract starting from the Ready for Service date, or if no Initial Term is specified on the relevant Service Contract, a period of one (1) calendar years from that date.

Intellectual Property Rights means all trade and service marks or names, domain names, patents, utility models, design rights, copyright, database rights or other intellectual property rights, in each case whether registered or unregistered, whether capable of registration or not, including applications for registrations, anywhere in the world.

Invoice Due Date means the date for payment set out on the Supplier's invoice or in the Service Contract or if no date for payment is stated, thirty (30) days from the date of the invoice.

Order Acceptance means a notice given to the Customer, in writing (including via email) by the Supplier confirming the order status.

Order or Order Form means the order placed by the Customer for relevant Services, which shall be submitted on the Supplier's standard Order Form unless otherwise agreed by the Supplier and which shall be subject to this MSA and form part of the relevant Service Contract.

Planned Maintenance means a projected service outage initiated by the Supplier where five (5) days' notice is served (unless less notice is provided by the Supplier's 3rd parties) the Service will be degraded or suspended for a short period of time to allow for maintenance activities to take place.

Project Plan means the plan to be developed to outline the provision of Services (including any set-up services) where applicable.

Rates: means any fees or charges for additional services that are to be charged on an hourly or daily rate which shall be notified to the Customer and as determined by the Supplier.

Ready for Service or Ready for Service Date means the date at the end of Service Implementation when the Supplier has delivered all the elements of a Service (or part of a Service) such that it may now be reviewed for conformity to the Service Contract by the Customer. The exact conditions of when the Ready for Service Date is achieved are set out in the Service Contract as appropriate. For the avoidance of doubt, this is the date when the Initial Term shall commence.

Recurring Fees means any element of the Fees which is payable periodically (e.g. monthly, quarterly, annually) regardless of usage as set out in the Service Contract.

Rented Equipment means any apparatus or equipment as specified in the Service Contract to be loaned to the Customer by the Supplier or any third party on behalf of the Supplier to enable the provision of Services.

Representatives means a party's employees, officers, representatives, advisers, or subcontractors.

Service means each individual service listed as part of and provided pursuant to a Service Contract.

Service Catalogue means the list of standards, predefined Services that can be purchased by the Customer.

Service Contract means a contract made between the parties to this MSA and described as such in associated documentation that references this MSA. Service Contract can also be used to describe a collection of directly related items ordered by Customer such as an Order, Order Form, Service Description, Service Definition and Statement of Works.

Service Credit means any credits against Fees set out in the Service Contract which are payable by the Supplier for failure to comply with agreed Service Levels.

Service Definition or Service Description means the description of a of standard, predefined Service that can be purchased by the Customer.

Service Implementation means the phase of the Service Contract between when the order is placed and accepted and Service Ready Date.

Service Level means any service level standards which the Supplier has agreed to in relation to a Service Contract.

Service Operations means the phase of the Service Contract from the Ready for Service Date until the relevant Service Contract has terminated.

Set-Up Fees means the element of the Fees which consists of initial one-off fees as shown in the Order Form.

Sold Equipment means any apparatus or equipment as specified in the Service Contract to be sold to the Customer by the Supplier or any third party on behalf of the Supplier.

Supported Software means any operating system and software applications identified in the Order Form as being supplied by the Supplier.

Statement of Works or SOW means the statement of work which describes the provision of the Services.

Usage Fees means the usage fees defined in the Order Form.

SCHEDULE 2: SERVICE CONTRACTS

This section is left intentionally blank as part of the MSA template. Each relevant Service Contract will be inserted as appropriate here.