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Master Services Agreement

1 Serbert Way, Portishead, Bristol, BS20 7GD



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Author: Anthony Sherry

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MASTER SERVICES AGREEMENT

BACKGROUND

- (A) The Supplier has developed and will provide the Services which may be provided by any of its Affiliates (each as defined below).
- (B) The Customer wishes to use the Supplier's Services in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the Services, 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.

Acceptance Criteria: means the acceptance criteria as specified in Clause 12.2, referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables or Services (as the case may be) meet the Statement of Work, are satisfactory and ready to be invoiced.

Acceptance Tests: means the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties in writing, to be undertaken to determine whether the Deliverables or Services (as the case may be) meet the Acceptance Criteria.

Affiliate: either Party or any business entity from time to time controlling, controlled by, or under common control with, either Party.

Agreement: means the terms and conditions in this agreement along with the Statement of Work(s) (including the Schedules) and any other documents agreed between the Parties.

Applicable Data Protection Laws: means:

- a) To the extent the UK data protection law applies: 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.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Applicable Laws: means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable Party.

Assumptions: has the meaning given in Clause 10.5.

Authorised Representative: means the person nominated by each Party in accordance with this Agreement.

Authorised User: means any individual who is entitled to use of the Third Party Services, Subscription Services and/or Services under the Agreement.

Background Materials: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business unless otherwise specified in the Statement of Work.

Business Systems: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer or any of its agents or contractors.

Cap: is the total monthly volume of Products the Customer is permitted to use.

Change Request: means any request to alter the Services pursuant to this Agreement as set out in Clause 19.

Commencement Date: means the date of this Agreement unless otherwise specified in the relevant Statement of Work.

Commissioner: the Information Commissioner (see section 114, DPA 2018).

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its “**Representatives**”) to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Consumption Subscriptions: refers to the subscription licences that are billed based on actual usage.

Consumer Prices Index: (CPI) (all items) (United Kingdom).

Contract Year: any twelve (12) month period ending on any anniversary of the Service Commencement Date.

Customer: the customer as identified in the Statement of Work.

Customer Agreement: the Microsoft customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into this agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

Customer Data: any information that is provided by the Customer to the Supplier as part of the Customer's use of the Services, including any information derived from such information.

Customer's Operating Environment: the Customer's computing environment (consisting of hardware and software) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with the Supplier's System in order for the Customer to receive the Managed Services, but excluding the Customer-side Equipment.

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-side Equipment: any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by the Supplier as part of the Services.

Customer Site: means the locations where the Services are provided as identified in the Statement of Work.

Customer's System: the Customer's IT system, as at the Commencement Date, as listed in the applicable Statement of Work.

Cybersecurity Requirements: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the UK Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Deliverable: means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Dispute Resolution Procedure: the procedure described in Clause 34.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law.

Fees: the fees payable to the Supplier as described in the Statement of Work as may be varied from time to time pursuant to the terms of this Agreement.

Force Majeure Event: has the meaning given in Clause 25.1.

Go-live Date: the date specified in the Statement of Work or as otherwise agreed between the Parties in writing.

Goods: the goods or equipment to be purchased by the Customer and provided as part of the Services (or any part of them), as set out in the relevant Statement of Work in the relevant section or as otherwise agreed in writing between the Parties.

Good Industry Practice: the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

Hardware: all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Managed Services to the Customer.

Initial Term: means the period commencing on the Commencement Date and ending on the date three years (3) thereafter unless otherwise specified in the Statement of Work. For the avoidance of doubt, each Statement of Work will have their own Term, which will extend the Initial Term of the Agreement if the term of the Statement of Work is longer than the Initial Term of the Agreement.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including Software, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature

of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world now or in the future, in each case for their full term, together with any future rights and renewals or extensions.

IPR Claim: means a claim arising from the infringement of IPR belonging to third parties.

Issues List: means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

Licence Agreement: means all licence agreements that may have to be entered into by the Supplier and/or the Customer in respect of Third Party Services used as set out in the relevant Statement of Work.

Local System Components means equipment supplied by the Customer such as routers, switches, PCs, thin Customer devices, smart phones, wireless controllers and access points.

Managed Services: the hosting and support service described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Minimum Commitment: means if applicable, the minimum value, commitment of usage or number of Authorised Users (as the case may be) stated in the Statement of Work or otherwise agreed between the Parties in writing from time to time.

NCE Subscription Services: means the services and use related to NCE subscription services.

NCE Subscription Terms: the terms and conditions relating to the provision of the NCE Subscription Services found in Schedule 2.

Normal Business Hours: 9.00 am to 5.30 pm local UK time on Business Days unless otherwise stated in the applicable Statement of Work.

Obsolete Products: any Customer products that form part of the Customer's System, including but not limited to any software, hardware, bespoke-in house software or third party equipment, that are no longer supported by the Third Party Supplier.

Out of Scope: means those out of scope services specified as such in the Statement of Work together with any other services which are not detailed in the Statement of Work.

Products: means the Third Party Services, tools, software, hardware, or professional support or consulting services provided under the terms of the Customer Agreement, applicable Licence Agreement or as otherwise agreed between the Parties.

Project Services: the service described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Purpose: the purposes for which the Customer Personal Data is processed, as set out in the applicable Statement of Work.

Rates: the Supplier's standard hourly or daily fee rates as set out in the applicable Statement of Work.

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement;
- (d) any telecommunications network defect, delay or failure or failure of the Customer's hardware or other systems;
- (e) incompetence, misuse or other error of a user of the Services or erroneous or incorrectly prepared Customer materials;
- (f) failure to access or use the Services in accordance with the terms of this Agreement, any documentation or the Supplier's instructions;
- (g) any change, addition or variation to the Services or the operating environment outside the Supplier's normal procedures made by or at the request of the Customer;
- (h) any change, addition, variation or repair other than those carried out by the Supplier;
- (i) use of the Services in combination with other systems, software or equipment of the Customer (or any third party) not approved by the Supplier;
- (j) any failure in performance of the Services caused by matters other than the hardware, software, networks, databases and other information technology equipment owned or controlled by the Supplier; or
- (k) any of the causes or events set out in Clause 14.9.

Scheduled Downtime: means the total amount of time during which the Customer is not able to access the Services due to planned maintenance. The Supplier may schedule system downtime, with prior agreement of the Customer. Scheduled Downtime periods do not count against the service level calculation detailed in such Statement of Work.

Service Level Arrangements: the service level arrangements set out in the Statement of Work or as otherwise agreed in writing between the Parties.

Services: means the provision of the Goods, Managed Services (including Subscription Services) and/or the Project Services including consulting, advisory, integration or technical services performed by the Supplier under a Statement of Work or otherwise agreed in writing between the Parties.

Services Commencement Date: means the date set out in the applicable Statement of Work or as otherwise agreed between the Parties for the commencement of the Services.

Software: the Supplier's proprietary software which is owned by or to the Supplier and licensed to the Customer as set out in the applicable Statement of Work.

Statement of Work: the order form, quote, project initiation document, service proposal and any other services specification for the Services as set out under separate cover and agreed between the Parties.

Subscription Services: means a right to use the Product(s) for a defined term.

Subsequent Term: means twelve (12) months commencing on the last day of the Initial Term or previous Subsequent Term unless otherwise stated in the applicable Statement of Work.

Supplier: means either CHORUS IT LIMITED (company number 03836029) whose registered office is 1 Serbert Way, Portishead, Bristol, BS20 7GD or CHORUS SOLUTIONS LTD. (company number 07149657) whose registered office is 1 Serbert Way, Portishead, Bristol, BS20 7GD as specified in the applicable Statement of Work.

Supplier Equipment: means any equipment made available to the Customer by the Supplier to enable the Customer to access the Services.

Supplier's System: the system to be used by the Supplier in performing the Managed Services, including the Hardware, any Third Party Services, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer's Operating Environment.

Term: means the Initial Term and any Subsequent Term, as applicable.

Third Party Supplier: any third party that supplies Third Party Services to the Supplier and/or the Customer (as the case may be) during the provision of the Services.

Third Party Services: any services, goods, code or software programs written or provided by a Third Party Supplier which are used by the Customer during the provision of the Services.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

UK GDPR: the EU GDPR as it applies in the UK.

Unscheduled Downtime: means any time when any or all of the applications and Services provided by the Supplier to the Customer shall be unavailable to the Customer due to unexpected system failures other than Scheduled Downtime or the downtime is attributable to events not under the control of the Supplier.

User Subscriptions: means the user subscriptions purchased by the Customer pursuant to a Statement of Work which entitle Authorised Users to access and use the Subscription Services and/or Third Party Services (as the case may be) in accordance with this Agreement.

- 1.2 Clause, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.12 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.13 In the event of any conflict or inconsistency between the Clauses, the Schedules, the Statement of Work, the Licence Agreements and Customer Agreement (including any changes or variations to each of the Clauses, the Schedules, the Statement of Work, the Licence Agreements and Customer Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Statement of Work;
 - (b) the Licence Agreements and Customer Agreement to the extent applicable to the Services;
 - (c) the Schedules;
 - (d) the Clauses.

2. **PROVISION OF SERVICES**

- 2.1 The Agreement sets out the terms and conditions under which the Supplier shall provide to the Customer the Services.
- 2.2 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Customer in connection with the purchase of the relevant Services; and (ii) prevail over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.3 No addition to, variation of or other amendment or purported amendment to any Statement of Work or this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by or acknowledged by an Authorised Representative of both Parties.
- 2.4 Any quotation or proposal given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. Unless otherwise stated in the relevant Statement of Work, for:
- (a) the supply of Goods or Third Party Services, it is only valid for a period of fourteen (14) days;
 - (b) Project Services and Managed Services (including NCE Subscription Services), it is only valid for a period of thirty (30) days,

from its date of issue unless otherwise agreed by the Supplier in writing and shall only become binding upon the signing of a Statement of Work.

3. **STATEMENTS OF WORK**

- 3.1 Each Statement of Work shall be agreed in the following manner:
- (a) the Customer shall ask the Supplier to provide any or all of the Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Services requested;
 - (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Services; or
 - (ii) provide the Customer with a draft Statement of Work.
 - (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to Clause 3.1(b), the Supplier and the Customer shall discuss and agree that draft Statement of Work; and
 - (d) both Parties shall sign the draft Statement of Work when it is agreed.

- 3.2 The Supplier may charge for the preparation of Statements of Work on a time and materials basis in accordance with the Supplier's daily fee rates.
- 3.3 Once a Statement of Work has been agreed and signed in accordance with Clause 3.1(d), no amendment shall be made to it except in accordance with Clause 19 (Change Request) or Clause 2.3.
- 3.4 Each Statement of Work:
- (a) shall incorporate and be governed by this Agreement; and
 - (b) shall form a separate contract between the Parties.
- 3.5 A purchase order constitutes an offer by the Customer to purchase Services and Goods in accordance with the terms and conditions of this Agreement. It shall only be deemed to be accepted when the Supplier gives notice of acceptance of the purchase order.

4. RESPONSIBILITIES OF SUPPLIER

- 4.1 The Supplier shall:
- (a) provide the Services in accordance with the terms of this Agreement and the Statement of Work;
 - (b) use its commercially reasonable endeavours to complete any Deliverables within any timescales set out under any Statement of Work but any such dates shall be estimates only;
 - (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with this Agreement and any Statement of Work;
 - (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
 - (e) take such steps as may be required to fulfil its obligations under this Agreement and any Statement of Work;
 - (f) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
 - (g) notify the Customer promptly if the Supplier is unable to comply with any of the terms of this Agreement, any Licence Agreement, the Customer Agreement or any Statement of Work; and
 - (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer Sites and which have been communicated to it a week prior to the Services commencing, where the Supplier is required to be on such Customer Sites for the provision of the Services.
- 4.2 The Supplier shall co-operate with the Customer in all matters relating to the Services and shall appoint an Authorised Representative ("**Supplier Representative**"), as the contact throughout the Services.
- 4.3 Unless otherwise set out in a Statement of Work, the Customer confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all its obligations under this Agreement, whether such obligations are performed by the Supplier itself or any sub-contractor engaged by the Supplier and under the supervision of the Supplier.
- 4.4 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Customer will have a direct contract in place with Microsoft through the Customer Agreement).
- 4.5 The Supplier does not warrant that the Customer's use of the Managed Services will be:
- (a) free from faults, interruptions or errors;
 - (b) available one hundred percent (100%) of the time.

- 4.6 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under Clause 4.1, the Supplier shall:
- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
 - (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;
 - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
 - (d) undertake account reviews at such intervals as are agreed between the Parties, to discuss the Customer's service needs and ensure that the Agreement is in alignment with its needs;
 - (e) use commercially reasonable endeavours to follow the instructions of the Customer and will remain courteous during any communications with Customer personnel; and
 - (f) provide the Customer with reasonable co-operation in relation to this Agreement.
- 4.7 The Supplier shall be under no obligation to provide the Managed Services to the Customer in the following circumstances (unless specified under the Statement of Work):
- (a) unauthorised use of the Services by the Customer or use otherwise than in accordance with this Agreement;
 - (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
 - (c) providing any other services not covered herein;
 - (d) training; and
 - (e) providing the Managed Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer pursuant to the call for technical support.
- 4.8 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.
- 4.9 The Supplier is not liable for defects in, or delays related to the Products.
- 4.10 The Supplier shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Services. Where relevant, the Supplier shall replace any senior personnel who are removed with another appropriately skilled person.

5. **SUPPLY OF GOODS**

- 5.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 5.2 To the extent that the Goods are to be manufactured in accordance with the Customer's specification, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of such specification.

- 5.3 The Supplier reserves the right (but does not assume the obligation) to cancel or make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 5.4 If the Supplier cannot supply the Goods ordered by the Customer, the Supplier reserves the right to offer Goods of equal or superior quality at no extra cost. In such a case, if the Customer does not wish to accept the alternative Goods offered, it may cancel the order and require the refund of any money paid to the Supplier in respect of that order, including carriage charges. This shall be the sole remedy of the Customer in these circumstances.
- 5.5 Where the Goods are being supplied by a Third Party Supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Third Party Supplier.
- 5.6 Prices and Payment.
- (a) Prices for Goods in the Supplier's stock ready to be shipped will be established at the time the order is accepted by the Supplier. If the Customer places an order for Goods not in stock at the time of order (a "Backorder") or the Customer places an order for scheduled delivery, such orders shall be irrevocable and the price for such Goods shall be the price established at the time the Backorder or scheduled delivery is accepted by the Supplier.
 - (b) Notwithstanding the foregoing, the Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Goods as has not been delivered to reflect any increase in the cost to the Supplier which is due to market conditions or any factor beyond the control of the Supplier (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
 - (c) All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
 - (d) Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier may invoice the Customer for the price of the Goods on or at any time after delivery of the Goods.
- 5.7 Delivery.
- (a) The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the relevant Statement of Work. Time is not of the essence as to the delivery of the Goods and the Supplier is not in any circumstances liable for any delay in delivery, however caused.
 - (b) Delivery shall be made during Normal Business Hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.
 - (c) The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods (if applicable). If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
 - (d) The Customer agrees that it will inspect the Goods immediately upon delivery or collection and in all cases shall:
 - (i) not sign to accept the Goods if the types/quantities of Goods are incorrect or the Goods and/or their packaging are damaged in any way; and/or

- (ii) inform the Supplier in writing within forty eight (48) hours of delivery of any damage, shortages, defects or non-delivery of the Goods which was not apparent at the time of delivery/collection, and, where the Customer fails to do so, they shall be deemed to have accepted the Goods.
- (e) If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:
 - (i) a delay from the manufacturer, Third Party Supplier or other third party;
 - (ii) an event of Force Majeure; or
 - (iii) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- (f) The Supplier shall not in any circumstances be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within seven (7) days after the scheduled delivery date.
- (g) If the Customer fails to accept delivery of the Goods, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Agreement in respect of the Goods:
 - (i) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (ii) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- (h) If, ten (10) Business Days after the day on which the Supplier attempted to make delivery of Goods, the Customer has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.
- (i) The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

5.8 Warranties.

- (a) Subject to Clause 5.8(e), the Supplier warrants that on delivery for such period as is offered by the manufacturer (if any) ("**Warranty Period**"), the Goods shall:
 - (i) conform in all material respects with the relevant section of the applicable Statement of Work;
 - (ii) be free from material defects in design, material and workmanship; and
 - (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- (b) Subject to Clause 5.8(c), if:
 - (i) the Customer gives notice in writing to the Supplier during the Warranty Period, within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranties set out in Clause 5.8(a);
 - (ii) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (iii) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full. If the Customer's claim is subsequently found by the Supplier to be outside the scope or duration of the Warranty Period, the costs of transportation of the Goods, investigation and repair shall be borne by the Customer.

- (c) The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in Clause 5.8(a) if:
- (i) the Customer makes any further use of such Goods after giving notice of defects in accordance with Clause 5.8(b);
 - (ii) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (iii) the defect arises as a result of the Supplier following any drawing, design or Statement of Work supplied by the Customer;
 - (iv) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (vi) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- (e) Insofar as the Goods comprise or contain goods or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass onto the Customer.
- (f) The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in Clause 5.8(a) is as set out in Clause 5.8(b).
- (g) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- (h) The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

5.9 Title and risk.

- (a) Risk in Goods shall pass to the Customer on completion of unloading the Goods at the agreed delivery location.
- (b) Title to the Goods shall not pass to the Customer until the earlier of:
- (i) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (ii) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Clause 5.9(d).
- (c) Until title to the Goods has passed to the Customer, the Customer shall:
- (i) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (iv) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 21.2(d) of Agreement; and
 - (v) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- (d) Subject to Clause 5.9(e), the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (i) it does so as principal and not as the Supplier's agent; and
 - (ii) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- (e) If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 21.2(d), then, without limiting any other right or remedy the Supplier may have:
- (i) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (ii) the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- (f) The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in Clause 5.9(c) and to recover any Goods in which property has not passed to the Customer.

5.10 Cancellation.

Notwithstanding Clause 5.5, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

5.11 Return of Goods.

- (a) All returns of Goods can only be made, and will only be accepted by the Supplier if they comply with this Clause 5.11.
- (b) Subject to the provisions of this Clause 5, Goods may only be returned in accordance with the Supplier or Third Party Supplier's terms and conditions or returns policy.
- (c) Prior authorisation for the return of any Goods must be obtained from the Supplier or Third Party Supplier via such method as the Supplier may advise. Such returns authorisation shall be given at the Supplier's or Third Party Supplier's sole discretion.
- (d) Goods that are authorised for return must be returned by the Customer in accordance with the applicable return instructions provided by the Supplier or Third Party Supplier.
- (e) The Supplier or the Third Party Supplier reserves the right to levy a reasonable administration charge in respect of returns.

6. **MANAGED SERVICES**

- 6.1 The Customer shall remain responsible for the use of the Managed Services under its control including any use by third parties that the Customer has authorised to use the Managed Services.

- 6.2 The Customer must take reasonable measures to ensure it does not (and the Customer personnel do not) jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Customer to alleviate the situation as quickly as possible but shall have no liability or responsibility for any liability incurred by the Customer as a result of such attack. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 6.3 The Customer shall not provide the Managed Services to third parties without the prior written consent of the Supplier.
- 6.4 The Customer acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions include:
- (a) failure of Customer Hardware, software or operating system;
 - (b) partial or full failure of Third Party Services;
 - (c) network connectivity issues between Local System Components and the Supplier's platform; and/or
 - (d) network connectivity issues between Local System Components and its third party's servers.
- 6.5 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
 - (b) modify or replace any Hardware or software in its network or in equipment used to deliver any Managed Service over its network,
- provided that this has no adverse effect on the Supplier's obligations or performance under this Agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Customer and the Parties shall follow the Change Request.
- 6.6 If the Supplier breaches its obligations in Clause 4.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
- 6.7 The Managed Services acquired by the Customer under the Agreement are solely for the Customer's own internal use and not for resale or sub-licensing, unless otherwise agreed in writing.
- 6.8 The Supplier may suspend, revoke or limit use of the Managed Services, wholly or partly (i) in case of late payments, (ii) if the Supplier in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, the Supplier will provide the Customer notice of what actions the Customer must take to reinstate the Managed Services and/or Products. If the Customer fails to take such actions within a reasonable time, the Supplier may terminate the applicable Managed Service.

7. RESPONSIBILITIES OF CUSTOMER

- 7.1 To the extent that the Supplier requires access to the Customer Site to perform the Services, the Customer shall provide such access during Normal Business Hours and to provide a suitable work environment to enable the Supplier to perform such Services subject to the Supplier complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.
- 7.2 The Customer shall co-operate with the Supplier in all matters relating to the Services and shall appoint a minimum of two (2) Authorised Representatives ("**Customer Representatives**"), who shall have authority to commit the Customer on all matters relating to the relevant Service.

- 7.3 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement shall form part of the Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements and/or the Customer Agreement are not applicable to the Services being received or delivered by the Supplier to the Customer under the Agreement, such agreements shall not apply.
- 7.4 The Customer shall:
- (a) make the Customer's Operating Environment and Customer-side Equipment, required to provide the Services, accessible to the Supplier's support staff, enable logons or passwords required for such support staff and provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
 - (b) ensure that all the Customer-side Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services;
 - (c) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
 - (d) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
 - (e) adhere to the dates scheduled for provision of Services by the Supplier to the Customer as stated in the applicable Statement of Work or otherwise agreed between the Parties in writing. In the event the Customer wishes to reschedule or cancel the dates for the provision of Services, liquidated damages ("**Liquidated Damages**") will become payable from the Customer to the Supplier on the following basis:
 - (i) if dates are changed or cancelled at the Customer's request more than fourteen (14) days before the scheduled start date no Liquidated Damages are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Liquidated Damages equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date Liquidated Damages equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable;
 - (f) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (g) take good care of the Supplier's Equipment to prevent damage or loss to such equipment arising from misuse by Customer personnel in accordance with any applicable Supplier policy or instructions of the Supplier from time to time;
 - (h) maintain adequate policies of insurance which provide cover for the Supplier's Equipment when located at the Customer Site against the normal risks which the Customer could reasonably be expected to insure against in respect of its own equipment;
 - (i) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
 - (j) allow the Supplier or its designated subcontractors and third parties, appropriate admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
 - (k) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365) the Supplier will upon request be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date;
 - (l) in respect of any Microsoft funded services, where relevant, sign and deliver the Microsoft Proof of Execution ("**POE**") within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not

return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in this Agreement;

- (m) provide in a timely manner all information, documents and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement and ensure that they are accurate and complete;
- (n) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
- (o) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details; and
- (p) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier's performance of its obligations under a Statement of Work for the Supplier to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then it shall where it is able to do so grant to Supplier and any of its subcontractors a nonexclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services.

7.5 The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in this Agreement):

- (a) use the Services only for lawful purposes and in accordance with this Agreement;
- (b) keep secure from third parties any passwords issued to the Customer by the Supplier;
- (c) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
- (d) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- (e) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Customer-side Equipment or Customer's Operating Environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, the Supplier will have to make additional effort to return the Customer's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate;
- (f) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (g) carry out all other Customer responsibilities set out in this Agreement and the Statement of Work 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 Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

7.6 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) 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 to any material that breaches the provisions of this Clause.

- 7.7 In the event that the Customer is in breach of its obligations under the Agreement (excluding payment obligations) then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) days' notice to remedy such breach if capable of remedy. If the Customer fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 7.8 In the event that the Customer is in breach of its payment obligations under the Agreement then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Customer fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 7.9 The Supplier shall not be liable for any delays or claims of whatsoever nature, which result, directly or indirectly, from the failure by the Customer to comply with the reasonable requests of the Supplier or the breach by the Customer of any provision of this Agreement and the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from any such failure or breach by the Customer.
- 7.10 The Customer accepts full liability for the performance by any Customer Affiliate of any Statement of Work or order for Goods entered into by any such Customer Affiliate pursuant to this Agreement.

8. PROJECT ORGANISATION

- 8.1 If requested in writing by the Customer or specified in the Statement of Work, the Customer Representatives and the Supplier Representative shall have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 19 and to discuss the Service Level Arrangements.
- 8.2 Before each meeting, the Customer Representatives shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

9. USER SUBSCRIPTIONS

- 9.1 The Supplier grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Third Party Services and/or Subscription Services (as applicable) during the Term solely for the Customer's internal business operations.
- 9.2 Once an order for Subscription Services has been accepted by the Supplier, Subscription Services shall continue for the duration of the Agreement or the applicable Statement of Work (as the case may be) unless and until terminated in compliance with the Agreement.
- 9.3 In relation to the Authorised Users, the Customer undertakes that:
- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Third Party Services and/or Subscription Services;

- (b) each Authorised User shall keep a secure password or other biometric authentication for their use of the Third Party Services and/or Subscription Services (as the case may be) and that each Authorised User shall keep their password confidential;
- (c) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request from time to time;
- (d) it shall permit the Supplier to audit the Customer's use of the Third Party Services and Subscription Services for each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, 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;
- (e) if any of the audits referred to in Clause 9.3(d) reveal that any password has been provided to any individual who is not an Authorised 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; and
- (f) if any of the audits referred to in Clause 9.3(d) reveal that the Customer has underpaid Fees to the Supplier and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment within ten (10) Business Days of the date of the relevant audit or upon request by the Supplier, promptly disable access to such individuals.

9.4 The Customer may, from time to time during any Term, subject to the NCE Subscription Terms and the Statement of Work, request that the User Subscriptions are adjusted providing it does not decrease below the Minimum Commitment provisioned, by giving the Supplier written notice subject to the following:

- (a) The Supplier shall evaluate the Customer's request for additional User Subscriptions and grant or refuse the request (in its sole discretion).
- (b) If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such additional User Subscriptions at the relevant price at the time of the request and, if such additional User Subscriptions are purchased by the Customer part way through the Term, such fees shall be pro-rated for the remainder of the Term.

9.5 Unless otherwise set out in the Statement of Work, the Supplier may adjust the Minimum Commitment monthly to reflect any adjustments made to the User Subscriptions in accordance with this Clause 9 over the previous month or as otherwise agreed between the Parties.

9.6 Termination of the licences under the Subscription Services will not affect any other Services provided under the applicable Statement of Work or this Agreement.

9.7 Where the Services include the supply of NCE Subscription Services, the NCE Subscription Terms apply.

10. **PRICE AND PAYMENT**

10.1 The Customer shall pay the applicable Fees for the Services (including any Third Party Services) as more fully set out in the relevant Statement of Work. Where these are based on the number of User Subscriptions and/or Consumption Subscriptions, such Fees shall be variable upon the terms set out in the Statement of Work.

10.2 In the event the Customer delays the Go-live Date (which falls outside of the Liquidated Damages) or has not conducted its Acceptance Testing in accordance with Clause 12, the Supplier may charge the Customer for such delays in accordance with its Rates.

10.3 If no Fee is quoted, the Fee shall be calculated in accordance with the Supplier's then current Rates as amended from time to time in accordance with this Agreement.

- 10.4 Clause 10.6 shall apply if the Services are to be provided on a time-and-materials basis. Clause 10.8 shall apply if the Services are to be provided on a Subscription Services basis. The remainder of this Clause 10 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 10.5 Where a Fee has been quoted, this is a best estimate based on the information given to the Supplier by the Customer and/or which is available at that time and may be based on a number of assumptions set out in the Statement of Work (“**Assumptions**”). If it materialises that in the Supplier’s reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, the Supplier shall be entitled to charge (at the Supplier’s current Rates) the Customer for any Out of Scope Services or other additional Services provided to those detailed in the Statement of Work together with all related costs and expenses incurred by the Supplier.
- 10.6 Where the Services are provided on a time-and-materials basis:
- (a) unless otherwise set out in the Statement of Work the Supplier’s standard hourly or daily rates are calculated on the basis of Normal Business Hours;
 - (b) the Supplier shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Statement of Work; and
 - (c) the Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.
- 10.7 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work. Save where other payment terms are set out in the Statement of Work, all Fees will be payable by direct debit. The Customer shall provide the Supplier with valid up-to-date and complete payment information and direct debit authority.
- 10.8 Subscription Services:
- (a) Fixed Term Subscriptions
 - (i) Products sold under fixed term subscriptions are sold for a term as specified in the Statement of Work. The Statement of Work shall specify if such subscriptions are to be billed on a monthly or annual basis.
 - (ii) Any subsequent adjustments to annual subscriptions (e.g. adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.
 - (iii) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
 - (b) For all Consumption Subscriptions. The Customer agrees and acknowledges that:
 - (i) it may be required to submit monthly use reports based on its monthly usage of the applicable Third Party Service in accordance with the requirements set out in the applicable Statement of Work;
 - (ii) any adjustments or revisions to its monthly use report must be provided within thirty (30) days of the original invoice date together with a detailed explanation of the adjustment or revision;
 - (iii) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Statement of Work, Licence Agreement or Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - (iv) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for the Online Services sold on a consumption basis may change during the subscription period;
 - (v) where applicable, it shall pay all such usage and is responsible for monitoring its consumption needs;

- (vi) the Customer further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "**Barrier**"), which prevents the Customer from utilisation of a Product in excess of the Cap; it may be required to submit monthly use reports based on its monthly usage of the applicable Third Party Product in accordance with the requirements set out in the applicable Statement of Work;
- (vii) any adjustments or revisions to its monthly use report must be provided within thirty (30) days of the original invoice date together with a detailed explanation of the adjustment or revision;
- (viii) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
- (ix) Consumption Subscriptions may be subject to a cap. It will be billed at the next billing cycle including all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for the applicable Third Party Product sold on a consumption basis may change during the subscription period;
- (x) it shall pay all such usage and is responsible for monitoring its consumption needs.

- 10.9 For the avoidance of doubt, if, in spite of Clause 10.8(b)(ix), the Customer utilises a Product in excess of the Cap, the Customer shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Customer from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Customer from utilisation in excess of the Cap.
- 10.10 The Customer shall reimburse any travel or subsistence expenses incurred by the Supplier and agreed in advance with the Customer, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 10.11 The Customer shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by the Supplier or unless otherwise set out in the Statement of Work.
- 10.12 All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to the Supplier's bank account as advised by the Supplier to the Customer in writing.
- 10.13 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 10.14 Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Statement of Work.
- 10.15 The Customer shall pay all costs (at the Supplier's then prevailing rates), and any reasonable expenses incurred and agreed in advance with the Customer, by the Supplier for work carried out by the Supplier in connection with any fault in the Customer's System which is not covered by the Services in this Agreement.
- 10.16 Where at the request of the Customer any work to provide the Services is undertaken at any time which is not during the standard support hours for that particular Service, unless otherwise agreed, the Customer shall pay a charge for such work calculated using the Supplier's hourly multiplier rate contained in the applicable Statement of Work, which shall be advised to and approved by the Customer prior to such works being carried out.
- 10.17 Without prejudice to any other remedy that the Supplier may have, if payment of the Fees or any part thereof is overdue then unless the Customer has notified the Supplier in writing that such payment is in dispute within ten (10) days of the date of the corresponding invoice the Supplier may, without prejudice to any other rights or remedies:

- (a) charge the Customer interest on the overdue amount at the rate of four percent (4%) per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - (b) be entitled to recover all costs and expenses incurred in pursuing such late or non-payment including, but not limited to, reasonable legal fees and disbursements, administrative costs and collection agency fees. The Customer shall reimburse the Supplier for all such costs and expenses within seven (7) days of an invoice detailing the same.
- 10.18 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of three (3) months has elapsed from the date of invoice.
- 10.19 The Supplier shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Statement of Work, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 10.20 Subject to Clause 10.22 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding twelve (12) month period.
- 10.21 For the avoidance of doubt, the Supplier may increase any fees related to Third Party Services in line with any increases imposed upon the Supplier by such Third Party Suppliers upon reasonable notice and/or in line with the terms of the Licence Agreement and/or Customer Agreement.
- 10.22 Notwithstanding and subject to Clauses 10.20 and 10.21, the Supplier reserves the right, on giving the Customer thirty (30) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Customer does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Customer is deemed to have agreed to the amendment to the Fees.
- 10.23 The Supplier shall be entitled to impose a credit limit on the Customer and/or require payment of an increased security deposit and on written notice to the Customer may suspend or withhold any Services (or the delivery of any Goods) in excess of the credit limit or security deposit, in the event that the Customer:
 - (a) suffers a material and negative change in its financial or trading condition or in its credit rating; and/or
 - (b) fails to make payment in cleared funds within fourteen (14) days of the Supplier's notification of non-payment.
- 10.24 The Supplier will be entitled to appoint a debt collection agency registered with the Financial Conduct Authority (FCA) for recovery of outstanding payments. In this event, the Customer agrees that additional charges will be levied to cover the costs of the debt collection agency.

11. **WARRANTIES AND SERVICE LEVELS**

- 11.1 The Customer warrants that:
 - (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer;
 - (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement;
 - (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under the Agreement;
 - (d) the Supplier's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-party materials, including any Hardware or software supplied by the Customer to the Supplier for use in the provision of the Managed Services or otherwise in connection

with this Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party;

- (e) it will comply with and use the Managed Services in accordance with the terms of the Agreement and all Applicable Laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws; and
- (f) the Customer is solely responsible for securing and backing up its data unless otherwise set out in the applicable Statement of Work. The Supplier is not responsible or liable for the deletion of or failure to store any Customer Data and other communications maintained or transmitted through the use of the Managed Services or Products.

11.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of the Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under the Agreement; and
- (d) the Customer's use of any Supplier materials and/or third-party materials, including any materials supplied by the Supplier to the Customer, shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party.

11.3 Except for any warranties and service levels expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Customer's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

11.4 In the event that a defect, fault or impairment in the provision of the Service(s) causes a service interruption and the Supplier becomes aware of this either through the Customer giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment as more fully set out in the Statement of Work and to the extent it reasonably can.

11.5 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Customer or Authorised User, (ii) the Customer's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Customer; or (iv) any third party action in response to an act or omission of the Customer or any person given access to the Service by the Customer (including third party hosted software vendors) then the Supplier may recover from the Customer all reasonable costs to be incurred by it or on its' behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.

11.6 Unless otherwise agreed or set out in the Statement of Work (as forming part of the Service), if the Customer accesses the Services through the public internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.

11.7 If the Customer moves from one Customer Site to another site or makes changes to any Customer Site or opens a new location to be added to the Customer Sites, the Customer must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Customer of any work to bring the IT Infrastructure up to standard operating conditions at the new location in order to remain eligible for

coverage. The Supplier will provide a quotation if it is to provide additional resources or services in the case of any change at the Customer Sites or new Customer Sites for including as part of the Fees.

- 11.8 The Supplier will request approval from the Customer's Representatives before making any significant changes to the Services. The Supplier will arrange any Scheduled Downtime in advance with the Customer's Representatives. The Supplier is not responsible for Unscheduled Downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 11.9 The Service Level Arrangement are specific to directly provided Services of the Supplier and do not relate to Third Party Services (of which such Third Party Services will be governed by their own relevant service levels).
- 11.10 The Supplier shall not in any circumstances be liable under its obligations in this Clause 11 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 11.11 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free.
- 11.12 The Customer hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by the Supplier or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Supplier.

12. ACCEPTANCE OF THE PROJECT SERVICES

- 12.1 The relevant Statement of Work shall specify the Deliverables or Services (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 12.2 In relation to any Acceptance Testing:
 - (a) the Customer shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from the Supplier's delivery of each Deliverable or Service under the relevant Statement of Work (the "**Acceptance Period**") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "**Acceptance Criteria**"). If the Customer determines that a Deliverable or Service does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria;
 - (b) the Customer shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable or Service which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in Clause 12.2(a)) if any of the Deliverables or Services do not conform to the Acceptance Criteria. In the event that the Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under this Clause, such Deliverable or Service shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 9, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables or Services but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 12.2(d) below;
 - (c) if:
 - (i) the Customer does not provide any written comments in the initial period described in Clause 12.2(a) above;
 - (ii) commences live running of the whole or part of such Deliverable other than in the course of undertaking Acceptance Testing; or
 - (iii) if the Deliverable or Services are found to conform with the Statement of Work;

then in each case the Service or Deliverable shall be deemed accepted from the date of the notification by the Supplier pursuant to Clause 12.2(a).

- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Customer or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Request or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Customer to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to (i) at its discretion, provide a substitution that offers equivalent functionality which shall not have a materially detrimental impact on the relevant Deliverable or Service, or (ii) terminate work on that specific Deliverable.
- (f) If the Supplier terminates work on any Deliverable in accordance with Clause 12.2(e), the Supplier agrees not to charge Customer, any amounts paid or payable by Customer to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied. If the Supplier is unable to correct the non-conformity within thirty (30) Business Days, either Party may terminate the applicable Statement of Work without further liability to the other.

13. DATA PROTECTION

- 13.1 The Supplier shall promptly notify the Customer in writing of any loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Supplier shall use commercially reasonable endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party.
- 13.2 For the purposes of this Clause 13, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Laws.
- 13.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 13.3 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 13.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in the applicable Statement of Work, as a processor on behalf of the Customer.
- 13.5 Without prejudice to the generality of Clause 13.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of this Agreement.
- 13.6 In relation to the Customer Personal Data, the data processing schedule in Schedule 1 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. In the event that the details in Schedule 1 are not accurate, any changes will be identified in the applicable Statement of Work.
- 13.7 Without prejudice to the generality of Clause 13.3 the Supplier shall, in relation to Customer Personal Data:
 - (a) process that Customer Personal Data only on the documented instructions of the Customer, 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;

- (b) implement appropriate the technical and organisational measures 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;
- (c) 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;
- (d) 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;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 13.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this Clause 13.7 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

13.8 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this Clause 13;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the sub processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection;
- (b) only transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

13.9 The Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 13, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 18.5.

- 13.10 To the extent that the Supplier cannot comply with a change to the Customer's instructions when processing Customer Personal Data without incurring material additional costs:
- (a) the Supplier shall: (i) immediately inform the Customer, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and
 - (b) any changes in the Customer's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Request (as set out in Clause 19).

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 Subject to Clause 14.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created exclusively under the Services ("**Bespoke IPR**") for the Customer shall vest automatically in the Customer. The Supplier hereby assigns to the Customer its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Customer hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of the Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 14.2 Notwithstanding Clause 14.1 above, the Supplier and its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Supplier Intellectual Property**"). The Supplier grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier Intellectual Property.
- 14.3 The Customer may not, at any time including after termination of this Agreement, share any Supplier Intellectual Property with any third party without the Supplier's prior written consent. The Supplier may treat the Customer's breach of this Clause 14.3 as a breach of the Agreement.
- 14.4 The Customer acknowledges and agrees that a breach of this Clause 14 may cause irreparable injury to the Supplier for which there may be no adequate remedy at law, and the Supplier shall be entitled to seek interim or other equitable relief necessary, including an injunction and specific performance, in the event of any breach or threatened breach or intended breach of this Clause 14 by the Customer.
- 14.5 The Customer shall pay and indemnify the Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Supplier, arising by reason of claims that (1) Supplier's possession of or use of the Customer's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its customers, modify, alter, replace or combine with any other data, code, documents or other software, which alters the Supplier's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 14.6 The Supplier shall pay and indemnify the Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Customer, arising by reason of claims that (1) the Customer's possession of or use of the Supplier's Intellectual Property Rights in connection with the provision of the Services and Deliverables infringes the Intellectual Property Rights of a third party; (2) the Supplier, modifies, alters, replaces or combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 14.7 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 14, the Indemnified Party shall:
- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 14.5 or Clause 14.6 (as applicable);

- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

14.8 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Customer is still able to use the Deliverables by either:

- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
- (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.

14.9 Except to the extent that the Supplier should reasonably have known or advised the Customer the foregoing provisions of Clause 14.8, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:

- (a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
- (b) any modification carried out on behalf of the Customer to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action; or
- (c) compliance with the Customer's specifications or instructions

15. **THIRD PARTY SERVICES**

15.1 The Supplier shall procure any Third Party Services required by the Customer for the provision of the Services and as more fully set out in the Statement of Work. Except as expressly set out in the relevant Licence Agreement, the Supplier expressly excludes any warranty to the Customer that the Third Party Services supplied or licensed under the Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations and any and all liability in relation to the use of such Third Party Services. Notwithstanding termination of this Agreement, the Customer shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms for such Third Party Services (the “**Licence Fees**”).

15.2 The Customer acknowledges and accepts that Obsolete Products may no longer be supported by a Third Party Supplier. Whilst the Supplier will use its reasonable endeavours to notify the Customer of its recommendations to upgrade or replace the Obsolete Products in whole or in part, from time to time, where necessary to do so, if the Customer does not wish to follow the Supplier's recommendations, the Supplier shall only provide the relevant Service on a reasonable endeavours basis, not subject to Service Level Arrangements or any financial penalty and subject to the agreed Fees. Where the Customer decides not to follow the Supplier recommendation or agreement is not reached in respect of the Fees, the Supplier reserves the right to cease the provision of Services in respect of the Obsolete Products.

15.3 It is a condition of this Agreement that the Customer shall enter into such direct Licence Agreements issued by the Third Party Supplier where the Customer must directly contract with that Third Party Supplier as so

prescribed by the relevant software owners of each Third Party Services identified within this Agreement and/or in the applicable Statement of Work. In the event the Customer does not accept the terms of such Licence Agreements (whether directly contracted with the Supplier or the relevant Third Party Supplier), the Supplier reserves the right to suspend the provision of the Services until such time as the Customer enters into such Licence Agreement.

- 15.4 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged breach of such Licence Agreements.
- 15.5 The Customer shall not:
- (a) 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, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or
 - (b) attempt to adapt, make error corrections, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
 - (c) access all or any part of the Services in order to build a product or service which competes with all or any part of the Services (including the Software) during the term of this Agreement and for a period of six (6) years thereafter; or
 - (d) use the Services to provide services to third parties; or
 - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 15.5.
- 15.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 15.7 The rights provided under this Clause 15 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless otherwise agreed in a Statement of Work.
- 15.8 Any service level agreements provided by the Third Party Supplier shall pass-through to the Customer as set out in the applicable Statement of Work or Licence Agreement (as the case may be). The Supplier shall be not responsible for any failure of the Third Party Supplier to meet any service level agreements including any triage services provided by the Supplier in relation to such Third Party Services.
- 15.9 The Customer acknowledges that it is responsible for ensuring that the Customer's Hardware, and operating software for such Hardware is compatible with the Services including any Third Party Services and the Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the Statement of Work.
- 15.10 The Customer's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of the Agreement.
- 15.11 Termination of the licences will not affect any other Services provided under this Agreement.
- 15.12 The Supplier shall not be liable whatsoever to the Customer following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by any Third Party Supplier.

16. SOFTWARE

- 16.1 In consideration of the Fees paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive, revocable, worldwide, non transferable licence for the duration of the applicable Statement of Work until terminated to use of the Software.
- 16.2 For the purposes of Clause 16.1:
- (i) use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer); and
 - (ii) "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.
- 16.3 The Customer may not use the Software other than as specified in Clause 16.1 and Clause 16.2 without the prior written consent of the Supplier, and the Customer acknowledges that additional Fees may be payable on any change of use approved by the Supplier.
- 16.4 The Customer may not use any such information provided by the Supplier or obtained by the Customer in the use of the Software to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 16.5 The Customer shall not:
- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by the Supplier;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance; and
 - (c) deal in any other manner with any or all of its rights and obligations under this Agreement,
- without the prior written consent of the Supplier.
- 16.6 The Customer shall:
- (a) ensure that the Software is installed on designated equipment only;
 - (b) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - (c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person; and
 - (d) pay, for broadening the scope of the licences granted under this Agreement to cover the unauthorised use, an amount equal to the Fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 16.7 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

17. INFORMATION SECURITY AND PENETRATION TESTING

- 17.1 The Supplier shall use reasonable endeavours not to:

- (a) introduce any software virus, bug, bomb or other contaminant or similar item to any of the Customer's information technology and telecommunications systems; or
 - (b) destroy, damage or corrupt any software or data of the Customer's information technology and telecommunications systems.
- 17.2 The Supplier shall use all reasonable precautions in the delivery of the Services to protect all data and other information belonging to the Customer.
- 17.3 The Customer shall not undertake any penetration testing ("Testing") of the Services being provided by the Supplier without providing the Supplier with at least five (5) Business Days prior written notice of the date of such Testing. Such Testing shall occur no more than once every twelve (12) month period unless otherwise agreed in writing with the Supplier.
- 17.4 The Supplier shall have no liability or responsibility for the suspension or unavailability of the Services or the Services' failure to comply with the Statement of Work and/or Service Level Arrangements as a result (whether indirectly or directly), of the Customer conducting any Testing and/or the Supplier taking such action as it considers necessary in response.
- 17.5 In the event that the Supplier incurs any additional cost or expense in connection with such Testing (including, but not limited to, any suspension and/or reinstatement of the Services) (whether indirectly or directly), the Supplier may recover from the Customer all reasonable costs and expenses incurred by it or on its' behalf in relation to the same.

18. **EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES**

- 18.1 The Customer acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Statement of Work, the Customer assumes sole responsibility for:
 - (a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities;
 - (b) loss or damage arising from or relating to any Relief Event;
 - (c) its compliance with the Cybersecurity Requirements relevant to the Customer's business.
- 18.2 This Clause 16 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:
 - (a) any breach of this Agreement; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 18.3 Nothing in this Agreement excludes or limits either Party's liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liability which cannot lawfully be excluded or limited.
- 18.4 Subject to Clause 18.3 above, the Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 18.5 Any breach of the Party's responsibilities under Clause 13 shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the cap set out in Clause 18.6.

- 18.6 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with:
- (a) the Goods, shall be limited to the replacement value of the Goods;
 - (b) subject to Clauses 18.6(c) and 18.6(d) below, the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to one hundred and twenty five percent (125%) of the Fees payable by the Customer in the Contract Year in which the liability arises or two hundred thousand pounds (£200,000) (whichever is greater);
 - (c) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise, shall in no circumstance exceed a sum equal to five hundred thousand pounds sterling (£500,000) in respect of any breach of Clause 17 (Information Security);
 - (d) the total liability of the Customer, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to one hundred and fifteen percent (115%) of the Fees payable by the Customer in the Contract Year in which the liability arises.
- 18.7 Except as expressly and specifically provided in this Agreement neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity;
 - (e) loss of goodwill and reputation;
 - (f) loss or corruption of data; and/or
 - (g) indirect or consequential loss.
- 18.8 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Managed Services, 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 Managed Services, or any actions taken by the Supplier at the Customer's direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 18.9 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.
- 18.10 The Supplier shall maintain in force the following minimum insurance policies:
- (a) a cyber insurance policy with minimum cover of not less than £1 million;

- (b) a public liability insurance policy with cover of not less than £10 million;
- (c) an employer's liability insurance policy with cover of not less than £10 million; and
- (d) a professional indemnity insurance policy with cover of not less than £5 million.

19. **CHANGE REQUESTS**

- 19.1 Either Party may request changes to any Services (in each case, a "**Change Request**"). Any Change Request shall be made in writing and sent to the Customer Representatives or Supplier Representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 19.2 Where the Parties propose a Change Request the Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Fees as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Customer shall notify the Supplier whether it accepts or reasonably rejects the Change Request within five (5) Business Days of its receipt of the written estimate.
- 19.3 Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Statement of Work without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into the Agreement and Statement of Work and the Supplier shall commence performance of the Change Request accordingly.
- 19.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 19.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Customer at Supplier's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Customer.

20. **CONFIDENTIALITY**

- 20.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Statement of Work.
- 20.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its Representatives, in each case under the same conditions of confidentiality as set out in Clause 20.1.
- 20.3 The obligations of confidentiality set out in this Clause 20 shall not apply to any information or matter which:
 - (i) is in the public domain other than as a result of a breach of this Agreement;
 - (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party;
 - (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or
 - (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

21. **TERM AND TERMINATION**

- 21.1 This Agreement shall commence on the Commencement Date and each Statement of Work shall commence on the Services Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties in writing or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Statement of Work shall continue to automatically renew for a Subsequent Term, unless a Party gives written notice to the other Party, not later than one hundred and eighty (180) days before the end of the Initial Term or the relevant Subsequent Term, to terminate this Agreement.

- 21.2 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the Customer breaches its obligations in Clauses 7.7 and 7.8;
 - (b) the other Party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
 - (c) the other Party breaches any of the terms of Clause 13, Clause 20 or Clause 26; or
 - (d) 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.
- 21.3 The Supplier may in the provision of the Services make recommendations in relation to the Customer System including (but not limited to) the Customer's security configuration, Customer's Hardware, Customer's software and the Customer's general IT system configuration. In the event that the Customer does not wish to follow the Supplier's recommendations and in the Supplier's reasonable opinion, such refusal will have an adverse effect on the Supplier's ability to provide the Services in accordance with this Agreement and the applicable Statement of Work and agreement is not reached in respect of any necessary action, the Services and/or applicable Fees, the Supplier reserves the right to cease provision of all or part of the affected Services and/or to terminate the Agreement and/or the applicable Statement of Work.
- 21.4 The Supplier may terminate the Subscription Services immediately on giving written notice to the Customer if the Customer (i) repeatedly fails to timely report use of the Subscription Services to the Supplier or (ii) repeatedly or obviously reports (or instructs the Supplier to report) incorrect use of the Subscription Services to the Supplier.
- 21.5 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 21.6 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
 - (b) the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Term (as applicable); (2) any Licence Fees as set out under Clause 15.1; and (3) any termination fees that the Supplier incurs from any of its Third Party Suppliers as a consequence of such early termination. The Supplier shall use reasonable endeavours to mitigate any loss but the Customer acknowledges and agrees that any Third Party Supplier fees may not be mitigated by the Supplier and the Customer shall not hold the Supplier responsible if it incurs full termination fees;
 - (c) all licences granted under the Agreement will terminate immediately except for fully-paid, fixed term and perpetual licences;
 - (d) for metered Products billed periodically based on usage, the Customer must immediately pay for unpaid usage as of the termination date; and
 - (e) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 21.7 Save as provided in in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure Event, neither Party shall be entitled to terminate a Statement of Work. Termination of a Statement of Work shall not by default, terminate other Statement of Works nor this Agreement.
- 21.8 Termination of any Statement of Work shall be without prejudice to any other rights which any Party may have under any other Statement of Work.

- 21.9 If for any reason a contract between a Third Party Supplier and the Supplier relating to the Supplier's right to use, install or support Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Statement of Work (as the case may be) shall automatically terminate, save that where the Agreement or Statement of Work relates to other Services other than that Third Party Service, termination of the Agreement or Statement of Work shall operate only in so far as it relates to such Third Party Services.
- 21.10 Upon termination of this Agreement or a specific Statement of Work for any reason the Supplier will provide to the Customer and / or to any new supplier selected by the Customer (the "**Successor Service Provider**") such assistance as reasonably requested by the Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to the Customer or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during any period of notice of termination (the "**Termination Assistance Period**"). Any services required by the Customer for the transition of Services during the Termination Assistance Period shall be provided by the Supplier at its then current time and materials fee rate for such period of time and upon such terms as shall be mutually agreed.
- 21.11 Upon termination of the Agreement or a specific Statement of Work (as applicable), the Supplier shall only retain the Customer Data for a maximum period of three (3) months from the date of termination and shall delete all such copies of its Customer Data after the three (3) months period has ended.
- 21.12 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

22. SUSPENSION

Without prejudice to its other rights or remedies hereunder or generally at law, the Supplier may at its sole discretion suspend provision of the Services or Products or any part thereof without liability to the Customer immediately on written notice where the Supplier has a right to terminate this Agreement, irrespective of whether it has exercised such right. Such suspension will not entitle the Customer to terminate the Agreement and will not suspend or alleviate any of the Customer's obligations.

23. STAFF TRANSFER AND NON-SOLICITATION

- 23.1 It is not intended that any staff be transferred from the Supplier to the Customer or from the Customer to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the TUPE.
- 23.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of twelve (12) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- 23.3 In the event that either Party is in breach of Clause 23.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) per cent of the current annual remuneration (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either Party's ability to seek injunctive relief.
- 23.4 The Parties hereby acknowledge and agree that the formula specified in Clause 23.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

24. RELIEF EVENTS

Subject to Clause 18.3, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

25. FORCE MAJEURE

- 25.1 The Supplier shall have no liability to the Customer under this Agreement and the Customer shall have no obligation to pay the Fees if the Supplier 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 except to the extent that the Supplier could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a “**Force Majeure Event**”), provided that:

- (a) the Customer is notified of such an event and its expected duration; and
- (b) the Supplier uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

26. **ANTI-BRIBERY AND MODERN SLAVERY**

26.1 The Supplier shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (“**Relevant Requirements**”);
- (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

26.2 The Supplier shall procure that any person associated with the Supplier, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on the Supplier in this Clause 26 (“**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

26.3 For the purpose of this Clause 26, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 26 a person associated with the Supplier includes any subcontractor of the Supplier.

26.4 In performing its obligations under this Agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

27. **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 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.

28. **SEVERANCE**

28.1 If any court or competent authority finds that any provision of this Agreement (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 this Agreement shall not be affected.

28.2 If any invalid, unenforceable or illegal provision of this Agreement 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.

29. ENTIRE AGREEMENT AND AMENDMENT

- 29.1 This Agreement and its references to further documentation, the Licence Agreements and the Statement of Works and Customer Agreement 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.
- 29.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 29.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

30. ASSIGNMENT

The Customer shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

31. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

32. THIRD-PARTY RIGHTS

This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

33. NOTICES

- 33.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.
- 33.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 33.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

34. DISPUTE RESOLUTION

- 34.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").
- 34.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement (“**Designated Representative**”); and
- (b) notify the other Party in writing of the name and contact information of such Designated Representative.

34.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

34.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

35. **GOVERNING LAW AND JURISDICTION**

35.1 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 exclusively governed by and construed in accordance with the law of England and Wales.

35.2 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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

DATA PROTECTION SCHEDULE

Data subjects:	Customer personnel Customer clients Customer third parties Business contacts in general
Types of personal data:	Name Job title Email address Phone number Business address Any other personal data provided by Customer to the Supplier
Special categories of personal data:	None
Purpose of processing:	In the case of data subjects other than staff: for the purpose of providing IT services and support to Customer's business. In the case of staff: for the purpose of providing IT services and support for Customer's employment and HR matters.
Nature of processing:	As set out in the body of the Agreement.
Approved Sub-Processors:	
Approved international transfers:	
Additional instructions:	

SCHEDULE 2

NCE SUPPLEMENTAL TERMS

1. NCE SUBSCRIPTION

Where the services referred to in the Supplier's Statement of Work include the provision of Microsoft products or services under the New Commerce Experience ("**NCE Subscription Services**"), the NCE Subscription Services shall be provided in accordance with and governed by the Statement of Work and these Supplemental Terms (which are hereinafter referred to as the "**NCE Subscription Terms**").

Except as defined in these NCE Subscription Terms, capitalised terms shall have the meanings given to them in the Statement of Work and/or the Agreement as the case may be.

For the avoidance of any doubt, in the event of a conflict in respect of the NCE Subscription Services referred to in the Statement of Work only, between these NCE Subscription Terms and the Agreement, the NCE Subscription Terms shall prevail. For all other Services, the Agreement shall apply.

2. INTERPRETATION

The following definitions in this paragraph 2 apply in these NCE Subscription Terms.

Customer Agreement: the Microsoft customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into this agreement, the terms of which can be found on Microsoft's website and which may be updated from time to time.

Online Service: any of the Microsoft-hosted online services subscribed to by Customer under the Agreement.

Third Party Distributor: the third party who sells the Product(s) to the Customer or the Supplier (as the case may be).

3. SERVICE PROVISION

3.1 By submitting an order for NCE Subscription Services, the Customer:

- (a) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects;
- (b) agrees to pay the Supplier for all orders it submits for Products and the NCE Subscription Services; and
- (c) agrees to the terms of the NCE Subscription Terms, the Agreement and the Statement of Work.

3.2 By placing an order with the Supplier, the Customer represents and warrants that the Customer has accepted the Customer Agreement.

3.3 Once an order for a Subscription Service has been accepted by the Supplier:

- (a) Subscription Services shall continue for the duration of the Agreement or the applicable Statement of Work (as the case may be) unless and until terminated in compliance with the Statement of Work; and/or
- (b) adjustments may only be made to increase the Minimum Commitment and not decrease below any current Minimum Commitment provisioned as more fully set out in the Statement of Work.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer agrees and acknowledges to adhere to the terms of the Customer Agreement which govern the use of the Subscription Services and the Online Services.

5. FEES

- 5.1 Any quotation or proposal given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. For NCE Subscription Services, it is only valid for the month in which the quote has been issued.
- 5.2 The Supplier may change credit or payment terms for unfilled orders if, in the Supplier's reasonable opinion, the Customer's financial condition, previous payment record, or relationship with the Supplier merits such change.

6. INTELLECTUAL PROPERTY

- 6.1 The Customer acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Customer of these rights beyond the scope permitted by the Customer Agreement shall constitute a material breach hereof.
- 6.2 The Supplier is not liable for defects in, or delays related to the Products.
- 6.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Agreement shall apply and is a separate action between the Customer and Microsoft.

7. CANCELLATION

- 7.1. Subject to paragraph 7.2, where the Customer has procured Products or Online Services from the Supplier, the Customer may cancel the applicable order in line with the terms set out by Microsoft if the Customer notifies the Supplier within forty eight hours (48) of placing the initial order for the applicable Products or Online Services. For such notice to cancel to be effective, it must be received by the Supplier within the hours of 9am – 4pm (GMT) on a Business Day.
- 7.2 The Customer acknowledges and accepts that any cancellation pursuant to paragraph 7.1 will only be accepted if submitted by the Supplier within Microsoft's designated cancellation period for the applicable Online Service or Product and is approved by Microsoft and/or the Third Party Distributor (if applicable) and is in accordance with any other requirements of Microsoft and/or Third Party Distributor (if applicable) at the time of cancellation. If cancellation is approved by Microsoft and/or Third Party Distributor, then the order will be cancelled.
- 7.3 Depending on the service or product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor (if applicable) to the Supplier, on receipt of the same, the Supplier will pass on any such credit to the Customer less any Microsoft and/or Third Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant Product or Online Service. The Supplier is not liable to the Customer if Microsoft and/or Third Party Distributor do not issue a credit.

8. LIMITATION OF LIABILITY

- 8.1 For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Customer and Microsoft in relation to the use of the Subscription Services and Online Services and the Supplier excludes any and all liability in relation to the use of the Products.
- 8.2 Notwithstanding anything to the contrary in the Agreement, the Customer shall indemnify the Supplier from and against any claims, including but not limited to claim for licence fees that directly or indirectly arises from the Customer's use of the Subscription Services or reporting under the Agreement.

9. TERM & TERMINATION

- 9.1 The Customer's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), subject to these NCE Subscription Terms. Unless otherwise specified in the applicable

Statement of Work, the Customer shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.

9.2 Termination of the licences will not affect any other Services provided under these NCE Subscription Terms or the Agreement.

9.3 The Supplier shall not be liable whatsoever to the Customer following any termination or suspension of the Subscription Service for legal, regulatory or any other reasons by Microsoft or the Third Party Distributor.

9.4 The Supplier may terminate the NCE Subscription Services immediately on giving written notice to the Customer if:

- (a) payment of any amount due from the Customer under these NCE Subscription Terms is overdue by ten (10) Business Days or more provided that the Supplier has given the Customer ten (10) days' written notice of such failure to pay; and/or
- (b) upon termination by Microsoft or the Third Party Distributor of the licence(s); and/or
- (c) in accordance with the Customer Agreement.

9.5 On termination of the Agreement or the NCE Subscription Terms for any reason:

- (a) the Customer shall pay all outstanding sums owing to the Supplier up to and including the date of termination;
- (b) all licences granted under the Agreement will terminate immediately except for fixed term and fully-paid, perpetual licences;
- (c) for metered Products billed periodically based on usage, the Customer must immediately pay for unpaid usage as of the termination date; and
- (d) if Microsoft is in breach and the Customer is entitled, the Customer will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

10. THIRD PARTY RIGHTS

Where the Services include the supply of NCE Subscription Services, notwithstanding Clause 32 of the Agreement, this Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.