

Alemba Service Manager Cloud Master Services Agreement

The Customer		The Company	
Company Name:		Company Name	Alemba Ltd
Registered Address:		Registered Address:	Salisbury House, Station Road, Cambridge, United Kingdom CB1 2LA
Trading Address:		Trading Address:	24 Minto Street Edinburgh EH9 1SB
Registration No:		Registration No:	06322945
VAT No:		VAT No:	9177777772

1 Introduction

- 1.1 This MSA shall govern the provision of the Alemba Service Manager Software Cloud Edition and associated services from the **Company** to the **Customer**.
- 1.2 Acceptance of this MSA as part of the G-Cloud 14 terms and conditions shall form the contract between the **Company** and the **Customer** where if any conflict between the G-Cloud 14 terms and conditions and this MSA, the G-Cloud 14 terms and conditions will prevail.

2 Application of this MSA

- 2.1 The terms and conditions of this Master Services Agreement including the Schedules and the associated Appendices (the "MSA") are the terms on which the **Company** provides **Access to Software** and **Services** to its **Customers**. In these Conditions the definitions in Schedule 1 shall apply.

3 Contracts

- 3.1 The **Customer's** acceptance of the details of **Company's Order Form** comprising the associated quotation for **Services** (including any **Deliverables** defined in the associated quotation) and/or **Software**, this MSA and any **Deliverables** stated in any associated Statement(s) of Work constitutes an offer to the **Customer** to purchase the Services and/or access the **Software** (as applicable) subject to the terms of this MSA indicated by the **Customers'** signature of such **Order Form** and Part 8 of this document (The MSA).
- 3.2 No offer placed by the **Customer** shall be accepted by the **Company** unless it has been made on the Company's **Order Form** and has acceptance by the **Company** of such order indicated by the **Company's** countersignature of such **Order Form**.
- 3.3 Upon such acceptance of each **Order Form** by the **Company**, a **Contract** for the enablement of access to the **Software** to the **Customer** and the supply of the **Services** to the **Customer** (with **Deliverables** defined in the associated quotation and/or Statement of Work) will be established, incorporating this MSA, the associated **Order Form**, the associated Quotation and the applicable Statement of Work.
- 3.4 In the event of a conflict or inconsistency between the terms and conditions of this MSA and the **Order Form**, the special conditions in the **Order Form** shall prevail.
- 3.5 In the **Contract** references to a person (unless otherwise specified: the masculine gender shall include the feminine and the neuter and vice versa) shall include reference to any individual, company, association, partnership, charity or joint venture.
- 3.6 In the **Contract** references to "include" and "including" shall be treated as references to "include without limitation" or "including without limitation".
- 3.7 In the **Contract** unless the context requires otherwise, words in the singular shall include the plural and vice versa.
- 3.8 The headings are for identification only and shall not affect the interpretation of the **Contract**.
- 3.8 In the **Contract** a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 3.9 In the **Contract** all references to "writing" shall include by email, unless otherwise stated.

4 Price and payment

4.1 Time-and-Material Contracts

4.1.1 Where the Services are provided on a time-and-materials basis:

the **Service Fees** shall be calculated in accordance with the **Rates**.
the **Company's** standard hourly rates are calculated on the basis of **Working Hours**.

the **Company** shall be entitled to charge an overtime rate of 150% of the normal rate for time worked by members of the **Project Team** outside **Working Hours** or on any Saturday and 200% of the normal rate for time worked by members of the **Project Team** on any Sunday or on any public holiday in England.

4.1.2 The **Company** shall ensure that the **Project Team** complete time sheets to calculate the **Service Fees** for each invoice charged on a time and materials basis.

4.1.3 Increases in **Fees** will be restricted to the UK Retail Prices Index plus 5% at the time of the notification of the increase.

4.1.4 In the event that the number of hours spent by the **Company** in providing the **Services** on the **Contract Site** is less than the **Minimum Billable Hours** in any given **Working Day**, the **Service Fees** for that **Working Day** shall be calculated by applying the applicable **Rate** to the number of **Minimum Billable Hours**.

4.2 Fixed Price Contracts

4.2.1 The **Company** shall invoice the **Charges** in accordance with the payment intervals stated in the **Order Form** or quotation.

4.2.2 The **Service Fees**, unless stated otherwise in the **Order Form** or quotation, exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the **Project Team** in providing the **Services**, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the **Customer** for the **Services** ("**Expenses**").

5 Expenses

- 5.1 **Expenses** shall be approved by the Customer in advance of being incurred and shall be payable by the **Customer** in accordance with agreed payment terms of thirty (30) days unless stated otherwise on the **Order Form**. The **Company** shall maintain complete and accurate records to substantiate the **Company's Expenses**.

6 Payment

- 6.1 The **Customer** shall pay each undisputed invoice for the **Charges** and **Expenses** in full and have provided cleared funds (without deduction, set-off, counterclaim or withholding other than withholding of taxes required by law) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by the **Company** or stated in the **Order Form**. The **Customer** shall notify the **Company** within Fifteen (15) days of the invoice date if it disputes the invoice.
- 6.2 Time for payment shall be of the essence in the **Contract**.
- 6.3 All payments by the **Customer** hereunder shall be in Pounds Sterling or as stated on the associated **Order Form** quotation and shall be paid to the **Company's** bank account as advised by the **Company** to the **Customer** in writing.

7 Payment of Taxes

- 7.1 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.
- 7.2 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 **Contract** the **Charges** payable shall be increased by the amount of such tax to ensure that the **Company** receives a sum equal to the amount to be paid under the applicable **Order Form**.

8 Overdue Payments

- 8.1 Without prejudice to any other remedy that the **Company** may have, if payment of the **Charges** or any part of the **Charges** is overdue, then (unless the **Customer** has notified the **Company** in writing that such payment is in dispute within fifteen (15) days) the **Company** may, without prejudice to any other rights or remedies, at the

Customer's option:

suspend the **Services** under all **Order Forms** or the relevant **Order Form** until such payment is made in full. If the **Company** does so suspend, any costs and expenses the **Company** incurs due to such suspension and subsequent resumption shall be added to the **Charges** and the timescales for the **Services** shall automatically be extended by the period of such suspension without liability on the **Company's** part; and
charge the **Customer** interest on the overdue amount at the rate of 6% per annum above Barclays Bank Plc's 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. The **Company** shall not be obliged to provide any of the **Services** while any duly issued invoice(s) remain unpaid under any **Order Forms**, but should the **Company** choose to continue to do so, this shall not in any way be construed as a waiver of the **Company's** rights or remedies.

9 Service Fee Amendment

- 9.1 In respect of any on-going **Services**, the **Company** may amend the **Service Fees** on the anniversary of the **Contract** and shall give the **Customer** at least 30 (thirty) days written notice of any such amendment. The **Customer** may give notice to terminate the corresponding **Contract** as applicable without liability within fifteen (15) days of receipt of such written notice from the **Company**. If the **Company** does not receive written notice within such fifteen (15) day period, the **Customer** is deemed to have agreed to the amendment to the **Service Fees**. The Amendment of **Service Fees** will be limited to a maximum increase of the value of the UK Consumer Price index plus 5%.

10 Non-Solicitation

- 10.1 Except with the **Company's** prior written consent, the **Customer** shall not, during the term of **Contract**, or for a period of 12 months following expiry or termination of a **Contract**, directly or indirectly induce or attempt to solicit or induce any member of the **Company's Project Team** who was involved in the provision of **Software** or **Services** under such **Contract** to leave the **Company's** employment, or engage, attempt to engage, hire, employ, attempt to employ or offer employment or work to any member of the **Company's Project Team**,

provided that this clause shall not preclude the **Customer** from running general and non-specific recruitment campaigns in the normal course of its business.

- 10.2 The **Customer** shall procure that the **Customer's Group Companies** shall comply with this clause and (without prejudice to the foregoing) any acts or omissions of any of the **Customer's Group Companies** shall be deemed to have been carried out or occasioned by the **Customer** for the purposes of this clause.

Should the Customer or the Customer's Group Companies commit any breach of this clause, unless agreed otherwise, the **Customer** shall, on demand, pay to the **Company** a sum equal to one year's basic salary and bonus or the annual fee that was payable by the **Company** to that member of the **Company's Project Team** plus the recruitment costs incurred by the **Company** in replacing such person. The parties agree that such sums are a genuine pre-estimate of the loss likely to be suffered by the **Company**. Payment of any such sums shall not prejudice the **Company's** rights to seek other legal remedies such as injunctive relief.

11 Confidentiality

- 11.1 For the purpose of this clause, a "Disclosing Party" is a party who discloses **Confidential Information** to the other party, and a "Receiving Party" is a party who receives such **Confidential Information**.
- 11.2 All **Confidential Information** belonging to one party and disclosed to the other party remains the sole property of the Disclosing Party.
- 11.3 Subject to (11.8), a Receiving Party undertakes to hold in strict confidence any **Confidential Information**, to keep all **Confidential Information** secure and protected against theft, damage, loss or unauthorised access and take all necessary measures to prevent the unauthorised use and disclosure of **Confidential Information** by its **Associates**.
- 11.4 Subject to (11.8), a Receiving Party undertakes to treat all **Confidential Information** with the same degree of care as it employs with regard to its own **Confidential Information** of a like nature and in any event in accordance with reasonable current commercial security practices.
- 11.5 Subject to (11.8), a Receiving Party undertakes not to use, copy or modify the **Confidential Information** (or permit others to do so) for any other purpose than as contemplated by this **Contract** and to disclose the **Confidential Information** only to its employees, officers, agents, associates, legal advisors, Affiliates ("**Associates**") on a strictly "need to know" basis and provided that:
- (a) it informs such **Associates** of the confidential nature of the **Confidential Information** before disclosure; and

- (b) at all times, it is responsible for such **Associates'** compliance with the confidentiality obligations set out in this clause and shall obtain from such **Associates** duly binding agreements to maintain in confidence the **Confidential Information** to be disclosed to the same extent at least as the parties are so bound under the **Contract**. Such agreements must include the right of the **Company** to bring any claim for breach of the agreement by virtue of the **Contracts (Rights of Third Parties) Act 1999**.
- 11.6 Subject to (11.8), a Receiving Party undertakes not to disclose the **Confidential Information** to any third party whatsoever (excluding **Associates** under this clause) except with the prior written consent of the Disclosing Party.
- 11.7 Subject to (11.8), a Receiving Party undertakes not to make copies of (or if not in writing reduce to permanent form) the Confidential Information, whether in whole or in part, without the prior written consent of the Disclosing Party; and each party agrees to keep the existence and nature of the Contract and its provisions confidential.
- 11.8 The provisions of the Confidentiality clause shall not apply to:
- (a) any information in the public domain otherwise than by breach of the **Contract**.
 - (b) information lawfully in the possession of the Receiving Party free of any restriction as to its use or disclosure prior to or after its being furnished by the Disclosing Party under the **Contract**, provided that the source of such information has the legal right to use and disclose it and is not subject to any agreement or other duties relating to confidentiality in respect of it.
 - (c) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the Receiving Party under such duty to disclose shall (to the extent permitted by law) use all reasonable endeavours to give the Disclosing Party as much prior notice of such disclosure provided a valid Cloud Services Contract is in place; take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such disclosure with the Disclosing Party before making the disclosure; and consult with the Disclosing Party as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the Receiving Party, all at Disclosing Party's expense; and
 - (d) information which the Disclosing Party has expressly agreed in writing does not apply to the provisions of the Confidentiality Cause.
- 11.9 Each party acknowledges and agrees that any breach of the Contract by it as a Receiving Party could cause injury to the other party as a Disclosing Party and damages would not be an adequate remedy. In the event of a breach or threatened breach by a Receiving Party, the Disclosing Party shall be entitled to apply for injunctive relief in any court of competent jurisdiction and the

Receiving Party shall not oppose any such application. Nothing contained in the Contract shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it for a breach or threatened breach.

- 11.10 If so requested in writing by the Disclosing Party, the Receiving Party shall return at its own expense to the Disclosing Party, on demand and to a location specified by the Disclosing Party, all materials bearing **Confidential Information**, and shall destroy all copies made by the Receiving Party, including information stored on the Receiving Party's computer system or other documents which have been made by the Receiving Party and which contain any part of or reference to the **Confidential Information**, except as authorised in writing by the Disclosing Party and except as may be reasonably necessary to exercise any rights granted to the Receiving Party under the terms of the Contract.
- 11.11 The obligations in this Confidentiality clause shall remain in full force and effect notwithstanding any termination of the **Contract** by either party.

12 Limitation of Liability

- 12.1 This clause is drafted in order to strike a fair and reasonable balance between the **Customer** and the **Company** and to allocate risk between the parties in a way that is fair and reasonable bearing in mind the parties' respective knowledge of their businesses, the availability of insurance to protect against risks and the level of the **Charges**.
- 12.2 The **Company** has carefully considered the basis on which it can provide the **Software** and the **Services** (including the **Deliverables**, if any) commercially bearing these things in mind and this clause sets out the extent to which it considers that it is fair and reasonable for it to accept liability and where the **Customer** accepts risk for itself in the use of the **Software** and the **Services** (including the **Deliverables**, if any).
- 12.3 All claims by the parties against each other in respect of the **Contract** shall be brought under the **Contract**.
- 12.4 This clause prevails over all other conditions in the **Contract** and sets forth the entire liability of the **Company** and the sole and exclusive remedies of the **Customer** in respect of: the Software and the Services (including the **Deliverables**, if any) or any part of them; any use made by the **Customer** of the **Software** or the **Services** (including the **Deliverables**, if any) or any part of them; any breach, performance, non-performance, purported performance or delay in performance of the **Contract** (including any **Order Form** and any breach of the warranties in Part 3); otherwise in relation to the **Contract** or the entering into of the **Contract**; any representation, statement or act or omission (including negligence) arising under or in connection with the **Contract**.

- 12.5 The **Company** shall not in any circumstances have any liability for any losses or damages which may be suffered by the **Customer** (or any person claiming under or through the **Customer**), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence), breach of statutory duty, through indemnification or otherwise howsoever, which fall within any of the following categories: any special, indirect or consequential losses, costs, charges, expenses or damages; or punitive damages; or loss of profits or revenue; or loss of anticipated savings; or loss of business or sales; or loss of contracts; or loss of use; or loss of opportunity; or loss or damage to reputation; or loss arising from any delay to the **Customer's** project(s) including any increased costs; claims against the **Customer** by any third party; or losses (regardless of their nature) for any delay or failure by the **Company** to perform its obligations under this **Contract** as a result of a **Force Majeure Event**; and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.
- 12.6 The **Company** shall in no circumstances be liable or responsible for (or for the consequences of):
- (a) any failure to meet its obligations under the **Contract** or in any way otherwise if such failure is caused by any breach of **Contract** by the **Customer** or by any act or omission of: the **Customer** or its employees, agents or representatives;
 - (b) or any third party (other than a subcontractor of the **Company**) defects or errors in the **Software** (or any **Deliverables**, if applicable) outside the **Warranty Period**, though this is without prejudice to the **Company's** obligations to provide **Support and Maintenance Services** in relation to such **Software** (including **Deliverables**, if any) if and to the extent agreed under a **Contract** for such **Services**;
 - (c) defects or errors resulting from any modifications of the **Software** or the **Software Documentation** (as defined in the **Specific Terms**) or the **Deliverables** made by any person other than the **Company** without the **Company's** prior written consent;
 - (d) defects or errors caused by the use of any release of the **Software** or **Deliverables** comprised of software other than the **Covered Release** and, if applicable, any **Update** issued pursuant to clause PART 3, 3.9;
 - (e) use of the **Software** and/or the **Deliverables** other than strictly in accordance with the **Software Documentation** (or other applicable documentation provided by the **Company**) or defects or errors due to operator error;
 - (f) a situation where a defect or error could have been avoided by consideration of all information contained in the **Software Documentation**, even if such consideration depends on the interpretation of such information;
 - (g) any defect or error in the cloud platform or in any other programs used in conjunction with the **Software** or the **Deliverables**;

- (h) defects or errors caused by the malicious or negligent activities of the **Customer** or its employees or subcontractors or any other third parties;
 - (i) defects or errors in any way related to the **Customer** not affording the **Company** proper access to the **Software** to provide the **Services** (as applicable);
 - (j) any loss, damage, defects or errors arising from the **Company's** reliance on the **Assumptions** agreed between the parties in the **Contract**.
- 12.7 The **Company** may provide the **Customer** with guidance in respect of **Software**, **Services** and **Deliverables** which might be suitable for the **Customer**, but the **Customer** accepts responsibility for the **Software**, **Services** and the **Deliverables** selected in the **Order Form** to achieve its intended results and the **Company** shall not be liable for ensuring that the **Software**, **Services** or **Deliverables** meet the **Customer's** individual requirements.
- 12.8 The total liability of the **Company** under or in connection with any **Contract** and any contracts which are collateral to such **Contract**, whether in contract, tort, (including negligence or breach of statutory duty), misrepresentation, through indemnification or otherwise, shall be for direct and reasonably foreseeable costs and damages only, and shall in no circumstances exceed a sum equal to one hundred and ten percent (110%) of the aggregate **Charges** paid by the **Customer** in the year preceding the date that the liability arises under the specific **Contract** that is the subject of the claim.
- 12.9 All dates supplied by the **Company** for the delivery of the **Software**, the provision of **Services** or delivery of **Deliverables** shall be treated as estimates and approximate only. While the **Company** shall use reasonable endeavours to meet estimated delivery dates, the **Company** shall not in any circumstances be liable for any loss or damage arising from any delay in delivery or failures to meet estimated timescales and time for delivery of **Software**, the provision of **Services** or delivery of **Deliverables** by the **Company** shall not be of the essence of the **Contract**.
- 12.10 The exclusions and limitations of liability in this **Contract** (including in this clause and in clauses, the Overdue Payment Clause, Customer Responsibility Clause, Part 3 – Warranties Clause and the Force Majeure Clause.) shall apply to the fullest extent permissible by law but nothing in the Contract shall exclude or limit the Company's liability for:
- (a) death or personal injury caused by the negligence of the **Company**, its **Project Team**, officers or other employees, contractors or agents;
 - (b) or fraud or fraudulent misrepresentation;
 - (c) or any other liability which cannot be excluded or limited by law.
- 12.11 All references to "the Company" or references to a "party" which are applicable to the Company in this clause and the Warranty Clause shall, for the purposes

of such clauses only, be treated as including all employees, subcontractors and suppliers of the Company and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in such clauses.

13 Termination

- 13.1 The Contract relating to each individual Order Form shall become effective on its Commencement Date and shall continue until it expires in accordance with its terms or is terminated in accordance with the provisions of this clause.
- 13.2 The Customer shall provide notice to terminate with 30 day's notice. No fault termination is allowed.
- 13.3 For the avoidance of doubt in the event of a **Contract** being terminated any other **Contracts** still in existence do not automatically terminate and shall continue subject to the terms and conditions of the relevant **Contract** until such **Contracts** expire or are themselves terminated in accordance with their terms.
- 13.4 Without affecting any other right or remedy available to it, either party may terminate any or all Contracts with immediate effect by giving written notice to the other party if:
 - 13.5 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123(2) of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - 13.6 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 13.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 13.9 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over any assets of the other party or a receiver is appointed over any assets of the other party;
- 13.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days; any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause or the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.11 Without affecting any other right or remedy available to it, the Company may terminate some or all Contracts or (at the Company's option) terminate the relevant Contract at any time if the Customer fails to pay the Charges or any amount due to the Company under the Contract on the due date for payment and remains in default for fourteen (14) days or more after being notified in writing to make such payment.
- 13.12 Without affecting any other right or remedy available to it, either party may terminate a **Contract** (or, at its option, some or all **Contracts**):
- (a) at any time on giving prior written notice to the other party if the other party commits any material breach of any term of the relevant **Contract** and, in the case of a breach which is reasonably capable of remedy, fails to remedy that breach within thirty (30) days of a written request to remedy the same (the **Company** may treat the **Customer's** breach of any applicable **Third-Party Licence** as a material breach of the Contract which is incapable of remedy); or
 - (b) in relation to on-going **Services** for any reason on giving the other party at least 30 days' prior written notice any such termination to take effect only on expiry of the **Initial Term** or **Renewal Term** in respect of the relevant **Service**;
 - (c) and for the avoidance of doubt, in the event of a **Contract** being terminated, any other **Contracts** still in existence shall continue as separate contracts until such **Contracts** expire or are themselves terminated and in the event that on-going **Services** are terminated, any

Software or other **Services** in the same **Contract** which are still in existence shall continue subject to the terms and conditions of the **Contract**.

- 13.12 The termination of all **Contracts** or the expiry or termination of any **Contract** for whatever reason shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination or expiry nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 13.13 On expiry or termination of a **Contract** for whatever reason, but subject to the continuation of existing **Contracts**, **Software** and **Services** the Company shall cease providing the terminated **Services** under that **Contract**; the **Customer** shall immediately pay to the **Company** all of the **Company's** outstanding unpaid invoices and any interest due under that **Contract**; and all amounts due under that **Contract** until the effective date of termination, including in respect of terminated **Services** supplied under that **Contract** but for which no invoice has been submitted (and the **Company** shall submit an invoice for such **Services** accordingly, which shall be payable by the **Customer** immediately on receipt).
- 13.14 The **Customer** shall return to the **Company** all **Pre-Existing Materials** and **Confidential Information** of the **Company** that the **Customer** has in its possession.
- 13.15 The **Company** may render reasonable assistance to the **Customer** (including migration of any **Customer Data**) if requested by the **Customer**, but this assistance shall be at the **Customer's** cost and expense and subject to a separate contract between the parties relating to such services.

14 Promotion by the Company

- 14.1 Subject to written prior approval by the **Customer**, the **Company** may name the **Customer** as its customer in a general context and may also use the **Customer's** name in publicity, marketing, advertising releases and other material prepared by or on behalf of the **Company** which makes reference to the **Customer** as a specific user of specific software products or services of the **Company**.

15 Announcements

- 15.1 Subject to any other provision in the **Contract**, neither party shall make any statement or disclose to any person who is not a party, themselves or through any third party, information which relates to or is connected with or arises out of the **Contract** or the matters contained in it, without the prior written approval of the other party as to its content and the manner and extent of its publication. The parties shall consult together upon the form of any such disclosure, press release, document or statement and the other party shall promptly provide such information and comment as the party issuing such press release, document or statement may from time to time reasonably require.
- 15.2 The provisions of this clause shall not apply to disclosure of matters required to be made by law or regulations or by any court or governmental or administrative authority competent to require the same.

16 Force Majeure

- 16.1 Neither party shall be in breach of the **Contract** nor liable for delay in performing, or failure to perform, any of its obligations under the **Contract** (excluding payment obligations) if such delay or failure result from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the **Project Team** or any other party), failure or interruption of a utility service or transport or telecommunications network, act of God, war, terrorist attack, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, disasters, explosions, fire, flood, storm, embargo, changes to the law, act or omission of carriers or default of suppliers or sub-contractors ("**Force Majeure Event**"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

17 General

- 17.1 Variation. The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 17.2 Subject to this clause no variation of the Contract shall be valid unless it is in writing and signed by authorised representatives of each party.

- 17.3 Waiver. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy.
- 17.4 The waiver of any breach or default does not constitute the waiver of any subsequent breach or default. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 Remedies by law. Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
Severability. If any provision or part-provision of the **Contract** is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the **Contract**.

18 Entire Agreement.

- 18.1 The **Contract** (which includes the **Order Form**) constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements, assurances, understandings and other communications between the parties, both oral and written.
- 18.2 Each party acknowledges that in entering into the **Contract** it does not rely on, and shall have no remedies in respect of, any representation, assurance, statement or warranty (whether made innocently or negligently) of any person (whether a party to this **Contract** or not) that is not expressly set out in the **Contract** ("Representation").
- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

19 Assignment

- 19.1 The Customer shall not, without the prior written consent of an authorised executive officer of the **Company**, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its interests, rights or obligations under the **Contract**.

- 19.2 The **Company** may at any time on written notice to the Customer assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 19.3 Each party is acting on its own behalf and not for the benefit of another person. Should the **Company** assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its interests, rights or obligations under the **Contract**, the **Customer** has the option to terminate the contract with 30 days written notice. Fees due to the date of 30 days from the date of the option to terminate shall be payable.

20 Independent Contractors

- 20.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21 Third Party Rights

- 21.1 A person who is not a party to the **Contract** has no rights under the **Contracts (Rights of Third Parties) Act 1999** to enforce any term of this **Contract** but this does not affect any right or remedy of a third party that exists or is available apart from the Act.
- 21.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the **Contract** are not subject to the consent of any person that is not a party to the **Contract**.
- 21.3 Notices. Any notice given to a party under or in connection with this **Contract** shall be in writing and shall be delivered by hand or by registered courier or other next **Working Day** recorded delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 21.4 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by registered courier or other next Working Day recorded delivery service, at the time recorded by the delivery service.
- 21.5 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 not include e-mail.

21.6 Applicability of UN Convention for International Sale of Goods Contracts.

21.7 The parties agree that this **Contract** is not a contract for the sale of goods; therefore, this **Contract** shall not be governed by any references to the United National Convention on Contracts for the International Sale of Goods.

22 Survival

22.1 Any provision of this MSA that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this MSA shall remain in full force and effect including the confidentiality agreement.

23 Export

23.1 Each party undertakes to strictly comply with any applicable laws and regulations, national or international, relating to security trade / export control when pursuing its activities under the Contract.

23.2 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the **Contract** (or any products, including access to the **Software**, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

23.3 Each party undertakes contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above, and if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any export control laws.

24 Dispute Resolution, Law & Jurisdiction

24.1 If any claim, controversy or dispute arising under this Agreement or the relationship created by this Agreement arises, a party to the dispute may give written notice (a "Dispute Notice") to the other party specifying the nature of the dispute. Each party will designate an authorized representative with the appropriate authority to negotiate the dispute. Within seven (7) Working Days

after a Dispute Notice is received by a party, each party's authorized representative will promptly meet to negotiate and resolve the dispute.

- 24.2 If the authorized representatives of the parties are unable to resolve the dispute within twenty (20) Working Days from the Dispute Notice, the dispute will be escalated to the senior management of each party for further negotiation and resolution.
- 24.3 Either party may bring an action for monies owed or injunctive relief without first submitting the action to mediation if the parties cannot resolve the claim, controversy or dispute within ninety (90) days after conferring with the mediator, either party may submit such claim, controversy or dispute to court in accordance with the next two paragraphs below:
- 24.4 No party may commence court proceedings related to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation in accordance with this Dispute Resolution clause provided that the right to issue proceedings is not prejudiced by a delay. Notwithstanding the provisions of this paragraph nothing in this Agreement shall limit either party's right to seek injunctive relief.
- 24.5 Each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to this Agreement (including non-contractual disputes or claims).
- 25.6 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, formation, validity, construction, interpretation and performance (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

Part 1 - Alemba Service Manager Cloud Software Licence Contract

- 1.1 In consideration of the annual **Service Fee** paid by the Customer to the **Company** for access to the Alemba Service Manager Cloud (ASM-Cloud) platform the **Company** will provide access to Alemba Service Manager for the number of users stated in the associated **Order Form** or the agreed **Customer** order vehicle.
- 1.2 Software also includes **Deliverables** as defined on a Statement of Work and/or a **Technical Specification**.
- 1.3 The number of systems provided under this agreement, Production, Test, Training, Sandbox and Reporting will be defined on the associated **Order Form** or the agreed **Customer** order vehicle.
- 1.4 The Software Fees include, support, maintenance, and hosting but exclude professional services for application configuration, which may be provided if such professional services are separately agreed in an associated **Order Form** or the agreed **Customer** order vehicle subject to payment of the applicable **Service Fees**.
- 1.5 The Customer may appoint a subcontractor to provide professional services on the Alemba Cloud Software provided the subcontractor expressly agrees that they shall not use the **Software** for any other purpose than to support the **Customer**.
- 1.6 Where the Software identified in the Order Form is "Alemba Service Manager (ASM)", the Company warrants that it has the necessary rights from VMware Inc to (i) grant Customer the rights in this Agreement; and (ii) perform its obligations under the Contract in respect of the Software.
- 1.7 Other than the express software access rights granted to the Customer in 1.1, no right, title or interest in all or any portion of the Software is conveyed or assigned to Customer, either expressly or by implication, by virtue of this Contract, including any Intellectual Property Rights associated with the Software.
- 1.8 Alemba commits to providing each **Customer** with sufficient compute, storage and memory as recommended by the Cloud Platform Provider to support the number of users stated on the associated **Order Form**.
- 1.9 The ASM Cloud application availability provided under this contract is 99.95% calculated over **Working Hours**.
- 1.10 Storage – Fair Use Policy, the **Company** will provide storage based on the expected consumption profile based on the number of **Analysts**. The **Company**

reserves the right to charge an additional fee for excess storage used above the expected consumption profile. (Typically, this operates between 50GB and 100GB per annum)

Should the customer require additional storage the costs are:

Additional Storage Capacity	Cost Per Month
100GB - 199GB	£800.00
200GB - 499GB	£1,200.00
500GB - 999TB	£2,000.00
1TB - 1.5TB	£3,000.00
1.6TB – 2TB	£3,500.00
2.1TB – 2.5TB	£4,000.00
2.6TB – 3TB	£4,500.00
3.1TB - 4TB	£5,000.00
4.1TB – 5TB	£5,500.00
5.1TB – 6TB	£6,000.00
Per TB thereafter	£1,000.00

(Costs are in GBP).

- 1.11 ASM Cloud Platform support operates twenty-four (24) hours per day three hundred and sixty-five (365) days per year.
- 1.12 ASM Cloud Platform failure response time is twenty (20) minutes.(A Critical Issue)
- 1.13 The ASM Cloud platform provides a standard back-up service that operates every 24 hours and retains data on a rolling 7 day schedule.
- 1.14 Mean Time to Recovery, the ASM Cloud mean time to recovery following the catastrophic failure of a datacentre is four (4) hours.
The four (4)-hour time period will be deemed to have started from the time that the Cloud Platform Provider has declared that the time to recovery of the current in-use datacentre is greater than four (4) hours.
- 1.15 Maximum Data Loss – The maximum data loss on the ASM Cloud Platform for a standard contract is 23 Hours and 59 minutes.
- 1.16 ASM Cloud customers are entitled to one annual software **Major Release** per twelve (12) months. Alemba reserves the right to provide additional upgrades with the consent of the **Customer**.

- 1.17 Maintenance Window Notification – Maintenance requiring downtime on a **Customer's** ASM Cloud platform will be informed at least five (5) **Working Days** before the planned maintenance upgrade.
- 1.18 Data Rights – ASM Cloud **Customers** have the right to request their data at any time. The **Company** will fulfil this request within five (5) **Working Days**.
- 1.19 ASM Cloud Contract Termination – On termination of an ASM Cloud contract **Customers** will be provided a copy of their system data in accordance with Part 4 - Termination Process.
- 1.20 Escalation Procedure - Should the **Company** fail to provide support in accordance with the service level agreement as stated in Section 1.31 the customer will be able to escalate issues using the following escalation path:

Service Desk Agent

Service Desk Manager; James Buckle; (James.Buckle@alemba.com)

VP Sales; Laurence Scott-Mackay; (Laurence.Scott-Mackay@alemba.com)

CEO; Simon Nugent; (Simon.Nugent@alemba.com)

Intellectual Property Rights

- 1.21 The **Company** acknowledges that all **Intellectual Property Rights** in the **Customer's Equipment** and **Customer Data** shall belong to the **Customer**. The **Customer** shall have sole responsibility for the legality the **Customer's Equipment** and **Customer Data**.
- 1.22 The **Customer** acknowledges that all **Intellectual Property Rights** in the **Software** and **Deliverables** (which are created as part of any **Development Services** for additional features or functions which have been agreed in an **Order Form** defined in an accompanying Statement of Work and Technical Specification). **Company Background Technology** and any **Updates** belong and shall belong to the **Company** or the **Company's licensors** (as the case may be), and the **Customer** shall have no rights in or to the **Software** or **Deliverables** other than the right to use them in accordance with the terms of this Contract unless specified otherwise on an agreed Statement of Work.
- 1.23 Notwithstanding the restrictions in the Software Licence detailed in 1.1, the **Customer** acknowledges that all **Intellectual Property Rights** in any Alterations now in existence or created by **Company**, **Customer**, or any third party on behalf of the **Company** or **Customer**, shall become and remain the sole and exclusive property of the **Company** unless specified otherwise on a Statement of Work.

Upon written request by the **Company**, the **Customer** will promptly execute such assignments or other documents necessary to confirm, assign or transfer in favour of the **Company** any **Intellectual Property Rights** in any **Alterations**.

- 1.24 For clarity, the **Company** is not restricted from using any knowhow developed or acquired by the **Company** during the **Company's** provision of the **Services** which may be of general application to the **Company's** work for other customers. For the purposes of this clause, 'knowhow' shall mean information and experience, but shall not include the **Customer's Confidential Information**.

Alemba Service Manager Cloud Application Support And Maintenance Services

- 1.25 In consideration of the annual **Service Fee** paid by the **Customer** to the **Company** the **Company** shall provide the Customer with **Support and Maintenance Services** for the duration of the **Initial Term** and any **Renewal Terms**.
- 1.26 **Support and Maintenance Services** will be provided to the **Customer** to correct **Faults** and provide **Updates** for **Software**.
- 1.27 The **Company** may cease to provide **Support and Maintenance Services** for certain **Software** versions on no less than one year's prior written notice to the **Customer**.
- 1.28 **Support and Maintenance Services** will be provided to the **Customer** via telephone, web or email, in accordance with service level agreement detailed in clause 1.31.
- 1.29 Unless otherwise stated in the Order Form, **Support and Maintenance Services** will be limited to the support of one production environment and one single cloned environment for testing purposes if this option is detailed on the associated Order Form.
- 1.30 If the Customer believes that there is a Fault with the **Software** then the Customer (by acting through the **Customer's Support Representative** or any other individuals authorised by the **Customer**) shall notify the **Company** by telephone, customer portal or e-mail using the **Company's** nominated support phone numbers or email address(es) of the defect, error or non-compliance ("Support Issue") in question and provide the **Company** with a documented example of such **Support Issue**. The preferred method of notification is the Alemba customer portal.
- 1.31 On receipt of a **Support Issue** the **Company** shall investigate and use its reasonable endeavours to correct such **Support Issue** (where it, in its absolute discretion believes correction is necessary). Attempts to resolve the

Support Issue shall be provided by telephone or e-mail support, or remote access connectivity at the sole discretion of the Company.

The Company shall categorise the **Support Issue** as "*Critical*", "*High*", "*Medium*", "*Low*" or "*Request*", based on the urgency and impact on the Customer's business operations and shall use reasonable endeavours to respond to each **Support Issue** in accordance with the target timeframes and actions detailed in the table below.

In the event that the Company can only fix a **Fault** by issuing **Updates** in certain versions of the **Software**, the **Customer** is bound to accept the provision of the fix in an **Update** to the **Software** as remedy for the **Fault** (and in such circumstances, where the **Customer** chooses not to accept the relevant **Update** to that **Software**, the **Company** shall not be liable in any way in relation to that **Fault** or any consequences of that **Fault**).

Priority	Description	First Call-Back Target	Resolution Target	Action
24 Hour 365 Day Service				
Critical (P1)	Total system failure or failure of a major module. For example, the Incident or Request module. The system or module is completely unavailable. For Example: No Calls and/or Workflow Requests can be logged.	Acknowledgement by Service Desk Analyst within 20 minutes	Resolution as soon as possible. Workaround within 4 hours (this is conditional to the system meeting resilience standards; and that a code change is not required to the core product)	This level of failure must be logged by the P1 option on the front of the Alemba Customer Portal. Hourly progress update to Customer.
Business Hours Service				
High (P2)	Severe problem impairing major business functions. A secondary module of the system is useable but is impaired. For Example: A call can be logged but a particular field cannot be set.	Acknowledgement by Service Desk Analyst within 1 hour	Workaround within 5 Working Days and fix in the next release.	An emergency fix will be supplied ASAP if appropriate.
Medium (P3)	Performance of job function is limited.	Acknowledgement by Service Desk Analyst within 2 hours	Workaround within 30 Working Days. Fix to be scheduled in a future release.	Fix in future minor or major release. Where possible a workaround will be provided.

Low (P4)	Non-critical problem and/or product use questions Major module is unaffected however a technical function of the module is degraded For Example: Calls can be logged the history is saved and displayed but not in correct format	Acknowledgement by Service Desk Analyst within 1 working day	Workaround within 60 Working Days or fix in a future release	Workaround provided if available or fix provided in a future release.
Request	Feature requests and other non-critical questions	Acknowledgement by Service Desk Analyst within 2 working days	Response and advice provided in an appropriate time based on the nature of the request.	Core product feature requests may be included in the ASM Roadmap.

- 1.32 Where the **Customer** wishes to notify the **Company** of a **Support Issue** in accordance with paragraph 1.31 it shall contact the **Company** by telephone or e-mail in accordance with paragraph 1.33 and provide information in accordance with paragraphs 1.34 and 1.36.

How to notify the **Company** by Telephone and E-mail:

- 1.33 On identifying a Fault, the Customer must notify the Company promptly of the Fault, either by raising an incident ticket through the Company's Customer Portal at www.alemba.help, emailing the service desk using the email address, servicedesk@alemba.com, or by telephoning the service desk on +44 (0) 203 479 7900.

Supplying Information

- 1.34 When notifying the **Company**, the **Customer** must prepare a succinct description of the problem which accurately describes the problem to the Company.
- 1.35 If the **Company's** support representative does not understand the problem the **Customer Support Representative** shall re-assess the problem and having carried out a further investigation prepare a new description of it. The **Company** shall ensure that its support representatives are reasonably skilled and trained to provide helpdesk services.
- 1.36 It is the **Customer's** responsibility to provide the following information when notifying the **Company** of a **Support Issue**:
- (a) the relevant background of the issue or problem to be reported;
 - (b) an exact and accurate description of the issue or problem being reported;
 - (c) what the particular user was doing at the time the issue or problem arose;
 - (d) how the issue or problem was identified;
 - (e) what affect the issue or problem is having on the **Customer**;
 - (f) symptoms of the issue or problem;
 - (g) details of any message or warnings displayed on screen;
 - (h) a screenshot or PDF from the **Customer's** software illustrating the Fault;
 - (i) where the information relates to a previously logged call give the reference of such call; and
 - (j) enough information to locate and replicate the **Fault** including:
 - (i) specific details on which part of the system the problem occurred;
 - (ii) steps to recreate the issue; and
 - (iii) screen shots of any errors received in the system or the server event log.
- 1.37 The **Support and Maintenance Services** do not cover:
- (a) any services required for post Update re-configuration or application operation.
 - (b) any software other than the Alemba Service Manager **Software** and its service delivery architecture.
 - (c) the use of the **Software** or **Software Documentation** other than strictly in accordance with the **Software Documentation**.
 - (d) defects or errors due to operator error.
 - (e) a situation where such a defect or error can be avoided by consideration of all information contained in the **Software Documentation**, even if such consideration depends on the interpretation of such information.
 - (f) any **Customer** programs used in conjunction with the **Software**.
 - (g) defects or errors caused by the use of the **Software** on unsupported web browsers.

- (h) defects or errors caused by the malicious or negligent activities of the **Customer**, its employees, agents, or subcontractors or any other third parties.
 - (i) defects or errors in any way related to the **Customer** where the defect or error is caused in any way by the **Customer** not being contactable or not following instructions correctly whether given by telephone, email or otherwise or caused by or related to any breach by the Customer of its obligations under this Contract.
 - (j) a situation where the Customer ceases for whatever reason to have the legal right to use the Software.
 - (k) defects or errors caused by a Force Majeure Event.
- 1.38 Nothing in the Contract shall impose any obligation on the Company to provide **Support and Maintenance Services** in respect of any defect, error or circumstance arising due to any of the exclusions referred to in paragraph 1.37 above.

1.39 Updates:

- (a) The **Company** shall in its sole discretion determine whether to issue an **Update** for any **Support Issue** notified to it by the **Customer** or as otherwise may be identified by the **Company**. All **Updates** within the expected evolution of the **Software** shall be included as part of the **Support and Maintenance Services**, subject to the payment of the **Service Fee** for use of the ASM Cloud **Software**.
- (b) The **Company** may recommend an upgrade to the **Customer** of an **Update** of the **Software** which the **Company** shall from time to time make generally available to its licensees, the **Customer** shall accept such new **Update** promptly. The **Company** may decide on the content and timing of all **Updates**. Once delivered to the **Customer**, where such **Update** is a **Major Release**, it shall become the current **Major Release** and all references to "**Covered Releases**" shall be construed accordingly.
- (c) In reasonable time (two (2) weeks target) prior to the delivery of a new **Update** the **Company** shall make available to the **Customer** all amendments to the **Specification** and the **Software Documentation** which are necessary to describe the operability and the facilities and functions of the new **Update**.
- (d) If requested by the **Customer**, the **Company** shall provide training for **Updates** outside the scope of the **Support and Maintenance Services**. Any such further request shall be the subject of a separate Contract for **Consulting Services**. The **Customer** shall use reasonable efforts to ensure that such installation and training can take place within thirty (30) days of delivery by the Company of a new **Update**.
- (e) Within three (3) weeks of the **Customer** receiving the new **Update** the **Customer** shall test the new **Update** and shall notify the **Company** of any non-compliance of the new **Update** with the amended **Specification** as delivered to the **Customer** pursuant to paragraph 1.39(b). On receipt of such notification, the **Company** shall verify the non-compliance and where the **Company**, in its sole discretion, determines such non-compliance exists, it shall correct the non-compliance and re-deliver the new **Update** for retesting by the **Customer**.
- (f) If within three (3) weeks after any delivery or redelivery of such new **Update** no notification of non-compliance is received by the **Company** then the **Customer** shall be deemed to have accepted the new **Update**.

Customer's Obligations

1.40 During the term of the ASM Cloud **Software** Contract the Customer shall:

- (a) use only **Covered Releases** of the **Software** in accordance with paragraph 1.39 above.
- (b) ensure programs used with the **Software** are used only in accordance with the **Software Documentation** and by competent trained employees only or by persons under their supervision and provide supervision, control and management of the use of the **Software**.
- (c) provide the **Company** with all information and documents required by the **Company** (at all times acting reasonably) in connection with the provision of the **Support and Maintenance Services**.
- (e) co-operate fully with the Company's personnel in the diagnosis of any error or defect in the **Software** or the **Software Documentation**.
- (f) take all reasonable steps necessary to carry out procedures for the rectification of a **Fault** within a reasonable time after such procedures have been provided by the **Company**.

1.41 The **Company** may elect to suspend **Support and Maintenance Services** to the extent that the **Customer's** failure to comply with paragraph 1.40 above prevents the **Company** from providing such **Support and Maintenance Services** in a cost effective and timely manner.

1.42 The Customer shall:

- (a) nominate a manager to be available to liaise with, and respond to queries from, the **Company's** designated account manager (for example, as to the resolution of conflicting priorities between two or more **Support** Issues).
- (b) nominate **Customer Support Representatives** who are entitled to contact the **Company** for requests for **Services**;
- (c) notify the **Company** at least two (2) **Working Days** in advance if the **Customer** replaces the manager or any of the **Customer Support Representatives** appointed pursuant to clause 1.42 (a).

Part 2 - Consulting Services

- 2.1 In consideration of the **Service Fee** paid by the **Customer** to the **Company** for **Consulting Services**, the **Company** shall provide the **Customer** with **Consulting Services** subject to the terms and conditions stated in this Part 2 – Consulting Services.
- 2.2 The **Customer** acknowledges that the **Company's** provision of **Consulting Services** is subject to the **Assumptions** (if any) set out in the **Contract**.
- 2.3 Each party will appoint a qualified person to act as project manager, whose duties shall be to act as liaison between the **Company** and the **Customer** in connection with **Consulting Services**. The **Company** reserves the right to determine which of its personnel shall be assigned to the **Project Team** to perform **Consulting Services**, and to replace or reassign such personnel and the **Customer** acknowledges that the **Company's** personnel may not be exclusively engaged in connection with the provision of **Consulting Services**, however, the **Company** will, subject to scheduling and staffing considerations, attempt to honour the **Customer's** request for specific individuals.
- 2.4 The **Contract** for **Consulting Services** constitutes a contract for the provision of services and not a contract of employment and accordingly the **Company** shall be fully responsible for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the **Consulting Services** and any payment or benefit received by its personnel in respect of the **Consulting Services**, where such recovery is not prohibited by law.
- 2.5 The **Company** or its subcontractors are solely responsible for the administration of all salary, performance appraisal, disciplinary, grievance and other employment-related matters in respect of its or the subcontractor's personnel (as applicable) howsoever arising.
- 2.6 The **Customer** may cancel the **Consulting Services** on written notice to the **Company** prior to the date of performance of such **Consulting Services** (as detailed in the **Contract**) subject to payment of the cancellation charge set out below, which is calculated by reference to the date on which the **Company** receives written notification of cancellation for the **Consulting Services** and which is without prejudice to any other right or remedy available to the **Company**.
 - (a) Sixteen (16) **Working Days** prior to the date of performance of the **Services** - 0% of the **Service Fees** set out in the **Contract** for the cancelled **Consulting Services**.

- (b) Eleven to fifteen (11-15) **Working Days** prior to the date of performance of the **Services** - 25% of the **Service Fees** set out in the **Contract** for cancelled **Consulting Services**;
 - (c) Six to ten (6-10) **Working Days** prior to the date of performance of the **Services** - 50% of the **Service Fees** set out in the **Contract** for the cancelled **Consulting Services**;
 - (d) One to five (1-5) **Working Days** prior to the date of performance of the **Services** - 100% of the **Service Fees** set out in the **Contract** for the cancelled **Consulting Services**.
- 2.7 The **Customer** will ensure that information and instructions that it provides to the **Company** in respect of the scoping and performance of the **Services** from time to time are complete and accurate. If the **Company** bases the **Charges** upon information provided by the **Customer** and this information is subsequently shown to be incorrect or incomplete, the **Company** reserves the right to charge any resulting additional **Service Fees** to the **Customer**.
- 2.8 The **Company** may engage subcontractors to perform **Consulting Services** provided that the **Company** shall be fully and solely responsible for the supervision and payment of its subcontractors and for all work performed by such subcontractors.
- 2.9 Nothing in the **Contract** shall prevent the **Company** or the **Project Team** from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the provision of the **Services** provided that such activity does not cause a breach of any of the **Company's** obligations under the **Contract**.

Contract Change Orders

- 2.10 If either party wishes to change the scope or execution of the **Consulting** or **Development Services**, it shall submit details of the requested change to the other in writing and the **Company** shall, within a reasonable time, dependent of the size and complexity of the change, provide a written estimate to the **Customer** of the likely time required to implement the change, any necessary variations to **Charges** arising from the change and any other impact of the change on the **Contract**; (the "**Change Request Quote**").
- 2.11 The **Customer** may:
- (a) accept the **Change Request Quote** at any time within ten (10) **Working Days** of the **Company** submitting the **Change Request Quote**. Any acceptance must be in writing signed by the **Customer**. If the **Customer** does not accept the **Change Request**

- Quote** within that time period, the **Change Request Quote** will expire; or
- (b) reject the **Change Request Quote**, in which case the **Contract** will continue in force unchanged.
- 2.12 The **Company** may withdraw, refuse, defer or abandon a **Change Request Quote** at any time before its acceptance, in which case the existing **Contract** will continue in force unchanged.
- 2.13 The **Company** has no obligation to proceed with any change unless and until the parties have agreed the necessary variations to the **Charges**, the **Consulting Services** and/or the **Development Services** and any other relevant terms of the **Contract** to take account of the change and the relevant **Contract** has been varied in accordance with the General Clause.

Customer's Responsibilities

- 2.14 Without prejudice to clause 2.15, the **Customer** shall provide the **Project Team** with full, safe and uninterrupted access (including remote access where applicable) to the **Customer's** premises and to all items of software, hardware or other materials as may reasonably be required for the purpose of performing the **Services**.
- 2.15 The **Customer** shall ensure that appropriate environmental conditions are maintained for the supported software, hardware and other items and shall take all reasonable steps to ensure that they are operated in a proper manner by the **Customer's** employees and that the **Customer's** employees are properly trained in the use and application of the **Software** and the equipment on which the **Software** is operating.
- 2.16 The **Customer** shall provide the **Company's** personnel with administrative assistance to schedule meetings and workshops (as may be required).
- 2.17 Where the **Services** are to be performed at any of the **Customer's** premises, the **Customer** shall provide the **Project Team** with adequate and safe working space, the **Customer's** Equipment, information, services, support and other assistance as the **Project Team** may reasonably require to provide the **Services**.
- 2.18 The **Customer** shall permit the **Company** and the **Project Team** access to the relevant areas of the **Customer's** Site and provide internet access to the **Software**, **Customer's** Equipment and facilities to the extent necessary for the performance of the **Services**, provided that, whilst on such Site and using the **Customer's** Equipment, the **Company** shall comply with any of the **Customer's** reasonable safety and security requirements notified to the **Company** in advance.

- 2.19 The **Customer** shall provide such telecommunication facilities as are reasonably required by the **Company** to provide the Services (including for testing and diagnostic purposes) at the Customer's expense.
- 2.20 The **Customer** shall provide a suitable vehicle parking facility for use by the Company's personnel when visiting the Customer's premises which is free from any legal restrictions if possible.
- 2.21 The **Customer** shall make available **Project Personnel** and **Support Representatives** to provide any assistance or information as may reasonably be required by the **Company** for the delivery of the Services, including in relation to **Acceptance Testing**.
- 2.22 The **Customer** shall ensure that all necessary consents, licences and permissions are in place to enable the **Company** to perform the requested **Services** and provide any **Deliverables** (including without limitation any relevant third-party licences for software, hardware and operating environment required to provide and support access to the **Software**).
- 2.23 The **Customer** shall not request, permit or authorise anyone other than the **Company** to provide any support services in respect of the **Software** (including **Deliverables** comprised of **Software**).
- 2.24 The **Customer** agrees that if the **Customer** is in breach of any of its obligations under the **Contract** and such breach affects the **Company's** ability to provide the **Software** and/or **Services** (including delivering **Deliverables**):
- 2.25 The **Customer** agrees the time for performance or delivery shall be extended by such period of time as shall be reasonable having regard to the nature and extent of the **Customer's** breach and the **Company** shall not be liable for any delay or failure to provide the **Software** or **Services** (as applicable).
- 2.26 The **Customer** shall indemnify the **Company** and hold it harmless from and against any losses, damages, costs (including all legal fees) and expenses and any other liabilities suffered, incurred by or awarded against the **Company** as a result of the possession or use of the **Software** or **Deliverables** by the **Customer** or any of the **Customer's Group Companies** (or by the employees, agents or representatives of either the **Customer** or the **Customer's Group Companies**) in a way which is not permitted by the **Contract**.

Part 3 - Warranties

- 3.1 Each of the parties warrants to the other that it has full power and authority to carry out the actions contemplated under the **Contract**, and that its entry into and performance under the terms of the **Contract** will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.
- 3.2 Subject to the exceptions set out in the **Contract** and the limitations upon the **Company's** liability in the Limitation of Liability clause in this MSA, the **Company** warrants that, the **Services** will be carried out with reasonable skill and care for the **Warranty Period** that the **Software** and tangible **Deliverables** will conform and operate in all material respects in accordance with its functional **Specification**.
- 3.3 The **Company** warrants that; the Software and Deliverables do not infringe the UK copyright or database rights of any third party.
- 3.4 Save as expressly provided in clause 3.1, 3.2 and 3.3 above, all warranties, conditions and other terms implied by statute or common law or in any way otherwise are, to the fullest extent permitted by law, excluded from the Contract, including but not limited to terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 and warranties and conditions of satisfactory quality, performance, fitness for a particular or any purpose, or ability to achieve any particular result or requirements.
- 3.5 Without prejudice to the generality of clause 3.4, the **Company** does not guarantee any particular results when providing the **Software**, the **Services** or **Deliverables**, or through use of the **Software**, **Services** or **Deliverables**, where the Customer has asked the Company to configure or develop any software based on the **Customer's** business methodology or rules, it is the **Customer's** responsibility to ensure that its instructions have been implemented to its satisfaction; and the **Customer** assumes sole responsibility for the results obtained from the use of **Software**, **Services** and/or **Deliverables** and for conclusions drawn from such use.
- 3.6 The **Company** does not warrant that the use of the **Software** or **Deliverables** comprised of software will be uninterrupted or error-free.
- 3.7 Subject to clause 3.11, the sole remedy for breach of the warranty given in clause 3.2 is, at the Company's option (as applicable) to; repair the **Software** or **Deliverable**; replace the **Software** or **Deliverable**; re-perform the relevant **Services** at the **Company's** own cost; or refund any of the **Charges** paid by the **Customer** for such **Software** or **Deliverable** on a pro rata basis in respect of the **Customer's** use of the **Software** or **Deliverable** up to the date the **Software** or **Deliverable** is returned to the **Company**.

Provided that the **Customer** provides the **Company** with all information that may be necessary to assist the **Company** in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the **Company** to re-create the defect or fault.

- 3.8 Subject to clause 3.11, the sole remedy for a breach of the warranty given in clause 3.3 is that the **Company** shall at its own expense, defend or, at the **Company's** option, settle any third party claim or suit alleging that the use by the **Customer** of the **Software** or **Deliverable** or any part of them infringes any UK copyright or database rights belonging to a third party (a "Claim") and the **Company** agrees to be responsible for the **Customer's** costs properly and reasonably incurred and to pay any direct damages finally awarded against the **Customer** in any such Claim by a court of competent jurisdiction provided that the **Customer** shall immediately notify the **Company** if a Claim is made against the **Customer** and agrees to grant the **Company** exclusive control of all litigation and negotiations in connection with such Claim; the **Customer** shall, at the **Company's** request and expense, afford to the **Company** all reasonable assistance for the purpose of contesting any Claim; the **Customer** does not make any admissions (save where required by court order or governmental regulations, and where the **Customer** is required under the terms of such order or regulations not to first consult with the **Company**) which may be prejudicial to the defence or settlement of any Claim without the **Company's** approval (not to be unreasonably withheld or delayed).
- 3.9 Subject to clause 3.11, if a Claim is made or in the **Company's** reasonable opinion is likely to be made, the **Company** may at the **Company's** own expense either; modify any or all of the **Software** or **Deliverable** without reducing the performance and functionality of the same so as to avoid the infringement or the alleged infringement, in which case the **Company** may issue a new Update of the **Software** or **Deliverable** which the **Customer** shall implement; or procure a licence to use the infringing or potentially infringing part of the **Software** or **Deliverable** on terms which are acceptable to the **Customer** (acting reasonably).
- Or if neither causes of action under clause 3.9 are reasonably practicable or economical, the **Company** may terminate **Customer's** right to use the **Software** and **Deliverables**, in whole or in part and refund to the **Customer** the proportion of the **Charges** paid by the **Customer** to the **Company** which reflects the loss of functionality suffered by the **Customer** as agreed between the parties or in the absence of agreement as determined by an independent consultant nominated by agreement of the parties (such consultant to act as expert not as arbitrator) and whose decision shall be final and binding on the parties less a reasonable allowance for the period of time **Customer** has used the **Software** or **Deliverable**.

- 3.10 If the **Company** has modified the **Software** or **Deliverable** and issued an **Update** or procured a licence under clause 3.9 and has therefore avoided the Claim, then the **Company** shall have no further liability in respect of that Claim.
- 3.11 The provisions of clauses 3.7, 3.8 and 3.9 shall not apply insofar as any such defect, fault or Claim is based upon: any breach of the relevant **Software Licence** or **Third-Party Licence**; the **Customer's** use of the **Software** or **Deliverable** or any part thereof not in accordance with this **Contract** or in a manner not reasonably to be anticipated by the **Company** when supplying them to the **Customer**; modifications made to the **Software** or **Deliverable** by the **Customer** or a third party under the **Customer's** direction without the **Company's** authorisation; any **Customer Modifications** or (for clarity) **Customer Features**; use of the **Software** or **Deliverable** in association with any other equipment, programs or materials not supplied by the **Company** unless such combination is expressly authorised by the **Company**; use of any release of the **Software** or **Deliverable** comprised of software other than a Covered Release or by use of the **Software** or **Deliverable** comprised of software without the application of any Updates released pursuant to clause 3.9 above; or the **Customer's** Equipment; designs or specifications supplied by the **Customer**.
- 3.12 No representation or warranty is given by the **Company** that any or all faults will be fixed or will be fixed within a specified period of time.

Part 4 – Alemba Service Manager – Termination Process

- 4.1 The **Company** will provide the **Customer** a copy of their data as either a Microsoft SQL file or a set of CSV files for Incident, CI, Request Form data (excluding workflow) and Knowledge Basa data in the form of Word documents.

Part 5 - Data Processing

- 5.1 The **Company** acknowledges that the **Customer** is the **Data Controller** and the owner of such **Personal Data**, and that the **Company** is the **Data Processor**.

Compliance With Data Protection Laws

- 5.2 Both the **Customer** and the **Company** warrant that they have complied, and shall continue to comply, with the requirements of the applicable Data Protection Laws and all other data protection legislation in any jurisdiction relevant to the exercise of their rights or the performance of their obligations under this **Contract**. Nothing contained within this **Contract** shall affect or lessen the responsibilities or liabilities of the parties pursuant to the Data Protection Laws.

Data Processing Obligations

- 5.3 In respect of any **Personal Data** to be processed by the **Company** acting as **Data Processor** pursuant to this **Contract** for which the **Customer** is **Data Controller**.
- 5.4 The **Company** shall have in place and at all times maintain appropriate technical and organisational measures in such a manner to ensure the protection of the rights of the data subject and ensure a level of security appropriate to the risk.
- 5.5 The **Company** shall not engage any sub-processor without prior specific or general written authorisation of the **Customer** (and in the case of general written authorisation; the **Company** shall inform the **Customer** of any intended changes concerning the addition or replacement of other processors and the **Customer** shall have the right to object to such changes).
- 5.6 The **Company** shall process Personal Data (and ensure that all persons authorised to access the **Personal Data** process that **Personal Data**) only on documented instructions from the **Customer**, unless required to do otherwise by law, and in such a case the **Company** shall inform the **Customer** of that legal

requirement before processing, unless that law prohibits such information on important grounds of public interest.

- 5.7 The **Company** shall ensure that all persons authorised to access the **Personal Data** are subject to obligations of confidentiality.
- 5.8 The **Company** shall ensure that each of the **Company's** sub-processors are made aware of the **Company's** obligations under this Schedule (PART 5) and that the terms of this Schedule are imposed on any sub-processor by way of contract such that the sub-processor shall be obligated to act at all times in accordance with duties and obligations of the **Company** under this clause (Part 5). The **Company** shall be liable to the **Customer** for any failure of any sub-processor to act in accordance with the duties and obligations of the **Company** under this Schedule.
- 5.9 The **Company** shall take into account the nature of the processing, provide assistance to the **Customer**, within such timescales as the **Customer** may require from time to time, in connection with the fulfilment of the **Customer's** obligation as Data Controller to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR.
- 5.10 The **Company** shall assist the **Customer** in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the **Customer**, taking into account the nature of the processing and the information available to the **Company**.
- 5.11 The **Company** shall promptly following the end of the provision of the services to the **Customer** by the **Company**, at the instruction of the **Customer**, delete or return a complete copy of the **Personal Data** to the **Customer**, and then permanently delete any copies of the **Personal Data** from the **Company's** systems, unless otherwise required by law.
- 5.12 The **Company** shall make available to the **Customer** all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this clause (Part 5) and allow for and contribute to audits, including inspections, conducted by the **Customer** or another auditor mandated by the **Customer**, provided that, in respect of this provision the **Company** shall immediately inform the **Customer** if, in its opinion, an instruction infringes Data Protection Laws.
- 5.13 The **Company** shall maintain a record of its processing activities in respect of the **Personal Data**, in accordance with Article 30 of the GDPR;

- 5.14 The **Company** shall cooperate on request with any supervisory authority audit or investigation in respect of the **Personal Data**, in accordance with Article 31 of the GDPR;
- 5.15 The **Company** shall without undue delay, notify the **Customer** in writing about any Data Breach in respect of the **Personal Data** of which the **Company** becomes aware, in accordance with Article 33 of the GDPR;
- 5.16 The **Company** shall indemnify the **Customer** against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, fines and legal and other professional costs and expenses) suffered or incurred by the **Customer** or for which it may become liable as a result of or in connection with any failure of the **Company**, its employees or sub-processors to comply with this clause (Part 5). For the avoidance of doubt, this indemnity shall not be subject to any limitations or exclusions of liability contained anywhere within the **Contract**. This indemnity shall however be limited the agreed value of insurance held by the **Company**.

International Data Transfers

- 5.17 In respect of any **Personal Data** to be processed by the **Company** acting as Data Processor pursuant to this **Contract** for which the **Customer** is Data Controller, the **Company** shall not transfer the **Personal Data** outside the UK or to an international organisation without:
- (a) obtaining the written permission of the **Customer**;
 - (b) ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the **Personal Data** in accordance with the Data Protection Laws;
 - (c) notifying the **Customer** of the protections and appropriate safeguards in paragraph 5.17(b) above; and
 - (d) documenting and evidencing the protections and appropriate safeguards in paragraph 5.17(b) above and allowing the Customer access to any relevant documents and evidence.

Details Of Processing Activities (Gdpr Compliance)

5.18 The following table sets out the details of processing as required by The Data Protection Act 2018:

Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	The Company will process data on behalf of the Customer for the sole purpose of providing hosting, Maintenance and Support Services for the support of IT Service Management helpdesk software.
Description of the categories of the data subjects Please specify the categories of data subject whose Personal Data shall be processed under this Contract.	Data held will be ITSM Software service users (Customer employees only) personal details and Customer infrastructure data including Hardware, Software and Services and where available the interconnectivity between them. There may also be external end customer data processed occasionally, where the helpdesk request refers to a specific external customer (for example, where a specific external customer has reported an issue with the Customers web page)
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this Contract.	They system will typically hold the following Personal Data: - Customer Name - Customer Phone Number - Customer Email Address or Location - Customer IT Equipment - Customer Software / System Access - ASM Application permissions Plus any Personal Data of external customers (as set out above), which will be sporadic and only occasional. In this case, it would be a minimum of the customer name, potentially their email address and/or phone number, and potentially order details.

Description of transfers of Personal Data to a country outside of the UK. Please record transfers of Personal Data outside of the UK, recording the country and/or international organization and, where applicable, please document suitable safeguards.	No data will be held outside the UK.
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	Personal Data will be processed only for the Term of the agreement.
Authorized Sub-Processors List the sub-processors who will process Personal Data.	Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399 USA

Part 6 - Alemba Service Credits

- 6.1 In consideration of the **Fee** paid by the **Customer** to the **Company** for Alemba Service Credits, the **Company** shall provide the **Customer** with Units of Effort which the **Customer Support Representative** shall be entitled to request their consumption for the purpose of receiving from the **Company**:

Administration Services,

Professional Services,

Development Services

Customer Agreed Subsistence Expenses

- 6.2 The **Customer** shall provide a written Request from the Company (a "Request for Service") for the consumption of Alemba Service Credits until such Alemba Service Credits have been consumed or expired.

- 6.3 An Alemba Service Credit is 30 minutes of Time. (16 Credits Per Day)

- 6.4 The **Company** will provide the requested Administration Service on an agreed timetable, at an agreed number of Alemba Service Credits as defined at each Request for Service acceptance by the **Company**.

- 6.5 The **Company** shall at its discretion provide help and assistance to define the required Request for Service.

(The **Company** Reserves the right to charge for this service should it become onerous.)

- 6.6 The **Company** shall provide statements of credit usage monthly or upon credit consumption.

- 6.7 All credits will expire 12 months from date of purchase.

Part 7. Signature

7.1 The Customer and the Company by signing this MSA agree that it provides the terms and conditions under which the Company shall provide Software and Services to the Customer

Signed for and on behalf of The Company Name: Position: Date:	Signed for and on behalf of The Customer Name: Position: Date:
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Schedule 1 - Definitions

These definitions and rules of interpretation apply in the Alemba Service Manager Cloud Contract.

"Acceptance Criteria"	the acceptance criteria set out in the Specification to be used by the Customer when carrying out the Acceptance Tests.
"Acceptance Tests"	Acceptance Tests are defined as tests that shall only be carried out against the relevant Acceptance Criteria, and no other acceptance testing criteria shall apply.
"Affiliates"	Any business entity from time to time Controlling, Controlled by, or under common Control with, either party.
"Alterations"	all alterations, translations, upgrades, enhancements, customizations or modifications of all or any portion of the Software or Deliverables;
"Associates"	Associates are defined as the employees, officers, agents, associates, legal advisors and Affiliates of either party.
"Assumptions"	Any assumptions relating to the Services as detailed in the Order Form.
"Authorized User"	Any employee, subcontractor, agent or representative of the Customer who is permitted by the Customer to use the Software in accordance with the terms of the Contract for the Customer's own internal business purposes.
"Change Request Quote"	The cost to support a request from either party to change the scope or execution of the Consulting or Development Services.
"Commencement Date"	the date set out in the Order Form as being the commencement date.
"Company"	The company stated on this MSA and associated Order Form.
"Company Background Technology"	any technology that was conceived, created or developed by or for the Company (alone or with others) either: i. prior to the Commencement Date; or ii. after the Commencement Date but outside the scope of the Development Services; and includes the Company's Pre-Existing Materials and Software.
"Confidential Information"	Any and all information of a disclosing party including algorithms, source code, specifications, software, test results, business or marketing plans, pricing, network configurations, network architecture, information relating to products, software, processes, procedures, methods of working, formulae, ideas, concepts, plans, strategies, know-how, designs, photographs, drawings, specifications, inventions, technical literature, customer contact data, commercial activities, and financial, operational, technical and non-technical information including potential customers and customer lists, customer usage or requirements, business and customer usage forecasts and

	projections, accounting, finance or tax information, pricing information, and any information relating to the corporate and/or operational structure of the disclosing party and its affiliates which is: i. not generally known to the public; and ii. disclosed to the Receiving Party (as defined in Clause 10.1) in any form, whether in - printed, photographic or electronic form, orally visually or otherwise; and iii. either marked "Confidential" or "Proprietary", or which the Receiving Party has - been informed is confidential or which the Receiving Party might reasonably expect the Disclosing Party would regard as confidential.
"Consulting Services"	the consulting or professional services provided or to be provided by the Company to the Customer under the Contract as detailed in the Order Form (which may include configuration, training or project management services) and which are subject to the Alemba professional services agreement terms and conditions or another agreed contract vehicle.
"Contract"	each separate Order Form or Customer Order together with the terms and conditions set out in this Software Services Agreement and including the relevant agreed terms and conditions from the, as identified in the Order Form or agreed contract vehicle.
"Covered Releases"	the current Major Release (being the Major Release that was last released by the Company to its customers generally), and the immediately previous Major Release, including all Point Releases relating to such Major Releases.
"Customer"	the Customer identified in the Order Form or Customer Order.
"Customer Data"	data owned by the Customer and inputted by the Customer into the Software or Deliverables (if such Deliverables are comprised of software).
"Customer's Equipment"	All Documents, equipment and materials provided by the Customer to the Company including, but not limited to the Customer's computers, browser software, integration software, telephones, in connection with the Consulting Services.
"Customer Feature"	An additional function provided to the customer that requires development of new code that is not yet included in the standard Software Release and so would be dependent on Customization Support until the feature is released in a generally available release.

"Customer Support Representatives"	the individual(s) listed in the Order Form or identified by the Customer who are trained and competent in all aspects of using and administering the Software and who are entitled to contact the Company for a request for Services.
"Customization Support"	the Support and Maintenance Services provided or to be provided by the Company to the Customer as identified in the Contract for Development Services.
"Data Controller"	Has the meaning given to 'Data Controller', or 'Controller' as appropriate, in the Data Protection Laws.
"Data Breach"	Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
"Data Processor"	Has the meaning given to 'Data Processor', or 'Processor' as appropriate, in the Data Protection Laws.
"Data Protection Laws"	Means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data Protection Act 2018, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended or superseded and the GDPR (Regulation (EU) 2016/679).
"Deliverable"	the items (whether tangible or intangible) identified in the relevant Order Form or Customer Order to be delivered to the Customer by the Company in the performance of Development Services which are a configuration, update, modification, enhancement, adaptation or translation of the Software or which are otherwise inextricably linked or connected with the Software (and includes but is not limited to a Supported Deliverable).
"Development Services"	the technical development services provided or to be provided by the Company to the Customer under the Contract to configure, update, modify, enhance, adapt or translate the Software or other technical development services which are inextricably linked or connected with the Software and which are required to create Deliverables as detailed in the Order Form and which are subject to the terms and conditions in Part E of the Specific Terms;

"Fault"	any re-producible error in the Covered Software which results in a failure of the Covered Software to conform with the Specification.
"Force Majeure Event"	Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract (excluding payment obligations) if such delay or failure result from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the Project Team or any other party), failure or interruption of a utility service or transport or telecommunications network, act of God, war, terrorist attack, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, disasters, explosions, fire, flood, storm, embargo, changes to the law, act or omission of carriers or default of suppliers or sub-contractors ("Force Majeure Event"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
"GDPR"	Means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time.
"Initial Term"	means, in respect of the relevant Services, the initial duration of such Services calculated from the Commencement Date, as set out in the relevant Order Form.
"Intellectual Property Rights"	all patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, moral rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Major Release"	a version release of the Software, including any Updates issued from time to time by the Company to the Customer in relation to that version. For illustration, a version release, is indicated by

	a change to the left of the first decimal point (e.g.V3.0 to V4.0) or by the addition of date designation or change in an existing date designation (e.g. V2005 to V2006) which would be a separate Major Release.
"Minimum Billable Hours"	Seven and a half hours (7.5 hours) unless otherwise specified in the relevant Order Form.
"MSA"	The terms and conditions of this Master Services Agreement including the Schedules.
"Order Form"	the Company's standard order form for Software and Services which has been signed by both the Customer and the Company, which is subject to the terms of this Contract and the relevant Specific Terms identified in the Order Form or the agreed Customer order vehicle.
"Party / Parties"	Is defined the Customer and/or the Company as appropriate.
"Personal Data"	Has the meaning given in the Data Protection Laws, and where reference is made to Personal Data in this Schedule, it refers to the Personal Data being processed pursuant to this Agreement.
"Point Release"	a release of the Software denoted by a change to the right of the decimal point (e.g. V3.0 to V3.1).
"Pre-Existing Materials"	all documents, information and materials provided by the Company or which the Company may use in connection with or relating to the Services which existed prior to the Commencement Date, including computer programmes, tools, data, reports and specifications.
"Project Team"	The Company's directors, officers, employees, agents, consultants, representative and staff authorized by the Company to provide the Services from time to time.
"Rates"	the Company's standard hourly fee rates as set out in the applicable Order Form.
"Renewal Term"	means a twelve-month period commencing either (i) on the anniversary of the Commencement Date which is the day after expiry of the relevant Initial Term or (ii) on any successive anniversary of the Commencement Date.
"Services"	the ASM Software Service, Administration Services, Consulting Services, Development Services and Support and Maintenance Services as selected and described in the Order Form or the agreed Customer order vehicle.
"Service Fees"	the fee for the Services provided under the Contract as set out in the Order Form on a fixed price basis, time and materials basis or a combination of both payable by the Customer.
"Site"	The premises from which the Customer carries out its business as stated in the Order Form.
"Software"	the Company's software services specified in the Order Form or the agreed Customer order vehicle licensed to the Customer by the Company on the terms of this contract.

"Software Documentation"	the instruction manuals, user guides and other supporting material to explain and assist with the use of the Software and the Deliverables (if applicable) as provided to the Customer by the Company (together with any supplemental instructions which may from time to time be supplied by the Company or any manuals or instructions replacing the same) in either hard copy or electronic form.
"Software License"	the licensing terms for the use of the Alemba Software Service (and for Deliverables comprised of software) specified in the Order Form or the agreed Customer order vehicle, as set out in this contract.
"Software License Fee"	the fee for the Software License granted under the Contract as set out in the Order Form payable by the Customer in accordance with the Payment Clause of this Contract.
"Specification"	the functional specification provided by the Company describing the facilities and functions of the Software and Deliverables (if applicable) as stated in the Order Form.
"Support and Maintenance Services"	the support and maintenance helpdesk services provided or to be provided by the Company to the Customer under the Contract for Covered Software as detailed in the Order Form and subject to the terms and conditions in clauses 1.25 through 1.42.
"Supported Deliverable"	a Deliverable for which Customization Support has been agreed in a Contract.
"Support Issue"	If the Customer believes that there is a Fault with the Covered Software then the Customer (by acting through the Customer's Support Representative or any other individuals authorised by the Customer) shall notify the Company by telephone, customer portal or e-mail using the Company's nominated support phone numbers or email address(es) of the defect, error or non-compliance ("Support Issue") in question and provide the Company with a documented example of such Support Issue. Critical Priority Incidents must be logged by telephone.
"Support Period"	the total period during which the Company shall provide the Support and Maintenance Services as set out in the Order Form, which shall be for a minimum period of one Year.
"Third Party License"	any license relating to Third Party Software;
"Third Party Software"	any proprietary third-party software including open source software which is ancillary to the Software or to any Deliverable and which is necessary to enable the Customer to use the Software or Deliverable (as applicable);
"Update"	any update, patch, revision or addition to or for the Software that correct faults or bugs or otherwise amends the Software and which is released by the Company from time to time, whether for the purpose of fixing an error, bug or other issue in the Software, including Point Releases and Major Releases or an

	upgrade of the Software that adds new features, enhancements, functionality and/or makes any other material change, amendment or alteration or upgrade to the Software;
"Warranty Period"	the period of thirty (30) days: (i) from the relevant Commencement Date; or (ii) in relation to any Deliverable for which Acceptance Tests are required for a Deliverable in the Order Form , from Acceptance of such Deliverable;
"Working Day"	any day other than a Saturday, Sunday or public or national bank holiday in the country of Customer.
"Working Hours"	the hours between 09.00 and 17.30 in the local time zone Monday to Friday excluding Public Holidays and Bank Holidays in the customer Time Zone.
"Year"	a 12-month period calculated from the Commencement Date or any anniversary of the Commencement Date