

Alcidion Services Agreement

Agreement Details

Alcidion, we, us or our		You or your	
Name	[Alcidion AUS Pty Limited]	Name	[Insert Customer's name]
ABN / ACN	[ABN 62 103 201 663]	ABN / ACN	[Insert ABN / ACN]
Address	[Level 10, 9 Yarra Street South Yarra VICTORIA 3141]	Address	[Insert address]
Attention	[Insert contact name]	Attention	[Insert contact name]
Email	Email: [Insert email address]	Email	Email: [Insert email address]

Commencement Date (clause 2)	[The date the last party signs this Agreement.]
Term (clause 2)	[insert]
Renewal Term (clause 2.2)	
Background	We agree to provide the Services to you, and you agree to obtain the Services, in each case, on the terms set out in this Agreement.

Executed as an agreement by or on behalf of the parties on the Commencement Date.

EXECUTED by US:

.....
Signature of authorised representative

.....
Print name

.....
Date

.....
Signature of authorised representative

.....
Print name

.....
Date

EXECUTED by YOU:

.....
Signature of authorised representative

.....
Print name

.....
Print title

.....
Signature of witness

.....
Print name

.....
Date

General Terms

1. About this Agreement

- 1.1 This Agreement consists of the following parts:
- (a) the Agreement Details;
 - (b) the Supply Schedule;
 - (c) these General Terms; and
 - (d) each schedule to these General Terms, setting out additional terms and details of the Services we offer.
- 1.2 The specific terms that apply to a Service is set out in the Supply Schedule.
- 1.3 If there is any conflict or inconsistency between the parts of this Agreement listed in clause 1.1 above, then the part listed earlier prevails to the extent of the inconsistency.
- 1.4 Capitalised terms used are defined in this Agreement, including clause 20.

2. Term

- 2.1 This Agreement commences on the Commencement Date, and continues for the Term unless earlier terminated in accordance with its terms.
- 2.2 You may, on notice to us at least 3 months prior to the expiry of the then current Term, extend the Term for further periods equal to the Renewal Term, provided that all such renewals do not exceed 3 years in total, unless we agree otherwise in writing.

3. Supply Schedule

The Supply Schedule identifies the Services to be supplied under this Agreement.

4. Provision of Services

- 4.1 We will supply the following to you in accordance with the terms of this Agreement and the Supply Schedule:
- (a) Software as a Service, the specific terms of which are set out in Schedule 1;
 - (b) Managed Services, the specific terms of which are set out in Schedule 2; and
 - (c) Professional Services, the specific terms of which are set out in Schedule 3.
- 4.2 We will use reasonable endeavours to:
- (a) perform the Services in a skilled, diligent and competent manner;
 - (b) comply with all relevant laws, regulations and legally binding guidance and codes of conduct that apply to our provision of the relevant Services;
 - (c) notify you where practicable of any issues or problems associated with the Services; and
 - (d) meet any delivery dates specifically set out in a Supply Schedule for Professional Services, but the parties agree that any such dates are estimates only.
- 4.3 If a specific environment is set out in a Supply Schedule, then you agree to:
- (a) implement and maintain that environment to enable you to obtain, access and use the relevant Services, including any technology infrastructure, networks and facilities; and
 - (b) ensure that you provide us with all relevant information that may be reasonably required for us to provide the Services for such environment.
- 4.4 The parties acknowledge and agree that:
- (a) some features of a Service may provide access to, or include information or materials from, a Third Party (**Third Party Items**);
 - (b) your use of such Third Party Items is subject to and governed by the relevant Third Party Terms;
 - (c) you are solely responsible for any use of any Third Party Items, whether authorised or not; and
 - (d) we are not a party to any Third Party Terms, and that you must bring all claims with respect to any such Third Party Items against the relevant Third Party and not us.
- 4.5 We will endeavour to meet any service levels specified in this Agreement for a Service (**Service Level**).

5. Your Commitment to us

You must:

- (a) provide us with any information reasonably required by us to assist us to provide you with the Services;
- (b) provide us with reasonable assistance and access to your Sites and such other facilities as are reasonably required for us to comply with our obligations, including to provide you with the Services, and to enforce our rights, under this Agreement;
- (c) ensure that the equipment that you, or any Third Party on your behalf, use in conjunction with the Services do not damage the Services;
- (d) ensure that all facilities and infrastructure, including hardware and infrastructure owned or operated by you (**Your System**), and any telecommunications services and equipment, required by you to access and use the Services is compatible with the Services;
- (e) ensure that your use of the Services complies with and is used in accordance with all laws, regulations, legally binding guidance and codes of conduct, procedures and documentation, including the Terms of Use and Acceptable Use Policy (if applicable);
- (f) not interfere with or disrupt the integrity or performance of the Services;
- (g) provide Your Data as necessary to ensure that we can provide and maintain the Services;
- (h) not resell, rent, loan, sub-license, lease, distribute or license the use of, or attempt to grant any rights to, the Services to any Third Party; and
- (i) take all reasonable steps to mitigate the risk inherent in the use of the Services (such as loss of Your Data) including performing regular backups of all of Your Data and having business continuity plans and back-up arrangements in place in accordance with best industry practice.

5.2 You must ensure that:

- (a) you and your Personnel comply with your clinical governance policies and clinical practice in all clinical settings where our Services are used;
- (b) all clinical rules and algorithms incorporated or configured in any of the Services are appropriate for its purpose prior to its use with patients; and
- (c) all users of the Services have appropriate skills and experience to be performing the role in which they are using the Services.

6. Fees and Taxes

6.1 You must pay all Fees, including any early termination fees, under this Agreement. Unless otherwise indicated in a Supply Schedule, the Fees for the Services exclude all Taxes.

6.2 We may adjust the Fees by an amount equal to the Indexation calculated as follows, such Indexation to occur once each year within 90 days of the anniversary of the Commencement Date:

$$\text{New Fee} = \text{Value} \times \left(\frac{\text{RPId}}{\text{RPIo}} \right)$$

where:

RPId is the value of the Retail Prices Index published or determined by the Office of National Statistics in England (or any successor thereof) with respect to the month most recently preceding the date when the provision in question is to be given effect; and

RPIo is the value of the Retail Prices Index on the relevant date.

6.3 If you terminate a Software as a Service and a Managed Service before the end of the Term for any reason other than our material breach, then you must pay us the early termination fee specified in this Agreement for that terminated Service. If no such early termination fee is specified, then the early termination fee will be calculated as follows:

$$\text{ETC} = (50\% \times A \times M) + X$$

where:

ETC = early termination fee;

A = the Fees for the terminated Service for a month;

M = the number of months, or part thereof, from the date of termination to the end of the Supply Schedule Term; and

X = unavoidable costs necessarily incurred by us arising out of such termination (eg., third party service provider termination fees).

6.4 The parties agree that:

- (a) Unless otherwise expressly stated in this Agreement, the Fees payable or consideration in accordance with this Agreement are exclusive of VAT, which will be payable in the manner and at the rate prescribed by law from time to time;
- (b) if a party makes a taxable supply under or in connection with this Agreement, the other party must pay to the supplier at the same time, and in addition to any VAT-exclusive consideration, an amount equal to VAT payable on that supply;
- (c) the supplier must, as a precondition to the payment of VAT under paragraph (b), give the other party a valid tax invoice;
- (d) if an adjustment event arises in connection with a supply made under this Agreement, the supplier must give the other party an adjustment note in accordance with VAT law; and
- (e) if this Agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

6.5 If any law requires you to deduct an amount in respect of Taxes from a payment under this Agreement, then you will pay an amount equal to the amount required to be deducted to:

- (a) the relevant Government Agency in accordance with applicable laws and give the original receipts to us within 30 days of making such payment; and
- (b) us so that we will receive a net sum equal to the Fees.

7. Invoices

7.1 We will invoice you for the Fees in accordance with this Agreement. If no specific invoicing terms are specified in the Supply Schedule or this Agreement, then we will invoice the Fees annually in advance. All fees that are paid in advance are not refundable.

7.2 You must pay an undisputed invoice within 30 days of the date of issue of that invoice. If you fail to pay an invoice by the due date, then we may, without limiting any other rights under this Agreement:

- (a) suspend our supply of the Services to you until you pay the invoice in full; and/or
- (b) charge interest on the amount overdue at a rate of 1.5% (or the maximum amount permitted by law) per month calculated daily from the date the relevant payment was due until the date on which it is paid in full.

7.3 You may dispute any amount in an invoice by giving us notice within ten Business Days of the date of that invoice. If so, then you must:

- (a) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this Agreement;
- (b) give us your reasons in writing for disputing the remainder of the invoice; and
- (c) if the parties cannot reach mutual agreement in respect of a disputed invoice under this clause 7.3, the parties shall follow the dispute resolution procedure detailed in clause 16.

8. Confidentiality

8.1 A party which acquires Confidential Information (the **Recipient**) of another party (the **Discloser**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
- (b) disclose any of the Confidential Information except in accordance with clauses 8.2 or 8.3.

8.2 Disclosures to personnel and advisers

- (a) The Recipient may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the Recipient to perform its obligations or to exercise its rights under this Agreement; and

- (ii) prior to disclosure, the Recipient informs the person of the Recipient's obligations in relation to the Confidential Information.
 - (b) The Recipient must ensure that any person to whom Confidential Information is disclosed under clause 8.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 8.2(a).
 - (c) We may at any time require you to arrange for your officer, employee, agent, contractor, or legal, financial or other professional adviser engaged in relation to the performance of this Agreement to execute a suitable confidentiality deed. You must arrange for all such deeds to be executed within the timeframe reasonably proposed by us.
- 8.3 Disclosures required by law
- (a) Subject to clause 8.3(b), the Recipient may disclose Confidential Information that the Recipient is required to disclose by:
 - (i) law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) any government agency, stock exchange or other regulatory body.
 - (b) If the Recipient is required to make a disclosure under clause 8.3(a), the Recipient must:
 - (i) to the extent possible, notify the Discloser immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the Discloser to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.
- 8.4 Each party may make reference to the other party's name and existence of this Agreement on their respective websites and in publications referencing awarded contracts. Without limiting the foregoing, the parties agree to collaborate on appropriate publicity opportunities including press releases, presentations and case studies, save that the obligation to collaborate is subject to the parties' rights and obligations under clause 8.
- 8.5 On termination or expiry of this Agreement, and subject to any term of this Agreement to the contrary, each party must if requested in writing by the other party:
- (a) return to the requesting party all documents and other materials containing, recording or referring in any way to the Confidential Information of the requesting party; and
 - (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to the Confidential Information of the requesting party,
- which are in the possession, power or control of the party or of any person to whom the party has given access.
- 9. Privacy**
- 9.1 You acknowledge that you are primarily responsible for the collection, use and storage of any of Your Data affected by any data protection or privacy legislation, guidelines or directives, including Privacy Laws, through your use of our Services.
- 9.2 You undertake to ensure that you and all your Personnel will comply with the requirements of any Privacy Laws that may be applicable to the operation of the Services and otherwise in respect of any Personal Information collected, held, accessed, used, or otherwise dealt with by you in connection with this Agreement and that you and they will not do or omit to do anything to cause us to breach such Privacy Laws.
- 9.3 You acknowledge that:
- (a) from time to time, in order to perform our obligations under this Agreement, we will collect Personal Information about your Personnel, clients or customers; and
 - (b) in performing our obligations under this Agreement, or as otherwise required by law, we may provide that Personal Information to Third Parties anywhere in the world.
- 9.4 You undertake to take reasonable steps to ensure that your Personnel, clients, or customers are aware that we may:

- (a) from time to time collect Personal Information about them in order to perform our obligations under this Agreement;
 - (b) of our Privacy Policy; and
 - (c) use and disclose Personal Information about them in accordance with our Privacy Policy.
- 9.5 You must ensure that you have provided the appropriate notifications and procured the necessary consents and authorisations to allow us to collect Your Data and the Personal Information referred to in this clause 9.5, as well as the Personal Information about your Personnel, clients, or customers (if applicable), and to use Your Data and such Personal Information as contemplated by this Agreement, our Privacy Policy, and in accordance with Privacy Laws.
- 9.6 You must notify us immediately upon becoming aware of any breach of any Privacy Laws that may be related to the operation of any of the Services.
- 10. Warranties and Disclaimers**
- 10.1 You acknowledge and agree that:
 - (a) we are not engaged in the practice of medicine;
 - (b) the Services are only a means of transmitting, interpreting and displaying information and is in no way a substitute for competent medical advisors or clinicians;
 - (c) all medical practice management and patient care decisions made in which the Services may be utilised, and the consequences thereof, are your sole and exclusive responsibility;
 - (d) we do not, and are unable to, control or monitor the transfer of data over telecommunication facilities, including the Internet; and
 - (e) Internet accessibility carries with it the risk that data may be lost or compromised, and that information, data and property may be lost or compromised through networks, infrastructure and facilities that are not under our control.
- 10.2 Subject to clause 10.4, you warrant that you have not relied on any representation made by us which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity materials produced by us.
- 10.3 You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in this Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation.
- 10.4 To the full extent permitted by law, all conditions and warranties which would otherwise be implied in this Agreement (by statute, general law, customs or otherwise) are expressly excluded.
- 11. Liability**
- 11.1 Subject to clauses 11.3 and 11.5, we exclude all liability under or in connection with this Agreement (including Supply Schedules) for:
 - (a) Consequential Loss, loss of profit, revenue or anticipated savings, business interruption, loss of chance or business opportunity, loss of or damage to goodwill or reputation, or claims by a third party for liquidated sums;
 - (b) loss arising from your failure to comply with the warranty in clause 10.2;
 - (c) loss arising from any medical practice management and patient care decisions made in which the Services may be utilised;
 - (d) loss arising from your failure to use proper procedures and systems for the management of the quality and accuracy of data input to the Services; or
 - (e) loss (including loss or compromise of data) attributable to transmission over telecommunications facilities, including the Internet.
- 11.2 Subject to clauses 11.1, 11.3 and 11.5, we limit our liability for all claims, howsoever arising, whether in contract (including an indemnity), tort (including negligence or breach of statutory duty) or otherwise, to:
 - (a) subject to paragraph (b) below, the amount equal to the Fees paid to us under this Agreement in the first 12 months from the Commencement Date; and
 - (b) for all claims arising out of or in connection with our breach of data protection obligations under this Agreement, breach of confidentiality and/or privacy, the amount equal to £100,000.
- 11.3 Nothing in this Agreement limits:
 - (a) any liability that cannot be limited or excluded by law;

- (b) a party's liability for:
 - (i) death or personal injury caused by the negligence of that party, its officers, employees, contractors or agents;
 - (ii) loss or damage to property;
 - (iii) fraud or fraudulent misrepresentation;
 - (c) your breach of any of our Intellectual Property Rights; and
 - (d) your failure to pay Fees or charges, or any financial contribution, due and payable under this Agreement; and
 - (e) your breach of your data protection obligations under this Agreement.
- 11.4 A party's liability for any cause of action (including under an indemnity) arising out of or in connection with this Agreement (including all Supply Schedules) is reduced proportionally to the extent that the liability, loss or damage is caused or contributed to by the other party's acts or omissions, including breach.
- 11.5 If a law implies any term into this Agreement, then we limit our liability, to the maximum extent permitted by law, for any breach of such implied term to (at our option):
- (a) for goods, the:
 - (i) replacement or repair of goods;
 - (ii) supply of equivalent goods; or
 - (iii) payment of the cost of replacing or repairing the goods, or of acquiring equivalent goods;
 - (b) for Services, the:
 - (i) re-supply of the Services; or
 - (ii) payment of the cost of having the Services re-supplied.
- 12. Intellectual Property**
- 12.1 Nothing in this Agreement affects the ownership of a party's Background Material. Each party grants to the other party a revocable, non-exclusive, non-transferable, royalty-free right to use that party's Background Material for the Term solely for the purposes, and to the extent necessary, for the other party to perform its obligations and exercise its rights under this Agreement.
- 12.2 All Intellectual Property Rights of whatever nature in the Services, as at the date of this Agreement and as modified from time to time, and all works and materials created by us in connection with this Agreement, are and will at all times remain our exclusive property, free from liens, charges, encumbrances or otherwise. Nothing in this Agreement should be construed as transferring any aspects of such rights to you or any Third Party.
- 12.3 You will immediately notify us if you become aware that the Services may infringe the Intellectual Property Rights of any Third Party (save for open source software or licences).
- 12.4 If you suggest any new features, improvements, or corrections to the Software as a Service (**Suggestion**), such Suggestion will be our sole and exclusive property, free from any confidentiality restrictions that might otherwise be imposed on us pursuant to clause 8 or any other restrictions. To the extent that you have any rights, title or interest in a Suggestion, you hereby assign to us, from creation, absolutely and beneficially, the whole of your rights, title and interest, including any Intellectual Property Rights, in and to the relevant Suggestion.
- 12.5 You own all Intellectual Property Rights in and to Your Data. You grant us a non-exclusive, royalty-free, irrevocable, perpetual and worldwide licence for the Term to:
- (a) use, modify, copy and add to Your Data, in any form and in any medium, in our provision of the Services and otherwise in connection with our performance of this Agreement and our provision of the Services;
 - (b) use, copy, adapt and modify Your Data in an anonymised form, whether aggregated or otherwise; and
 - (c) store and share Your Data in an anonymised form, whether aggregated or otherwise, within our internal organisation and other Third Parties we may contract with from time to time.
- 12.6 We may, as part of our performance of this Agreement or otherwise in connection with our business, generate data, or create works and materials that:
- (a) are derived from, or based on, Your Data; and

- (b) utilise anonymised aggregated user and other data collected by us regarding the Services or its use,

(together, the **Created Data**).
- 12.7 We own all rights (including Intellectual Property Rights) in and to all Created Data, including all copies of the Created Data.
- 12.8 You agree to acknowledge us as the:
 - (a) original creator of the Software as a Service in any relevant media and marketing materials; and
 - (b) owner of the Software as a Service in all communications relating to the Software as a Service.
- 13. Variation**
- 13.1 We are not required to carry out any Services outside the scope of this Agreement, unless the parties have agreed a variation agreement in accordance with this clause 13.
- 13.2 Either party may request a change to:
 - (a) the scope or description of any of the Services;
 - (b) any of the specifications set out in a Supply Schedule;
 - (c) any of the Service Levels; or
 - (d) any other term of this Agreement or a Supply Schedule,

(each a “**Change**”) by issuing a notice in writing to the other party.
- 13.3 If:
 - (a) you request a Change under clause 13.2, then we will endeavour to provide a draft Change Proposal to you within 10 Business Days of receiving the notice of request; and
 - (b) we request a Change under clause 13.2, then you will endeavour to provide a draft Change Proposal to you within 5 Business Days of receiving the notice of request.
- 13.4 Where we require information from you to properly prepare a Change Proposal, you will co-operate with us in good faith and provide to us all such information reasonably requested within a reasonable period of the request.
- 13.5 Each Change Proposal must:
 - (a) set out a full description of the Change; and
 - (b) specify all changes to the Fees or charges and any other changes to conditions which we reasonably require to perform the Change and must detail reasons for those changes.
- 13.6 You will not unreasonably reject a Change Proposal. Subject to the foregoing, you may accept or reject a Change Proposal at any time within 5 Business Days of receiving the Change Proposal. Where you accept a Change Proposal, the parties will execute a change notice on those terms (“**Change Notice**”) and this Agreement will be varied accordingly, with effect from the date of execution of the Change Notice.
- 14. Termination**
- 14.1 We may terminate the Services and this Agreement (in whole or in part) immediately on notice to you, if:
 - (a) we reasonably believe you have breached any of your obligations under the relevant Software as a Service Terms (as applicable);
 - (b) you breach a material term of this Agreement, and:
 - (i) the breach is incapable of remedy; or
 - (ii) the breach is capable of remedy, but you have failed to remedy the breach within 20 Business Days of receiving notice of that breach from us;
 - (c) you use the Services in any way which we reasonably believe is fraudulent, poses an unacceptable risk to our security, is illegal or likely to be found illegal;
 - (d) you become or are at the risk of being Insolvent;
 - (e) any regulatory approval necessary for the conduct of the Services is revoked or any new regulatory approval is required; or
 - (f) we decide to discontinue or cancel any part of the Services for any reason (including where it is no longer commercially viable for us to continue to provide the Services).

- 14.2 We may terminate, limit or suspend your use of the Services and this Agreement (in whole or in part) immediately on notice to you if:
- (a) required by law;
 - (b) there is an emergency that affects our ability to provide the Services to you, or if the provision of the Services becomes (or is likely to become) unlawful;
 - (c) in our reasonable opinion, the provision of the Services is likely to cause death, personal injury, or damage to property; or
 - (d) there is a Force Majeure Event.
- 14.3 You may terminate this Agreement in whole on notice if we breach a material term of this Agreement and the breach is:
- (a) incapable of remedy; or
 - (b) capable of remedy, but we have failed to remedy the breach within 20 Business Days of receiving notice of such breach from you.
- 14.4 Any termination under this clause 14 will be without prejudice to any right, action or remedy which has accrued or which may accrue in favour of either party. Upon termination of this Agreement by either party:
- (a) you must cease access to and use of (and ensure the users cease their access to and use of) any of our Services;
 - (b) each party must immediately cease using the other party's Confidential Information, and comply with the provisions set out in clause 8;
 - (c) we will provide you with a final invoice for the Services under the Supply Schedule, up to and including the date of termination under this Agreement;
 - (d) we may retain any moneys paid by you (if applicable); and
 - (e) you will pay to us any outstanding sums due to us and any early termination fees (if applicable) pursuant to this Agreement.
- 14.5 If for any reason this Agreement expires or is terminated, this clause 14, and 8, 9, 10, 11, 12, 15, 17, 18, 19 and 20, and any other provision of this Agreement which by their nature survive expiration or termination, will survive expiration or termination of this Agreement.
- 15. Governing Law**
- 15.1 This Agreement and any dispute (including non-contractual obligations) arising arising out of or in connection with this Agreement shall be governed in all respect by the laws of England and Wales. Each party hereby submits to the exclusive jurisdiction of the courts of England and Wales and the courts of appeal above them.
- 16. Dispute Resolution**
- 16.1 Negotiation
- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may give notice to the other party or parties to the Dispute (**Dispute Notice**) for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 16;
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to:
 - 1. provisions of this Agreement; and/or
 - 2. acts or omissions of any person; and
 - (iv) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
 - (b) Within five days of the Referring Party giving the Dispute Notice, a representative from each of the parties to the Dispute must meet at least once to attempt to resolve the Dispute in good faith.
 - (c) Each party warrants that their representative has full authority to resolve any Dispute.
- 16.2 Mediation

- (a) If (and only if) after fourteen (14) days of the Referring Party giving the Dispute Notice (**Resolution Period**), and the Dispute is unresolved at the end of the Resolution Period, a party may, by giving notice to the other party to the Dispute (**Mediation Notice**), refer the Dispute to mediation for resolution.
 - (b) The Mediation Notice must contain the information set out in clause 16.1(a)(iii).
 - (c) If a Mediation Notice is given, the parties must attempt to resolve the dispute by engaging in mediation in accordance with the applicable rules and endeavour to settle the Dispute by mediation within twenty (20) Business Days of the date of the Mediation Notice or such further period as the parties may agree in writing (**Mediation Period**).
 - (d) The mediation will take place in London, United Kingdom and will be administered by CEDR Model Mediation Procedure .
 - (e) The parties must enter into an agreement with the appointed mediator on such terms as the parties and the mediator may agree (**Mediation Agreement**), or failing agreement, on terms reasonably requested by the mediator, provided those terms do not conflict with this clause 16.2.
 - (f) The parties must not withhold agreement to any reasonable fees and disbursements the mediator requests to be set out in the Mediation Agreement.
- 16.3 In the event the parties cannot settle a Dispute pursuant to this clause 16, the provisions of clause 15 shall apply.
- 16.4 Nothing in this clause 16 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- 17. Force Majeure**
- 17.1 Subject to clause 17.2, where any failure or delay in the performance of obligations under this Agreement is caused, directly or indirectly, by a Force Majeure Event:
- (a) the Affected Party must as soon as practicable, give the other party notice of that fact;
 - (b) the Affected Party is not liable for that failure or delay in respect of the Affected Obligations;
 - (c) Affected Obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event; and
 - (d) if the Force Majeure Event continues for more than 60 consecutive days and while it continues, any party other than the Affected Party may, at its sole discretion, terminate this Agreement by giving notice to the Affected Party and all other parties (if any).
- 17.2 Clause 17.1 does not limit or qualify your obligation to pay Fees or any other amounts (including under an indemnity) under this Agreement.
- 18. Notices**
- 18.1 Any demand, notice, consent, approval or other communication under this Agreement may be made or given by a party or the solicitor for that party, provided that it is:
- (a) in writing;
 - (b) signed by the sender (if an individual) or by an authorised representative of the sender; and
 - (c) given to the addressee by:
 - (i) delivery in person;
 - (ii) post to, or leaving at, that party's address for service; or
 - (iii) sending by email to the party's email address.
- 19. General**
- 19.1 This Agreement constitutes the entire agreement between the parties about its subject matter and supersedes, terminates and replaces all prior agreements and communications between the parties concerning that subject matter.
- 19.2 This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 19.3 Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.
- 19.4 Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction be:

- (a) read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

- 19.5 This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause 19.6.
- 19.6 You cannot assign, novate or otherwise transfer the benefit of this Agreement without our prior written consent. We may assign, novate or otherwise transfer the whole or part of this Agreement without your prior written consent. You agree to execute any document necessary or desirable to give effect to this clause 19.6.
- 19.7 A provision of this Agreement, which can and is intended to operate after its conclusion will remain in full force and effect.
- 19.8 A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of that power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver or breach does not operate as a waiver of any other breach.
- 19.9 Any variation to this Agreement must be in writing and signed by both parties.
- 19.10 If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document. A party may sign a counterpart by executing a signature page and electronically transmitting a copy of the signed page to each other party or their authorised representative.
- 19.11 Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, or principal and agent, or of trustee and beneficiary.
- 19.12 Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.
- 19.13 Despite anything else in this Agreement, a party is not liable for non-performance in whole or in part, or for not performing on time, because of an event beyond that party's reasonable control.
- 19.14 The parties agree that a party may signed this Agreement physically, electronically, digitally or by any other legally effective means, including by using software or a platform for the electronic execution of contracts. In this instance:
 - (a) a print out of this execution Agreement once all parties signing electronically have done so, will be an executed original counterpart of this Agreement, irrespective of which party prints it; and
 - (b) no person may challenge the validity of this Agreement by virtue only of the fact that it has been electronically signed.
- 19.15 This Agreement does not confer any rights on any persons or party (other than the parties to this Agreement, or their successors and permitted assigns (where applicable)) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.16 You must ensure that any person associated with you in connection with this Agreement shall refrain from committing, facilitating, encouraging or allowing a Prohibited Act. You are responsible and directly liable for any such Prohibited Act carried out by any person associated with you in connection with this Agreement.

20. Definitions and interpretation

- 20.1 In this Agreement, unless the context indicates a contrary intention:

Acceptable Use Policy means any acceptable use policy provided to you in connection with this Agreement and updated from time to time.

Affected Obligations has the meaning given to that term in the definition of Force Majeure Event, but excludes your obligation to pay Fees.

Affected Party has that meaning given to that term in the definition of Force Majeure Event.

Agreement means this Alicidion Master Services Agreement, including the parts set out in clause 1.1.

Agreement Details means the section of this Agreement with that heading.

Background Material means any material in which the Intellectual Property Rights are owned by, licensed to, or developed by or on behalf of a party which are pre-existing or created independently of this Agreement.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in England and Wales.

Change has the meaning given to it in clause 13.2.

Change Notice has the meaning given to it in clause 13.6.

Change Proposal means the proposal containing the information set out in clause 13.5.

Consequential Loss means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of this Agreement or other event giving rise to such Loss, where such Loss was reasonably in the contemplation of the Parties at the time they made this Agreement; and for the avoidance of doubt, includes any Loss which is indirect, consequential or special.

Commencement Date means the commencement date of this Agreement as set out in the Agreement Details.

Confidential Information means information that:

- (a) relates to the business plans and strategies, financial affairs, product designs and specifications, pricing, licensing terms, personnel, policies, assets or affairs of a party, information which is otherwise designated as confidential by that party;
- (b) is made available by or on behalf of that party to the other party and is obtained by or on behalf of the other party; and
- (c) is by its nature confidential or the Recipient knows, or ought to know, is confidential,

but does not include information that is:

- (d) in or enters the public domain through no fault of the Recipient or any of its officers, employees or agents; or
- (e) was made available to the Recipient by a person (other than the Discloser) who is not or was not then under an obligation of confidence to the Discloser in relation to that information; or
- (f) is trivial or by its very nature immaterial; or
- (g) was developed by the Recipient independently of the Discloser and any of its officers, employees or agents.

Created Data has the meaning given to it in clause 12.6.

Discloser has the meaning given to it in clause 8.1.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.

Fees means the fees as set out in the Supply Schedule and any other fees set out in this Agreement.

Force Majeure Event means an event beyond the reasonable control of a party, including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, epidemic, pandemic, quarantine, radiation or radioactive contamination;
- (b) an action or inaction of a Government Agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction of embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) termination or withdrawal by Third Party providers of any of the products, facilities or services used to provide the Product, or other service disruptions involving hardware, software or power systems within such party's possession or reasonable control and denial of service attacks,

to the extent that the act, event or cause directly results in a party (**Affected Party**) being prevented from or delayed in performing one or more of its material obligations under this Agreement, but excludes your obligations to pay Fees (**Affected Obligations**).

General Terms means the section of this Agreement with that title.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute in the relevant jurisdiction.

Implementation Services means the services provided by Alcideon in the nature of providing go-live

support for deployment to initial users and providing post go-live rollout to additional users, more particularly as described in Schedule 3. Implementation Services include customising, configuring and localising dashboards.

Indexation has the meaning given to it in clause 6.2.

Information means any information, whether oral, graphic, electronic, written, or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know-how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens disclosed by either party.

Insolvent means, in relation to a person, when the person:

- (a) has a receiver, LPA receiver, fixed charge receiver, receiver and manager, administrative receiver or court appointed receiver or provisional liquidator appointed over any of its assets, undertaking or income;
- (b) has an administration order made in respect of it or a notice of appointment of an administrator filed in respect of it at any court;
- (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring, is otherwise unable to pay its debts as and when they become due and payable);
- (d) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- (e) has a winding up order made by a court in respect of it;
- (f) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring);
- (g) ceases to carry on its business; or
- (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

Loss means any loss, damage, cost and expense.

Malicious Code means any virus, trojan horse, worm, logic bomb or other malicious code that infect, manipulate, modify, deny, corrupt or inhibit the operation of a Service.

Managed Services means the services described as such in Schedule 2, and selected as such in the Supply Schedule.

Mediation Agreement has the meaning given to it in clause 16.2(e).

Mediation Notice has the meaning given to it in clause 16.2(a).

Mediation Period has the meaning given to it in clause 16.2(c).

Personal Information means Information or an opinion (including Information or an opinion forming part of a database), whether true or not, and whether recorded in a material form, electronic form or otherwise, about an identified individual or an individual who is reasonably identifiable, and includes anything that is defined as personal information or as sensitive information in the relevant Privacy Laws.

Personnel means, for each party, any person acting for, or on behalf of, that party, including a director, officer, employee, contractor, sub-contractor, or agent of that party.

Privacy Law means any applicable law, statute, regulation, ordinance, code, standard or requirements of any government, governmental or semi-governmental body which relates to privacy or health information, including the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) unless and until it is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, and any Australian legislation from time to time in force which relates to or affects privacy rights

or Personal Information.

Privacy Policy means:

- (a) the privacy policy accessed via <https://www.alcidion.com/wp-content/uploads/2022/05/Alcidion-Group-Privacy-Policy.pdf>; and
- (b) the specific privacy policy that is relevant to the Customer as set out on our website.

Professional Services means the professional services set out in a Supply Schedule.

Prohibited Act means:

- (a) committing an offence under any applicable law creating offences in respect of bribery or fraudulent acts;
- (b) defrauding or attempting to defraud; or
- (c) offering, giving or agreeing to give to any person employed by or otherwise associated with the Supplier any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the creation or performance of this Agreement;
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement; or
 - (iii) entering into this Agreement where commission has been paid or has been agreed to be paid by us or on our behalf, or to our knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to us.

Recipient has the meaning given to it in clause 8.1.

Resolution Period has the meaning given to it in clause 16.2(a).

Service means the Software as a Service, Managed Services and/or the Professional Services (as applicable), and any other services or products identified in the Supply Schedule.

Service Level has the meaning given to it in clause 4.5.

Site means the site or environment specified in a Supply Schedule (if any) where the Services are to be provided.

Software as a Service is defined in Schedule 2.

Software as a Service Terms means the terms set out in Schedule 1 that governs the basis on which we will provide the Software as a Service to you.

Supply Schedule means Schedule 4.

Suggestion has the meaning given to that term in clause 12.4.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties, but excluding VAT) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of Alcidion.

Term means the term of this Agreement as set out in the Agreement Details.

Terms of Use means any terms of use provided to you in connection with this Agreement and updated from time to time.

Third Party means a party other than us or you.

Third Party Items is defined in clause 4.4.

Third Party Terms means the terms and conditions applicable to the use of any Third Party Item.

Use Restrictions means any restrictions on use set out in a Supply Schedule (if applicable).

User Number Allocation means, in respect of the Software as a Service, the maximum number of users that may access the Software as a Service as set out in a Supply Schedule.

VAT means any value added tax imposed by the Value Added Tax Act 1994 or any other tax of a similar nature imposed in the United Kingdom;

Your Data means your data or data supplied by or on behalf of you that is hosted by the Software as a Service.

Your System has the meaning given to it in clause 5(d).

20.2 In this Agreement, unless specified to the contrary or the context otherwise requires:

- (a) the background, the schedules, the execution page and the annexures (if any) are each incorporated herein and form part of this Agreement;
- (b) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (c) use of the word 'including' and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (d) references to the singular include the plural and vice versa and references to any gender include every gender; and
- (e) references to any legislation or legislative provision will include any subordinate legislation made under it and will be construed as references to such legislation, legislative provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- (f) law includes common law, principles of equity, and laws made by any statutory body or legislature;
- (g) all references to "party" and "parties" are to a "party" and "parties" to this Agreement;
- (h) a reference to a "party" includes that party's executors, administrators, successors and permitted assigns;
- (i) references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality); and
- (j) if the time for performing an obligation under this Agreement expires on a day which is not a Business Day, then time is extended until the next Business Day;

Schedule 1 – Software as a Service Terms

Unless otherwise indicated in this Schedule 1, capitalised terms have the meanings given in this Agreement.

1. Application

This Schedule does not apply to Professional Services. In this Schedule, "Software as a Service" is defined in Schedule 3.

2. General obligations

2.1 We do not promise or guarantee that the Software as a Service:

- (a) is continuous or fault free; or
- (b) will meet your requirements or be fit for a particular purpose.

2.2 You:

- (a) must only use, and must ensure that the Users will use, the Software as a Service in accordance with this Agreement, including any documentation provided by us and Use Restrictions set out in a Supply Schedule;
- (b) must comply, and must procure your Users' compliance at all times with:
 - (i) all password and other security arrangements and policies we specify from time to time in respect of the Software as a Service; and
 - (ii) all applicable laws in receiving the Software as a Service.

2.3 You will ensure that you authorise individuals to be Users only to the extent necessary that such Users require access to the Software as a Service to perform their duties. If any User ceases to be authorised by you to access and use the Software as a Service for any reason (including termination of employment of the relevant User), you will promptly take steps to ensure that the User ceases to access and use the Software as a Service.

2.4 You are responsible and liable for:

- (a) all acts and omissions of Users as if they were your acts and omissions;
- (b) all actions taken using your Users' login and passwords;
- (c) the accuracy, completeness, and security of any data or information, including Your Data, that you enter into the Software as a Service;
- (d) backing up Your Data that you enter into the Software as a Service; and
- (e) ensuring Your Data complies with all applicable laws.

3. Use of the Software as a Service

3.1 You are solely responsible for obtaining all facilities, including any facilities, services and equipment, required to access and use the Software as a Service.

3.2 You may only use the Software as a Service for your internal business purposes, and otherwise in accordance with our directions under this Agreement.

3.3 You will comply with the Terms of Use in your use of the Software as a Service.

3.4 You must not use, permit or facilitate the use of the Software as a Service:

- (a) such that the Software as a Service is made available to anyone other than the Users;
- (b) such that the Users make the Software as a Service available to any Third Party;
- (c) for a purpose other than the purposes set out in clause 3.2 of this Schedule;
- (d) to infringe the Intellectual Property Rights and any other rights of any person;
- (e) to interfere with or disrupt the integrity or performance of the Software as a Service;
- (f) such that you either directly or indirectly through engaging any third parties:
 - (i) reverse engineer the Software as a Service;
 - (ii) build a competitive product or service;
 - (iii) make a product or service using similar ideas, features, functions or graphics of the Software as a Service;

- (iv) modify, translate, or create derivative works based upon the Software as a Service;
- (v) remove, modify or obscure any copyright, trade mark or other proprietary rights that appear on the Software as a Service; or
- (vi) "frame", "mirror" or otherwise copy any features, functions or graphics of the Software as a Service;
- (g) to resell, rent, loan, sub-license, lease, distribute or license the use of, or attempt to grant any rights to, the Software as a Service to any Third Party;
- (h) to use the Software as a Service to store or transmit infringing, fraudulent or otherwise unlawful material or otherwise use the Software as a Service in a manner which is unlawful or would infringe the rights of another person (including any Intellectual Property Rights);
- (i) to introduce to the Software as a Service, or use the Software as a Service to, store or transmit a Malicious Code;
- (j) to attempt to gain unauthorised access to the Software as a Service or its related systems or networks;
- (k) to breach any law, regulations, standards, content requirements or applicable codes of conduct;
- (l) to publish or disseminate any material that is defamatory, pornographic, depicts acts of violence, sexual acts or which may perpetuate hatred against any person or group or have the likely effect of causing offence or harm;
- (m) to menace or harass any person;
- (n) to publish or disseminate any material that contains any instructions which if implemented might cause damage or injury to any person or property; or
- (o) in a manner that may expose us to a breach of any law or the risk of any claim, legal or administrative action.

4. Maintenance and updates

We may, from time to time or at any time, be required to carry out maintenance or updates to the Software as a Service and in all such cases, we will endeavour to provide you with reasonable notice. You acknowledge that the Software as a Service may be inaccessible or inoperable during such maintenance or update periods. We will, in each case, provide you with reasonable notice before a maintenance or update outage occurs.

Schedule 2 – Managed Services

1. Structure

- (a) We will provide the Managed Services to you, including (for clarity) Alcidion Cloud, to host and provide the Software as a Service.
- (b) This Schedule 2 sets out the terms on which we will provide the managed services to you.
- (c) If there is any inconsistency between:
 - (i) the terms of the Agreement;
 - (ii) this Schedule 2; and
 - (iii) each Supply Schedule agreed by the parties,then the document listed later prevails to the extent of the inconsistency.

2. Managed Services

2.1 General obligation

We will use our best endeavours to supply the Managed Services pursuant to each Supply Schedule, on the terms of the Agreement, including this Schedule 2. The "**Managed Services**" are the services set out, or described, in this Schedule 2, and include the following, as selected in the Supply Schedule:

- (a) Alcidion Cloud;
- (b) the Support Services for Alcidion Cloud and the Software as a Service;
- (c) Backup Services for the Server Environments hosted on Alcidion Cloud;
- (d) Monitoring Services for Alcidion Cloud and the Server Environments; and
- (e) any optional services agreed pursuant to a Supply Schedule. All such optional services supplied under or pursuant to a Supply Schedule are taken to be part of the Managed Services for the purposes of this Schedule 3.

2.2 Requirements

- (a) To obtain the Managed Services, you must meet all relevant technical and eligibility requirements specified by us.
- (b) We will work with you to enable you to obtain the relevant network and environments to be able to access and use the Managed Services.
- (c) You are solely responsible, at your own cost, for obtaining and ensuring that your network and environment are suitable for use, and compatible and interoperate, with the Managed Services, including Alcidion Cloud. If you vary your network or environment, then we may not be able to provide the Managed Services, in whole or in part, to you. In this instance, we:
 - (i) will work with you so that you may address any non-compliance in your network and environment; and
 - (ii) may adjust the Fees under the Supply Schedule for the Managed Services.You must continue paying all Fees for the Managed Services during such period.

2.3 Your obligations

- (a) You must comply at all times with all:
 - (i) policies and procedures that we specify from time to time in respect of the Managed Services;

- (ii) applicable laws; and
 - (iii) reasonable directions and instructions provided by us with respect to the Managed Services.
- (b) You are responsible for:
 - (i) implementing, supporting, maintaining and managing your local area and wider area networks and devices;
 - (ii) protecting your operating environment, including for implementing, supporting, maintaining and managing your firewall and security infrastructure to protect your environment;
 - (iii) providing all elements of, and supporting, your standard operating environment, including end user desktop, screens, displays and mobile support;
 - (iv) application maintenance and configuration of your applications, including the deployment of changes to applications;
 - (v) user identification and password administration;
 - (vi) training your users;
 - (vii) implementing and maintaining all required system interfaces necessary for you to access and use the Managed Services;
 - (viii) obtaining, at its own cost, all required third party services and subscriptions necessary for its business; and
 - (ix) security and testing of its applications, infrastructure and systems.

2.4 Service Term

- (a) You agree to obtain, and we will provide, the Managed Services for the Service Term.
- (b) Unless set out in the Supply Schedule, the Service Term commences on the date the Supply Schedule is accepted by us, and ends on the expiry of the Service Term, unless renewed or earlier terminated in accordance with the Agreement.
- (c) If you are provided with the option to renew the Service Term in the Supply Schedule, then you may, on at least 90 days' notice to us before the expiry of the then current Service Term, renew the Service Term for the period specified in that Service Schedule.
- (d) On the expiry of the Service Term, if you continue to obtain the Managed Services, then we will continue providing the Managed Services on a month-to-month basis on the terms and conditions of the Agreement, including this Schedule 2. If so, then either party may terminate the Managed Services on 30 days' notice to the other.
- (e) If you terminate the Supply Schedule before the expiry of the Service Term, then you must pay us the Early Termination Charges.

2.5 Suspension or termination of Managed Services

- (a) Without qualifying or limiting our other rights under the Agreement, we may suspend or terminate the Managed Services, or a part of it if:
 - (i) you breach this Schedule 2 and the breach is incapable of remedy, and the parties agree that a material breach of this Schedule 2 is taken to be a breach that is incapable of remedy for the purposes of this paragraph;
 - (ii) you commit a breach of this Schedule 2 that is capable of remedy and does not rectify the breach within 5 days of us issuing a notice of such breach to you;
 - (iii) the provision of the Managed Services is suspended or cancelled by us or our third party provider for any reason;
 - (iv) we of the reasonable opinion that the continued provision of the Managed Services (or any part of it) compromises or will compromise the security or integrity of our platform used to provide the Managed Services; or

- (v) we have an express right to do so under any provision of this Schedule 2, the Agreement or the Supply Schedule (as applicable).
- (b) We may migrate you to an equivalent service to replace the Managed Services if we exit the provision of the Managed Services. If you do not agree to obtain the equivalent service, then you may terminate the Managed Services on 60 days' notice to us without payment of any Early Termination Charges.

2.6 Managed Services limitations

We will notify the details of any limitations to the Managed Services to you, which may be through a notice on our website.

2.7 Changes to the Managed Services

- (a) We may, from time to time, update or change the Managed Services (excluding Alcidion Cloud), or a part of it, without notice to you, but only if such update does not materially and detrimentally affect you.
- (b) If we wish to update or change the Managed Services (excluding Alcidion Cloud) such that there is a material detrimental impact on you, then:
 - (i) we will provide you with reasonable notice (not less than 30 days' notice) of any such proposed detrimental change; and
 - (ii) the parties agree to co-operate reasonably to agree on such material detrimental change.
- (c) We may, from time to time, change or update Alcidion Cloud, or any part of it. In this instance, if such change has a detrimental impact on you, then we will provide you with notice of such change before effecting that change.
- (d) Despite any other provision to the contrary in the Agreement and this Schedule 2, if a third party service provider changes or updates any of their services and/or changes the cost of, or the charges for, their goods or services, in respect of which we utilise to provide the Managed Services, then we may change or update the Managed Services, and/or increase the relevant Fees, including as required to reflect such change or update from that third party service provider. If so, then we will endeavour to provide you with as much notice as is reasonably possible in these circumstances.

2.8 Third party claims

You indemnify us, and our Affiliates, against all Claims, arising out of, or in connection with, a third party claim with respect to:

- (a) your use of the Managed Services;
- (b) your breach of the Agreement, including this Schedule 2; and
- (c) Your Data.

Your liability under this indemnity is reduced to the extent that we materially caused or contributed to such third party claim through our breach of this Schedule 2.

3. Alcidion Cloud

3.1 Overview

We will provide you with Alcidion Cloud as part of the Managed Services. The "**Alcidion Cloud**" service comprises:

- (a) the provision of one or more virtual server environments on server infrastructure (**Server Environment**); and
- (b) end to end management of the Server Environments.

3.2 Server Environments

Unless otherwise indicated by us (including in the relevant Service Schedule), we will make available the following Server Environments to you as part of Alcidion Cloud:

- (a) one Server Environment for use as the production instance; and
- (b) one Server Environment for use as the test instance.

You may obtain additional Server Environments from us for an additional Fee.

3.3 Provisioning

We are responsible for provisioning a Server Environment. A Server Environment is provisioned on the date we notify, which may be through email or other electronic communication, you that the Server Environment is ready to be used by you. We will commence charging the Fees for the Managed Services on the date set out in the Supply Schedule or, if no date is specified in the Supply Schedule, the date we notify you that the Server Environment is provisioned.

3.4 Exclusions

We do not support any patient data in a Server Environment, other than the production instance unless agreed otherwise. We are not liable for any loss or damage to patient data, other than as expressly set out in the Agreement in respect of the Server Environment referred to in clause 3.2(a).

3.5 Restrictions

- (a) You must not use Alcidion Cloud:
 - (i) to infringe the Intellectual Property Rights and any other rights of any person;
 - (ii) to interfere with or disrupt the integrity or performance of Alcidion Cloud;
 - (iii) to resell, rent, loan, sub-license, lease, distribute or license the use of, or attempt to grant any rights to, Alcidion Cloud to any third party;
 - (iv) to use Alcidion Cloud to store or transmit infringing, fraudulent or otherwise unlawful material or otherwise use Alcidion Cloud in a manner which is unlawful or would infringe the rights of another person (including any Intellectual Property Rights);
 - (v) to introduce to Alcidion Cloud, or use Alcidion Cloud to, store or transmit a malicious code;
 - (vi) to attempt to gain unauthorised access to Alcidion Cloud or its related systems or networks;
 - (vii) to breach any law, regulations, standards, content requirements or applicable codes of conduct;
 - (viii) in a manner that may expose us to a breach of any law or the risk of any claim, legal or administrative action;
 - (ix) in a manner that is excessive or unusual; or
 - (x) in a way that interferes, or threatens to interfere, with the efficiency and security of Alcidion Cloud or another person's services.
- (b) Without qualifying or limiting the above, you must comply with any acceptable use policies that we may from time to time notify you.
- (c) If you use Alcidion Cloud in any way that is inconsistent with the policies or guidelines notified by us to you, then we may charge you an additional Fee to rectify any resulting problems.

3.6 Use of third party service providers

You acknowledge and agree that we may use third parties to provide all or some aspects of Alcidion Cloud.

3.7 Rights to Alcidion Cloud

You acknowledge and agree that:

- (a) as between the parties, the platforms and infrastructure used by us to provide Alcidion Cloud are owned by us;
- (b) you have no real property interest in, or to, Alcidion Cloud;
- (c) you do not have any rights as a tenant or otherwise under any relevant laws in relation to Alcidion Cloud;
- (d) you have no right to access the platforms and infrastructure used to provide Alcidion Cloud; and
- (e) you must not assert any ownership or other rights in and to the platforms and infrastructure referred to in paragraph (a) above, and must not purport to encumber or permit any security interests (including liens) to be attached to such platforms and infrastructure.

3.8 Management of Server Environments

We are responsible for, as part of Alcidion Cloud:

- (a) commissioning and setting up the Server Environments;
- (b) capacity planning and scaling (including decommissioning of unused capacity) of the platforms used by it to provide Alcidion Cloud;
- (c) configuration management of Alcidion Cloud;
- (d) application management, deployments and upgrades in respect of the components of Alcidion Cloud; and
- (e) database and cluster management in respect of Alcidion Cloud.

3.9 Target Service Levels – availability

The table below sets out the Target Service Levels for Alcidion Cloud:

Service Level	Target metric
Availability Uptime - Production Server Environment	99.95%
Availability Uptime - Non-production Server Environment	95%

- (a) We will measure the Availability Uptime on a monthly basis, but the Service Levels are calculated as a Quarterly average, and is reported on a rolling 12-month basis.
- (b) A "**Quarter**" means each three consecutive month period, ending in March, June, September and December of each year.
- (c) The **Monthly Availability Uptime** is measured at the end of each month as follows:

$$A = \frac{[\text{Base Time} - (\text{Downtime} - \text{Scheduled Downtime})]}{\text{Base Time}} \times 100$$

where:

A = Availability Uptime (expressed as a percentage)

Base time = (a) for the Production Server Environment, 60 x 24 x D1

(b) for the Non-production Server Environment, [60] x 8.5 x D2

D1 = the number of days in the month

D2 = the number of days that are Monday to Friday, excluding national and applicable State or regional public holidays, in the month

Downtime means the time during which the Software as a Service is not available to any user for a period of over five minutes as a consequence of unavailability of, or problems with provisioned, Alcidion Cloud. Downtime commences when you notify us that the Software as a Service is inoperable and unavailable for use. Downtime will end when we confirm to you that the Software as a Service is available for use. Downtime is only calculated during the times when the Server Environment that is the subject of the Service Level should have been available (for example, Downtime for a Non-production Server Environment is only calculated if it occurs during the hours of 9.00am to 5.00pm on a Monday to Friday, excluding applicable National or local public holidays).

Scheduled Downtime is defined in clause 3.10.

- (d) For the purposes of reporting and measuring the Availability Uptime Service Level as a Quarterly average, we will apply the following calculation for each Quarter:

Availability Uptime Service Level = (A1 + A2 + A3) / 3

where:

A1 = the Monthly Availability Uptime for the first month of the Quarter

A2 = the Monthly Availability Uptime for the second month of the Quarter

A3 = the Monthly Availability Uptime for the third month of the Quarter

For the first Quarter that applies to the Managed Services, the Availability Uptime Service Level will be necessarily pro-rated based on the number of months from the date the Server Environment is provisioned until the end of that Quarter.

3.10 Updates and outages to Alcidion Cloud

- (a) The parties acknowledge that we will plan and set certain periods during which Alcidion Cloud or the Software as a Service is not available to enable it to perform maintenance of Alcidion Cloud, including for Planned Maintenance (each such period is the "**Scheduled Downtime**").
- (b) Subject to paragraph (c) below, we will use its best endeavours to:
- (i) co-ordinate and schedule Planned Maintenance with you;
 - (ii) provide reasonable notice of Planned Maintenance to you; and
 - (iii) perform Planned Maintenance without the need for Scheduled Downtime.
- (c) We may perform Planned Maintenance activities without co-ordinating and providing notice to you referred to in paragraphs (i) to (ii) above, if such Planned Maintenance activities will not cause a service interruption, affect Server Environment availability or will not be noticed by users of Alcidion Cloud. Where possible, we will endeavour to provide at least 5 Business Days' notice of Planned Maintenance.
- (d) Subject to paragraph (e) below, if Scheduled Downtime is unavoidable, then we may perform Scheduled Downtime at any time at its discretion, subject to the following limitations:
- (i) no more than three hours of unavoidable Scheduled Downtime will be performed in each Quarter; and
 - (ii) no more than two occurrences of eight hours of unavoidable Schedule Downtime in respect of each occurrence in each year for large changes that cannot be performed in the period referred to in paragraph (i) above.

- (e) If an emergency or an urgent event occurs (eg. for a security incident compromise, attacks), then we may temporarily suspend Alcidion Cloud, but only for so long as is reasonably necessary to address or resolve such event. In this instance, the parties agree that the time during the time in which Alcidion Cloud is taken to be Scheduled Downtime for the purposes of this Schedule 3.

3.11 Reporting

- (a) We will provide you with a report on a Quarterly basis that covers:
 - (i) Service Level performance;
 - (ii) Downtime; and
 - (iii) updates and outages to Alcidion Cloud,for the preceding three month period.
- (b) We will provide a post incident report to you for all Priority 1 unplanned outages of the production Server Environment.

4. Support Services

4.1 Our Support Obligations

- (a) We will provide the Support Services as part of the Managed Services. The "**Support Services**" comprise the services set out in this clause.
- (b) Subject to paragraph (c) below, we will provide third level technical support as part of the Managed Services for Alcidion Cloud and the Software as a Service. This support involves using commercially reasonable efforts to isolate and address problems, issues or defects with Alcidion Cloud and/or the Software as a Service that are escalated to it by you pursuant to the Agreement, including this Schedule 2.
- (c) We will, as part of the Support Services, provide regular version upgrades to the Software as a Service at no additional charge to you where those version upgrades are generally made available to other customers under similar circumstances. We may charge you for software changes and features requested by you, depending on the significance and applicability of these to other customers. We will only support the current version of the Software as a Service and the immediately preceding version of the Software as a Service (that is, N, N-1 and N-2). If we support the operating system of the Server Environment as part of the Support Services, then we will only support the current version of that operating system (as provided by the relevant third party licensor) and the immediately preceding version of that operating system. If you require support for a non-supported version of the Software as a Service and/or operating system, then you will need to obtain Professional Services (at an additional charge) from us to support that version of the Software as a Service and/or operating system.
- (d) We will make available to you, in respect of your third level technical support (each, a "**Service Request**"):
 - (i) a service desk (**Service Desk**) to enable you to request for Support Services pursuant to this clause 4 for Priority 1 incidents relating to the production Server Environment; and
 - (ii) an online support portal (**Alcidion Connect**).
- (e) The Service Desk is available between 9.00am and 5.00pm each Monday to Friday, excluding applicable National and local public holidays and a 24 hours a day, 7 days a week service is available for Priority 1 Production environment issues through telephone: (ANZ: +61 88208 4677) or (UK: +44 800 054 8161)
- (f) Alcidion Connect provides you with the ability log, view and update Service Requests and is available on a 24 hours a day, 7 days a week basis.
- (g) You must ensure that you do not provide us with any patient data when making a Service Request, or otherwise interacting with us in respect of a Service Request.

4.2 Service Requests

You may log a Service Request through the Service Desk or Alcidity Connect as set out in the table below:

Priority level	Incident examples	Support
Priority 1 – Urgent/Critical Fault: major outage of the live production environment that renders the software or other relevant component of the live production environment to be unavailable resulting in complete work stoppage and causing the solution to be completely unusable.	The integration engine is rejecting all feeds and will not run at all, or; Data entry is not possible for 100% of users and staff are not able to use any part of the software.	24 hours a day, 7 days a week for issues raised against the Production Environment only
Priority 2 – High/Major Fault: Business critical application function or group of functions is inaccessible or unusable. Resolution is urgent and no workaround exists.	A data entry process of integration point is failing for >50% of users, or; The software is displaying incorrect or misleading information, or; A commonly used function in the application is not functioning correctly and is having a significant business impact for >50% of users.	9.00am to 5pm each Monday to Friday, excluding National or local public holidays
Priority 3 – Medium Fault: Non-business critical product function or group of functions is unusable, inaccessible or not functioning as designed and/or specified but business impact is not significant and/or a valid workaround exists.	A field or fields on a screen is not functioning correctly, or; Errors in the product preventing the use of non-critical business functions, or; Errors in patient data that need to be fixed but are not impacting patient care or business flow.	9.00am to 5pm each Monday to Friday, excluding National or local public holidays
Priority 4 – Low Fault: Application function has a fault but continues to be usable. Business operation and data integrity is unaffected.	Formatting, cosmetic or display issues, or; Minor errors in reports, screens or functionality.	9.00am to 5pm each Monday to Friday, excluding National or local public holidays

4.3 Target Service Levels – Service Requests

The table below sets out the target Service Levels that apply to Service Requests for the live production server environment:

Priority Level	Response Time	Resolution target	Compliance target
1	30 Minutes	4 hours	>90%
2	1 business hour	2 business days	>90%
3	1.5 business days	5 business days	>85%
4	3 business days	15 business days	>85%

Note:

Target Response Time means the time in which we have reviewed the Service Request, confirmed the priority level and acknowledged receipt of the Service Request through Alcideon Connect (or phone if after hours).

Target Restoration Time means the target time to restore the relevant component to you. We will use reasonable efforts to ensure that the Target Resolution Time is met with regard to a Service Request for events within its control. For clarity, we are not responsible for meeting the Target Restoration Time where a third party is responsible for the resolution, but we will use our best efforts to facilitate this restoration work to the extent possible. The Target Restoration Time excludes activities required to replay stored or queued messages.

The target response time and target restoration time Service Levels commence at the time the Service Request is received by us through Alcideon Connect and by phone for Priority 1 issues in Production, whichever occurs first.

The reference to "hour" and "business hour" for the purposes of the Service Level is a reference to an hour where Support Services are available (that is, 24 hours a days, 7 days a week for a Priority 1 incident or otherwise 9.00am to 5pm each Monday to Friday, excluding National or local public holidays).

We are responsible for determining when the response and restoration has occurred for the purposes of this Schedule 3, subject always to the definitions set out above.

Different Target Resolution Times apply for items diagnosed as a software defect to all other items, as diagnosed software fixes have a longer identify-fix-test-deployment cycle,

Where an incident is diagnosed as a Software as a Service fault, the status of the Service Request will be set to "Referred to Development for review".

If a Software as a Service defect is diagnosed and where development is required, the Service Request will be taken to have been resolved when:

- For Priority 1 and 2 diagnosed defects – we notify you that a defect has been diagnosed and resolved and a delivery plan agreed
- For Priority 3 diagnosed defects – we notify you that a defect has been diagnosed and resolved and a delivery plan has been agreed, and
- If the Service Request does not require a software fix or development, the Service Request will be considered resolved when the Software as a Service/Services are restored, or when Service Request is set to a status of "Resolved Pending Client Signoff", whichever occurs first. You will subsequently mark the status of the Service Request as "Closed" if no further action is required.

If a valid and acceptable workaround is identified that reduces the impact and severity of the logged Service Request, we will downgrade the severity of the Service Request.

Service Levels refer to the live production Server Environment only and for tickets with a type of "Incident/Issue".

Time spent waiting on you to supply additional information or time spent waiting on third party vendor will be excluded from the calculated time to resolve the Service Request.

Service Requests with a status of waiting for you may be closed by us after 5 or more business days with no response from you.

Where an incident, defect etc. set out in a Service Request cannot be replicated, and all avenues for investigation have been exhausted, the status of the Service Request will be updated to "Resolved" and a new Service Request must be logged if additional information is gathered to assist with replication and diagnosis of a defect. Issues identified in non-production environments should be logged for investigation in Alcidion Connect with a Severity rating of Priority 3.

4.4 Your support obligations

You will:

- (a) provide first level support to users, that includes receiving calls or requests for support from a user, resolving issues relating to the operation or use of the Managed Services, undertaking initial diagnostics to identify any problems, defects or issues, and escalating any problems, defects or issues for further investigation and resolution to second level support;
- (b) provide second level support for the Managed Services, that includes technical subject matter experts to provide detailed identification and resolution of problems, defects or issues, and escalation of unresolved issues to us;
- (c) raise and manage appropriately qualified third level issues to us using Alcidion Connect, including the provision of any error logs, replication steps and other supporting data if required to diagnose the issue; and
- (d) be solely responsible for implementing, managing and supporting your own infrastructure, including networks, devices, security, certificates and connectivity to Services. This includes provision and maintenance of all required interfaces necessary to access the Services and provision of the end-user standard operation environment such as devices, end-user technical support and training.

5. Backup Services

- (a) We are responsible for maintaining regular Backup Services as part of the Managed Services. In performing the "**Backup Services**", we will backup databases containing your specific configuration and data for production and non-production Server Environments in accordance with our policies and procedures that apply to such Backup Services.
- (b) We will implement procedures to encrypt at rest the backups referred to in paragraph (a) above.

6. Monitoring Services

- (a) We will provide "**Monitoring Services**" as part of the Managed Services to:
 - (i) continuously and proactively monitor the production Server Environments for 24 hours a day, 7 days a week;
 - (ii) audit access and security logs, where required;
 - (iii) establish thresholds for your Server Environment and trigger alerts to manage the support response and team for the Support Services;
 - (iv) action alerts, including for infrastructure or performance issues;
 - (v) create and maintain alert rules, including alert conditions based on the criticality of the alert; and
 - (vi) establish a monitoring dashboard for the Server Environment.
- (b) We are responsible for, as part of the Monitoring Services, monitoring the following (where identified in our policies and procedures for the Monitoring Services):
 - (i) service and application logs;

- (ii) infrastructure metrics, including central processing unit (**CPU**) usage, memory usage and network usage;
 - (iii) host metrics, including CPU usage, memory usage, disk usage and network usage;
 - (iv) message processing metrics, including queue depth, message processing rate and error rate; and
 - (v) application metrics, including DB queries per second, Redis key counts, http requests per second and Rabbit queue count, size and rate.
- (c) We will not use patient data when providing the Monitoring Services.

7. Information security

We will maintain the security of the Server Environments in accordance with our security policy as updated or amended from time to time (**Security Policy**). The Security Policy will include data management and retention periods, penetration testing and related data security processes.

8. Disaster Recovery Services

You may request us to provide disaster recovery services (**Disaster Recovery Services**). If so, then we will provide you with a project statement of work that sets out the scope of the Disaster Recovery Services and the fees and charges that apply to those services.

9. Professional services

You may request us to provide professional services in connection with the Managed Services, including:

- (a) to set up the Server Environment, migration and transition data and related functions (**Setup Services**); and
- (b) any other services that may apply.

If so, then we will provide you with a project statement of work that sets out the scope of the Setup Services and/or any other services and the fees and charges that apply in respect of each.

10. Your Information

- (a) The parties acknowledge and agree that the rights, title and interests in and to all information and data that are entered or generated by you (**Customer Data**) are owned by you. You grant a non-exclusive and royalty free licence to us to:
 - (i) access, use, modify, add to and copy the Customer Data for the purposes of providing the Managed Services and otherwise performing its obligations under the Agreement;
 - (ii) permit any person to assist us to do any of the things referred to in paragraph (i); and
 - (iii) sub-licence any of the rights granted to us to any person in connection with the provision of the Managed Services and its performance.
- (b) You acknowledge and agree that the Customer Data may be accessed, used and/or processed by a third party sub-contractor to us.

11. Intellectual Property

- (a) Despite any clause to the contrary in the Agreement, you acknowledge and agree that, as between the parties, we own all rights (including Intellectual Property Rights), title and interests in and to:
 - (i) all materials, works, documents, processes and ancillary software that is provided to you as part of the Managed Services (together, the "**Licensed Materials**");
 - (ii) the processes, platforms and infrastructure used by us to provide the Managed Services and otherwise perform its obligations under the Agreement; and
 - (iii) all records, information and data created or generated by or on behalf of us in connection with its provision of the Managed Services and its performance of the Agreements.

- (b) We grant you a non-exclusive licence to use the Licensed Materials for the Service Term solely for the purpose of your receipt and use of the Managed Services.

12. Pricing

- (a) The Fees for the Managed Services are set out in the Supply Schedule. The Fees set out in or pursuant to this Schedule 3 are fees and/or charges for the purposes of the Agreement.

- (b) If the Managed Services, or any part of it, is terminated during the Service Term for any reason other than our breach, then we may charge you an early termination fee as follows:

$$\text{ETC} = (50\% \times A \times M) + X$$

where:

ETC = early termination fee;

A = the Fees for the Managed Services for a month;

M = the number of months, or part thereof, from the date of termination to the end of the Service Term; and

X = unavoidable costs necessarily incurred by us arising out of such termination (eg., third party service provider termination fees).

- (c) Without qualifying or limiting clause 2.7(d), Alcidion may increase the Fees for the Managed Services on notice to you if your use:

- (i) of the Cloud Service, Managed Services or any component of the services supplied to you changes; or
- (ii) exceeds any applicable limits specified by us from time to time, including with respect to processing units, memory, storage and network usage.

13. Third party terms

- (a) You must, in your use of the Managed Services (including Alcidion Cloud), ensure that you comply, and your users comply, with the third party terms set out on our website or as otherwise notified to you from time to time (each a "Third Party Term") as though it were bound by such Third Party Terms and a reference to us in each Third Party Term is taken to be a reference to you for the purposes of this Schedule 2. You are responsible for checking and understanding each Third Party Term.

- (b) We may, from time to time, update, add or remove Third Party Terms. If so, then we will endeavour to notify you through our website or through other electronic means.

A breach by you, your Affiliates and/or any of your users, of a Third Party Term is taken to be a breach by such person of this Schedule 2.

For reference purposes only, as at the date of this Schedule 2, the Third Party Terms set out in the table below apply:

Third party	Third Party Term
Microsoft	https://www.microsoft.com/licensing/terms/welcome/welcomepage
Google	https://cloud.google.com/terms
Amazon	https://aws.amazon.com/agreement/

14. Liability

- (a) Our liability for all Claims in each Year, whether in contract, tort (including negligence) or otherwise, is limited in the aggregate to the fees paid and payable by you for the Managed Services in that Year.
- (b) You must use its best endeavours to mitigate all losses, damages, costs and expenses suffered or incurred by it arising out of or in connection with an event giving rise to a Claim under or in connection with the Agreement and/or the Managed Services.
- (c) Without qualifying or limiting paragraph (b) above, our liability under or in connection with the Agreement and/or the Managed Services, including under an indemnity, is reduced to the extent that you caused or contributed to the losses, damages, costs and expenses in respect of a Claim.
- (d) Despite any other provision to the contrary in the Agreement, you are not liable for any loss or corruption of data, but you must use its best endeavours to restore any lost or corrupted data from available backup media, if such loss or corruption of data was caused by our breach of the Agreement or its negligent acts.
- (e) You must ensure that it does not use the Managed Services in a manner that may give rise to losses exceeding our liability under this Schedule 3. Our liability under this Schedule 3 is reduced to the extent that loss or damage was caused or contributed to by you, your Affiliates and/or your users. You must ensure that you, your Affiliates, and users mitigate all losses and damages that may arise out of or in connection with this Schedule 3.

15. Definitions

Capitalised terms used in this Schedule 2 have the meaning given to them in the Agreement and this Schedule 2.

In this Schedule 2:

Affiliate means any business entity from time to time controlling, controlled by, or under common control with, either party, whereby a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Agreement means the agreement between the parties pursuant to which this Schedule 3 is attached.

Alcidion Cloud is defined in clause 3.1(a).

Alcidion Connect is defined in clause 4.1(d)(ii).

Availability Uptime is defined in clause 3.9.

Backup Services is defined in clause 5.

Business Day:

- (a) for a Supply Schedule, is defined in that Supply Schedule or, if not defined, has the meaning given to it in paragraph (b) below; and
- (b) means a day that is not a Saturday, Sunday, public holiday or bank holiday in England and Wales.

Claims means claims, losses, damages, costs and expenses (including legal expenses).

Disaster Recovery Services is defined in clause 8.

Early Termination Charges means, for the Managed Services, the charges set out in the Supply Schedule.

Managed Services is defined in clause 2.1.

Monitoring Services is defined in clause 6(a).

Monthly Availability Uptime means the monthly Availability Uptime that is to be calculated pursuant to clause 3.9(c).

Non-production Server Environments means:

- (a) Server Environment for use as the test instance; and
- (b) Server Environment for use as the development instance.

Planned Maintenance means any planned changes performed by us to the Alcidion Cloud, including:

- (a) capacity management of the database, virtual machines and disks;
- (b) solution and data backup;
- (c) solution and data restore with annual testing, unless otherwise agreed by the parties;
- (d) TLS certificate ordering, renewal, and installation;
- (e) operating system and application patching, where applicable; and
- (f) endpoint protection, where applicable.

Quarter is defined in clause 3.9(b).

Scheduled Downtime is defined in clause 3.10(a).

Server Environment is defined in clause 3.1(a).

Service Desk is defined in clause 4.1(d)(i).

Service Request is defined in clause 4.1(d).

Setup Services is defined in clause 9(a).

Software as a Service means the software that is provided to you as a service with the Managed Services, and specified in the Supply Schedule.

Supply Schedule means, in respect of this Agreement and the Managed Services, the Supply Schedule or other document forming part of, or entered into by the parties pursuant to, the Agreement in respect of which you agree to obtain the Managed Services.

Support Services is defined in clause 4.

Year means each calendar year.

16. Interpretation

In this Schedule 2, unless the context indicates a contrary intention:

- (a) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors; and
- (b) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind.

Schedule 3 – Professional Services

1 Application

This Schedule applies if a Supply Schedule specifies that the Professional Service is provided to you.

2 Supply of Professional Services

2.1 We will provide the following Professional Services to you pursuant to the Supply Schedule:

- (a) **implementation services:** services and activities that we will carry out for you to establish and configure the Software as a Service in the manner specified in the Supply Schedule;
- (b) **training services:** specific training services, including training materials that we will provide to you to assist with your use of the Software as a Service;
- (c) **testing services:** specific services and activities that we will carry out to test the Software as a Service, or any part of it, or any Deliverable in connection with the Software as a Service or our other Professional Services, or
- (d) **other professional services involving our Software as a Service:** consultancy services, in relation to our Software as a Service,

each as further described in that Supply Schedule.

2.2 You will provide us with such cooperation as reasonably required and requested by us for the purpose of providing the Professional Services, including the provision of physical access to your premises, remote access to staff resources and test data.

3 Deliverables

3.1 If we provide any documentary Deliverables to you as part of the Professional Services, then we grant to you a personal and non-exclusive licence to use such documentary Deliverables solely for your internal business purposes and only in connection with your use of our Services under this Agreement.

3.2 For clarity, all Intellectual Property Rights in and to a Deliverable remains with us or our third party licensors.

4 Acceptance Testing

4.1 If Acceptance Testing is specified in a Supply Schedule, then:

- (a) you may perform Acceptance Testing to assist with your assessment of the Deliverables that we provide to you pursuant to the Professional Services with respect to the Acceptance Criteria;
- (b) the parties will work in good faith to identify and agree:
 - (i) the tests that you will carry out as part of Acceptance Testing; and
 - (ii) Acceptance Criteria that will apply; and
- (c) once the parties have agreed the tests and Acceptance Criteria, then the process set out further below in this clause 4 applies.

4.2 You must ensure that we are provided with the opportunity to participate in the Acceptance Testing process. The parties agree to co-operate reasonably with respect to your conduct of such Acceptance Testing.

4.3 If the parties agree a timeline to conduct the Acceptance Testing, then you must conduct the Acceptance Testing in accordance with that timeline.

4.4 If the Acceptance Testing reveals that a Deliverable does not meet the Acceptance Criteria, then:

- (a) you must immediately notify us of such non-compliance; and
- (b) we will endeavour to rectify such non-compliance within a reasonable period of time or, if a specific period of time for rectification has been agreed in the Supply Schedule, by such agreed time or, at our option, provide you with a work-around.

4.5 If the Acceptance Testing reveals that a Deliverable meets all of the Acceptance Criteria, then you must immediately issue an Acceptance Certificate to us for such Deliverable.

4.6 Acceptance will be deemed in the event that:

- (a) you fail to return a signed Acceptance Certificate in accordance with the time frame referred to in clause 4.5 or the Supply Schedule; or
- (b) you use the Software in production prior to the issuing of an Acceptance Certificate.

5. Definition

Accept or **Acceptance** means, for a Deliverable, that the Deliverable has passed Acceptance Testing as indicated by:

- (a) your Acceptance Certificate for that Deliverable; or
- (b) the process specified in clause 4 of this Schedule.

Acceptance Testing means, for the Professional Services, the tests that you may carry out to assess the Deliverables provided by us to you pursuant to those Professional Services.

Acceptance Criteria means, for a Deliverable, the mutually agreed criteria with respect to that Deliverable.

Acceptance Date means, for a Deliverable, the date you Accept that Deliverable.

Deliverables means, for Professional Services and a Supply Schedule, the items identified as such in that Supply Schedule.

Schedule 4 – Supply Schedule

Unless otherwise indicated in this Supply Schedule, capitalised terms have the meanings given in the Alcilion Services Agreement ("Agreement").

Software as a Service	
☒ Miya Intelligence ☐ Other: _____	
Description of the Software as a Service (only if Other is selected above)	[insert a description of the Software as a Services that are to be provided]
Use Restriction (User number allocation)	☐ Enterprise (no user number restriction) ☐ Other: _____
Specific terms	[insert if any]
Managed Services	
Specific terms	[insert if any]

Professional Services (if applicable)	
Description of the Services	The Professional Services are as follows: [insert a description of the Professional Services that are to be provided]
Technical or Functional requirements	The Professional Services must meet the following technical and/or functional requirements: [insert technical or functional requirements for the Professional Services - this can cross-reference to an attachment]
Customer supplied terms	You must provide the following to us: [insert what items the Customer is required to provide to Alcilion under this Supply Schedule]
Indicative Project Plan	[insert indicative project plan]

Deliverables and Specifications	
---------------------------------	--

ID	[insert]
Dependency	[insert any dependencies on the Deliverables]
Deliverable	[only fill this in if there is a tangible output from the Services] OR

	[insert N/A if there is no tangible output from the Services]
Specifications	[insert a proper description of the detailed technical and/or functional specifications for the Deliverables] OR [insert N/A if there are no Deliverables]
Acceptance Criteria	[insert] OR [insert N/A if it is not applicable]

ID	[insert]
Dependency	[insert any dependencies on the Deliverables]
Deliverable	[only fill this in if there is a tangible output from the Services] OR [insert N/A if there is no tangible output from the Services]
Specifications	[insert a proper description of the detailed technical and/or functional specifications for the Deliverables] OR [insert N/A if there are no Deliverables]
Acceptance Criteria	[insert] OR [insert N/A if it is not applicable]

ID	[insert]
Dependency	[insert any dependencies on the Deliverables]
Deliverable	[only fill this in if there is a tangible output from the Services] OR [insert N/A if there is no tangible output from the Services]
Specifications	[insert a proper description of the detailed technical and/or functional specifications for the Deliverables] OR [insert N/A if there are no Deliverables]
Acceptance Criteria	[insert] OR [insert N/A if it is not applicable]

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Fees		
Fee type	Fee (excl tax, duties, levies)	Payment Terms
[Insert fee type eg: professional services fees]	[Insert Fees: These could be: • a fixed fee; • a time and materials charge, with a set of rates.]	[Insert payment terms: These could be: • monthly in arrears (eg for time and materials); • on set dates; • when specific tasks are completed.]

Approval	
Signed for and behalf of our authorised representative Signature of authorised representative Name of authorised representative (print)	Signed for and behalf of your authorised representative Signature of authorised representative Name of authorised representative (print)