

1. Your Agreement with Us

1.1 These Terms and Conditions should be read in conjunction with your completed Order Form and the relevant Schedules in which you will find the Service description(s), pricing and other arrangements specific to your contract with Us.

1.2 Our legally binding contract is made up of: (a) the relevant Order Form for the Services and/or Hardware you have ordered; (b) the relevant sections of these Terms and Conditions; and (c) Schedules, appendices and / or any other documents incorporated by reference in the Order Form or these Terms and Conditions. Such contract is referred to in these terms as the “**Agreement**”.

2. Terminology

2.1 To make these Terms and Conditions easier to read, We have given the following expressions a specific meaning:

Acceptance Criteria means the specification of the Service as set out in the Order Form;

Acceptance Tests means those tests to be carried out to confirm that the Services conform to the Acceptance Criteria;

Affiliate means in relation to either of us each and any of our subsidiaries or holding companies and each and any subsidiary of our holding companies;

Applicable Data Protection Law means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including: (a) the Data Protection Act 2018 including the UK GDPR (which has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018); and (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the UK, in each case, as may be amended, superseded or replaced from time to time in the UK;

Annual Recurring Charges means those charges identified as annual or fixed term charges as set out in the Order Form;

AUP means Our standard acceptable use policy and the terms of which may be updated by Us from time to time;

Broadcom End User Agreement means end user agreement applicable to any Broadcom offerings available at <https://www.broadcom.com/company/legal/licensing> (as updated by Broadcom from time to time);

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

Charges means the charges that you will pay to Us pursuant to paragraph 7, as detailed in the Order Form and updated from time to time in accordance with the Agreement;

Confidential Information has the meaning given in paragraph 12.1;

Customer Data means any data, document, text or information that is provided by or on your behalf to Us or Our Third Party Suppliers as part of your use of the Services, including any information derived from such information;

Data Centre means:

(a) in respect of data centre services, the data centre premises from which the Services are provided; or

(b) in respect of all other Services, any data centre operated by Us, Our Affiliates or Third Party Suppliers;

Data Centre Access Policy: means Our standard data centre access policy and the terms of which may be updated by Us from time to time;

Deliverables means all documents, products and materials developed by Us as part of or in relation to Professional Services set out in a Statement of Work;

Effective Date means the date set out in the Order Form;

EULA means a Third Party Supplier's end user licence agreement applicable to the relevant Third Party Services, including, without limitation, the MCA in respect of any Microsoft products or Broadcom End User Agreement in respect of any Broadcom products and any other end user licence agreements referenced in the Order Form or applicable to the Services from time to time;

Energy Charges means any costs, charges, expenses, levies, tariffs and taxes whether direct or indirect arising out of or attributable to the use or consumption of energy as a result of the provision of the Services and which are imposed on Us;

Exit Plan Schedule means Our standard exit plan schedule, as referred to in the Order Form;

Hardware means hardware to be provided by Us as part of the Services as set out in more detail in the Order Form;

Hardware Schedule means Our standard hardware schedule, as referred to in the Order Form;

High Risk Use means use of the Third Party Services in any application or situation where the Third Party Services' failure could lead to: (i) death or serious bodily injury of any person; or (ii) physical or environmental damage; or (iii) the safety of people, property and the environment being reduced below a level that is reasonable, appropriate or legal (in the circumstances of such use);

Initial Term means the initial term of the Agreement set out in the Order Form commencing on the Start Date;

IPR means any and all intellectual property rights including without limitation copyright and related rights, trade marks, domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software, database right, rights in confidential information (including know-how and trade secrets) whether registered or unregistered, which subsist now or in the future in any part of the world;

Law means any applicable law whether local, national or international including statute, statutory instrument and guidelines and codes which have legal effect;

MCA means the "Microsoft Customer Agreement" applicable to Third Party Services provided by Microsoft available at <https://www.microsoft.com/licensing/docs/customeragreement> (as updated by Microsoft from time to time);

Monthly Recurring Charge means those charges identified as monthly recurring charges as set out in the Order Form;

Network means the connectivity used to access the Services provided by Us, including:

- (a) Our underlying connectivity to the internet and/ or between Our Data Centres and/or the connectivity within a data centre (and/or within the data centre of Our Third Party Suppliers);
- (b) your connectivity to the internet and into your Service; and
- (c) the interconnectivity between elements of the Services provided by Us;

Non-Recurring Charges means those charges identified as non-recurring charges as set out in the Order Form;

Order Form means the order form provided to you by Us, containing service, pricing and other arrangements specific to the Agreement;

Privacy Notice means the then current version of Our privacy policy available at <https://www.iomart.com/privacy-policy>;

Professional Services means one-off or other professional services identified as such and set out in a Statement of Work;

Project Handover Document means Our document called Project Handover or any other document which confirms the Services are implemented and / or handed over from Us to you;

Project Plan means Our document called Project Plan or any other document which confirms an overview of how and when activities are to be achieved to enable the Services to be implemented, performed and /or completed;

Schedule means the schedules referred to in the Order Form that apply to each Agreement including, without limitation, Service Schedules;

Service Credit means a service credit that may be payable to you for Our failure to meet an applicable Service Level for a particular Service calculated in accordance with the Service Level Schedule;

Service Levels means the service levels set out in the relevant Service Schedule for that Service (where applicable);

Service Level Schedule means the Schedule setting out the calculation of Service Credits and the procedure for claiming;

Services means the services and/or software described in an Order Form as set out in more detail in the relevant Services Schedule (including any Professional Services);

Service Schedules means those Statement(s) of Work or Schedule(s) referred to in the Order Form which together with the Order Form describe the Services provided by Us to you;

Set-Up Charges means those charges identified as Set-Up Charges as set out in the Order Form;

Software means any and all software, whether Ours or Our Third Party Suppliers' provided to you as part of the Services;

Start Date means the: (i) the start date set out in the Order Form; or (ii) where the Order Form specifies "Activation of Service" the relevant date on which delivery of the Service is made, commences or goes live as specified in the Project Handover Document; or (iii) the date specified by Us under paragraph 6.10. For the avoidance of doubt, the Start Date will take effect regardless of whether all lines or circuits required from third-party carriers to receive the Services are ordered or installed or capable of receiving the Services;

Statement of Work means a statement of work setting out the details of Professional Services to be provided by Us to you as referred to in the Order Form;

Successor Supplier means any person taking responsibility for the provision of the Services following termination or expiry of the Services (in whole or in part);

Terms and Conditions means these terms and conditions;

Third Party Services means the systems, services, software, products, and materials (other than Your Equipment or Your Software) necessary to provide the Services;

Third Party Supplier(s) means any third party supplier of the Third Party Services;

Variable Service Charge means those variable charges as set out in the Order Form;

We means iomart Managed Services Limited (Co. No. SC275629) whose registered office is at 6 Atlantic Quay, 55 Robertson Street, Glasgow G2 8JD and the terms "**Us**" and "**Our**" will be interpreted accordingly;

Work Product means any work product provided to you or created as part of the Services, including any operations manuals, handbooks, runbooks or other documentation;

Year means a 12-month period commencing on the Start Date and each anniversary thereof;

you and **your** means Our customer, being the person or entity that is identified in the Order Form;

Your Equipment means your hardware if/when located in Our Data Centre; and

Your Software means systems, services, software, products, and materials procured by you direct, independently of Us, used on or in relation to the Services.

2.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. Headings have been included for convenience only and will not be used in constructing any provisions of the Agreement. Any references in the Agreement to words in the singular include the plural and vice versa. Where the words "includes" or "including" are used, the words that follow are examples only.

3. Order Process

3.1 **Formation of Agreement.** Each Order Form will establish a new Agreement, separate to any other Agreement for the provision of the Services described in that Order Form. These Terms and Conditions will apply to the Agreement to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. Any Order Forms executed by you in relation to future Services provided to you by Us will be subject to the then current version of these Terms and Conditions.

3.2 **Schedules.** The Schedules contain terms that are specific to Services that We may supply to you. However, only the Schedules expressly and specifically incorporated by the relevant Order Form or these Terms and Conditions will apply to this Agreement.

4. The Services that We will provide.

4.1 We will provide the Services to you in accordance with the Agreement:

4.1.1. to a standard that meets or exceeds the relevant Service Level (if applicable);

4.1.2. using reasonable care and skill; and

4.1.3. in accordance with Law applicable to Us as a provider of IT services.

4.2 If you are receiving Professional Services from Us, We will provide the Deliverables as set out in the Statement of Work (as relevant).

4.3 We will use reasonable endeavours to meet any dates and times for performance of Services stated in any Service Schedule but these dates and times are estimates only and time of performance shall not be of the essence.

Dates and times supplied shall be extended to reflect any delay in performance caused by you pursuant to paragraph 6.8 or any Force Majeure Event.

4.4 For the avoidance of doubt, and without limitation, the Service does not include any items that are not expressly stated as being provided in the relevant Service Schedule.

4.5 **Hardware:** If we are providing you with Hardware, the terms of the Hardware Schedule shall apply.

5. Third Party Services

5.1 **Licences We provide.** The Third Party Services are as stated in the Agreement. You will comply with all licence terms (including those of a Third Party Supplier) for such Third Party Services. By placing an order for any Third Party Services you represent that any subscription commitments and requirements disclosed are complete and accurate.

5.2 **End User Licence Agreements.** You authorise Us to accept any EULA applicable to the Third Party Services acquired under this Agreement on your behalf and in your name. Where you are required by the Third Party Supplier to accept or acknowledge any EULA directly, you agree to accept or acknowledge such EULA prior to making use of the relevant Third Party Services. You shall not hold Us liable for any loss or damage caused by Our acceptance of any EULA on your behalf. We are not liable to you for losses you suffer, nor to refund you any Charges, where a Third Party Supplier terminates or suspends your right to use the Third Party Services. Further to paragraph 5.1, you warrant and undertake to comply with all terms set out in the applicable EULA.

5.3 **Licences We sell to you.** Where it is agreed to in an Order Form that you will purchase certain Microsoft licences from Us on a resale basis pursuant to the Microsoft New Commerce Experience Program (NCE), We agree to procure such Third Party Services on your behalf. You acknowledge that under the NCE your contract for the provision of licences is directly with Microsoft (under the terms of the MCA) and We disclaim any and all warranties and (subject always to paragraph 10.1) exclude all liability in respect of such Third Party Services. You shall indemnify Us from and against any and all claims brought against us by Microsoft, including claims for licence fees acquired under the NCE.

5.4 **Your Licences.** You will ensure you have suitable licences in place, before the date on which the Services are to start, for Your Software required to allow Us and Our Third Party Suppliers full use in relation to the Services provided. You warrant and undertake that at all times you will either own or have a valid licence to use Your Software and you shall comply with all relevant third-party licence terms when using Your Software on the Services. You agree that you will provide copies of the relevant agreements to Us on request.

5.5 **Your Compliance.** You shall at all times only install, load and use on the Services any Software that has been lawfully obtained in accordance with the applicable terms and you shall not install, load or use any Software which: (a) requires consent from the vendor to be used or loaded without first obtaining Our consent and all necessary third party consents; and/or (b) by reason of any licence terms, cannot be used with the Services or (with regard to existing licenses) cannot be migrated on to the Services. You may not transfer outside the Services any Software (including related documentation) you obtain from Us or Third-Party Suppliers in connection with the Services without specific authorisation from Us. You will not do or omit to do anything which puts us in breach or would be reasonably likely to put us in breach of our obligations to any Third Party Suppliers.

5.6 **Our Admin Access.** Where We require, in order to enable us to provide the Services, you will maintain and allow Us to have continuous global administrator access to your Microsoft cloud services and will assign Us any necessary delegation during for the duration of this Agreement.

5.7 **Mobility Programme.** If you are using a mobility programme from a software vendor to use or operate Third-Party Services using Our Services, you must complete the appropriate procedure with such software vendor and provide evidence of your verification status to Us before you load or install Third-Party Services on the Services.

5.8 **Right to verify compliance.** You must keep records relating to all use of Third-Party Services and Your Software during and for a period of seven (7) years after the expiry of this Agreement. We and/or any third party nominated or verified by Us (including, but not limited to, any Third-Party Supplier (including, but not limited to, Microsoft and/or any third party appointed by or on behalf of Microsoft) and/or any such third party including any auditor or licence management organisation) has the right, at their expense, to audit and verify compliance with

any licence terms of Third-Party Services and/or Your Software. You must promptly provide the relevant auditor with the information the auditor reasonably requests in furtherance of the verification or audit, including access to the systems running Third-Party Services and/or Your Software and evidence of licenses for Third-Party Services and/or Your Software. We will endeavour to notify you 21 days in advance of our intent to verify your compliance with the licence terms of Third-Party Services and/or Your Software and any auditor shall be subject to a confidentiality obligation. You agree to complete Our self-audit process, which We may require as an alternative to a third-party audit. You acknowledge that We are obliged to disclose certain usage data relating to your use of Third-Party Services and/or Your Software and agree that provided We take reasonable steps to confirm such request is a genuine, bona fide third party audit request, We will not be in breach of our obligations of confidentiality set out in this Agreement nor will We be required to obtain your prior consent to disclose such usage data. We will be entitled to install, run, amend, update and / or maintain licence monitoring software as part of the Services to ensure your compliance with any applicable terms (including these Terms and Conditions and those of providers of Your Software) and to monitor any unlicensed use of Third-Party Services or Your Software.

5.9 Remedies for non-compliance. If monitoring, verification or self-audit reveals any unlicensed use of Third-Party Services or Your Software, then you must immediately acquire sufficient licences to cover such use and notify Us immediately and reimburse Us for any loss, fine, penalties or costs incurred by Us in relation to the Third-Party Services or Your Software. We reserve the right in Our absolute discretion to suspend the Service until such time as you demonstrate compliance with the relevant licence terms. By exercising the rights and remedies described above, We do not waive Our rights to enforce this Agreement by any other legal means. You agree and acknowledge that you will cooperate in good faith with Us and/or any third party nominated or verified by Us to investigate and remedy any non-compliance.

5.10 Indemnity. You shall indemnify Us against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against Us (including a claim by a Third-Party Supplier (or any person on its or their behalf) or supplier or licensor of Your Software (as applicable)) as a result of a breach of your obligations under paragraphs 5.1 to 5.9.

5.11 Third Party Supplier Rights. Each Third Party Supplier providing Third Party Services pursuant to this Agreement is an intended third-party beneficiary of this paragraph 5 (Third Party Services) with the right to enforce its provisions.

5.12 Third Party Variations: Our Third Party Suppliers may at any time make changes or modifications to their products and services, including without limitation to the products and services themselves and/or to the pricing and/or to the payment or licensing structure and/ or to the terms on which they make them available. If so, We will be entitled to amend Our products, services (including the Services or their specification) and / or Charges and/ or payment structure and / or these Terms and Conditions to reflect those changes or modifications. Our Third Party Suppliers may also withdraw or discontinue certain products and services from time to time and at any time or it may terminate Our agreement as our partner (even where We have not breached Our agreement with them) and if so, We will be entitled to cease providing that product or service to you or change how we provide the Service to you. We will give you as much notice as possible of these changes, withdrawals, discontinuations or terminations. We will not be deemed to be in breach of this Agreement or liable for any loss, cost, expense or damage suffered by you as a result of Our Third Party Suppliers making such changes, withdrawals, discontinuations or termination or any consequent change, withdrawal, discontinuation or termination We make as a result.

6. Our Commitments to one another

6.1 Authority to sign the Agreement. Each of us confirms to the other that we have the authority to enter into and meet Our respective obligations under the Agreement.

6.2 Acceptable Use. You will comply with the AUP during the term of the Agreement. If We receive a court judgment or order or request related to you or your use of Our services, facilities or other networks accessed through Us from any Third Party Supplier, licensor of Your Software, law enforcement or governmental authority, then We will be entitled to comply with such judgement, order or request. We will not be obliged to inform you of the receipt of or compliance with such judgment, order or request. Furthermore, you will co-operate in any resulting investigation by

Us, Third Party Supplier, licensor of Your Software or relevant government or law enforcement authorities relating to you or your use of Our services, facilities or other networks accessed through Us. Any government or legal rulings or determinations will be binding on you. If you fail to co-operate with any such investigation, ruling or determination, or fail to immediately rectify any illegal or inappropriate use, We may immediately suspend or terminate this Agreement. Further, We may modify or suspend the Service or terminate this Agreement in the event of a breach or suspected breach of the AUP or as necessary to comply with any law, regulation or law enforcement or court order.

6.3 Data Centre Access: In the event you ever attend one of Our Data Centres, you will comply with Our Data Centre Access Policy.

6.4 Third Party Carriers. Unless otherwise stated in the Order Form, you are responsible for ordering:

- 6.4.1. all lines or circuits you require from third-party carriers to receive the Services; and
- 6.4.2. any necessary cross-connects from Us subject to paying Our cross-connect charges.

You will ensure that third-party carriers install those circuits in your name. You will be solely responsible for those circuits and for all payments due to the carriers. You will notify the carrier directly when you wish to end or change those circuits.

6.5 Resale of the Services. You may use the Services for your own benefit or, subject always to paragraph 10.6, for the purposes of using the Services to provide your business services to your end-user customers but you may not resell or sublet the Services to any third party including any interim users or additional cloud providers or resellers.

6.6 Insurance. It is your responsibility to obtain insurance, including in respect of Your Equipment (if any) whilst it is on Our premises or in transit and other such insurance, including professional indemnity, cyber-risk and data loss insurance, as may be required by you for provision of the Services by Us. If We ask you to do so, you must provide Us with the relevant certificates of insurance. We will take out and maintain professional indemnity, public liability and product insurance and will provide you with the relevant certificates of insurance on written request by you.

6.7 Your commitments to Us. You will:

6.7.1. promptly provide Us with access to your premises and other facilities, equipment, documentation and any other information as reasonably requested by Us to perform the Services. Any and all documentation and other information will be materially correct, up to date and complete. You will inform Us and Our representatives in advance of any policies and procedures regarding health and safety and security that apply of your premises and other facilities;

6.7.2. ensure you have fully operating hardware, software and/or operating systems as well as sufficient support and maintenance as required for any of Your Software, hardware or systems for which we are not responsible;

6.7.3. respond to tickets, provide sufficient co-operation, information and details, answer queries, meaningfully engage with Us regarding any issues, within reasonable time frames to enable Us to perform Our obligations under this Agreement. You will ensure that all data, materials, equipment, documents and other property that you provide to Us are free from defects or viruses;

6.7.4. implement any recommendations made to you by Us regarding the Services or your systems that will operate with the Services including preparing for any set up, installation, commissioning work, engineering works, equipment maintenance activities, capacity and design (in particular to ensure that the Services are appropriate in size and specification for their intended purpose), operating your environment with the most efficient set up and continued compliance with third party licence terms;

6.7.5. where you are receiving Professional Services, maintain a daily back-up of your own data, documents and software and associated restoration measures (including insuring against any loss or damage), implement reasonable business continuity and disaster recovery measures;

6.7.6. ensure you have sufficient communication lines and connectivity services in place;

6.7.7. provide Us with access to appropriate members (including the number of members) of your staff and employees (together with logons or passwords) as is reasonably required by Us to perform the Services (including without limitation an employee with authority to discuss the Services and to approve any variations to the Services);

6.7.8. promptly comply at all times with Our reasonable instructions relating to the Services and perform any obligations required of you including without limitation: (i) those set out in this Agreement (including, without

limitation, those set out in the Schedules); and (ii) those notified to you after the Effective Date (including, without limitation, in the Project Plan);

6.7.9. promptly install any Hardware or other equipment on your premises that We provide to you as part of the Services;

6.7.10. not use the Third Party Services for any High Risk Use;

6.7.11. promptly notify Us if you breach any terms of the EULAs;

6.7.12. will be responsible for the content of any and all Customer Data transmitted through the Service; and

6.7.13. use the Services in compliance with Law.

6.8 **Customer Dependency:** You acknowledge that Our performance of Our obligations under this Agreement is dependent on your performance of your own such obligations. Accordingly, We will not be in breach of the terms of this Agreement or liable for any losses, expenses, damages, costs, claims or liabilities suffered by you as a result of your failure or delay to perform your obligations under this Agreement or any act that you knew or ought reasonably to have known would have resulted in a failure or delay by Us to perform Our obligations under this Agreement. Accordingly, without prejudice to any other remedy We may have, any deadline on Us will be extended to reflect any failure or delay caused by you. Any additional work required to be performed by Us as a result of you failing to perform your obligations under this Agreement shall be charged on a time and materials basis.

6.9 **Your Responsibilities:** For the avoidance of doubt, We will not be in breach of the terms of this Agreement or liable for any defect, fault, impairment in the Service or any losses, costs or liabilities suffered by you as a result of: (a) a failure by your operating system on which the Services are deployed or with which they work or the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by You; (b) any of Your Software used with the Services; or (c) your usage of the Services, or any component of the Services, being in excess of the capacity specifications detailed in the Order Form; (d) your negligence, act, omission, or default; (e) your breach of this Agreement; (f) any third party action in response to your act or omission or any person to whom you give access to the Service (including third party hosted software vendors); and (g) a failure of any Third Party Services. In such circumstances, We reserve the right to suspend the Services by giving as much notice as is reasonably practicable and you shall reimburse Us for any costs, losses or expenses arising directly or indirectly as a result. We can make no commitment to fix any fault and time is not of the essence. We are not liable for any failure to perform the Services as a result of: (x) any change, addition, variation or repair other than those carried out by Us; (y) any telecommunications network defect, delay or failure.

6.10 **Impact on Start Date:** Without prejudice to paragraph 6.8, in the event that you do not perform your obligations under this Agreement, and such non-performance delays the commencement of the Acceptance Tests beyond a reasonable period of time, we may specify the Start Date for the purposes of this Agreement provided: (a) we notify you by email of this three (3) times; and (b) you do not perform your relevant obligations on or before the time period specified in Our third notice. The Start Date will be the date specified in our third notice, notwithstanding that the Acceptance Tests have not been completed or that the Service has not been delivered, commenced or gone live.

7. Charges and their payment

7.1 **Implementation/Setup Charges.** From the Effective Date, We will invoice you for any Set-Up Charge listed in the Order Form, together with any costs incurred through the purchase of any equipment that you have agreed to pay for in accordance with and as set out in the Order Form. Any other Non-Recurring Charges will be invoiced on delivery or installation. Those invoices will be payable within 14 days of the date on which it is issued to you.

7.2 **Recurring Service Charge.** From the Start Date, We will also invoice you for the Monthly Recurring Charge (as applicable) or Annual Recurring Charge listed in the Order Form. The initial invoice shall be a proportionate amount of the Monthly Recurring Charges from the Start Date to the last day of that month. Following Our initial invoice, We will invoice you for any further instalment of the Monthly Recurring Charge monthly in advance (where applicable). In respect of Monthly Recurring Charges only the final invoice shall be a proportionate amount of the Monthly Recurring Charges from the first day of that month to the date of termination. The Annual Recurring Charges

will be invoiced on the Start Date and each anniversary thereof. Each invoice will be payable within 30 days of the date on which it is issued to you.

7.3 Variable Service Charges. We will invoice you monthly in arrears for any Variable Service Charges that become payable as a result of the Services that We provide. Those Variable Service Charges will be calculated in accordance with the rates set out in the Order Form. That invoice will be payable within 30 days of the date on which it is issued to you. Where any Variable Service Charges are calculated on a consumption basis you acknowledge that such Charges will be based on your usage of any Services. You acknowledge that in respect of such Services we may establish a cap or barrier on your usage.

7.4 Third Party Services. Notwithstanding the termination of this Agreement, you shall remain liable for any and all payments owed to any Third Party Supplier in respect of any Third Party Services you acquire pursuant to this Agreement from the point of acquisition until the end of the of the relevant licence. You are responsible for Charges applicable to your adjusted use or increased consumption of the Third Party Services. We may invoice you for any adjusted use at the time you place an order or adjust your usage. Any increased consumption will be invoiced in accordance with paragraph 7.3.

7.5 Your Software. In line with paragraph 6.4, you are solely responsible for paying any charges for the lease or use of telecommunications lines or any of Your Software.

7.6 Taxes. The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to any relevant invoice and will be payable by you or, if payable on a withholding tax basis, will be payable by you to the relevant authority direct.

7.7 Payment of invoices. Unless you dispute an invoice in good faith, and other than as set out in this paragraph 7, you must pay each invoice in full cleared funds within 30 days of the date on which that invoice is issued or within such alternative period as is expressly stated in the Agreement (the "**Due Date**"). Unless agreed otherwise, invoices shall be payable by direct debit. Your designated bank account will be charged automatically on or before each Due Date (whether monthly, annually or otherwise). Other than in relation to Service Credits which may be payable to you, you will not be entitled to deduct or off-set any amount that We may owe to you against Our invoice.

7.8 No Refund. All Charges are non-cancellable and non-refundable.

7.9 Disputed Invoices. If you dispute any invoice in good faith:

7.9.1. you shall pay all undisputed amounts in accordance with the provisions of this paragraph 7;

7.9.2. you will give Us written notice of the dispute prior to the Due Date. We shall both use reasonable endeavours to resolve the dispute as amicably and promptly as possible. Following resolution of the dispute, you shall pay any outstanding sums within thirty (30) days of the date on which the dispute is resolved. In the event the dispute is not able to be resolved in accordance with this paragraph then the terms of the dispute resolution paragraph 15.9 will apply.

7.10 Suspension of Services for non-payment. If you do not pay an amount (which is not disputed in good faith):

7.10.1. within thirty (30) days of the Due Date, We will be entitled, at any time thereafter (until payment is made), to suspend the Service. If We do suspend the Service, it may be re-enabled following payment in full of the relevant outstanding amount. We will contact you at least three (3) times outlining details of your overdue invoices before taking any of the actions listed in this paragraph 7.10.1; and

7.10.2. within thirty (30) days of the date of suspension, We may terminate the Agreement and end the Service permanently and charge you a de-installation charge notified to you in advance. If We end the Service in that way, you will still be responsible for your obligations under the Agreement, including the obligation to pay all Charges for the remainder of the Initial Term or Renewal Term; and

7.10.3. within thirty (30) days of the Due Date, We will be entitled to restrict access to Your Equipment until full payment is made in cleared funds of all such amounts due (together with any accrued interest).

7.11 Interest charge. If you do not pay any invoice (which is not disputed in good faith) in full by the Due Date, We will be entitled to charge you interest on the unpaid undisputed amount calculated at a rate of 8% per annum above the prevailing base rate of the Bank of England, that interest charge being applied until the outstanding

undisputed amount is settled in full. Our right to charge interest does not affect our right to take other legal action against you in relation to non-payment of the amount concerned.

7.12 **Increase in Charges.**

7.12.1. From the first day of each Year, the Charges will automatically increase by a percentage amount equal to the increase in the retail prices index (UK)(all items)(as published by the Office for National Statistics) or, a suitable alternative index determined by Us and notified to you from time to time, for the previous calendar year. Charges payable during each subsequent Year will be confirmed to you in writing at least thirty (30) days in advance of the start of that Year.

7.12.2. We may increase the Charges to reflect any change to Energy Charges at any time and from time to time. We will give you written notice as far in advance as reasonably practicable of any resulting increase in the Charges. We shall take steps to minimise any such increases to the extent possible and shall only pass on increases under this paragraph which are proportionate to any increase imposed on Us by Our suppliers.

7.12.3. We may increase the Charges to reflect any increase in the costs of Third Party Services at any time and from time to time. Such increase will take effect from the date the increase is affected by the Third-Party Supplier. We will give you written notice as far in advance as reasonably practicable of any resulting increase in the Charges. We shall only pass on increases under this paragraph which are proportionate to any increase imposed by the Third-Party Supplier.

7.13 **Time and Materials:** Where the Services are provided on a time and materials basis, Our rates will be calculated as follows:

7.13.1. a 'day' will mean a period of seven and a half (7.5) hours, which shall include time spent travelling to and from any of your premises or any other location where the Services are performed as well as any lunch and other breaks. We shall be entitled to charge an overtime rate as specified in the Order Form or Statement of Work for time worked outside this seven and a half (7.5) hour period and/or outside of any Business Days, unless otherwise agreed and set out in the Order Form or Statement of Work;

7.13.2. where Our charges are based on an hourly rate, any time spent which is less than one (1) hour shall be charged on a pro-rata basis per thirty (30) minutes; and

7.13.3. we shall be entitled to vary the hourly (or) day rates during the term of this Agreement. Before implementing new hourly (or) day rates we shall provide them in writing to you.

7.14 For consultancy, changes, extras and undocumented ad-hoc work ordered by you, we will invoice charges on a time and materials basis in accordance with paragraph 7.13 above, unless a different rate has been provided for in writing, in which case the latter rate will apply. You agree to pay such charges.

7.15 **Suspension of Services:** If We suspend the Services pursuant to this Agreement, your corresponding obligation to pay the Charges shall not be suspended.

8. **Acceptance**

8.1 **Acceptance Tests.** You will have a reasonable period of time (up to five (5) Business Days unless otherwise specified in the Order Form) from notification that the Service or Deliverable (as appropriate) is ready for the Acceptance Tests to confirm that the Service or Deliverable meets the Acceptance Criteria or to otherwise confirm in writing that the Service or Deliverable does not conform to the Acceptance Criteria. You shall use best efforts to ensure that the Acceptance Tests are appropriate to the nature of the Services or Deliverable being tested. If you determine, acting reasonably, that the Service or Deliverable does not conform to the Acceptance Criteria you will before the expiry of the five (5) Business Day period provide to Us a written list of such non-conformities.

8.2 **Our Responsibility to Remedy.** We shall remedy the non-conformities which are directly attributable to our acts or omissions, without additional charge, and will repeat the relevant tests within a reasonable time. The above process will be repeated until the Acceptance Tests are confirmed by you as being passed or deemed to have been passed.

8.3 **Non-conformities Outside Our Control.** If any non-conformity cannot be remedied by Us due to an error, defect or fault which We are able to demonstrate to your reasonable satisfaction is outside our control and which

has disabled Our ability to remedy the non-conformity then We may terminate this Agreement in part in respect of the Service or Deliverable subject to such non-conformity without liability to you.

8.4 Deemed Acceptance: In the event you: (i) do not perform the Acceptance Tests within five (5) Business Days, (ii) do not confirm that the Service or Deliverable does not meet the Acceptance Criteria or do not provide the list of non-conformities each within the five (5) Business Day period; or (iii) use the Service or Deliverable in the ordinary course of business, the Acceptance Tests shall be deemed passed on the earlier of the foregoing to occur.

9. Protection of Us. You will indemnify Us or any of Our employees, officers, directors or Affiliates (each "**Our Entity**") for any and all liabilities, losses, costs, damages, expenses, claims or expenses suffered as a result or in connection with: (a) your breach or alleged breach of the AUP or other misuse of the Services; or (b) any damage or destruction to the Data Centre, the Network, Our premises or equipment; or (c) any damage or destruction to any of Our customer equipment or data; or (d) any personal injury to or property damage of any of Our Entity; or (e) failure to meet reasonable privacy and security obligations; or (f) misappropriation or infringement of a third-party's intellectual property rights; or (g) violation of Law, including without limitation, data protection laws; caused by you or that results from a breach of this Agreement by you or something that you have negligently done or failed to do. Your indemnification obligations include claims arising out of the acts or omissions of your contractors, employees, customers or end users, any person to whom you grant access to the Services or the Customer Data, and any person who gains access to the Services or Our data.

10. Limits of Liability

10.1 Limit of exclusions. Nothing in these Terms and Conditions excludes or limits Our or your liability where that liability arises out of the death or personal injury of any person caused by negligence or for any statement that constitutes fraud or fraudulent misrepresentation.

10.2 Service credits. Where applicable to the Service and save to the extent you have an express right to terminate the Agreement as set out in an applicable Service Level, the Service Credit payable will be the sole and exclusive remedy by which you will be compensated for any failure (howsoever arising, whether in contract tort or otherwise) by Us to meet the Service Levels. You agree that the Service Credits are reasonable and proportionate to your legitimate interest in the Services being performed in accordance with paragraph 4.1.1.

10.3 Your obligations. You will take all reasonable measures to prevent and mitigate any losses, damages, costs and expenses that you may suffer or incur and in respect of which you intend to recover (in whole or in part) under or in connection with the Agreement.

10.4 Cap on liability under this Agreement. Provided that paragraph 10.1 will always apply, and subject to paragraph 10.3, Our total aggregate liability to you in relation to any and all loss or damage arising out of or in connection with this Agreement, whether in contract, tort, (including negligence) or otherwise, will be limited to the total Charges paid or payable by you to Us under this Agreement in the 12 month period preceding the date of the first claim (or if the first claim arises during the initial 12 months of this Agreement the Charges that would have been payable for the initial 12 month period).

10.5 Exclusion of losses. Provided that paragraph 10.1 will always apply, We shall not in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any:

- 10.5.1. loss of revenue, profits, sales or contracts;
- 10.5.2. loss of anticipated savings;
- 10.5.3. pure economic loss;
- 10.5.4. loss of, damage to or corruption of data;
- 10.5.5. loss of business opportunity and management time;
- 10.5.6. loss of goodwill;
- 10.5.7. loss from wasted expenditure, wasted time or business interruption; or
- 10.5.8. indirect, special or consequential loss, costs, damages, charges or expenses, howsoever arising (whether or not We knew or ought to have known that such losses or damages might be incurred).

10.6 **Your customers.** You acknowledge that We have no duty to any of your customers or any other recipient of any goods or services that you supply to third parties. Provided that paragraph 10.1 will always apply, We shall not in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any loss or damage that you incur as a result of claims made by any third party or any other recipient of any goods or services that you supply to third parties.

10.7 **Exclusion of implied warranties.** Subject to the warranties that We have given to you under the Agreement, all warranties terms and conditions that would otherwise be implied by statute or at common law are excluded to the fullest extent permitted by law. Furthermore, We do not warrant, guarantee, or undertake that any Service will be uninterrupted, error-free or capable of withstanding all cyber-attacks or other unauthorised hacking or intrusions. Additionally, We make no warranties, express or implied, with respect to any Third Party Service as part of the Service including without limitation, any implied warranties regarding merchantability, availability, non-infringement, title and quiet enjoyment, or fitness for a particular purpose. Our Third Party Suppliers do not warrant that their service will run uninterrupted in all IT environments or be error-free. In the event of any issues or defects with the Third Party Service, We shall promptly notify the Third Party Supplier to remedy the issue or defect but make no warranty regarding the remedy of the same.

10.8 **Cyber risk.** We will perform the Services as set out in the Agreement, We have no knowledge of the data or types of data We host under the Agreement. It is your responsibility to ensure that: (a) the Services are appropriate for the type of data that We host under the Agreement; (b) you have in place appropriate people, controls, processes, systems and software to prevent and mitigate any cyber risk incident; and (c) you have appropriate insurance in place to cover losses arising from any cyber risk incident (aside from any incident caused directly by Our failure to comply with the requirements). Prior to the Effective Date, We will provide you with the information necessary for you to assess and determine whether the technical and organisational measures that We implement meet your requirements. However, except as expressly provided in this Agreement, We do not provide any warranty regarding the adequacy of the Services and do not warrant that the Services, or their design, will protect your data from corruption, theft, loss, or degradation in all circumstances.

10.9 **Regulated Activity.** You accept responsibility for the selection of the Services to achieve the intended results and you acknowledge that the Services have not been developed to meet your individual requirements including any particular cybersecurity requirements you might be subject to or any regulated activity that you may be engaged in (each a "**Regulated Activity**"). If you use the Services for any Regulated Activity you agree to comply with any requirements that apply to such Regulated Activity from time to time (including in any jurisdiction in which you operate or where the Regulated Activity is undertaken) and you shall defend, indemnify and hold Us harmless against any loss or damage (including regulatory fines or penalties) costs (including legal fees) and expenses which We may suffer or incur as a result of your breach of this paragraph or arising from the Regulated Activity.

10.10 **Internet:** The Service may access and transfer information over the internet, and We and Third Party Suppliers do not operate or control the internet. Viruses, worms, trojan horses and other undesirable data or components or unauthorized users (e.g., hackers) may attempt to obtain access to and damage Customer Data, devices and networks. We and Our Third Party Suppliers are not responsible for any such activities.

11. Termination

11.1 **Automatic Renewal.** Unless terminated by either party in accordance with this paragraph 11 or unless expressly stated otherwise in a Schedule, this Agreement shall take effect on the Effective Date and shall continue until the expiry of the Initial Term and thereafter will automatically renew for consecutive periods of 12 months, starting on the expiry of the Initial Term and each anniversary thereof (each period being a "**Renewal Term**"). If you are receiving Professional Services from Us, this Agreement shall take effect on the Effective Date and shall continue until the Professional Services are completed and thereafter this Agreement shall automatically terminate in relation to those Professional Services. For the avoidance of doubt, this Agreement shall continue in accordance with its terms for any other Services that are to be provided after the completion of the Professional Services.

11.2 **Terminating the Agreement on notice.** Either Us or you can end the Agreement (other than in respect of Professional Services) by giving the other party at least ninety (90) days' written notice in advance of and to expire

at the end of the relevant Initial Term or any subsequent Renewal Term. Notices of termination must be sent by you to cancellations@iomart.com.

11.3 Terminating an Agreement following a breach. Either of us may end the Agreement with immediate effect on prior written notice to the other if the other:

11.3.1. materially breaches its obligations under this Agreement and (if such breach is capable of remedy) does not remedy that breach within thirty (30) days after receipt of written notice from the other party to remedy such breach;

11.3.2. (a) suspends, or threatens to suspend, payment of their debts, or is unable to pay their debts as they fall due or admit inability to pay their debts, or (being a company) they are deemed unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986; (b) commences negotiations with all or any class of their creditors with a view to rescheduling any of their debts, or make a proposal for or enter into any compromise or arrangement with their creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of their company; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with their winding up (being a company); (d) an application is made to court, or an order is made, for the appointment of an administrator, or an administrator is appointed over them (being a company); (e) the holder of a qualifying floating charge over their assets (being a company) has become entitled to appoint or has appointed an administrative receiver; or (f) a person becomes entitled to appoint a receiver over their assets or a receiver is appointed over their assets; (g) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, them or any part of their assets and such attachment or process is not discharged within 14 days; or (h) any event occurs, or proceeding is taken, in any jurisdiction to which they are subject that has an effect equivalent or similar to any of the events mentioned in this paragraph; or

11.3.3. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of their business.

11.4 Our specific rights to end the Agreement. We may end the Agreement with immediate effect on written notice to you where:

11.4.1. your financial position deteriorates so far as to reasonably justify, in Our opinion, that your ability to pay the Charges pursuant to the terms of this Agreement is in jeopardy;

11.4.2. you have breached the AUP (if applicable);

11.4.3. any other agreement between you and Us is terminated by Us under circumstances similar to those set out in paragraphs 11.3 or this paragraph 11.4.

11.5 Termination of a EULA. Where a Third Party Supplier elects to terminate or suspend your licence pursuant to the terms of a EULA, Our obligation to make the relevant Third Party Services available to you shall also be terminated or suspended. You shall remain liable to Us for any Charges payable in respect of such terminated or suspended licence.

11.6 Continuing liability. Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

11.7 The position after the Agreement ends. When the Agreement expires or terminates:

11.7.1. We will immediately stop providing the relevant Service (including Third Party Services) provided that any licences acquired under the NCE may continue pursuant to the terms of the MCA;

11.7.2. you will comply with the requirements of the relevant EULA relating to the removal of Third-Party Services and/or Your Software;

11.7.3. payments due or payable (but not yet due) by you under the Agreement will become due and payable immediately, including any unpaid Charges due for the remainder of the Initial Term or any Renewal Term and/or pursuant to paragraph 7.4;

11.7.4. within thirty (30) days after the Agreement ends, each of us will return all Confidential Information of the other in its possession at the time the Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement;

11.7.5. you shall return any Deliverables which have not been fully paid for. If you fail to do so, then We may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;

11.7.6. you are responsible for preserving your data upon termination or expiration of this Agreement. In the event of termination or expiration of this Agreement: (i) all rights and licenses to the Services (including Third Party Services) and related materials under this Agreement shall immediately cease. We or Our Third Party Suppliers shall make any Customer Data We or they have access to available to you for a period of thirty (30) days following such termination or expiration. During such thirty-day time period, upon your request, We and/or the Third Party Suppliers shall provide all relevant information and make the Customer Data available to you. You shall, subject to the terms of the Exit Plan Schedule (where applicable), be solely responsible for migrating any Customer Data you have not deleted to a new subscription with a Successor Supplier. Following expiry of the thirty day period or upon delivery of the Customer Data to you, We shall promptly expunge from Our systems and otherwise destroy or dispose of all of the Customer Data in Our possession or control.

11.8 **Third Party Supplier Fees.** You acknowledge that, in order to deliver the Services, We may enter into contracts with Third Party Suppliers. If any Agreement is terminated for any reason other than by you under paragraph 11.3, you shall, without prejudice to Our other rights and remedies, immediately pay to Us all fees that We are liable to pay to such parties to terminate such contracts (as notified to you in writing by Us). You acknowledge that the termination fees may include payment of fees to the third-party suppliers for the minimum term of such contracts.

11.9 You shall indemnify Us against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against Us in respect of any claim or action brought against Us by one of the third-party suppliers described in paragraph 11.8 which results from your breach of any Agreement that causes Us to be in breach of such third-party contract.

11.10 **Termination of SLA.** On termination or expiry of the Agreement for any reason, any Service Levels which apply to the relevant Services, will no longer apply and will cease to have effect. Service levels will not apply to the provision of any termination assistance (if applicable) or any Services that may continue for any reason after expiry or termination.

11.11 **Exit Plan.** Where noted in the Order Form that the Exit Plan Schedule will apply, following the Start Date and on termination or expiry of this Agreement, the parties will comply with the provisions of the Exit Plan Schedule to ensure an orderly transition of the Services to you or any Successor Supplier.

11.12 **Survival.** On termination or expiry of the Agreement for any reasons, those paragraph (including those in any Schedules or Appendices) which are intended to continue or come into force on or following termination shall survive and continue in full force and effect including without limitation, paragraph 1 (Your Agreement with Us), paragraph 2 (Terminology), paragraph 3 (Order Process), paragraph 4.4 (The Services that We will provide) paragraphs 5.8–5.12 (Third Party Services), paragraphs 6.2, 6.3, 6.4, 6.6, 6.8 & 6.9 (Our Commitments to one another) paragraphs 7.1 – & 7.10 (inclusive) (Chares and their payment), paragraph 9 (Protection of Us), paragraph 10 (Limits of Liability), paragraphs 11.6 – 11.12 (Termination), paragraph 12 (Protection of Confidential Information), paragraph 13 (Protection of Personal Data), paragraph 14 (Intellectual Property), paragraph 15 (General Provisions).

12. Protection of Confidential Information

12.1 **Information concerned.** Each of us acknowledges that we will have access to certain confidential information of the other party concerning the other party's business, financial information, pricing, plans, customers, technology, and products, including the terms and conditions of the Agreement, proprietary software and customer information ("**Confidential Information**").

12.2 **Maintaining secrecy.** Each of us agrees that except as expressly permitted under this Agreement or as required to perform the Services, we will not use in any way, for our own account or the account of any third party, nor disclose to any third party, except as required by Law or as reasonably necessary to that party's professional advisors (or in Our case, to the other operators of Our global network), or to a Successor Supplier pursuant to

paragraph 11.11, any of the other party's Confidential Information and that we will each take reasonable precautions to protect the confidentiality of that information.

12.3 Exceptions. Information will not be deemed Confidential Information if that information: (a) was already known or becomes known to the receiving party from a source other than the disclosing party; (b) becomes publicly known or becomes no longer secret or confidential, except through a breach of an agreement by the receiving party; (c) is independently developed by the receiving party. The obligations in this paragraph 12 shall not apply to Confidential Information that is required to be released by Law, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.

12.4 Publicity. We shall be entitled to reference you as Our customer, including use your name, logo and other trade mark in Our publicity materials including but not limited to press releases and online marketing. You will also provide, from time to time, verbal customer references regarding the Services and Our delivery of the Services to other customers or potential customers of Us.

13. Protection of Personal Data

13.1 In this paragraph, the terms "Personal Data", "Controller", "Processor", "Data Subject", "Process(ing)", "Data Protection Impact Assessments" and "Personal Data Breach" have the meanings given in Applicable Data Protection Law.

13.2 Each party shall comply at all times with Applicable Data Protection Law and shall not perform its obligations under the Agreement in such a way as to cause the other to breach any of its applicable obligations under Applicable Data Protection Law.

13.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

13.3.1. We shall act as Controller in respect of any Personal Data we collect from You in the administration of this Agreement and as more particularly set out in our Privacy Notice;

13.3.2. We shall Process the Personal Data set out in the Order Form as Processor. The scope, nature and purpose of processing by Us, the duration of the Processing and the types of Personal Data and categories of Data Subject are set out below:

13.3.3. Duration of Processing: The term of this Agreement and thereafter to the extent required to exercise rights or perform obligations under this Agreement;

13.3.4. Nature of Processing: Collecting, recording, organising, storing, restricting, deleting data;

13.3.5. Purpose of Processing: For the provision of the Services pursuant to the Agreement to you;

13.3.6. Personal Data categories of processing: as set out in the Order Form; and

13.3.7. Data Subjects: as set out in the Order Form.

13.4 The parties acknowledge that the factual arrangement between them dictates the classification of each party as either a Controller or Processor under Applicable Data Protection Law. Notwithstanding the foregoing, the parties acknowledge that:

13.4.1. where We only provide colocation services under the Agreement, We will not be a Processor; and

13.4.2. where Personal Data is not accessible or likely to be accessible by Us, We will not be a Processor, and therefore, in either case, the obligations of paragraphs 13.7 to 13.11 shall not apply.

13.5 By entering into this Agreement, you consent to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Us in connection with our Processing of Personal Data as a Controller in accordance with the Privacy Notice.

13.6 Where We act as a Processor of any Personal Data, the terms of paragraphs 13.7 to 13.11 shall apply.

13.7 With respect to the party's rights and obligations under the Agreement, the parties agree that you are the Controller and that We are the Processor. Accordingly, you retain control of the Personal Data and remain responsible for your compliance obligations under the Applicable Data Protection Law, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions given to Us.

13.8 Where We process Personal Data as a Processor on your behalf, We shall:

13.8.1. Process the Personal Data only in accordance with Applicable Data Protection Law and instructions from you (which may be specific instructions or instructions of a general nature as set out in the Agreement or as otherwise notified by you to Us during the term of the Agreement) and in accordance with the details in the Annex to this Agreement;

13.8.2. take reasonable steps to ensure the reliability of any of Our staff who have access to the Personal Data, and ensure such staff are trained in the care and handling of Personal Data and have given appropriate binding undertakings of confidentiality;

13.8.3. notify you without undue delay and, in any event, within five (5) Business Days, if it receives:

13.8.3.1. a request from a Data Subject to have access to their Personal Data; or

13.8.3.2. a complaint or request relating to your obligations under Applicable Data Protection Law;

13.8.4. taking into account the nature of the Processing, assist and cooperate with you at your cost (including by using appropriate technical and organisational measures, in so far as this is possible), to respond to complaints or requests from Data Subjects exercising their rights under Applicable Data Protection Law, including by:

13.8.4.1. promptly providing you with full details of a complaint or request received by Us; and

13.8.4.2. upon your request, promptly providing information which you require in order to comply with a request from a Data Subject exercising their rights under Applicable Data Protection Law (including a 'subject access request').

13.8.5. as standard and free of charge, provide You with details of our governance, regulatory, and compliance credentials and associated controls where these are appropriate to share externally and do not impact the confidentiality and/or security of Us, any other customers, our Third Party Suppliers, or which would otherwise constitute a breach of Applicable Data Protection Law. This information can be made available on request and may be provided in the form of documentation or access to a self-service portal. We will provide this information only for credentials that We hold, and any exceptional requests regarding other standards be subject to additional scoping and charges as Professional Services and covered under a statement of works. We may permit you or your representatives access to any location where We process Personal Data during normal business hours to inspect and audit, on reasonable prior notice and no more than once per Year, Our data Processing activities and comply with all reasonable requests or directions by you to enable you to verify and/or procure that We are in full compliance with Our obligations under this paragraph 13.8. Such access, inspection and audit, requests or directions will be subject to additional scoping and charges as professional services and covered under a separate statement of works. You or your representative shall be required to adhere to any applicable site and security policies in the performance of such an audit or inspection. Any information disclosed to you during or as a result of such access, inspection or audit shall be deemed to be Our Confidential Information.

13.8.6. provide, following your request and at your cost, a written description of the technical and organisational methods employed by Us for Processing Personal Data (within the timescales reasonably required by you). You have, before the date of this Agreement, reviewed and confirmed the technical and organisational methods employed by Us are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

13.8.7. be entitled to engage sub-Processors (as a subcontractor), subject to:

13.8.7.1. the relevant subcontractor being engaged by way of a written contract which imposes obligations on the subcontractor which are at least equivalent to the obligations imposed on Us pursuant to this paragraph 13.8; and

13.8.7.2. the relevant subcontractor providing sufficient guarantees to Us in terms of expert knowledge, reliability, and resources to implement technical and organisational measures which will meet the requirements of Applicable Data Protection Law,

and all sub-Processors engaged by Us as at the Effective Date shall be deemed authorised;

13.8.8. in addition to the sub-Processors engaged pursuant to paragraph 13.8.7, be entitled to engage additional or replacement sub-Processors (as a subcontractor), subject to:

13.8.8.1. the provisions of paragraph 13.8.7.1 and 13.8.7.2 being applied; and

13.8.8.2. US notifying you of the additional or replacement sub-Processor, and where you object to the additional or replacement Processor, the parties shall discuss the objection in good faith. Following such discussion, if you continue to object to the changes and cannot demonstrate, to Our reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, you shall indemnify Us for any losses, damages, costs (including legal fees) and expenses suffered by Us in accommodating the objection;

13.8.9. save where such countries have been deemed by the Information Commissioner's Office ("**ICO**") or the European Commission to be providing an adequate level of protection pursuant to the relevant provisions of Applicable Data Protection Law not Process Personal Data outside the UK or European Economic Area without your prior written consent and, where you consent to a transfer, to comply with any reasonable instructions notified to it by you. Notwithstanding the foregoing, We are expressly permitted and instructed by you that We may transfer Personal Data to any of Our Affiliates and any of Our subcontractors, subject to first ensuring that adequate protections are in place to protect the Personal Data consistent with the requirements of Applicable Data Protection Law;

13.8.10. at your cost and taking into account the nature of the Data Processing and the information available to Us, assist you in ensuring your compliance with your obligations to:

- 13.8.10.1. ensure the security of the Processing;
- 13.8.10.2. notify Personal Data Breaches to the ICO;
- 13.8.10.3. notify Personal Data Breaches to the Data Subjects;
- 13.8.10.4. carry out Data Protection Impact Assessments; and
- 13.8.10.5. consult the ICO in respect of Data Protection Impact Assessments, pursuant to Articles 32 to 36 of UK GDPR (respectively); and

13.8.11. notify you without undue delay upon becoming aware of a Personal Data Breach.

13.9 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, you and We will take, implement and maintain such technical and organisational measures as are appropriate to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure.

13.10 At times, Our Third Party Suppliers' may be required to access or disclose Customer Data: (i) to provide the Services; (ii) to respond to a validly issued subpoena, an investigative demand or warrant; (iii) to investigate or prevent security threats, fraud, or other illegal, malicious, or inappropriate activity; (iv) to enforce or protect their rights and properties or those of its Affiliates or subsidiaries; or (v) with the informed consent of the data subject.

13.11 To the extent that Our performance of Our obligations under the Agreement involves the Processing of Personal Data on your behalf, you shall ensure:

13.11.1. you are not subject to any prohibition or restriction which would prevent or restrict you from disclosing or transferring such Personal Data to Us, as required under the Agreement; and

13.11.2. you have lawful grounds for Processing such Personal Data, including (if applicable) the consent of the individual to whom such Personal Data relates (and that such consent shall be valid under Applicable Data Protection Law).

13.12 Where under Applicable Data Protection Law (including without limitation Article 82 of UK GDPR and any applicable Law where you and the Us may incur joint and several liability as Controller and Processor with any other person) We incur any costs, liability, damages, claims or expenses, you shall indemnify Us on demand against all such costs, liability, damages, claims or expenses, save for such liability as corresponds directly to Our part of the responsibility for the damage caused by Our breach of the obligations of Applicable Data Protection Law or the Agreement.

13.13 **International Customers.** You acknowledge and agree that if you are a business located in a territory outside the UK, it is your responsibility to ensure compliance with Applicable Data Protection Law (or equivalent) in relation to transfers of your personal data from Us to you.

13.14 PCI DSS Requirements. Without prejudice to your other obligations set out in this Agreement, in accordance with best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data, should you use the Services to store, process or transmit credit or debit card information you will:

- 13.14.1. inform Us in writing as soon as practicable and, in any event, before you do so;
- 13.14.2. comply with the PCI DSS requirements; and
- 13.14.3. you will take all necessary steps to ensure you are properly advised by your card acquirer or a PCI DSS Qualified Security Assessor (QSA) with regards to your obligations and appropriateness of your Service.

13.15 Business Continuity. We warrant that We have and will undertake to maintain a business continuity plan for Our operations that is consistent with the international standards ISO 22301:2019, ISO 27001:2013 and ISO 9001:2015. While We take all steps listed in the Agreement to protect your data, this does not constitute an absolute guarantee that a third party will not try to access, interrupt, delete or compromise your data. You are therefore responsible for determining the ultimate safety and integrity of your data.

14. Intellectual Property

14.1 Nothing in this Agreement affects either party's rights in and to any IPR that existed prior to the date of this Agreement (including pre-existing IPR of either party contained in or relating to Confidential Information).

14.2 You acknowledge and agree that, as between the parties, We and/or Our Third Party Suppliers own all IPR in any Software, Work Product and in all other materials connected with the provision of the Services and/or developed or produced in connection with this Agreement by Us, sub-contractors or agents. Except as expressly stated in this Agreement, this Agreement does not grant you any rights to such IPR.

14.3 We acknowledge and agree that you own and retain all rights, title and interest in and to the Customer Data. Save to the extent necessary for the provision of the Services and performance of Our obligations under this Agreement, We shall have no rights to access, use or modify the Customer Data unless we have your prior written consent. You hereby grant Us a worldwide, non-exclusive, royalty-free, fully-paid up, transferable and sublicensable right to use, replicate, deduplicate, and store Customer Data for the purpose of delivering the Service pursuant to these Terms, improving the Services, and to enable Third Party Suppliers to provide the third Party Services, analyse and improve the Third Party Services and for any other purposes set out in the relevant EULA.

14.4 We grant you (for the term of this Agreement only) a non-transferable, non-exclusive, royalty-free, worldwide licence to use, all of the Work Product IPR solely to the extent and as incorporated by Us into the Work Product solely in connection with your receipt of the Services in accordance with this Agreement. Such licence will terminate on the termination or expiry of this Agreement.

14.5 Technology and Content: Our owned or licensed hardware, software, code, trademarks, trade secrets, proprietary methods and systems used to provide the Services (collectively, the "**Technology**") and the content made available or displayed by Us, Our Third Party Suppliers through the Services, including all text, graphics, images, trade names, service marks, product names, and the look and feel of the Solutions (collectively, the "**Content**") are owned by or licensed to Us and / or Our Third Party Suppliers. Other than the authorisations or licenses expressly granted by Us to you in this Agreement, no assignment or other transfer of ownership or any other rights shall be conferred or vest in and to the Technology or the Content to you, either by implication, estoppel, or otherwise.

15. General Provisions

15.1 Unenforceable Provisions. If any part of the Agreement is found by a court or other competent authority to be illegal or unenforceable then that part shall be deemed not to form part of this Agreement and the rest of the Agreement will remain in full force and effect.

15.2 Circumstances outside either party's control. Except for the obligation to pay money, neither you nor Us will be liable for any failure or delay in meeting our respective obligations under the Agreement, or for credits due under the SLA, due to any cause beyond our reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage, epidemic or pandemic or dispute, governmental order or act or failure of the Internet (a "**Force Majeure Event**"), provided that whichever of us is affected: (a) gives the other

prompt notice of the situation; and (b) uses reasonable commercial efforts to correct promptly the failure or delay in performance.

15.3 No property rights. The Agreement is a services agreement and is not intended to and does not grant a lease or licence over any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in any Data Centre (or, if applicable to the Services or equipment to be supplied to you, any space in any of Our Data Centres where Your Equipment is kept) or in Our other premises (including the location where the Services are provided).

15.4 Transfer of rights. The Agreement is personal to you, and you may not assign or transfer your rights or subcontract your obligations under the Agreement either in whole or in part without Our prior written consent. We will not unreasonably refuse that consent. We may assign or transfer Our rights or subcontract Our obligations under the Agreement either in whole or in part.

15.5 Third Party Rights: Other than as expressly stated otherwise (including the rights of any Third Party Suppliers set out herein), a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

15.6 Notices. Any notice given under the Agreement must be in writing and may be delivered personally, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the registered address or such other address as either of us may nominate in writing. That notice will be deemed to have been given on the date delivered, or five (5) days after mailed or sent, whichever is earlier. Notices will not be validly sent by e-mail. Notices sent to Us must be addressed to the Chief Financial Officer.

15.7 Status of the parties. We and you are independent contractors, and this Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.

15.8 Changes to the Agreement. Other than the express rights We have to vary the Agreement set out herein, the Agreement may only be amended if both of us agree in writing by way of an addendum or other written agreement entered into by and signed on behalf of both of us. Notwithstanding the foregoing, we reserve the right to modify or amend any terms or provisions of this Agreement in order to comply with Law. Any such modifications or amendments shall be effective upon written notice to you. We shall make reasonable efforts to minimize any adverse impact on you as a result of such changes

15.9 Dispute resolution. If a dispute arises between you and Us relating to the Agreement you and Us will use reasonable commercial efforts to resolve the dispute at senior management level within twenty eight (28) days of the dispute arising, failing which:

15.9.1. you and Us agree that, within fourteen (14) days of the failure to resolve the dispute, either of us may pass the dispute to an Alternative Dispute Resolution ("ADR") procedure officer of the Centre for Dispute Resolution ("CEDR") as adopted by a suitable qualified mediator in London, England appointed by the senior executive officer of CEDR. Each of us will meet Our own costs in those proceedings unless we agree otherwise as part of any settlement. If the dispute has not been resolved within a further twenty eight (28) days or if either of us refuses or ceases to participate in an ADR procedure, or you and Us cannot agree on an ADR procedure within fourteen (14) days of the failure to resolve the dispute, either of us may refer the dispute to the English Courts; and

15.9.2. nothing in this paragraph 15.9 prevents either of us from going to court to seek a preliminary injunction or other order or to pursue other remedies at any time if either of us thinks that such an action is necessary.

15.10 Delay in exercising rights. If either of us does not exercise a right which we have under the Agreement or at law, or if either of us delays in exercising that right, we will not be prevented from exercising that right at a later date. No waiver by either party of any breach of or compliance with any provision of this Agreement shall be effective unless made in writing and signed by the waiving party.

15.11 Documents making up this Agreement. This Agreement comprises the complete agreement and understanding between us in relation to the relevant Services and replace any other agreement or understanding between us, written or oral. It does not include any marketing materials, tender documents or response to tender documents of any nature. If a conflict is identified between the Order Form, these Terms and Conditions, any

Schedules or appendices and any other document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order:

- 15.11.1. the Order Form;
 - 15.11.2. any provision of the schedules that expressly takes precedence over these Terms and Conditions;
 - 15.11.3. these Terms and Conditions;
 - 15.11.4. the remaining provisions of the Schedules;
 - 15.11.5. the appendices to the Schedules; and
 - 15.11.6. any other document incorporated by express reference into this Agreement.
- 15.12 **Governing law.** This Agreement and any claims arising out of it or in connection with it (including non-contractual claims) will be governed by English law and both of us agree that the English Courts will have exclusive jurisdiction.