

ABYASA LTD – CONTRACT TERMS AND CONDITIONS

Dated 01st February 2025

Agreed terms.

- (A) The Supplier has developed and owns or has licensed from third parties certain computer software applications that will aid and support educational establishments in the placing of trainees in a working environment
- (B) The Customer wishes to purchase access to certain Software in accordance with these Conditions and the Supplier agrees to provide certain services in respect of the support and maintenance of the Software in accordance with these Conditions.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Abyasa Pro Software : that web-based application named Abyasa Pro provided by the Supplier to the Customer via www.abayasa.net or any other Uniform Resource Locator (URL) notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Abyasa SPWeb Software : that web-based application named Abyasa SPWeb provided by the Supplier to the Customer via www.abayasa.net or any other Uniform Resource Locator (URL) notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Acceptance : the date on which an Acceptance Certificate is issued or the date on which the Licensed Software shall be deemed to have passed the Acceptance Tests in accordance with clause 5.

Acceptance Certificate : a certificate issued by the Customer when the Licensed Software has been successfully configured to the Customer's System and has successfully passed the Acceptance Tests.

Acceptance Tests : the tests that the Customer will carry out on the Licensed Software once it is Ready for Testing in accordance with clause 5.

Administrative Users : means the Administrative SP1 Users and Administrative Website Users.

Administrative SP1 Users : those employees, contractors or workers of the Customer who are given Administrative SP1 User Access in accordance with the Order, subject to the Administrative User Cap.

Administrative SP1 User Access	: means access to the administrative pages of the SP1 Software via the Supplier's remote desktop application.
Administrative SP1 User Cap	: has the meaning given in the Order.
Administrative Website Users	: those employees, contractors or workers of the Customer who are given Administrative Website User Access in accordance with the Order, subject to the Administrative User Cap.
Administrative Website User Access	: means access to the administrative pages of the web-based application or website via of the Supplier's web application.
Administrative Website User Cap	: has the meaning given in the Order.
Authorised Users	: those employees, agents, independent contractors, affiliates, students, applicants, teachers and other persons nominated by the Customer who are authorised by the Supplier to use the Licensed Software and the Documentation, as further described in clause 3.2, including the Administrative SP1 Users, the Administrative Website Users and the General Users.
Backup Policy	As stated in Schedule 5
Business Day	: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Completion Date	: the date set out in the Order by which the Supplier is to provide the Licensed Software Ready for Testing, or any such later date as may be agreed between the parties.
Conditions	: these terms and conditions as amended from time to time in accordance with clause 18.
Confidential Information	: information that is proprietary or confidential and is either clearly labelled as such or is identified as Confidential Information in clause 13.6 or clause 13.7.
Contract	: the contract between the Supplier and the Customer for the supply of Software in accordance with these Conditions.
Contract Value	: the total fee set out in the Order.
Customer	: the person or entity who purchases Software from the Supplier in accordance with these Conditions.
Customer Data	: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Licensed Software or facilitating the Customer's use of the Licensed Software.

Customer's System	: the Customer's existing IT system including all hardware and software.
DPA 2018	: Data Protection Act 2018.
Deliverables	: the Licensed Software and the Documentation provided to the Customer by the Supplier under these Conditions.
Documentation	: the document made available to the Customer by the Supplier online via www.abayasa.net from time to time which sets out a description of the Licensed Software and the user instructions for the Licensed Software, including technical literature and all other related materials in eye-readable form supplied to the Customer by the Supplier for aiding the use and application of the Licensed Software, including any Supported Software.
Dispute Resolution Procedure	: means the procedure for resolving a dispute set out in clause 28.
Equipment	: such computer equipment as may be specified by the Customer from time to time.
Fault	: has the meaning given in Schedule 3.
Fault Correction	: has the meaning given in Schedule 3.
Force Majeure Event	: means any cause affecting the performance by a party of its obligations under these Conditions arising from acts, events, omissions or non-events beyond its reasonable control, including, but not limited to: • Acts of God, natural disasters, or extreme weather conditions; • War, riots, terrorism, civil unrest, pandemic or epidemic or other outbreaks of disease, or government-imposed restrictions; • Widespread internet or network outages not attributable to the Supplier; • Failures or delays caused by third-party service providers or infrastructure, including Microsoft; • Customer's failure to provide timely access to systems, environments, or data; • Misuse of the services by the Customer or its users; • Use of unsupported configurations or unauthorized changes made by the Customer.

General Users	: means the employees, contractors, teachers, students and other academic staff of the Customer who have been granted General User Access in accordance with the Order or as otherwise agreed between the parties from time to time, subject to the General User Cap.
General User Access	: access to the Abyasa Pro Software via the Supplier's general users' web-based application and/or website.
General User Cap	: has the meaning given in the Order.
Kloaket	: means Kloaket Technologies Pvt. Ltd, a private limited company duly incorporated under the Indian Companies Act, 1956 and having its registered office at Door No. 2/379, Kelapete, Maravanthe, Kundapura - 576224, Karnataka, INDIA.
Licensed Software	: the Software licensed to the Customer under these Conditions, as specified in the Order.
Longstop Date	: has the meaning given in the Order.
Maintenance Charge	: the annual fee for Support and Maintenance Services to be provided under clause 11.6.
Order	: The Customer's order for Software and Support and Maintenance Services as set out in the form set out in Schedule 1 and emailed to the Supplier or otherwise submitted through the website www.abayasa.net .
Project Plan	: means any plan in relation to the provision of the Licensed Software or any part of it, including the Support and Maintenance Services as agreed between the parties from time to time.
Ready for Testing	: fully configured, tested by the Supplier and ready for Acceptance Tests to be performed by the Customer in accordance with clause 5.
Renewal Period	: Any period during which the Subscription Term is renewed by mutual agreement between the Parties at the end of the Subscription Term.
Software	: the online software applications provided by the Supplier to the Customer under these Conditions via www.abayasa.net or any other Uniform Resource Locator (URL) notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation, including the SP1 Software, Abyasa SPWeb Software and the Abyasa Pro Software.
Software Implementation Fee	: the Software implementation fee set out in the Order.

Software Hosting Fees	: the Software hosting fees payable by the Customer to the Supplier, as set out in the Order.
Specification	: means any specification for the provision of the Licensed Software agreed between the parties.
Service Levels	: the agreed service levels for the Licensed Software as set out in Schedule 4.
SP1 Software	: that windows application named Abyasa SP1 provided by the Supplier to the Customer via www.abayasa.net or any other Uniform Resource Locator (URL) notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
Subscription Fees	: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order.
Subscription Term	: the term of the Contract as set out in the Order, including any Renewal Period.
Supplier	: ABYASA LIMITED incorporated and registered in England and Wales with company number 06071476 whose registered office is at Enterprise House C/O Integrate Accountants, Ocean Way, Southampton, SO14 3XB.
Supplier's Personnel	: means all employees, workers, contractors, sub-contractors, outsourcing partners, and agents of the Supplier, including those of Kloaket.
Support and Maintenance Services	: the support and maintenance services to be provided by the Supplier in respect of the Licensed Software as set out in clause 10, Schedule 3 and Schedule 4 and which are purchased and set out in the Order, including analysis, coding, testing, and release of corrections to Software Faults. Maintenance shall be within reasonable limits, as determined by the Supplier, and does not include requests for basic product training or technical consulting.
Supported Software	: the Licensed Software together with any releases or enhancements of software that have been made generally available to, and accepted by, the Customer during the preceding 2 years.
Third Party Software	: any third-party software forming part of the Software, including the Microsoft server.
User Subscriptions	: the user subscriptions purchased by the Customer pursuant to clause 11.1 which entitle Authorised Users to access and use the Licensed Software and the Documentation in accordance with these Conditions.
Virus	: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise

adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

UK Data Protection Legislation

: all applicable data protection and privacy legislation in force from time to time in the UK including the retained parts of the General Data Protection Regulation ((EU) 2016/679); the DPA 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- 1.2 Clause headings shall not affect the interpretation of these Conditions.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Conditions.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Conditions under that statute or statutory provision.
- 1.9 A reference to writing or written includes fax but not e-mail.
- 1.10 References to clauses are to the clauses of these Conditions.

2. Basis of contract

- 2.1 The Supplier has developed its Software applications and platforms which it makes available to subscribers via the internet on a pay-per-use-basis for the educational sector. In order to purchase access to the Software, the Customer must submit an Order to the Supplier setting out the package it requires in respect of the Software via the Supplier's website www.abayasa.net or any other URL notified to the Customer by the Supplier from time to time.
- 2.2 The Order constitutes an offer by the Customer to purchase access to the Software in accordance with these Conditions.

- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order via email to the Customer at which point and on which date the Contract shall come into existence. The Parties agree that the Contract commenced on 1st February 2025.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures (whether hard copy or online), are issued or published for the sole purpose of giving an approximate idea of the Software described in them and its use and functionality. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

3. User Subscriptions

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 2, 4.3 and clause 11.1, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions and the Order, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Licensed Software and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2 The Customer undertakes that:
- (a) the maximum number of Administrative SP1 Users and Administrative Website Users that it authorises to access and use the Licensed Software and the Documentation shall not exceed the Administrative SP1 User Cap or the Administrative Website User Cap respectively;
 - (b) the maximum number of General Users that it authorises to access and use the Licensed Software and the Documentation shall not exceed the General User Cap;
 - (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Licensed Software and/or Documentation;
 - (d) each Authorised User shall keep a secure password for his use of the Licensed Software and Documentation, that such password shall be changed no less frequently than every three calendar months and that each Authorised User shall keep his password confidential;
 - (e) it shall permit the Supplier to audit the Licensed Software in order to verify the identity and valid category of user of each Authorised User. Such audit may be conducted no more than once per year, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (f) if any of the audits referred to in clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

- (g) if any of the audits referred to in clause 3.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 30 Business Days of the date of the relevant audit.
- 3.3 The Customer shall not, and shall procure that no Authorised User shall, access, store, distribute or transmit any Viruses, or any material during the course of their use of the Licensed Software that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any Authorised User's access to the Licensed Software accordingly.
- 3.4 The Customer shall not, and shall procure that no Authorised User shall:
 - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Licensed Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Licensed Software; or
 - (b) access all or any part of the Licensed Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation; or
 - (c) use the Licensed Software and/or Documentation to provide software to third parties; or
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Software and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Licensed Software and/or Documentation, other than as provided under this clause 3; or

- (f) upload, post, host or transmit unsolicited email, SMSs or “spam” messages; or
 - (g) exceed a bandwidth usage of 50GB per month. If this bandwidth is exceeded or the average bandwidth usage of other Customers (as determined by the Supplier) is significantly exceeded, then the Supplier reserves the right to immediately disable the Customer’s and any Authorised Users’ accounts or throttle the Customer’s connection until the Customer reduces its bandwidth consumption.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Licensed Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 4. Additional user subscriptions**
- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of any restrictions set out in the Order, including the Administrative SP1 User Cap, Administrative Website User Cap and the General User Cap, and the Supplier shall grant access to the Licensed Software and the Documentation to such additional Authorised Users in accordance with the provisions of these Conditions.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 days of its approval of the Customer's request.
- 4.3 The Customer shall, within 14 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Order and, if such additional User Subscriptions are purchased by the Customer part way through the Subscription Term or any Renewal Period (as applicable), the relevant Subscription Fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Subscription Term or then current Renewal Period (as applicable), however the Customer shall be liable to pay the full annual Software Hosting Fee in relation to such additional User Subscriptions notwithstanding the fact that such additional User Subscriptions were purchased part way through the Subscription Term.
- 5. Software and Configuration**
- 5.1 The Customer acknowledges that the Licensed Software is the Supplier’s standard Software made generally available to other organisations and the Licensed Software is to be configured to meet the agreed parameters set out in the Order or in any agreed Specification, but the Software has not been developed and will not be further developed specifically for the Customer. Promptly after entering into the Contract, the Supplier shall undertake work to ascertain the Customer’s requirements to configure the Licensed Software in accordance with the Order or any Specification, provide the Licensed Software Ready for Testing and to enable the Customer to complete the Acceptance Tests. Both parties shall work together in good faith to agree any Specification and the Project Plan.
- 5.2 The Supplier shall create a Project Plan which reflects the work required to configure the Licensed Software to make it Ready for Testing and any proposed timescales. If the Customer rejects the draft Project Plan (acting reasonably) the Customer shall inform the Supplier in writing of its reasons for its rejection by way of Notice of Rejection. The Supplier shall then revise the draft Project Plan taking reasonable account of the Customer’s comments and shall resubmit a revised draft Project Plan to the Customer for the Customer’s reasonable approval within 5 Business Days of the date of the Customer’s Notice of Rejection. Either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 5.3 Subject to these Conditions, the Supplier hereby agrees to:
- (a) supply the Licensed Software for the duration of the Contract;
 - (b) use its reasonable endeavours to provide the Licensed Software Ready for Testing by the Completion Date and to comply with the any timescales set out in the Project Plan;
 - (c) host the Licensed Software; and
 - (d) provide the Support and Maintenance Services in accordance with clause 10.
- 5.4 The Supplier shall not be liable for any delay in providing the Licensed Software Ready for Testing or complying with any date set out in the Project Plan where such delay results from any Force Majeure Event or the failure of the Customer System or any Third Party Software or the failure of the Customer to comply with its obligations under these Conditions including any failure to provide information or assistance requested by the Supplier in order to comply with its obligations under these Conditions.
- 5.5 Once the Supplier has confirmed that the Licensed Software is Ready for Testing, the Customer and the Supplier jointly together will produce a set of tests which are designed to prove that the Licensed Software performs in accordance with any Specification. The Acceptance Tests will be carried out by the Customer and will include:
- (a) testing for successful configuration; and
 - (b) penetration testing.
- 5.6 The parties shall agree the scope of the Acceptance Tests between them and the Customer shall give the Supplier as much notice as possible before carrying out the Acceptance Tests. The parties shall co-operate fully in organising the Acceptance Tests and the Customer shall formally document the Acceptance Tests and the result thereof. Upon successful completion of the Acceptance Tests, the Customer shall sign an Acceptance Certificate within 5 Business Days of successful completion at which point Acceptance shall occur.
- 5.7 If the Licensed Software fails any of the Acceptance Tests, the Customer shall notify the Supplier in writing within 5 Business Days of the test (**Failure Notice**) setting out in reasonable detail the suspected nature of the defects giving rise to such failure or failures. In the event that the Supplier receives a Failure Notice, then the Supplier shall at its own expense use all reasonable endeavours to adapt, modify or otherwise correct the relevant Acceptance Test to which the Failure Notice relates or, where possible, the Licensed Software to the extent necessary for those test items to pass the Acceptance Tests and resubmit. After resubmission, the Customer shall have 5 Business Days to issue an Acceptance Certificate or a further Failure Notice.
- 5.8 The Customer may choose to waive any Failure Notice and proceed to issue an Acceptance Certificate if it so chooses. If the Customer fails to issue an Acceptance Certificate or a Failure Notice within the timescales set out in clause 5.6 and 5.7 above, then an Acceptance shall be deemed to have occurred.
- 5.9 To the extent that the Licensed Software is not Ready for Testing by the Longstop Date or the Licensed Software continues to fail all or any of the Acceptance Tests (after having been resubmitted under clause 5.7 above) then the Customer shall be entitled to serve notice under this Contract to terminate the Contract and the provisions of clause 16 shall apply.

- 5.10 The Supplier will provide initial online training on the Licensed Software to the Administrative SP1 Users and the Administrative Website Users only. This training will be conducted via Zoom, Microsoft Teams or similar workspace and involve the use of training videos and interactive online training sessions. All Administrative SP1 Users and Administrative Website Users must be proficient in the use of Microsoft Excel and once their training is complete, the Administrative SP1 Users and Administrative Website Users shall be responsible for the training of all other Authorised Users. Where the Customer requests onsite training, then the parameters of the onsite training shall be agreed at the relevant time with the Supplier at the Supplier's then daily rate (currently £1,000 per day).

6. Customer data, Data Protection and Freedom of Information (FOI)

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 The Supplier shall automatically back up the Customer Data on a nightly, weekly and monthly basis. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use all reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. Subject to clause 6.4 below, the Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 6.3 The Customer acknowledges that the technical processing and transmission of the Licensed Software, including processing and transmission of any Customer Data, subject to clause 6.4 below, may be transferred unencrypted and involve (a) transmissions over various networks and (b) changes to confirm and adapt to technical requirements of connecting networks or devices.
- 6.4 If the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under these Conditions, the parties record their intention that the Customer shall be the Data Controller and the Supplier shall be a Data Processor (where **Personal Data**, **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). In respect of any such Personal Data:
- (a) both parties shall comply with their obligations under the UK Data Protection Legislation; and
 - (b) without prejudice to the generality of clause 6.4(a), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
 - (c) without prejudice to the generality of clause 6.4(a), the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
 - (i) process that Personal Data only on the written instructions of the Customer;
 - (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal

Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (iv) In circumstances where Personal Data is transferred out of the European Economic Area ensure that the requirements of the UK Data Protection Legislation are complied with;
- (v) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the Customer without undue delay on becoming aware of a Personal Data breach by emailing [**contact@customerdomain.ac.uk**] within 24 hours of becoming aware of a suspected or actual data breach;
- (vii) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 6.

- (d) The Customer consents to the Supplier appointing third-party processors of Personal Data under these Conditions, in particular any third-party processors appointed outside the UK or the EEA and in particular Kloaket or any other outsourcing partner in place from time to time. The Supplier confirms that it has entered or (as the case may be) will enter into written agreements with the third-party processors in respect of the processing of Personal Data, which is no less stringent than the written contract between data controller and processor. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.4(d).

- 6.5 The subject matter is the use of the Licensed Software and the duration of processing is the length of the Contract and deletion period stated in 6.4(c)(vii).
- 6.6 The nature of the processing is the effective running of the Licensed Software by the Supplier, enabling the Customer to store Customer data.
- 6.7 The types of personal data and categories of data subject is the Customer data. Appropriate levels of encryption will be provided by the Supplier as Customer data includes special category data which may not be limited to certain fields.
- 6.8 The Supplier acknowledges that nothing within the contract relieves the Supplier of its own direct responsibilities and liabilities under UK Data Protection Legislation.
- 6.9 The Supplier acknowledges that the Customer has obligations under the Freedom of Information Act and the Environmental Information Regulations 2004 (collectively, the “**FOI Laws**”).

- 6.10 Within the required timescales the Supplier shall, where so requested, give the Customer full co-operation and information reasonably requested by the Customer so that the Customer can comply with any request under FOI Laws in accordance with its obligations under the applicable FOI Laws, always provided that the Customer shall have regard at all times to its obligations to the Supplier as a third party under FOI Laws, including its obligations to protect its confidential information, trade secrets and commercial interests
- 6.11 The Customer may consult the Supplier to help it decide whether to publish information under this clause 6. In deciding whether to disclose or publish information under this clause 6, the Customer shall have regard to the other provisions of this clause 6.

7. Third party providers

- 7.1 The Customer acknowledges that the Licensed Software may enable or assist it to access the website content of, correspond with, and purchase products and software from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Licensed Software.
- 7.2 The Customer accepts that the Supplier uses third party vendors, outsourcing partners, sub-contractors and hosting partners to provide the necessary hardware, software, networking, storage and related technology required to provide the Software and the Support and Maintenance Services, including Kloaket or any other outsourcing partner in place at the time. Subject to clause 6.4 above, the Supplier accepts no liability for any loss of service or loss of Customer Data caused directly or indirectly by any third parties.

8. Supplier's obligations

- 8.1 The Supplier warrants and undertakes to the Customer that:
- (a) the Licensed Software will work substantially in accordance with the Documentation and any description provided to the Customer;
 - (b) the Support and Maintenance Services will be provided with due skill and care;
 - (c) the Supplier has full capacity and authority and all necessary licences, permits, permissions, powers and consents to enter into and to comply with its obligations under the Contract; and
 - (d) the Supplier is entering into the Contract with the Customer as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under the Contract.
- 8.2 The undertaking at clause 8.1(a) shall not apply to the extent of any non-conformance which is caused by use of the Licensed Software contrary to the Documentation, or modification or alteration of the Licensed Software by any third party or any other party other than the Supplier or the Supplier's duly authorised contractors or agents. Subject to the foregoing, if the Licensed Software does not conform with the undertaking at clause 8.1(a), the Supplier will, at its expense, use its reasonable commercial endeavours to correct any such non-

conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Licensed Software will be uninterrupted or error-free; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, held or run by third parties and the Customer acknowledges that the Licensed Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
 - (c) does not warrant that the Licensed Software will be provided at a minimum speed.
- 8.3 The Supplier shall ensure that each of the Supplier's Personnel is suitably qualified and adequately trained.
- 8.4 If, pursuant to or in consequence of performing its obligations under the Contract, the Supplier gains access to any computer system of the Customer including any software, hardware, firmware, database, data or file, whether directly or remotely:
- (a) all access shall be strictly limited to that part of the computer software, hardware, firmware, database, data or files (as the case may be) as is required for proper performance of its obligations under the Contract;
 - (b) the Supplier shall comply with all reasonable security audit and other procedures and requirements of the Customer in relation to access; and
 - (c) the Supplier shall procure that only the Supplier's Personnel shall be permitted access and such access shall be to the extent strictly necessary for the proper performance of their duties in relation to the obligations of the Supplier pursuant to the Contract.

9. Customer's obligations

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to these Conditions for the provision of the Licensed Software Ready for Testing and the Acceptance Tests; and
 - (ii) all necessary access to such information as may be required by the Supplier, including any templates required to be configured by the Licensed Software;

in order to comply with its obligations under the Contract, including but not limited to Customer Data, security access information and configuration software;
- (b) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;
- (c) ensure that the Authorised Users use the Licensed Software and the Documentation in accordance with the terms and conditions of these Conditions and shall be responsible for any Authorised User's breach of these Conditions;
- (d) ensure that the Administrative Users meet the Supplier's minimum standards for training as communicated to the Customer from time to time and ensure that its

network and systems comply with the relevant specifications provided by the Supplier from time to time;

- (e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- (f) in respect of the Support and Maintenance Services:
 - (i) provide appropriate and sufficient IT support to include a named IT contact and agree to respond to the Supplier in a timely manner;
 - (ii) by arrangement, grant the Supplier access to its premises and/or its IT systems at all times in order to provide the Support and Maintenance Services;
 - (iii) provide reasonable notice of intention to change data-feeds;
 - (iv) effect and maintain adequate security measures to safeguard the Deliverables from access or use by any unauthorised person;
 - (v) retain the Deliverables and all copies thereof under the Customer's effective control;
 - (vi) maintain a full and accurate record of the Customer's copying and disclosure of the Deliverables and shall produce such record to the Supplier on request from time to time;
 - (vii) comply with all reasonable instructions of the Supplier with regard to the use of the Deliverables including, without limitation, the implementation of upgrades to the Licensed Software, third party software, specified operating system and computer hardware which the Supplier may provide from time to time; and
 - (viii) shall not alter or modify the whole or any part of the Deliverables in any way whatsoever, nor to permit the whole or any part of the Licensed Software to be combined with, or become incorporated in, any other programs unless agreed with the Supplier.

10. Support and Maintenance Services

10.1 Support

- (a) During the continuance of the Contract and in consideration of the Maintenance Charge, the Supplier shall provide the Customer with all or any of the following Support and Maintenance Services in respect of the Licensed Software:
 - (i) online chat and telephone support in circumstances where the Supplier, at the Supplier's discretion, is of a view that such support is appropriate, reasonable and feasible. Shared desktop support is available if the applications used by the Supplier are supported by the Customer; and
 - (ii) onsite support on request and where appropriate in the event that online support does not resolve a problem and charged as specified in schedule 2.

- (b) The provisions of Schedule 3 shall apply in respect of the Support and Maintenance Services, subject to the provisions of this clause 10.
- (c) The Support and Maintenance Services shall be subject to the service level requirements set out in schedule 4.
- (d) Customer support is available from Monday through to Friday excluding national holidays in both the UK (England) and India. Live chat support is provided between 08:00 to 13:00 UK time with email support offered between 13:00 – 16:00 UK time. The Supplier shall use its reasonable endeavours to respond to email by the end of the working day following notification to the Supplier by the Customer of the problem.
- (e) Fault Correction service shall not include remedial work required as a result of:
 - (i) defects or errors resulting from any modifications of the current version of the Licensed Software made by any person other than the Supplier;
 - (ii) any version of the Licensed Software other than the current version or any historic version used by the Customer in the 24 months preceding the release of the latest version;
 - (iii) incorrect use of the current release or operator error;
 - (iv) any fault in the Equipment or the Customer's System or any Third Party Software or in any programs used in conjunction with the current release; or
 - (v) defects or errors caused by the use of the current release on or with equipment or programs not supplied by or approved in writing by the Supplier, provided that for this purpose any programs designated for use with the release in the Specification shall be deemed to have the written approval of the Supplier.
- (f) The Supplier shall make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by the Supplier:
 - (i) at the request of the Customer, but which do not qualify under the aforesaid Fault Correction service by virtue of any of the exclusions referred to in clause 10.2(c) above or 10.4 below or set out in Schedule 3; or
 - (ii) at the request of the Customer but which the Supplier finds are not necessary.

For the avoidance of doubt nothing in this clause shall impose any obligation on the Supplier to provide services in respect of any of the exclusions referred to in clauses 10.2(c) and 10.4. The Supplier will advise the Customer if it considers that any work it is about to carry out will incur an additional charge under this clause 10.2(d).

10.2 *Changes in law*

The Supplier will from time to time make such modifications to the current release as shall ensure that the current release conforms to any change of legislation or new legal requirements which affect the application of any function or facility described in the Documentation. The Supplier shall promptly notify the Customer in writing of all such changes and new requirements and shall implement the modifications to the current release (and all

consequential amendments to the Documentation which may be necessary to enable proper use of such modifications) as soon as reasonably practicable thereafter.

10.3 *Excluded Support and Maintenance*

- (a) In addition to the provisions of clause 10.2(c), the Supplier shall be under no obligation to provide Support and Maintenance Services in respect of:
 - (i) any unauthorised modification or alteration of the Licensed Software. Modifications to the Licensed Software shall include but not be limited to changes to the logical or physical database schema for the Deliverables, changes to the disk layout and configuration, and hand-modified changes to the data within the database;
 - (ii) any software other than the Licensed Software;
 - (iii) incorrect or unauthorised use of the Licensed Software or operator error where these are defined as use or operation not in accordance with the Documentation;
 - (iv) any fault in the Equipment used including the Customer's internal networks;
 - (v) any programs used in conjunction with the Deliverables;
 - (vi) use of the elements of the Licensed Software in any combination other than those specified in the Documentation;
 - (vii) use of the Licensed Software with computer hardware, operating systems or other supporting software other than those specified in the Documentation; and
 - (viii) the Customer's failure to install and use upon the Equipment in substitution for the previous release and updated Licensed Software within 7 days of its receipt.
- (b) The Supplier may upon request by the Customer, provide additional support and maintenance services notwithstanding that the fault results from any of the circumstances described in clause 10.4(a) above, however all time spent by the Supplier investigating such faults will be chargeable at the Supplier's then current rates. The Supplier shall invoice such charges at its discretion and such charges shall be paid within 30 days of the date of said invoice. The Supplier shall have the right to charge interest on overdue invoices in accordance with clause 11.5.
- (c) The Supplier reserves the right to discontinue the Support and the Maintenance Services for any prior version of Supported Software if a superseding version has been available to the Customer.
- (d) The Supplier shall not be obliged to make modifications or provide support in relation to the Customer's computer hardware, operating system software, or third party application software or any data feeds or external data.

10.4 *Warranty*

- (a) The Supplier warrants that in providing its obligations under the Contract it will provide reasonable standards of care and skill and that all personnel will have qualifications and experience appropriate for the tasks to which they are allocated.

- (b) The Customer acknowledges that it is the responsibility of the Customer to ensure that the facilities and functions described in the Specification meet its requirements.
- (c) The Supplier does not warrant that all Faults can and will be corrected. The Supplier shall use its reasonable endeavours to correct Faults so long as the Faults are replicable by the Supplier, or to provide a software patch; or to bypass around such Fault.
- (d) The Customer must promptly notify the Supplier of any non-conformance to the above warranties in order to benefit from the remedy stated above and in any event within 90 days of such non-conformance occurring.

11. Charges and payment

- 11.1 The Customer shall pay the Software Implementation Fee, the Subscription Fees to the Supplier for the User Subscriptions and the Software Hosting Fees in accordance with this clause 11 and the Order. The Supplier reserves the right to increase the Software Hosting Fees at the beginning of each year of the Subscription Term if Microsoft's increases its fees.
- 11.2 The Customer shall as soon as practicable after the Commencement Date provide to the Supplier a purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, upon receipt, the Supplier shall submit an invoice to the Customer. Each invoice should itemise the services provided and shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 11.3 In consideration of the supply of the Licensed Software, Documentation and Support and Maintenance Services, the Customer shall pay the invoiced amounts within 30 days of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 11.4 If the Supplier has not received payment by the relevant due date, and without prejudice to any other rights and remedies of the Supplier:
 - (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Licensed Software and the Supplier shall be under no obligation to provide any or all of the Licensed Software while the invoice(s) concerned remain unpaid;
 - (b) suspend all Support and Maintenance Services; and
 - (c) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current small business lending rate of HSBC Bank Plc, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.5 All amounts and fees stated or referred to in these Conditions:
 - (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 16, non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 11.6 The Maintenance Charge for the provision of the Support and Maintenance Services are included in the Subscription Fees payable by the Customer. The Supplier may suspend such

Support and Maintenance Services where due payments are not received by the Supplier under the Contract.

- 11.7 Any additional charges payable by the Customer as set out in clause 10 or otherwise in these Conditions, shall be paid within 30 days of receipt by the Customer of the Supplier's invoice.
- 11.8 The Supplier shall have the right to charge interest on all overdue invoices raised under clauses 10 11.7 and in accordance with clause 11.4(c) above.
- 11.9 On-site visits are not included in the Subscription Fee and where requested shall be charged by the Supplier to the Customer as specified in schedule 2 and the provisions of clauses 11.4, 11.5 and 11.7 shall apply to such charges accordingly.

12. Proprietary rights

- 12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, these Conditions do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Documentation.
- 12.2 The Supplier confirms that it has all the rights in relation to the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Conditions.

13. Confidentiality and compliance with policies

- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Conditions.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, consultants, advisors or agents in violation of the terms of these Conditions.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4,

it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.6 The Customer acknowledges that details of the Software, and the results of any performance tests of the Software and the Documentation, constitute the Supplier's Confidential Information.
- 13.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.8 The above provisions of this clause 13 shall survive termination of the Contract, however arising.

14. Customer Limitation of Liability

- 14.1 The Customer shall not be liable whether in tort, contract, misrepresentation, restitution or otherwise for any:
 - (a) loss of business;
 - (b) depletion of goodwill;
 - (c) pure economic loss; or
 - (d) for any special indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
- 14.2 Subject to clause 14.3 below, the Customer's total aggregate liability in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 14.3 The Customer's liability for breach of clauses 3.2, 3.3, 3.4 and 3.5 shall be limited to £5million and the Customer shall ensure that it carries public liability insurance with a limit of £5million.

15. Supplier Limitation of liability

- 15.1 The Supplier shall during the term of the Contract, maintain professional indemnity cover and public and product liability insurance cover in respect of its liabilities arising out of or connected with the Contract, and such cover to be to a minimum value of £5,000,000 and with an insurance company of repute. The Supplier shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force. The Supplier undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.
- 15.2 Except as expressly and specifically provided in these Conditions:
 - (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Licensed Software, or any actions taken by the Supplier at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
 - (c) the Licensed Software is provided to the Customer on an "as is" basis.
- 15.3 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Support and Maintenance Services or Documentation infringes any patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 15.4 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Licensed Software, replace or modify the Licensed Software so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 20 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.5 The Supplier, its employees, agents and sub-contractors shall not be liable to the Customer whatsoever to the extent that any claim is based on:
 - (a) a modification of the Licensed Software or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Licensed Software in a manner contrary to the Documentation given to the Customer by the Supplier; or
 - (c) the Customer's use of the Licensed Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 15.6 Nothing in these Conditions excludes the liability of the Supplier:
 - (a) for death or personal injury caused by the Supplier's negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for breach of the indemnity at clause 15.4 above.
- 15.7 The Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for:
 - (a) any indirect loss of profits;
 - (b) loss of business;
 - (c) depletion of goodwill;
 - (d) loss or corruption of data or information;
 - (e) pure economic loss; or

- (f) for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
- 15.8 The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 15.9 The Customer's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in these Conditions is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. For the purposes of this clause, the 'the Supplier' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.
- 16. Term and termination**
- 16.1 The Contract shall, unless otherwise terminated as provided in this clause 16 or clause 5.9, commence on the Commencement Date and shall continue for the Subscription Term. The Contract will automatically renew at the end of the Subscription Term for a term of equal length to the Subscription Term, unless either party gives at least 3 months' written notice to the other to terminate the Contract at the end of the Subscription Term, in which case these Conditions shall apply to any such Renewal Period, subject to any changes to the Order agreed between the Parties.
- 16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract within 30 days by giving written notice to the other if:
- (a) a party fails to pay any amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) a party commits a material breach of any other term of these Conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
 - (c) a party repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
 - (d) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of a party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (g) a person becomes entitled to appoint a receiver over the assets of a party or a receiver is appointed over the assets of a party;

- (h) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2(d) to clause 16.2 (inclusive);
 - (i) a party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (j) the Supplier permanently discontinues the use of the Deliverables.
- 16.3 The Customer may terminate the Support and Maintenance Services at any time on providing the Supplier with not less than 30 days written notice without terminating the Contract.
- 16.4 On termination of the Contract for any reason:
 - (a) all licences granted under these Conditions shall immediately terminate and the Customer shall immediately cease all use of the Licensed Software and/or the Documentation;
 - (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 30 days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall deliver the back-up to the Customer in a readily available machine readable format and at no cost, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination; and
 - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.
- 16.5 In the event that termination should take place part way through the Subscription Term, no element of the Software Hosting Fees that have been charged shall be apportioned on a daily basis and the Customer shall forfeit the whole of the Software Hosting Fee paid for the relevant period. To the extent that the Customer has paid the Subscription Fees in advance, upon termination by the Customer that element of the Subscription Fees that relates to the period following termination shall be refunded to the Customer.
- 16.6 The Supplier shall be entitled to set-off any element of the Subscription Fees due to the Customer against any sums due and payable to the Supplier under the Contract.

17. Force majeure

Neither party shall have any liability to the other under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including any Force Majeure Event. If a Force Majeure Event continues for more than 8 weeks then the Customer may terminate the Contract whereupon the Supplier shall refund to the Customer any Subscription Fees paid which relate to the period following termination.

18. Variation

The Supplier reserves the right to modify, either temporarily or permanently, the Licensed Software without notice to the Customer. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Waiver

No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. Rights and remedies

Except as expressly provided in these Conditions, the rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

21. Severance

21.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. Entire agreement

22.1 The Contract constituting these Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23. Assignment

23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 The Supplier may at any time assign, transfer, charge, sub-contract, outsource or deal in any other manner with all or any of its rights or obligations under the Contract.

24. Third party rights

These Conditions do not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Notices

- 25.1 Any notice required to be given under the Contract shall be in writing and shall be sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.
- 25.2 A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

26. Governing law

The Contract and the Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or these Conditions or their subject matter or formation (including non-contractual disputes or claims).

28. Dispute Resolution

- 28.1 If a dispute arises out of or in connection with these Conditions (including in relation to any non-contractual obligations) (a **"Dispute"**) either party may by written notice (a **"Referral Notice"**) to the other party refer the matter for resolution.
- 28.2 Once a Referral Notice has been served in relation to a Dispute, that Dispute shall be referred for resolution the relevant contact for the Customer and John McCrae for the time being on behalf of the Supplier. Those representatives shall meet at the earliest convenient time and in any event within 10 Business Days of the date of service of the relevant Referral Notice and shall attempt to resolve the Dispute.
- 28.3 If a Dispute has not been resolved within 10 Business Days of the date of service of the relevant Referral Notice the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Either party may initiate a mediation by serving a written notice (a **"Mediation Notice"**) on the other party identifying the Dispute it believes has arisen and requesting it be referred to mediation.
- 28.4 Unless a mediator has been agreed upon by the parties and has confirmed his appointment within twenty-eight (28) days of the date of service of the relevant Mediation Notice, a mediator will be nominated at the written request of either party by CEDR. The parties shall use all reasonable endeavours to procure that the mediation shall start within 42 days of the date of service of the Mediation Notice.
- 28.5 If the Dispute is not resolved within 84 days of the date of service of the Mediation Notice, either party may commence proceedings formal proceedings in accordance with the law of England and Wales.

Signatures

SIGNED for and on behalf of **ABYASA LTD.**

Name: Shashidhar Shetty

Role: Director

SIGNED for and on behalf of **THE CUSTOMER**

Name:

Role:

Schedule 1

Form of Order

Name of Customer: [Customer Name]

Licensed Software: Abyasa Software including its modules such as SP1, Pro and Partnership portals

Subscription Fees

1. Software Implementation Fee

[To be inserted]

2. Subscription & Hosting Fees

[To be inserted]

3. Administrative SP1 Users

[To be inserted]

4. Administrative Website Users

[To be inserted]

5. General Users

[To be inserted]

The software provided does not warrant a minimum speed, therefore, an upgraded specification may be required to require increasing the speed.

Subscription Term

[To be inserted]

Completion Date

[To be inserted]

Long-stop Date

[To be inserted]

SCHEDULE 2

Fees and charges

Mapping service

Help and support in how to use the Licensed Software will be provided to Administrative Users. These users will be expected to manage the user access to the Licensed Software including the granting of permissions and manage the new year processes. These users will be trained in how to use the report writing tool on request. These users should be technically competent in using general IT packages such as Microsoft Word and Microsoft Excel and be a main User of the Licensed Software covered by these Conditions.

Help and support is limited to 80 hours per annum, over and above support which is necessary for updates to the system and resolution of errors and problems reported within 10 working days of a release. Help and support includes online shared sessions, email support, basic report design, template design, configuring panels and permissions but does not include extending the application's functionality.

Initial data import is included in the free trial provided the data is prepared by the **[Customer]** team to the Abyasa specification, is available in an electronic format and has the required keys to link related data.

Charges for additional support beyond the included hours

Charges for data entry will be **£40.00** per hour ex VAT, and charges for report design and coding of new features or changes to the Windows or Web applications will be **£60.00 ex VAT**.

All fees and charges within this schedule will be increased annually on the anniversary of the Commencement Date in line with the UK retail prices index.

Fees and charges will be due within 30 days of the issue of the invoice.

Fees and charges payable under this Agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law.

The Supplier shall have the right to charge interest on overdue invoices at the rate of 4% per annum above the Small Business Loan rate of HSBC Bank Plc together with any bank administration charges, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment, whether before or after judgment.

SCHEDULE 3

For the purposes of this **Schedule 3** the following expressions will have the following meanings unless inconsistent with the context:

“Fault”	any error, failure or malfunction of the Licensed Software (or part thereof) such that the Licensed Software does not conform in any respect with the Specification and its relevant Documentation, subject to the exclusions set out in clause 10.2(c) or 10.4 of these Conditions or the terms of this Schedule.
“Fault Categorisation”	a category of Fault specified in this Schedule 3
“Fault Correction”	any repair, correction, adjustment, replacement, renewal, bug-fix, work-around, patch or other modification or addition to any part of the Licensed Software that brings the Licensed Software into conformity with the Specification and its relevant Documentation provided that a Fault Correction shall only be deemed to be complete once it is implemented within the Licensed Software and the Licensed Software is working again fully in accordance with the Specification and the Documentation and is doing so without causing any material harmful impact on or significant diminution in performance, capacity or functionality of Customer’s System.
“Fix Time”	the maximum amount of time to be taken by the Supplier to provide Fault Correction in response to and from the time that (i) a Request is made and a Response is provided or (ii) the Supplier otherwise becomes aware of a Fault as set out in this Schedule 3 whichever is the earlier
“Help Desk”	the Supplier’s off-site support facility located at <i>support@abyasa.net</i>
“New Release”	in relation to the Licensed Software: (a) any major Updates carried out by the Supplier since the previous version of the Software was delivered to the Customer resulting in new functionality and developments and/or integrating new standard functions; and (c) bug fixes and essential security updates which do not constitute Updates.
“Request”	a request by the Customer to provide Fault Correction

“Response Time”

the maximum amount of time to be taken by the Supplier to make a Response, measured from (i) the time a Request is made; or (ii) the time that the Supplier otherwise becomes aware of a Fault as set out in this **Schedule 3**, whichever is the earlier,

where a ‘**Response**’ means to make contact with the Customer by telephone, fax or electronic mail and provide an initial acknowledgement and response in respect of a Fault notified to it and to inform the Customer who has been assigned by the Supplier to work on the Fault and what steps will be taken to correct the Fault

“Updates”

versions of the Software integrating any Fault Corrections and/or the solutions provided by the Supplier in relation to any Faults or errors encountered by the Customer in its use of the Licensed Software or as a result of the Supplier’s provision of the Support and Maintenance Services

“Business Hours”

9:00 AM – 4 PM UK time excluding Saturdays, Sundays, Bank holidays in both UK and India; and

References in this **Schedule 3** to a “paragraph” shall mean a paragraph to such Schedule and a reference to a “**clause**” shall mean a clause in the main body of the Agreement unless otherwise specified or inconsistent with the context.

1. Support and Maintenance Services

1.1 The Supplier agrees to provide the following Support and Maintenance Services to the Customer during the Business Hours in respect of the Licensed Software:

1.1.1 reasonable assistance in the resolution of queries via a telephone call or email originated by the Customer to the Help Desk;

1.1.2 recommendations relevant to the course of action necessary to recover from a Fault;

1.1.3 replacement of a copy Deliverable to the Customer where that Deliverable has been accidentally damaged upon return of the damaged Deliverable to the Supplier at no charge other than the Supplier’s current packaging and shipping charges and the Supplier’s current charge for the media upon which the replacement copy is provided;

1.1.4 upon request by the Customer the diagnosis of Faults and the rectification of such Faults in accordance with this Schedule 3;

1.1.6 subject to the Customer paying any additional charges under these Conditions, the creation and dispatch to the Customer from time to time of New Releases.

1.2 The Customer shall supply to the Supplier a description of the Fault and the circumstances in which the Fault arose promptly (and within **[2]** hours) after becoming aware of such circumstances in accordance with this **Schedule 3**.

1.3 The Support and Maintenance Services shall include the diagnosis and rectification of a Fault

arising in the then current version supplied by the Supplier to the Customer and any versions supplied to the Customer in the 24 months preceding the current version. .

1.4 Support for versions older than 24 months could be subject to a separate, legacy support agreement with additional charges.

1.5 The provision of Updates is included in the Maintenance Charges, but not New Releases.

2. Fault categorisations and corrections

2.1 Immediately upon becoming aware of or receiving notification of a Fault, the Customer, acting reasonably, shall assign a Fault Categorisation and shall inform the Supplier of the Fault and Fault Categorisation. Examples of what falls within each Fault Categorisation are set out in paragraph 2.6 below.

As part of the Supplier's Response, it shall confirm whether the Fault Categorisation is correct or not and any new Fault Categorisation. In cases of disagreement, the parties shall use all reasonable endeavours to agree the Fault Categorisation within 2 Business Days but in the absence of agreement the Supplier's final decision (acting reasonably) shall be binding.

2.2 The Supplier shall provide, implement and install all required Fault Corrections to the Customer as part of its Support and Maintenance Services within the applicable Fix Time (if any). Unless the need for testing is expressly waived by the Customer, the Supplier shall test proposed Fault Corrections as part of the Fault Correction process before confirming that a Fault is fixed.

Fault Reporting and Response Times

2.3 Where the Supplier discovers a Fault, either by carrying out preventative maintenance or otherwise, such Faults shall be promptly notified to the Customer.

2.5 When the Supplier becomes aware of a Fault, it shall respond to the Customer within the relevant Response Time and shall use its reasonable endeavours to fix the Fault within the relevant Fix Time. The Supplier shall indicate the actions that it will take to provide Fault Correction within its Response or, if this is not possible due to further investigation required, as soon as it identifies the problem.

2.6 The Supplier shall use reasonable endeavours to achieve the Fix Times outlined in the table below for Faults logged in Business Hours:

Fault category	Description	Response Time	Fix Time	Example Fault
P1	Showstopper, Licensed Software outage or Software completely unavailable or substantially unavailable with significant business or user impact	60 minutes	6 business hours Status updates every hour	[INSERT]
P2	High priority, key features and functionality not available impacting effective use of the Licensed Software for a significant	120 minutes	3 business day Status updates every 4 hours	[INSERT]

	number of users, no workaround available			
P3	Normal priority, service impaired for a small number of users	1 business day	15 business days or mutually agreed upon timeframe	[INSERT]
P4	Low priority, service not functioning as expected but not significantly affecting use	2 business days	60 business days or mutually agreed upon timeframe	[INSERT]

- 2.7 The Supplier shall use reasonable endeavours to achieve the Fix Times outlined in the table below for category P1 Faults logged outside Business Hours:

Fault category	Description	Response Time	Fix Time
P1	Showstopper, Licensed Software completely unavailable or substantially unavailable, significant business or user impact	120 minutes	12 business hours Status updates every 2 hours

- 2.8 The Support and Maintenance Services shall include, without limitation, the provision, installation, and testing of all Updates of the Software. The Supplier shall notify the Customer in advance of any Updates. Unless otherwise agreed or required due to Fault Correction, the Supplier shall not install more than two (2) Updates per contractual year. The Supplier shall provide reasonable notice of its intention to install and test an Update, and the Parties shall agree on a suitable date for such installation and testing, which shall be scheduled during low production periods where reasonably practicable. This paragraph 2.8 is subject to paragraph 2.10 and paragraph 2.11.
- 2.9 If the Supplier releases a New Release, the Supplier shall notify the Customer of such New Release, including details of new functionality, proposed timelines for availability and any changes to the Subscription Fees. If the Customer decides that it wants a New Release installed the Parties shall agree on a suitable date for such installation and testing, which shall be scheduled during low production periods where reasonably practicable.
- 2.10 The Customer shall not be required to accept any Update where, in its reasonable opinion, such Update may adversely affect the Customer's System or does not meet the agreed Specification, or where it would require additional upgrades or materially increase running costs. The Customer shall provide written justification for any such refusal. Where any Update is essential to maintaining the integrity of the Software and required to comply with changes in legislation or to enhance security measures, the Supplier may warn the Customer that the functionality of the Licensed Software may be effected and may charge additional fees to maintain out of date versions in accordance with paragraph 2.12.
- 2.12 In the event that the Customer elects not to accept an Update, the Supplier shall continue to provide Support and Maintenance Services for the version currently in use by the Customer for a grace period of 24 months from the date the Update was made available. After this grace period, continued support for the legacy version shall be subject to a separate legacy support

agreement, which may include additional charges to reflect the increased effort and complexity of maintaining outdated environments. For the avoidance of doubt, the Supplier shall, where possible, continue to provide all applicable security patches during the grace period, regardless of whether the Customer accepts the Update.

Reporting Requirements

- 2.13 The Supplier shall maintain accurate and up to date records of all Faults reported, showing the date and time of Fault, nature of the Fault, Fault Categorisation, actions taken, status, expected or actual resolution time and shall provide the same to the Customer promptly upon request.
- 2.14 The Supplier shall implement procedures to ensure as far as possible that Fault Corrections are provided within the Fix Times. Any Faults which are not resolved within the Fix Times should be escalated to the next level of management within the Supplier's business in accordance with paragraph 2.15 below. If the issue cannot be resolved in accordance with paragraph 2.15, the provisions of clause 28 shall apply.
- 2.15 There may be occasions when additional resources or focus needs to be applied by the Customer to assist the Supplier or there is the possibility that the Fix Time is likely to be exceeded. In such circumstances, the escalation process outlined below will need to be invoked:
- **Level 1:** escalation to occur at the end of the Response Time and to the Supplier delivery manager
 - **Level 2:** escalation to occur after a further time period dependent on the call priority defined in the table below:

Level	Escalation process during Business Hours	Escalation process outside Business Hours
P1	Stage 1 Escalate after 4 hours to the Supplier's delivery manager Stage 2 Escalate after 24 cumulative hours to the Supplier's senior manager or Director	Stage 1 Escalate after 6 hours to the Supplier's on-call duty manager Stage 2 Escalate after 24 cumulative hours to the Supplier's on-call duty senior manager or Director
P2	Stage 1 Escalate after 8 hours to the Supplier's delivery manager Stage 2 Escalate after 24 cumulative hours to the Supplier's senior manager or Director	Stage 1 Escalate after 12 Business Hours to the Supplier's on-call duty manager Stage 2 Escalate after 24 cumulative hours to the Supplier's on-call duty senior manager or Director

- 2.16 If the Customer is not satisfied with the Supplier's response or any other aspect of the service, then a complaint may be raised. Complaints will be reported to the Supplier's Help Desk where they will be logged and referred to the Supplier's Project Manager for resolution of the incident.

Maintenance

- 2.17 The Supplier shall create and maintain a rolling schedule of planned maintenance to the Licensed Software ("the **Maintenance Schedule**") which shall be agreed with the Customer.

Once the Maintenance Schedule has been agreed with the Customer, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule, unless an emergency fix is required.

- 2.18 The Supplier shall give as much notice as it reasonably practicable to the Customer prior to carrying out any emergency maintenance.
- 2.19 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or emergency maintenance) where it reasonably suspects that the Licensed Software or any part therefore has or may have developed a Fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Licensed Software.

SCHEDULE 4

SERVICE LEVEL REQUIREMENTS

1. General Service Level commitment

- 1.1 The Supplier shall provide a dedicated point of contact to ensure that all Service Levels are achieved to the highest standard throughout the Contract on matters relating to:
 - 1.1.1 Service performance;
 - 1.1.2 Quality of services;
 - 1.1.3 Customer support;
- 1.2 The Supplier accepts and acknowledges that failure to meet the Service Level performance measures set out in paragraph 6 may result in credits being issued to the Customer ("**Service Credits**").
- 1.3 The objectives of the Service Levels and Service Credits are to:
 - 1.3.1 ensure that the Services are of a consistently high quality and meet the reasonable requirements of the Customer;
 - 1.3.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and
 - 1.3.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

2. Service Levels

- 2.1 Paragraph 6 sets out the agreed Service Levels.
- 2.2 The Supplier shall, subject to clauses 10.2, 10.4, clause 17 and paragraphs 2.8 and 8 of this Schedule 4, at all times during the Subscription Term meet the Service Level Performance Measure for each Service Level as set out in paragraph 6. Failure to meet a Service Level Performance Measure shall be considered a "**Service Level Failure**".
- 2.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in this Schedule 4, including the right to any Service Credits.
- 2.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the loss that may be suffered by the Customer as a result of any Service Level Failure.
- 2.5 Any changes to Service Level weighting require mutual agreement between both parties and Supplier retains the right to propose an adjustment to contract charges from time to time.
- 2.6 If the Supplier becomes aware that the performance of any element of the Service during a Service Period (as defined in paragraph 4 below):
 - 2.6.1 is likely to, or does, fall below the applicable Service Level Performance Measure; or
 - 2.6.2 is likely to, or does, result in a Critical Service Level Failure,
 - the Supplier shall promptly notify the Customer in writing, providing reasonable details of the issue and any contributing factors.

- 2.6.3 Upon such notification, the Parties shall cooperate in good faith to assess the situation and agree on appropriate remedial actions. The Customer may, acting reasonably and in consultation with the Supplier:
- (a) request the Supplier to take all reasonable and proportionate remedial actions to mitigate the impact and prevent recurrence of the Service Level failure or Critical Service Level Failure or,
 - (b) where the issue has not been resolved through initial remedial actions, require the Supplier to implement a mutually agreed rectification plan within a reasonable timeframe;
 - (c) if a Service Level failure has occurred, apply the applicable Service Credit in accordance with paragraph 6 of this Schedule;
 - (d) if a Critical Service Level Failure has occurred, exercise its rights to compensation in accordance with paragraph 3, provided that such failure is not attributable to a Force Majeure Event, Customer failures or user error, or other exclusions set out in these Conditions.
- 2.7 Approval and implementation by the Customer of any rectification plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such approval and/or implementation by the Customer.
- 2.8 The Supplier shall not be liable for and no Critical Service Level Failure or Service Level Failure shall occur where any issues with the Support and Maintenance Services arise:
- 2.8.1 due to factors outside the Supplier's reasonable control (for example; a Force Majeure Event, a network or device failure external to the Supplier's data centres, including at the Customer' System or between the Customer' System and the Supplier's data centre);
 - 2.8.2 from the use of services, hardware, or software not provided by the Supplier, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services, including any issues involving Microsoft or Microsoft servers;
 - 2.8.3 as a result of the Customer's continued use of a Deliverable after the Supplier advised the Customer to modify the use of the Deliverable, if the Customer did not modify your use as advised;
 - 2.8.4 during or with respect to preview, pre-release, beta or trial versions of a Service, feature or software (as determined by the Supplier);
 - 2.8.5 from the Customer's unauthorised action or lack of action when required, or from the Customer's employees, agents, contractors, or vendors, or anyone gaining access to the Service by means of passwords or equipment, or otherwise resulting from your failure to follow appropriate security practices;
 - 2.8.6 from the Customer's failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or the use of the Service in a manner inconsistent with the features and functionality of the Service (for example, attempts to perform operations that are not supported) or inconsistent with published guidance;
 - 2.8.7 from faulty input, instructions, or arguments (for example, requests to access files that do not exist);
 - 2.8.8 that result from the Customer's attempts to perform operations that exceed prescribed quotas or that resulted from our throttling of suspected abusive behaviour; or
 - 2.8.9 due to the Customer's use of Service features that are outside of associated Support.

3. Critical Service Level Failure

3.1 A Critical Service Level Failure shall include:

- 3.1.1 a delay in delivering the Support and Maintenance Services in excess of twenty four (24) hours more than twice in any three (3) month period or more than five (5) times in any rolling twelve (12) month; or
- 3.1.2 a loss during Business Hours (excluding global outages, Permitted Maintenance and bank holidays of India) of the Support and Maintenance Services for more than thirty six (36) hours (in blocks of at least 4 hours) accumulated in any three (3) month period, or sixty (60) hours (in blocks of at least 4 hours) accumulated in any rolling twelve (12) month period.

3.2 On the occurrence of a Critical Service Level Failure:

- 3.2.1 Any Service Credits that would otherwise have accrued during the Subscription Term shall not accrue; and
- 3.2.2 The Customer shall (subject to the Service Credit Cap set out in this Schedule) be entitled to withhold and retain, as sole and exclusive compensation for the Critical Service Level Failure, a sum equal to any Subscription Fees which would otherwise have been due to the Supplier in respect of that period of loss or delay ("**Compensation for Critical Service Level Failure**") provided that such withheld amount shall not exceed the applicable Service Credit Cap defined in paragraph 5 of this Schedule;
- 3.2.3 The remedies set out in this paragraph 3.2 shall constitute the Customer's sole and exclusive financial remedy in respect of any Critical Service Level Failure, unless such failure arises from the Supplier's gross negligence, fraud, or wilful misconduct.

4. Service Credits

- 4.1 Paragraph 6 sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure occurring within a service period which, for the purposes of this Schedule 4, shall be recurrent period of one month during the Subscription Term ("**Service Period**").
- 4.2 The Customer shall use the performance monitoring reports supplied by the Supplier in accordance with paragraph 7 of this Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 4.3 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall off-set the value of any Service Credit against the appropriate invoice for the relevant Service Period in accordance with the calculation formula in paragraph 6 of this Schedule.
- 4.4 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of Subscription Fees and Hosting Fees. Both parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

5. Service Credit Cap

5.1 For the purposes of this Schedule 4, the Service Credit Cap means:

- 5.1.1 in the period from the 1st February 2025 to 31st January 2026, the total Service Credits payable shall not exceed 5% of the aggregate total Subscription Fees and Hosting Fees for the first year of the Subscription Term;

- 5.1.2 for each subsequent 12-month period, the total Service Credits payable shall not exceed 5% of the aggregate total Subscription Fees and Hosting Fees invoiced and paid in the preceding 12 months;
- 5.1.3 in any given month, the total Service Credits payable shall not exceed 5% of the aggregate total Subscription Fees and Hosting Fees payable for that month, regardless of the cumulative total and,
- 5.1.4 the Parties acknowledge that the Service Credits constitute a genuine pre-estimate of loss and are the sole and exclusive remedy for any Service Level Failure.

6. Service Levels

Service Level	Key indicator	Performance measure	Service Credit
Service availability	Service availability uptime 24x7x365 from mobile and desktop devices in all locations	At least 99.5%	Less than 99.5% but equal to or greater than 99.0%, 10% Service Credit Less than 99.0%, 20% Service Credit.
Failover	Instant failover in real-time such that there is no noticeable loss of availability and no loss of data	At least 99.5%	Less than 99.5% 10% Service Credit
Recovery	Recovery point objective of no more than 2 hours following failover	At least 99.5%	Less than 99.5% 10% Service Credit
Customer Support	Access to Supplier customer support during the Business Hours from agreed contact methods	At least 99.5%	Less than 99.5% 10% Service Credit

- 6.1 The Service Credit shall be calculated as a percentage of the applicable monthly Subscription Fees:

Formula: $x\% \text{ (Service Level Performance Measure)} - x\% \text{ (actual Service Level Performance Measure)} = \text{relevant \% Service Credit deducted from Contract Value subject to the Service Credit Cap}$

7. Performance monitoring

- 7.1 The Supplier shall provide the Customer with performance monitoring reports upon request, in accordance with the process and timescales agreed pursuant to the monitoring of IT services set out in the Supplier's proposal. Each report shall include, at a minimum:

- 7.1.1 the actual performance achieved over the Service Level for the relevant Service Period;

- 7.1.2 a summary of all Service Level Failures that occurred during the Service Period;
 - 7.1.3 details of any Critical Service Level Failures;
 - 7.1.4 The Service Credits to be applied, including the Service Level Failures; and
 - 7.1.5 Any other reasonable information the Customer may request, provided such requests are proportionate and relevant to the Services provided.
- 7.2 The Parties shall attend meetings to discuss performance monitoring reports on an annual basis (unless otherwise agreed). The performance review meetings shall (unless otherwise agreed):
 - 7.2.1 take place within one week of the performance monitoring reports being issued by the Supplier;
 - 7.2.2 take place at such a location and time (within normal Business Hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 7.2.3 be attended by the Supplier's representative and the Customer's representative;
- 7.3 The Customer may raise additional questions or request further information regarding any Service Level Failures. The Supplier shall respond within a reasonable timeframe, subject to the Customer having provided all relevant context and supporting information.
- 7.4 The Supplier shall provide supporting documentation reasonably required to verify Service Levels and Service Credit calculations, provided the Customer has fulfilled its obligations under Clause 7.8.
- 7.5 The Customer may conduct satisfaction surveys regarding the Supplier's services. The results may be shared and discussed during performance review meetings.
- 7.6 The Customer may notify the Supplier of any concerns arising from satisfaction surveys that reasonably suggest non-compliance with Service Levels. The Supplier shall investigate and respond accordingly.
- 7.7 Suggestions for service improvement shall be addressed through the Supplier's continuous improvement programme.
- 7.8 Customer Obligations for Performance Monitoring:

The Customer shall:

 - 7.8.1. Provide timely and reasonable access to systems, environments, and test data necessary for performance monitoring and issue resolution;
 - 7.8.2. Ensure that any delays or restrictions in access are communicated in advance;
 - 7.8.3. Acknowledge that failure to provide such access may impact the Supplier's ability to meet Service Levels, and in such cases, the relevant Fix Times or Response Times shall be suspended until access is restored.
- 7.9 Customer Role in Troubleshooting

The Customer shall:

 - 7.9.1. Perform initial fault diagnosis and provide sufficient detail when reporting incidents;
 - 7.9.2. Acknowledge that if insufficient information is provided, the Supplier may pause the Response or Fix Time clock until adequate information is received.

8. Force Majeure and External Factors

- 8.1 The Supplier shall not be liable for any failure to meet the Service Levels, including any associated Service Credits, to the extent that such failure is caused by a Force Majeure Event or other external factors beyond the Supplier's reasonable control.
- 8.2 In the event of a Force Majeure Event, the Supplier shall:
- 8.2.1 Promptly notify the Customer of the nature and expected duration of the event;
 - 8.2.2 Take reasonable steps to mitigate the impact on service delivery;
 - 8.2.3 Resume full performance as soon as reasonably practicable.
- 8.3 Any Service Level obligations, including Response and Fix Times, shall be suspended for the duration of the Force Majeure Event or until the Customer has remedied any contributing factors within its control.

SCHEDULE 5

Backup Policy

The Supplier ensures that the Customer's database is backed up regularly as per the Supplier's defined backup policy. These backups should be available for restoration on-demand as well in case of any incident happens.

The backup policy for the Supplier's database includes several key features. First, database backups are encrypted, ensuring data security. These backups are stored in the UK South region, with a geo-redundancy in the UK West. Additionally, the Supplier performs log backups (Point-in-Time Recovery) every 5 minutes, retaining them for 35 days. Differential backups occur every 12 hours, also with a 35-day retention period.

For long-term retention, the Supplier follows a schedule of weekly, monthly, and yearly backups. Weekly backups are retained for 4 weeks, monthly backups for 12 months, and yearly backups for 1 year.

In addition to database backups, the Supplier also backs up documents (file attachments). These backups are encrypted and stored in the UK South region, with a geo-redundancy in the UK West. Document backups occur every 4 hours, and soft deletion is set to 14 days.

For document retention, the Supplier maintains backups on a daily, weekly, monthly, and yearly basis. Daily backups are retained for 35 days, weekly backups for 4 weeks, monthly backups for 12 months, and yearly backups for 1 year.