

MASTER SERVICE AGREEMENT**(“MSA”) PARTIES**

- (1) Dataquest Group Limited incorporated and registered in England and Wales with company number 04704549 whose registered offices are at 24 Chiswell Street, London, EC1Y 4TY (**“Supplier”**).
- (2) [CUSTOMER NAME] incorporated and registered in England and Wales with company number [XXXXXXXXXX] whose registered offices are at [REGISTERED OFFICE ADDRESS] (**“Customer”**).

RECITAL

Whereas the Supplier wishes to supply certain Services and the Customer wishes to have the right to receive the Services in accordance with the terms set forth below.

AGREED ON BEHALF OF DATAQUEST GROUP LIMITED**Signed by:****Name:****Authorised Signatory:****Date:****AGREED ON BEHALF OF THE CUSTOMER****Signed by:****Name:****Title:****Date:**

1 INTERPRETATION

- 1.1 The clause, schedule and paragraph headings shall not affect the interpretation of this MSA or any Service Contract.
- 1.2 The definitions and rules of interpretation set out in Schedule 1 shall apply to each Service Contract.

2 BASIS OF CONTRACT

- 2.1 This MSA shall apply to and be incorporated into each Service 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. A separate Service Contract will be formed in respect of each order, comprising the Order Form; MSA; SOW (if applicable); Service Description; Acceptable Use Policy (if applicable) and Project Plan (if applicable) together with any schedules annexed thereto. In the event of any conflict or inconsistency between the documents comprising a Service Contract, they will prevail in the order written above.
- 2.2 No contract shall be created between the Supplier and the Customer for the provision of Services unless and until the Customer has counter-signed the relevant Order Form and sent it to the Supplier, except (if earlier) the Supplier has commenced providing the Services, in which case a contract will be deemed to have come into existence on the basis of this MSA (and, if applicable, the terms of the Service Contract) from the date on which the provision of the Services by the Supplier commenced.
- 2.3 This MSA shall commence in accordance with Clause 2.2. Each Service Contract shall commence on its respective Commencement Date. Both the MSA and the Service Contracts shall continue until they expire in accordance with their terms, unless suspended or terminated earlier in accordance with Clause 17.
- 2.4 Each Service Contract shall continue for the Initial Term. Thereafter, unless otherwise expressly stated in the Service Contract, it shall automatically be extended for successive twelve (12) month periods (each an “**Extended Term**”) at the end of the Initial Term and at the end of each Extended Term, unless a party gives written notice to the other party to terminate, not later than ninety (90) days before the end of the Initial Term or the relevant Extended Term, in which event the Service Contract will terminate at the end of that Initial Term or Extended Term as the case may be.
- 2.5 Either party may terminate an individual Service or Services under a Service Contract in accordance with Clause 2.4, in which event the Service Contract shall remain in full force and effect in relation to all of the Services not so terminated. The Customer agrees and acknowledges that each individual Service may have its own Ready for Service Date and accordingly, its own specific Initial Term. In the case of termination by the Customer hereunder, the Customer shall ensure that an authorised signatory terminates a Service by completing the Supplier’s “Request to Terminate” form. The Customer must ensure that the Supplier acknowledges receipt of the same.
- 2.6 In the event of termination or cancellation by the Customer of any Service Contract or Service, whether before or after the Ready for Service Date and prior to the expiry of the Initial Term or an Extended Term other than in accordance with Clauses 2.4 or 2.5, or in the event of termination by the Supplier in accordance with Clause 17, the Customer remains liable to pay for the Services for the entire Initial term and/or Extended Term except where the Customer rightfully terminates under Clauses 17.2 or 18.3 and shall promptly pay such sums to the Supplier on demand.

- 2.7 Subject to the due and punctual payment of the Fees by the Customer and the performance of its obligations under the Service Contract, the Supplier shall provide the Services to the Customer on and subject to the terms and conditions of the Service Contract.

3 THE SERVICES, PERSONNEL AND THIRD PARTY SUPPLIERS

- 3.1 The Customer shall use the Services in accordance with the Acceptable Use Policy (where applicable). Without prejudice to the foregoing, the Customer shall not use the Services for any purpose, or store, distribute or transmit any material through any part of the Services, that:
- 3.1.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - 3.1.2 facilitates illegal activity;
 - 3.1.3 depicts unlawful sexual imagery;
 - 3.1.4 promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; and
 - 3.1.5 constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality).
- 3.2 The Supplier shall not be responsible for any Event, or for any failure to meet any Service Level, response time, threshold or any obligation under any Service Contract, to the extent that such Event and/or failure is due to any:
- 3.2.1 act or omission of the Customer, its employees, agents, or subcontractors;
 - 3.2.2 failure of Customer Equipment and/or of any software other than Supported Software;
 - 3.2.3 failure caused by Customer Equipment and/or of any software other than Supported Software;
 - 3.2.4 Force Majeure;
 - 3.2.5 failure of the Customer to report an Event in accordance with the relevant Service Contract; or
 - 3.2.6 Planned Maintenance notified to the Customer in accordance with the applicable Service Contract or, if no such notice provisions are contained in the relevant Service Contract, upon reasonable notice.
- 3.3 The Supplier shall perform the Services using such personnel as it considers suitable, whether by reason of experience or qualification. The Supplier will, where reasonably possible, maintain continuity of personnel throughout the provision of the Services but reserves the right at any time to vary personnel assigned whilst always using reasonable endeavours to maintain continuity of provision of Services. The Supplier reserves the right to sub-contract any part of the Services.
- 3.4 The Supplier personnel engaged in the performance of the Services shall at all times remain under the direction and control of the Supplier and the terms and conditions of employment or engagement of the Supplier shall exclusively continue to apply to such personnel. Nothing in this MSA shall operate so as to prevent the Supplier from assigning the Supplier's personnel involved in the performance of the Services to the provision of similar services for third parties or in any way restrict the use of such personnel by the Supplier.
- 3.5 The Customer agrees that for the duration of this MSA and each Service Contract and for the period of twelve months following its termination, the Customer shall not employ or engage as an

independent consultant or otherwise offer employment or work whether directly or indirectly to any Supplier employee, contractor or other Supplier personnel involved in providing Services to Customer in the preceding twelve months, without prior written agreement from the Supplier. In the event that the Customer breaches this Clause 3.6, the Customer agrees to pay to the Supplier, by way of liquidated damages, a sum equal to the gross remuneration paid to the relevant Supplier personnel for the preceding 12 months. The parties hereby agree that this sum is a genuine pre-estimate of loss. The provisions of this Clause shall, for the avoidance of doubt, not apply to the recruitment of the relevant Supplier personnel who respond to a bona fide public advertisement for a vacancy.

- 3.6 The Supplier may use third-party suppliers ("Subcontractors") to assist in the provision of the Services to the Customer, and may pass to the Customer the benefits of any service level agreements from such Subcontractors. The Customer agrees to be bound by the terms of business of each Subcontractor engaged by the Supplier which shall be included in the Service Contract either by reference, or by annexing the relevant terms and conditions to the Order Form. Subject to receipt of any benefits of the Subcontractor's service level agreement, the Customer agrees not to hold the Supplier liable for any failure or delay of such Subcontractor.

4 CHANGE CONTROL

- 4.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing and the terms of Schedule 2 (Change Control Procedure) shall apply.

5 RENT AND SALE OF EQUIPMENT

- 5.1 Subject to clause 5.2, any equipment referred to in the Order Form shall be Rented Equipment. The Supplier will retain title in all Rented Equipment (and any equipment utilised by the Supplier as part of a Service) at all times and the Customer shall not do anything to affect the Supplier's interest therein. The Supplier may at any time where the Customer is in breach of a Service Contract take possession and control of the Rented Equipment.
- 5.2 Any Sold Equipment shall be identified as such in a Service Contract. The Supplier will retain title in all Sold Equipment until it has been paid for in full by the Customer, and the Customer shall not do anything to affect the Supplier's interest therein until title has vested in the Customer. The Supplier may at any time where the Customer is in breach of a Service Contract take possession and control of any Sold Equipment which has not been paid for in full.
- 5.3 The Customer agrees to keep all CPE, title to which has not vested in the Customer pursuant to this Clause 5, separate from its other equipment and marked as the property of the Supplier, and irrevocably agrees that the Supplier may enter its premises and recover any such equipment in the event that the Customer is in breach of its payment obligations under any Service Contract or upon termination of a relevant Service Contract.

6 SET-UP OF SERVICES

- 6.1 Where appropriate, the Customer and the Supplier shall agree a Project Plan for the implementation and provision of Services.
- 6.2 The Supplier shall use reasonable endeavours to meet the performance dates set out in the Service Contract (including, but without limitation, the Ready for Service Date) but any such dates shall be estimates only, and time shall not be of the essence in respect of the Supplier's obligations.
- 6.3 When the Supplier considers that the relevant Service and/or Sold Equipment is Ready for Service it shall so notify the Customer. Unless otherwise described in the appropriate SoW and/or appropriate Service Description, within five (5) Business Days of such notification the Customer shall review the operation of the Service and/or Sold Equipment to confirm that there are no Faults. The Customer shall give the Supplier a detailed description of any Fault in writing within the five (5) Business Days review period.
- 6.4 The Supplier shall use reasonable efforts to correct any Fault within a reasonable time and, on completion, re-submit the Service and/or Sold Equipment to the Customer. The provisions of Clauses 6.3 and 6.4 shall then apply again.
- 6.5 If the Customer does not provide any written notification of Faults in the five (5) Business Days period described above, or if the Service is found to conform to the Service Contract, or if the Customer shall commence the live operational use of the Service and/or Sold Equipment, the said Service and/or Sold Equipment shall be deemed accepted from that date.

7 SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier warrants that each of the Services will be performed with reasonable skill and care and that it will be provided substantially in accordance with the relevant Service Description.
- 7.2 The Supplier agrees to respond to and use its reasonable endeavours to comply with the Customer's reasonable requests and written instructions and act in a professional manner.
- 7.3 The warranty in Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of any of the Services contrary to the Supplier's instructions or the Service Contract.
- 7.4 If a Service does not conform with the warranty in Clause 7.1, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such non-conformity as soon as reasonably practicable.
- 7.5 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or fault free.
- 7.6 The Supplier agrees not to use the Customer Equipment or any other equipment belonging to the Customer save for the purposes of performing its obligations under the Service Contract or otherwise as directed by the Customer in writing.
- 7.7 The Supplier shall use reasonable endeavours to procure the installation of any Sold Equipment and/or Rented Equipment within the lead-times quoted to the Customer. These lead-times will, however, be subject to Order Acceptance, site survey and capacity checks and exclusive of any third-party delays.
- 7.8 Save as expressly provided in the relevant Service Contract, all representations, warranties and other terms, whether express or implied by law or otherwise, are strictly excluded to the fullest

extent permitted by law. In particular, the Supplier does not give any warranties, guarantees or assurances regarding the performance of the Equipment and/or the Services when used with, or run in conjunction with, any particular operating systems and/or software including Supported Software and software of the Customer or any third parties.

8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall at all times:

- 8.1.1 co-operate with the Supplier in all matters relating to the Services;
- 8.1.2 provide to the Supplier, in a timely manner, such materials, documentation, instructions and other information ("**Customer Materials**") as the Supplier may reasonably require in order to perform the Services, and ensure that the Customer Materials are complete and accurate in all material respects in order to carry out the Services, including Customer Data, security access information and software interfaces, to the Customer's other business applications;
- 8.1.3 provide such personnel assistance, and access to and use of its premises, adequate office space, facilities and utilities as may be reasonably requested by the Supplier from time to time;
- 8.1.4 ensure that all Customer Equipment is and remains in good working order and suitable for the purposes for which it is used and conforms to all Applicable Law;
- 8.1.5 carry out all other Customer responsibilities set out in the Service Contract in a timely and efficient manner;
- 8.1.6 ensure that, without cost or charge to the Supplier:
 - i. prior to commencement of the Services, any Customer Equipment to be hosted at the Facility is clearly identified as belonging to the Customer and that the Customer Equipment is labelled and all individual components which make up the Customer Equipment are easily identifiable from the front and rear to assist with timely execution of any maintenance and support;
 - ii. it takes all necessary steps to ensure that it has in place appropriate business continuity and disaster recovery arrangements in the event of Force Majeure. The Customer acknowledges that, unless expressly agreed in writing, the Services do not include the provision by the Supplier of additional space for hosting the Customer Equipment or any replacement equipment or the making of any contingency arrangements to support the Customer in the event of Force Majeure;
 - iii. it has obtained and maintained all necessary underlying rights, wayleaves, licences and consents and complies with all relevant legislation in relation to its use of the Services, the installation of the Equipment, the use of Customer Materials and the use of the Customer Equipment in relation to the Services; and
 - iv. it maintains, at its own cost, with a reputable insurance company such insurance cover against all risks which would normally be insured against by a prudent business including insurance in relation to the Equipment, any loss or damage caused to the Supplier's or other third party property or personnel or to the Supplier's employees, agents or Subcontractors by the negligence or default of the Customer, or the Customer's employees or agents, or caused by any malfunctioning of the Customer

Equipment, and any related loss or business interruption and shall upon reasonable request provide the Supplier with evidence that such insurance has been effected and is and will be maintained. The Customer agrees and acknowledges that the Customer Equipment is not insured by the Supplier;

- v. provide appropriate safe and secure equipment space, environment, ducting and electrical power as agreed at the site survey to facilitate future installation of Equipment at the Customer's premises without charge or cost to the Supplier in immediate proximity to the Supplier's Network termination equipment or termination point, failure to do so at time of site survey shall prevent the Supplier from complying with its obligation to deliver the Services hereunder. In the event that the Customer is in default of this Clause 8.1.6(v), the Supplier shall incur no liability to the Customer whatsoever in relation to the failure to deliver the Service;
 - vi. prepare its premises before the arrival of the Supplier in accordance with the Supplier's reasonable instructions. The Customer is responsible for restoring or replacing any items moved and any necessary redecoration;
 - vii. ensure that Equipment is not interfered with by any person and undertakes to pay the Supplier's reasonable charges for any restoration, repair or replacement of such equipment resulting from any Customer or third party interference; and
 - viii. afford the Supplier reasonable access at all times to the premises for the installation, connection, inspection and planned or emergency maintenance or removal of equipment, facilities and systems relating to the Services;
- 8.1.7 comply with all Applicable Law, including applicable requirements relating to health and safety and electrical equipment;
- 8.1.8 not hold itself out as being an agent, partner, representative or otherwise being entitled to bind the Supplier or other members of the Dataquest Group;
- 8.1.9 not publish or cause anything to be published, whether in hard copy or by any electronic medium, which contains adverse or derogatory comments about the Supplier or other members of the Dataquest Group;
- 8.1.10 provide the Supplier with the names and e-mail addresses of all persons who are authorised to issue instructions to the Supplier and, where any of those persons cease to be so authorised, notify the Supplier immediately;
- 8.1.11 ensure that no data received or transmitted by the Customer Equipment or otherwise via any of the Services will adversely affect, interfere with or be malicious to any of the Supplier's or any third party networks, equipment or software;
- 8.1.12 ensure that the Customer Equipment will not at any time perform operations designed to intercept data not directly addressed to the Customer Equipment or otherwise breach or disrupt voice or internet communications and will be operated in accordance with Accepted Standards; and
- 8.1.13 apply such security updates and patches as may, from time to time, be required to ensure compliance with the Service Contract and generally Accepted Standards of information security.
- 8.2 In the event of any delays in the Customer's compliance with Clause 8.1, the Supplier may adjust any timetable or delivery schedule set out in a Service Contract as reasonably necessary and the Customer agrees and acknowledges that any such delays or non-compliance shall relieve the

Supplier of any obligation or liability in respect of any delays to the Project Plan, the Ready for Service Date and/or any failure to meet Service Levels.

9 SYSTEM CAPACITY AND PERFORMANCE

- 9.1 Should the Customer's usage of the Services, or any component of the Services, be in excess of capacity specifications which are detailed in the Service Contract, recommended by the Supplier and/or published by any vendor of the relevant components, then the Supplier will advise the Customer of any upgrades recommended by the Supplier, and the Supplier will not be liable for any degradation in Service caused by such usage. The Supplier reserves the right to suspend the provision of the Services, giving as much notice as is reasonably practicable in the circumstances, in the event that the said usage exceeds the relevant capacity specifications.
- 9.2 If the Customer chooses not to upgrade as recommended by the Supplier in accordance with Clause 9.1, then the Supplier may notify the Customer in writing that all support in respect of such Services or component is thereafter provided on a reasonable efforts, discretionary and no liability basis, and following such notice any provision to the contrary of the Service Contract shall be deemed to be suspended to that extent unless and until such time as the Supplier's recommended upgrades are implemented.
- 9.3 Where the Service performance continues to be impacted due to a capacity issue as referred to in Clause 9.1 and as a result the Service is considered by the Supplier to be unsustainable, then without prejudice to Clause 9.2 the Supplier may at its sole discretion terminate the Service Contract in question upon giving no less than three (3) month's written notice to the Customer.

10 FEES AND PAYMENT

- 10.1 The Customer shall pay the Fees as set out in the relevant Service Contract, with effect from each Ready for Service Date in relation to each individual Service detailed in the Order Form. The Fees shall be payable as follows:
- 10.1.1 any Set-Up Fees upon the Ready for Service Date;
- 10.1.2 any Recurring Fees in advance from the Ready for Service Date as detailed in the Order Form. Thereafter, the said Charges are invoiced quarterly;
- 10.1.3 any Usage Fees monthly in arrears;
- 10.1.4 any Fees in respect of the Equipment ordered for and on behalf of the Supplier shall be payable as detailed in the Order Form; and
- 10.1.5 any additional Fees pursuant to this MSA.
- 10.2 The Customer shall reimburse the Supplier for all actual and reasonable travel expenses including airfares, hotels, and meals incurred by the Supplier in performance of Services at the rates specified in the Order Form or at the Supplier's then stated standard rates if not specified in the Order Form.
- 10.3 The Supplier shall be entitled to charge for any further Fees reasonably incurred for all time spent in reasonably resolving:
- 10.3.1 any complaints or reports received from any governmental or other competent authority or from any emergency service organisation in relation to the Equipment or the Customer's use of the Services. Save where prohibited from doing so by applicable law or regulation, the Supplier:

- i. shall inform the Customer without delay of any such complaint or report;
 - ii. wherever possible, shall not respond to the relevant authority or organisation without the Customer's prior consent (which shall not be unreasonably withheld or delayed); and shall consult with the Customer with regard to such complaint or report;
- 10.3.2 any issues that have arisen as a result of the Customer's failure to use any software or equipment in accordance with applicable user instructions, or the Customer's unauthorised attempts to maintain or alter any software or equipment, or any use of software, equipment or services other than in accordance with the Service Contract (including any breach of the Acceptable Use Policy) and in accordance with the Applicable Law.
- 10.4 The Customer shall pay the Fees by the Invoice Due Date. If the Customer has a genuine dispute about any Fees, it must provide details to the Supplier within forty (40) days of receipt of the relevant invoice, stating the invoice item which is disputed, and must pay all other elements of the relevant invoice by the Invoice Due Date.
- 10.5 If no notice of a disputed invoice is given within the forty (40) days referred to at Clause 10.4, the Customer shall be deemed to accept the invoice in full.
- 10.6 Any sum payable under the Service Contract is exclusive of VAT which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the Customer of a valid VAT invoice.
- 10.7 Save where the Order Form states otherwise, the Customer shall pay (and the Supplier may collect) all sums due under any Service Contract by way of variable direct debit in accordance with the direct debit mandate attached to the Service Contract or as varied from time to time. The Supplier may request that the Customer and the Customer agrees to pay a deposit, or to pay in advance as security for the Fees, and/or to set a total credit limit for amounts due from time to time.
- 10.8 If any sum payable under a Service Contract is not paid on or before the Invoice Due Date then, without prejudice to any other rights it may have, the Supplier will be entitled to charge the Customer interest on that sum at the rate of four per cent (4%) per annum above the base lending rate from time to time of The Royal Bank of Scotland plc from the Invoice Due Date until the actual date of payment, such interest to accrue on a daily basis. The Customer shall reimburse all costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount. If the Customer is committed to making a number of payments pursuant to this MSA, then all payments still to be made at the date of default shall immediately fall due and owing to the Supplier.
- 10.9 Subject to Clause 10.4, if the Customer fails to make full payment by the Invoice Due Date the Supplier may notify the Customer in writing of such payment default (a "**Payment Default Notice**") and unless the amount of the invoice is paid in full within ten (10) Business Days of the Customer's receipt of the Payment Default Notice, the Supplier may, without prejudice to any other rights it may have:
 - 10.9.1 suspend the Services immediately until it has received payment in full of all sums due; and/or
 - 10.9.2 terminate the Service Contract for material irremediable breach immediately; and/or
 - 10.9.3 exercise a lien over the Customer Equipment and any Sold Equipment until such time as all outstanding payments are made in full; and/or
 - 10.9.4 sell any Customer Equipment and Sold Equipment and account to the Customer for all sums received less a sum equal to all sums outstanding due to the Supplier and an administrative fee to

cover the costs of sale equal to fifteen per cent (15%) of the sums outstanding due to the Supplier at the time of sale such fee to be a minimum of £75 plus VAT.

- 10.10 On expiry or termination of this MSA or any Service Contract for any reason other than termination by the Customer pursuant to Clause 17.2 below, any outstanding Service Credits shall not be recoverable by the Customer.
- 10.11 The Supplier reserves the right to increase the Fees (such increase shall be effective following expiry of the Initial Term) by giving not less than ninety (90) days' notice in writing to the Customer, such notice to expire on the last day of the Initial Term provided always that the Supplier reserves the right to increase the Fees in relation to each Service on each anniversary of the Ready for Service Date for that Service by a sum equal to any percentage increase in the published Retail Prices Index (or any replacement method of indexation). In the event that the Customer does not accept the said increase (other than the said increase by RPI), the Customer shall be entitled to terminate the Service Contract for the relevant Service by giving not less than sixty (60) days' notice in writing, such notice to expire on the last day of the Initial Term. In the event that the Customer fails to provide such notice, the said increase in the Fees shall be deemed accepted by the Customer.
- 10.12 The Supplier shall have the right to alter the Rates in the Service Contract following the Initial Term subject to giving the Customer not less than four (4) weeks' notice in writing of any alteration.
- 10.13 All payments by the Customer shall be made in pounds sterling (£) and without deduction or set off of any amount except where the Order Form specifies otherwise. In the event that the Supplier consents to payment being made in either Euros (€) or US Dollars (\$), the Customer agrees to indemnify the Supplier in relation to any exchange rate fluctuations.
- 10.14 Fees in relation to any particular Services may be amended at any time by the Supplier giving not less than two (2) months' notice to the Customer if:
- 10.14.1 the scope of, or functionality required in, the Services changes or increases as a result of the Customer's changes, requirements or instructions; or
- 10.14.2 there is any material increase in the cost of the Services or other items that the Supplier must procure from third parties for the provision of the Services.
- 10.15 The Fees specified in the Order Form are exclusive of, and may be increased without notice as a result of, the imposition by any relevant authority of any tax, impost, levy or charge including any 'green levy' such as the carbon reduction commitment or the climate change levy and non-domestic rates on fibre optic networks.
- 10.16 In the event that additional Fees are incurred by the Supplier, whether during or after the Initial Term of a Service, as a result of:
- 10.16.1 any alteration or addition to the schedule of work for the Services as detailed in the Order Form or as otherwise agreed in writing;
- 10.16.2 abortive visits to the Customer's premises arising from failure or delay by the Customer in providing access to the Supplier or its Subcontractors;
- 10.16.3 delays arising from the failure of the Customer to provide access, data or information reasonably required by the Supplier from time to time or failure or delays by the Customer in attending or arranging meetings reasonably required by the Supplier in order to perform the Services;
- 10.16.4 any other breach of this MSA by the Customer;

10.16.5 any increase in the cost of provision of power and cooling at the Colocation Space;

The Supplier shall be entitled to recover such reasonable additional Fees from the Customer and the Customer shall fully indemnify and keep the Supplier indemnified in respect of the same. In respect of Clause 10.16.5, the Charges shall be increased per KWh and/or for cooling at the same rate of increase and/or change to the same basis for charging as the Supplier is charged.

10.17 The Supplier may vary the Fees in the Order Form as a result of a site survey and shall notify the Customer of any such variation. Unless varied, and subject to satisfactory site survey, the Supplier will invoice Customer the Fees for the Services detailed in the Order Form.

10.18 The Supplier reserves the right to invoice the Customer via any company within the Dataquest Group from time to time. For the avoidance of doubt, such action shall not affect the rights and obligations of the parties hereunder.

11 SERVICE CREDITS

11.1 Service Credits are available against certain losses of service and/or failures to meet Service levels where expressly stated and defined in the applicable Service Contract.

11.2 If, in the Supplier's reasonable opinion, only a proportion of any one Service used by the Customer is affected by the relevant loss of service, the Supplier shall credit the Customer's account with a reasonable proportion of the Service Credit. For the purpose of calculating the proportion of a Service Credit due to the Customer, the Supplier (in its sole discretion but acting reasonably) shall determine which proportion of the Service was affected.

11.3 The calculation of the Service Credit shall be based on the Recurring Fees and shall not include any other Fees paid or payable by the Customer to the Supplier.

11.4 The maximum Service Credit allowable in any given calendar month is limited to the amount of the Recurring Fees payable in that calendar month, unless set out otherwise in the applicable Service Contract.

11.5 A Service Credit shall not be credited to the Customer's account unless the Customer requests it from the Supplier's accounts department within thirty (30) days of the date on which the Supplier failed to meet the relevant Service Level for a reason solely due to the default of the Supplier. A claim for any such Service Credit must be made via email, referencing this Clause 11.5 and sent to servicecredits@dgggroup.com. If the Customer does not claim the Service Credit in this period then the Service Credit will lapse and may not be claimed by the Customer. A Service Credit which is claimed by the Customer shall be applied by the Supplier as a reduction to the Recurring Fees payable by the Customer to the Supplier and shall be credited to the Customer in a subsequent invoice.

11.6 Where Service Credits are provided for in a Service Contract, the parties agree that the Service Credits are a genuine pre-estimate of loss made by the parties and shall represent liquidated damages; these shall be the sole and exclusive remedy of the Customer for the relevant loss of service and/or the Supplier's failure to meet the applicable Service Levels.

11.7 Calculations of Service Levels and Service Credits will exclude the following:

11.7.1 Time needed to resolve Faults as a result of a breach by the Customer of Clause 8;

11.7.2 Time needed to resolve Faults as a result of a breach by the Customer of Clause 9;

11.7.3 Planned Maintenance; and/or

11.7.4 Emergency Maintenance.

12 NO RESALE RIGHTS

12.1 Except by prior written agreement of the Supplier which shall be set out in the relevant Service Contract, the Customer shall not offer, whether by way of resale or otherwise, services which are similar to or competitive to those provided by the Supplier to any other customer of the Supplier in the facility, including but not limited to internet access or other connectivity services.

13 INTELLECTUAL PROPERTY

13.1 Subject to payment in full of all sums due from the Customer, the Supplier shall grant the Customer a non-exclusive, non-transferable licence for the term of the Service Contract, to use any software, reports, information, drawings or other original material produced by the Supplier pursuant to this Service Contract for its own internal purposes but for no other purpose. The copyright and any other intellectual property rights in such material shall be vested in and remain the absolute property of the Supplier or its licensors. Nothing in this MSA shall operate to prevent the Supplier from making use of know-how acquired, principles learned or developed or experience gained during the performance of the Services.

13.2 Nothing in this MSA shall be deemed to, or require the Supplier to transfer, assign or license any intellectual property rights to the Customer.

13.3 Where the Customer requires the use of licensed software, code, access control lists or other configuration information ("Licensed Software") to use the Services supplied under any Order Form, then such Licensed Software shall be identified in the Service Description and the Supplier will provide the Customer with either:

13.3.1 Where the Licensed Software is owned, customised or created by the Supplier; for the duration of the term of the Service Contract, a non-exclusive, non-transferrable licence to use such Licensed Software for its internal purposes only and solely to the extent required to permit delivery of the Services. The Customer will in no event be entitled to claim title to or any ownership interest in the Licensed Software (or any derivations, modifications or improvements thereto), and the Customer will execute any documentation reasonably required by the Supplier to memorialise the Supplier's existing and continued ownership of or rights to the Licensed Software, or

13.3.2 Where the Licensed Software is licensed by the Supplier from a third party provider, the benefit of the extent of the licence granted to the Supplier by the licensor of the Licensed Software, the scope of which shall be specified in the Service Description or otherwise notified in writing to the Customer and incorporated in the Service Contract.

13.4 The Customer agrees that it will not, and will not allow others for whom it is responsible to: copy the Licensed Software except as allowed and permitted by the express written consent of the Supplier; reverse engineer, decompile or disassemble the Licensed Software, except where the Customer may decompile the Licensed Software only to the extent expressly permitted by law; sell, pledge, lease, license, sublicense or otherwise deal in the Licensed Software; create, write or develop any derivative software or any other software program based on the Licensed Software or any Confidential Information of the Supplier; or take any action prohibited by the owner of the Licensed Software, provided that the Supplier notified the Customer in advance of such prohibitions.

14 CONFIDENTIALITY

- 14.1 The Supplier and the Customer will each treat as confidential all Confidential Information obtained from each other under or in connection with this MSA and any Service Contract.
- 14.2 The Supplier and Customer shall not use the other's Confidential Information except for the purpose of exercising or performing its rights and obligations under a Service Contract ("**Permitted Purpose**") and shall not disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 14.
- 14.3 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 to third parties by its Representatives in violation of this Clause 14.
- 14.4 The Customer acknowledges that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Services and the Customer agrees not to make use of any such material for any purpose other than receipt of the Services from the Supplier.
- 14.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 14.6.1 it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
- 14.6.2 at all times it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause 14.
- 14.7 A party may disclose Confidential Information to the extent required 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.
- 14.8 The restrictions set out in this Clause 14 do not apply to information which:
- 14.8.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause 14);
- 14.8.2 was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
- 14.8.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 14.8.4 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 14.9 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this MSA or a Service Contract are granted to the other party or may be implied.

- 14.10 The provisions of this Clause 14 shall continue to apply after termination of the last Service Contract to expire, for a period of three (3) years.

15 LIMITATION OF LIABILITY

- 15.1 This Clause 15 sets out the entire liability of each party (including any liability for the acts or omissions of its employees, agents and subcontractors) to the other in respect of:

15.1.1 any breach of contract;

15.1.2 any representation, misrepresentation (whether innocent or negligent), statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this MSA or a Service Contract; and

15.1.3 in each case whether or not the liable party was made aware of the possibility of any loss or damage.

15.2 Except as expressly and specifically provided in a Service Contract:

15.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use; and

15.2.2 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 Services, or any actions taken by the Supplier at the Customer's direction.

15.3 Nothing in any Service Contract excludes or limits the liability of a party for:

15.3.1 death or personal injury caused by the party's negligence;

15.3.2 fraud or fraudulent misrepresentation;

15.3.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.3.4 any other liability which cannot lawfully be excluded or limited.

15.4 Further, no limitations on liability in a Service Contract apply to the Customer's liability to pay any Fees due under a Service Contract or interest due thereon.

15.5 The Service Contract states the Customer's full and exclusive rights and remedies, and the Supplier's only obligations and liabilities in respect of the performance and/or availability of the Services to be provided thereunder, or their non-performance and non-availability.

15.6 Subject to Clauses 15.3 and 15.4, neither party will be liable to the other or to any third party for:

15.6.1 indirect or consequential loss or damage;

15.6.2 any loss arising from or in connection with loss of revenues, profits, contracts, data or business or failure to realise anticipated savings; and

15.6.3 any loss of goodwill or reputation.

15.7 Subject to Clauses 15.3 and 15.4, the total cumulative liability of either party arising under or in connection with any Service Contract shall be limited to an amount equal to the sum equal to 125% of the Fees paid or payable by the Customer under the relevant Service Contract in the twelve (12) months preceding the date on which such liability arose.

16 SUSPENSION OF THE SERVICES

- 16.1 The Supplier may, at its sole discretion upon giving notice to the Customer as soon as reasonably possible either orally (confirming such notification in writing) or in writing, elect to suspend immediately the provisions of the Services until further notice where:
- 16.1.1 the Supplier is entitled to terminate any Service Contract pursuant to Clause 17.1;
 - 16.1.2 the Supplier suspects that the Equipment or Services are being used fraudulently or otherwise unlawfully;
 - 16.1.3 the Supplier is entitled to suspend provision of any other service under the terms of any other agreement between the Supplier and the Customer; or
 - 16.1.4 the Supplier is obliged to do so in order to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority.
- 16.2 Any exercise by the Supplier of its right of suspension in respect of an event referred to in this Clause 16 shall not exclude the Supplier's right subsequently to terminate a Service Contract or to claim any remedies in respect of the Customer's breach (if any).
- 16.3 Suspension of the Services for any reason will not alter the period of service for the current chargeable invoice and all fees and sections of each Service Contract will remain in effect.
- 16.4 In the event that a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse the Supplier for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.
- 16.5 The Supplier shall not be liable to the Customer for any fees incurred by the Customer for the use of other services, whether provided by the Supplier or any other person during any period of unavailability, occurring as a result of implementing a suspension pursuant to Clause 16.1.

17 TERMINATION

- 17.1 The Supplier shall be entitled to terminate any Service Contract at its immediate discretion in the event that:
- 17.1.1 the Customer fails to pay any amount due under the Service Contract on the Invoice Due Date for payment and fails to pay such amount within fourteen (14) days after being notified in writing of such failure;
 - 17.1.2 the Supplier has terminated, or is entitled to terminate, any other contract that it has entered into with the Customer on any grounds which are the same as, or are analogous to, those set out in this Clause 17.
- 17.2 Either party shall be entitled to terminate a Service Contract on notice in writing to the other party if:
- 17.2.1 the other party commits a material breach of the Service Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 17.2.2 the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable

to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, enters bankruptcy or (being a partnership) has any partner to whom any of the foregoing apply;

- 17.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 17.2.6 the holder of a qualifying charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.2.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 17.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 17.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 17.2.2 – 17.2.8 (inclusive);
- 17.2.10 the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 17.2.11 the other party threatens, whether orally or in writing (whether in hard copy, by any electronic medium or otherwise) to adversely affect the on-going operations of the first party's business or that of any of its Group Companies (provided that this Clause shall not apply to any action taken by the Supplier in accordance with a Service Contract or at any time that the Customer has not paid the Fees by the due date or is otherwise in breach of a Service Contract).
- 17.3 If a party has the right to terminate any Service Contract pursuant to Clauses 17.1 or 17.2, it may instead elect to terminate one or more of the individual Services provided under that Service Contract, in which event such Services shall be so terminated but the Service Contract will continue in full force and effect in relation to all the other Services provided thereunder.
- 17.4 Any provision of a Service Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Service Contract shall remain in full force and effect.

- 17.5 Termination of a Service Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties accrued before the date of termination or expiry.
- 17.6 On termination of a Service Contract for any reason, then without prejudice to any other right the Supplier may have, the following provisions shall apply to such termination as appropriate:
- 17.6.1 the Supplier shall immediately cease provision of the Services;
- 17.6.2 all amounts payable by the Customer to the Supplier shall become immediately due (subject to receipt by the Customer of a valid invoice in respect of the same);
- 17.6.3 the Customer shall pay all costs relating to the packing, transportation and administration, delivering or retrieving of the Customer Equipment;
- 17.6.4 the Customer shall pay the Supplier's reasonable cost for storing any Customer Equipment which is not collected from the Facility within fifteen (15) days of termination of the Service Contract (provided the delay is not caused by any act or omission of the Supplier);
- 17.6.5 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 17.7 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession. Notwithstanding its obligations in Clause 17, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under Clause 17, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 14 shall continue to apply to any such retained documents and materials.
- 17.8 Clauses 10, 14, 15, 19, 20 and 28 shall continue in full force and effect after the expiry or termination of this agreement.

18 FORCE MAJEURE

- 18.1 The Customer acknowledges and agrees that the Supplier does not and cannot control the flow of data to or from its networks or the storage of data held outside its networks. Such flow and/or storage depend, in large part, on the performance of internet services and/or telecommunications networks provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Supplier's connections to the internet (or portions thereof) or such other platforms upon which access to the Services may be provided. Although the Supplier will use reasonable efforts to take all actions reasonably necessary to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, save as provided expressly in a Service Contract, the Supplier gives no warranty in relation to such events and any occurrence of such will be classed as an Event of Force Majeure.
- 18.2 Each party will give notice forthwith to the other party upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 18.3 If a default due to an Event of Force Majeure shall continue for more than sixty (60) days, then either party will be entitled to terminate any affected Service Contracts by giving not less than thirty (30) days written notice to the other. Neither party shall have any liability to the other in respect of the termination of a Service Contract as a result of an Event of Force Majeure save and except for

the Customer's payment obligations up to and including the effective date of termination of the Service Contract.

19 DATA PROTECTION AND RIPA 2000

- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.
- 19.3 Without prejudice to the generality of clause 19.1, 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 this MSA.
- 19.4 Without prejudice to the generality of clause 19.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this MSA:
- 19.4.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 19.4.2 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);
- 19.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 19.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 19.4.4.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- 19.4.4.2 the data subject has enforceable rights and effective legal remedies;

- 19.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 19.4.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 19.5 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;
- 19.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 19.7 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
- 19.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 19.
- 19.9 Where the Customer consents to the Supplier appointing a third-party processor of Personal Data under this agreement, the Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 19. 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 19.
- 19.10 Either party may, at any time on not less than 30 days' notice, revise this Clause 19 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this MSA).
- 19.11 The Customer agrees and acknowledges that the Supplier is reliant upon the Customer for direction as to the extent to which the Supplier is entitled to use and process Personal Data disclosed by the Supplier. Accordingly, the Supplier shall not be liable for any claim brought by a data subject arising from any act or omission by the Supplier, to the extent that any such act or omission results from the Customer's instructions.
- 19.12 The Supplier shall comply with the Regulation of Investigatory Powers Act 2000 and similar or subordinate legislation or requirements made hereunder and as modified from time to time and Customer consents to the Supplier doing all such acts as may be required of it to comply with such requirements.

20 TUPE

- 20.1 Both parties warrant that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**"), and each party hereby indemnifies the other party against all losses, damages, liabilities, and reasonable costs and expenses arising in connection with any claim (whether successful or not) arising under, or in connection with the application of TUPE.

21 ANTI-BRIBERY

- 21.1 Each party shall:

- 21.1.1 comply with all applicable laws, regulations, mandatory codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
 - 21.1.2 have and shall maintain in place throughout the term of each Service Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 21.1.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Service Contract; and
 - 21.1.4 immediately notify the other party if a foreign public official becomes one of its officers or employees or acquires a direct or indirect interest in the first party (and the first party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of any Service Contract).
- 21.2 Any breach of this Clause 21 shall be deemed a material breach under Clause 17.
- 21.3 For the purposes of this Clause 21 a person associated with a party includes any subcontractor of that party.

22 WAIVER

- 22.1 No failure or delay by a party to exercise any right or remedy provided under a Service Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

23 CAPACITY

- 23.1 Each party warrants to the other that:
- 23.1.1 it has full capacity and authority to enter into and perform its obligations under any Service Contract; and
 - 23.1.2 each Service Contract is executed by its duly authorised Representatives.
- 23.2 The Customer warrants that it is the owner or permitted user of the Customer Equipment and that any software on such equipment is properly licensed to the Customer on terms which allow it to be used as contemplated by the relevant Service Contract.

24 SEVERANCE

- 24.1 If any court or administrative body finds that any provision of a Service Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Service Contract shall not be affected.
- 24.2 If any invalid, unenforceable or illegal provision of a Service Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

25 ENTIRE AGREEMENT

- 25.1 Each Service Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

26 ASSIGNMENT AND SUBCONTRACTING

- 26.1 The Customer shall not be entitled to assign or subcontract all or any of its rights or obligations under any Service Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 26.2 The Supplier shall be entitled to assign or subcontract all or any of its rights and obligations under any Service Contract to any person without the prior written consent of the Customer.

27 THIRD-PARTY RIGHTS

- 27.1 Each Service Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.

28 DISPUTE RESOLUTION

- 28.1 The parties agree to use reasonable endeavours to resolve any dispute or claim relating to a Service Contract in accordance with this Clause 28 in good faith. Each party must follow the procedures in this Clause 28 before starting court proceedings (except for urgent injunctive or declaratory relief).
- 28.2 If a dispute or claim arises between the parties that cannot be resolved promptly between the parties at an operational level, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within fifteen (15) Business Days of the date of the notice (or any other agreed period) to resolve the dispute or claim. In the event that the dispute is still not resolved the parties may refer the dispute to Ofcom to decide under section 186 of Communications Act 2003 whether it is appropriate for them to handle the dispute.

29 NOTICES

- 29.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 29.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax, at
9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

30 GOVERNING LAW AND JURISDICTION

- 30.1 Each Service Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

- 30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any Service Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 INTERPRETATION

The definitions and rules of interpretation in this Appendix apply in this MSA.

- 1.1 A person includes a natural person, company or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 A reference to a subsidiary or holding company is to be construed in accordance with section 1159 Companies Act 2006.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to writing or written includes faxes but not e-mail (except where specifically stated).
- 1.7 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.8 In the Service Description, SOW and any other ancillary documents, "you" and "your" refer to the Customer; similarly, "we", "us" and "our" refer to the Supplier.

Acceptable Use Policy: means the Supplier's acceptable use policy which is available on the Supplier's website at www.dqgroup.com as may be amended and updated from time to time;

Accepted Standards: means using the standards practices and methods and exercising the skill, diligence, prudence, foresight and judgement which would be expected from a highly skilled, qualified and experienced person engaged in a similar undertaking under similar circumstances;

Applicable Law: means any relevant statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or industry code of conduct or guideline;

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

Business Hours: means 9am to 5.30pm on a Business Day;

Co-location Space: means the Supplier data centre named on the Order Form;

Commencement Date: means the date that the Order Form is executed by the Customer (provided that this occurs within one month of the completed Order Form's delivery to the Customer);

Confidential Information: means all confidential information (however recorded, stored, preserved or communicated, including orally) disclosed by a party or its Representatives (a "disclosing party") to the other party and that party's Representatives (a "receiving party") including the trade secrets, operations, processes, plans, intentions, services, product information, know-how, designs, market opportunities, transactions, business affairs and any information (whether or not included in the above examples) which is either labelled as confidential or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure, and includes the terms of each Service Contract;

CPE: means any equipment located or to be located on a Customer Site but controlled or to be controlled by the Supplier as part of the Services;

Customer: means the party entering into the Service Contract that has a contractual relationship with the Supplier;

Customer Data: means all data provided by the Customer;

Customer Equipment: means the equipment owned by the Customer to be located at the Facility and as applicable and as specified in the Order Form managed and/or maintained by the Supplier;

Customer Site: means any premises belonging to or occupied by the Customer at which it receives a Service;

Data Protection Legislation: means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

Emergency Maintenance: means a projected service outage initiated by the Supplier where it is not reasonably possible to provide five (5) days' notice to the Customer; the Service will be degraded or suspended for a short period of time to allow for maintenance activities to take place out of Business Hours where reasonably possible;

Equipment: means CPE and Customer Equipment, including cabling and systems provided by the Supplier in connection with the Services;

Event: means an act, event, omission or circumstance;

Facility: means any building belonging to or occupied by the Supplier used for the provision of the relevant Services;

Fault: means a failure of a Service in any material respect to conform with the Service Contract;

Fees: means all fees due to be paid to the Supplier by the Customer for any Service Contract, including, but not limited to, the Set-Up Fees, the Recurring Fees and the Usage Fees;

Force Majeure: means any cause beyond the Supplier's reasonable control including fires, floods, lightening, war, revolution, act of terrorism, riot, civil commotion, act of God, industrial disputes, strikes (of another person's employees), casualties, accidents, power failure, breakdown in equipment, failure of suppliers, failures of transportation, telecommunications failures or internet downtime or available bandwidth shortage;

Group Companies: means in relation to a party, any subsidiaries or holding companies of that party, or subsidiaries of such holding companies;

Initial Term: means the period for the supply of the Services indicated on the relevant Order Form starting from the Ready for Service date for, or if no Initial Term is specified on the relevant Order Form, a period of three

(1) calendar years from that date;

Intellectual Property Rights: means any and all trade and service marks or names, domain names, patents, utility models, design rights, copyright, database rights or other intellectual property rights, in each case whether registered or unregistered, whether capable of registration or not, including applications for registrations, anywhere in the world;

Invoice Due Date: means the date for payment set out on the Supplier's invoice or in the Service Contract or if no date for payment is stated, thirty (30) days from the date of the invoice;

Order Acceptance: means a notice given to the Customer, in writing (including via email) by the Supplier confirming the order status;

Order Form: means the order placed by the Customer for relevant Services, which shall be submitted on the Supplier's standard order form unless otherwise agreed by the Supplier and which shall be subject to this MSA and form part of the relevant Service Contract;

Planned Maintenance: means a projected service outage initiated by the Supplier where five (5) days' notice is served (unless less notice is provided by the Supplier's 3rd parties) the Service will be degraded or suspended for a short period of time to allow for maintenance activities to take place;

Project Plan: means the plan to be developed to outline the provision of Services (including any set-up services) where applicable;

Rates: means any fees or charges for additional services that are to be charged on an hourly or daily rate which shall be notified to the Customer and as determined by the Supplier;

Ready for Service Date: means the date at the end of Service Implementation when the Supplier has delivered all of the elements of a Service (or part of a Service) such that it may now be reviewed for conformity to the Service Contract by the Customer. The exact conditions of when the Ready for Service Date is achieved are set out in the relevant Statement of Work or Service Description, as appropriate. For the avoidance of doubt, this is the date when the Initial Term shall commence;

Recurring Fees: means any element of the Fees which is payable periodically (e.g. monthly, quarterly, annually) regardless of usage as set out in the Order Form;

Rented Equipment: means any apparatus or equipment as specified in the Order Form to be loaned to the Customer by the Supplier or any third party on behalf of the Supplier to enable the provision of Services;

Representatives: means a party's employees, officers, representatives, advisers or subcontractors;

Service: means each individual service listed on an Order Form and more particularly described in the relevant Service Description and provided pursuant to a Service Contract;

Service Catalogue: means the list of Standard Change and Information Request services that the Supplier publishes to the Customer;

Service Contract: means a contract made between the parties to this MSA as more particularly described in Clause 2.1;

Service Credit: means any credits against Fees set out in the Service Contract which are payable by the Supplier for failure to comply with agreed Service Levels;

Service Implementation: means the phase of the Service Contract between Order Acceptance and the Ready for Service Date;

Service Level: means any service level standards which the Supplier has agreed to in relation to a Service. This will be set out as being the Key Performance Indicator in the applicable Service Description and expressly identified as a Target Service Level;

Service Operations: means the phase of the Service Contract from the Ready for Service Date until the relevant Service Contract has terminated;

Set-Up Fees: means the element of the Fees which consists of initial one off fees as shown in the Order Form;

Sold Equipment: means any apparatus or equipment as specified in the Order Form to be sold to the Customer by the Supplier or any third party on behalf of the Supplier;

Supported Software: means any operating system and software applications identified in the Order Form as being supplied by the Supplier;

SOW: means the statement of work which more particularly describes the provision of the Services; and **Usage Fees:** means the usage fees defined in the Order Form.

SCHEDULE 2

CHANGE CONTROL PROCEDURE

1 INTRODUCTION

- 1.1 This Schedule 2 (Change Control Procedure) sets out the procedure for dealing with changes to this Agreement (including, without limitation, any changes to the Services, the Service Levels, any agreed and baselined documents or controls such as technical designs, the Project Plans, or the Fees) (a **“Contract Change”**).
- 1.2 Under this Change Control Procedure:
- (a) either party may request a Contract Change, which they shall initiate by issuing a request for change request note in accordance with paragraph 3 below (a **“Request for Change”**);
 - (b) the Supplier will assess the potential impact of a proposed Contract Change in accordance with paragraph 4, and issue an impact assessment before the Contract Change can be either approved or implemented (an **“Impact Assessment”**);
 - (c) no proposed Contract Change shall be implemented by the Supplier until such time as a Request for Change has been signed and issued by the Customer in accordance with this Schedule (an **“Agreed RFC”**);
 - (d) if the circumstances or nature of a proposed Contract Change mean that it needs to be undertaken on an expedited basis (a **“Fast-Track Change”**) then it shall be processed in accordance with paragraph 7; and
 - (e) if the circumstances or nature of a proposed Contract Change mean that it should be treated as a pre-approved change (a **“Standard Change”**) then it will be processed in accordance with paragraph 7.
- 1.3 To the extent that any Contract Change requires testing and/or a programme for implementation, then the parties shall follow the testing procedures set out in this Agreement or the relevant Agreed RFC.
- 1.4 Until such time as an Agreed RFC has been signed and issued by the Customer in accordance with this Schedule:
- (a) unless the Customer expressly agrees otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of the Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the parties in connection with any proposed Contract Change, shall be without prejudice to each party's other rights under this Agreement.

2 COSTS

- 2.1 Subject to paragraph 2.2, each party shall bear its own costs in relation to the preparation and agreement of each Request for Change and Impact Assessment. All Contract Changes shall be calculated and charged in accordance with the principles and Fees. The Supplier may only increase the Fees if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources or requires the Supplier to incur additional costs or expenses. In any event, any increase to the Fees resulting from a Contract Change will be proportionate to the increase in the level of resources or additional

costs or expenses required for the provision of the Services as amended by the Contract Change. Any decrease in the Fees resulting from a Contract Change will be subject to agreement between the parties (acting reasonably and in good faith).

- 2.2 Any and all costs reasonably incurred by a party in respect of any use of this Change Control Procedure as a direct result of a material error or default by the other party shall be paid for by that other party, at the rates set out in the Rate Card, if the preparation of the Request for Change and/or Impact Assessment requires more than (two) 2 man-days' effort.

3 REQUEST FOR CHANGE

- 3.1 Either party may issue a Request for Change to the other party at any time during the Term. The Request for Change shall substantially be in the form of Appendix 1 (RFC Template) to this Schedule and must state whether the party issuing the Request for Change considers the proposed Contract Change to be a Fast-Track Change.
- 3.2 If the Supplier issued the Request for Change, then it shall also provide an Impact Assessment to the Customer as soon as is reasonably practicable but in any event within (ten) 10 Business Days of the date of issuing the Request for Change.
- 3.3 If the Customer issued the Request for Change, then the Supplier shall provide an Impact Assessment to the Customer as soon as is reasonably practicable but in any event within (ten) 10 Business Days of the date of receiving the Request for Change from the Customer PROVIDED that if the Supplier requires any clarifications in relation to the Request for Change before it can deliver the Impact Assessment, then it will promptly notify the Customer and the time period shall be extended by the time taken by the Customer to provide those clarifications. The Customer shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall provide the Customer with sufficient information to enable it to understand fully the nature of the request for clarification.

4 IMPACT ASSESSMENT

- 4.1 Each Impact Assessment shall be completed in good faith and shall include (without limitation):

- (a) details of the proposed Contract Change including the reason for the Contract Change;
- (b) details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under the Agreement and any variation to the terms of the Agreement that will be required as a result of that impact, including without limitation changes to:
- the Services and the Target Service Levels;
 - the format or handling of any Customer data;
 - the Project Plan or milestones for the provision of the Services, and any other timetable previously agreed by the parties; and
 - other services provided by third party contractors to the Customer, including any changes required by the proposed Contract Change to the Customer's IT and telecommunications infrastructure;
- (c) details of the cost of implementing the proposed Contract Change;

- (d) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either party and any alteration to the working practices of either party;
 - (e) a timetable for the implementation of the Contract Change, together with any proposals for the testing of the Contract Change;
 - (f) details of how the proposed Contract Change will ensure compliance with any applicable laws;
 - (g) such other information as the Customer may reasonably request in (or in response to) the Request for Change; and
 - (h) an outline design of the proposed solution sufficient to confirm feasibility and facilitate costing of the work.
- 4.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 19 of this Agreement.
- 4.3 Subject to the provisions of paragraph 4.4, the Customer shall review the Impact Assessment and, within fifteen (15) Business Days of receiving it, shall respond to the Supplier in accordance with paragraph 5.
- 4.4 If the Customer is the receiving party and the Customer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Request for Change and the Impact Assessment, then within five (5) Business Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to Customer within ten (10) Business Days of receiving such notification or such longer period as the parties acting reasonably may agree. At the Customer's discretion, the parties may repeat the process described in this paragraph until the Customer is satisfied that it has sufficient information to properly evaluate the Request for Change and Impact Assessment.

5 CUSTOMER'S RIGHT OF APPROVAL

- 5.1 Within fifteen (15) Business Days of receiving the Impact Assessment from the Supplier or within ten (10) Business Days of receiving the further information that it may request pursuant to paragraph 4.4, the Customer shall evaluate the Request for Change and the Impact Assessment and shall (in its sole discretion) do one of the following:
- (a) approve the proposed Contract Change, in which case the parties shall follow the procedure set out in paragraph 5.2 below;
 - (b) reject the proposed Contract Change, in which case it shall notify the Supplier of the rejection PROVIDED THAT (a) the Customer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any applicable laws or to remedy any default on the part of the Customer, and (b) if the Customer does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection;

- (c) if the Customer reasonably believes that a Request for Change or Impact Assessment contains errors or omissions, require the Supplier to modify the document accordingly, in which event the Supplier shall make any necessary modifications within five (5) Business Days of such request, and resubmit the Impact Assessment for review in accordance with this paragraph 5.1.

5.2 If the Customer approves the proposed Contract Change pursuant to paragraph 5.1 and it has not been rejected by the Supplier in accordance with paragraph 6 below, then it shall inform the Supplier accordingly, in which case the Supplier shall prepare two copies of a Request for Change which it shall sign and deliver to the Customer for signature. Following receipt by Customer of the Request for Change, it shall review the Request for Change and, subject to being satisfied that it accurately reflects all the agreed terms, sign both copies and return one copy to the Supplier. On the Customer's signature, the Request for Change shall become an Agreed RFC and constitute a binding variation to the Agreement provided that the Request for Change is signed by an authorised person.

6 CONTRACTOR'S RIGHT OF APPROVAL

6.1 Following an Impact Assessment, if the Supplier reasonably believes that any proposed Contract Change which is requested by Customer:

- (a) would adversely affect the risks to the health and safety of any person;
- (b) would require the Services to be performed in a way that infringes any law or is inconsistent with good industry practice;
- (c) would cause any consent to be revoked (or a new consent required to implement the relevant Contract Change to be unobtainable);
- (d) would adversely affect the Supplier's ability to deliver the Services (other than to a minimal or de minimis degree);
- (e) would require the Supplier to implement the Contract Change in an unreasonable period of time;
- (f) would materially change the nature or risk profile of the Services (other than to a minimal or de minimis degree);
- (g) would require a party to possess legal powers or capacity that it does not have; and/or
- (d) would put or be likely to put the Supplier in default in respect of any provisions of this Agreement,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Customer of its reasons for doing so within five (5) Business Days after the date on which it is obliged to deliver the Impact Assessment in accordance with paragraph 3.3.

7 FAST-TRACK CHANGES

7.1 The parties acknowledge there may be circumstances where it is desirable to expedite the processes set out above, in order to ensure operational efficiency.

7.2 If both parties agree in relation to a proposed Contract Change that:

- (a) the Contract Change does not involve any alteration to, or deviation from the contractual principles set out in the Agreement;

- (b) the total number of Contract Changes in relation to which this fast track procedure has been applied does not exceed four in any 12 month period (or such higher number as the parties may from time to time agree in writing); and
- (c) the value of the proposed Contract Change does not exceed £10,000 (ten thousand pounds) and the proposed Contract Change is not significant (as determined by Customer acting reasonably),

then the parties shall confirm to each other in writing that they shall use the process set out in paragraphs 2 to 6 above but with reduced timescales, such that any period of fifteen (15) Business Days is reduced to five (5) Business Days, any period of ten (10) Business Days is reduced to two (2) Business Days and any period of five (5) Business Days is reduced to one (1) Business Day.

7.3 The parameters set out in paragraph 7.2 may be revised from time to time by agreement between the parties in writing.

8 STANDARD CHANGES

- 8.1 Where specified in the appropriate Service Description or SoW and where requested, in writing, by the Customer, the Supplier will make a Standard Change which is a pre-approved Change described in the Supplier's Service Catalogue.
- 8.2 The Service Catalogue will describe the nature of Standard Change; the resources required from both Customer and the Supplier and the location of these resources; the lead time; the approximate time of day the Standard Change will be made; and any Fees for the Standard Change.
- 8.3 The Supplier will maintain the Service Catalogue as needed, including adding, deleting and modifying new Service Change Types.

APPENDIX 1 – RFC TEMPLATE

AMENDMENT TO CONTRACT - REQUEST FOR CHANGE		
PURCHASE ORDER NUMBER		
CHANGE CONTROL NUMBER		
Title of Change:		
Date:		
Reason(s) for Change:		
Impact of Change:	<i>Details of the proposed change (include payment profile, terms of the Contract, operational impact etc. as appropriate)</i>	
Overall Timetable:		
Effective Date:		
Fees:	<i>(net cost, or saving, as a result of this change)</i>	
Required Changes to the text of the Agreement:		
Originator:	Name: Signed:	Title: Date:
Date of expiry of validity of change control notice:	<i>(Date the change control notice expires if it has not been accepted by the other party)</i>	
Response:	ACCEPT/REJECT <i>(delete as appropriate)</i>	
Customer Signatory:	Name: Signed:	Title: Date:
Supplier Signatory:	Name: Signed:	Title: Signed: Date:

SCHEDULE 3**Processing, Personal Data and Data Subjects**

1. Processing by the Supplier
 - 1.1 Scope []
 - 1.2 Nature []
 - 1.3 Purpose of processing []
 - 1.4 Duration of the processing []
2. Types of personal data []
3. Categories of data subject []