



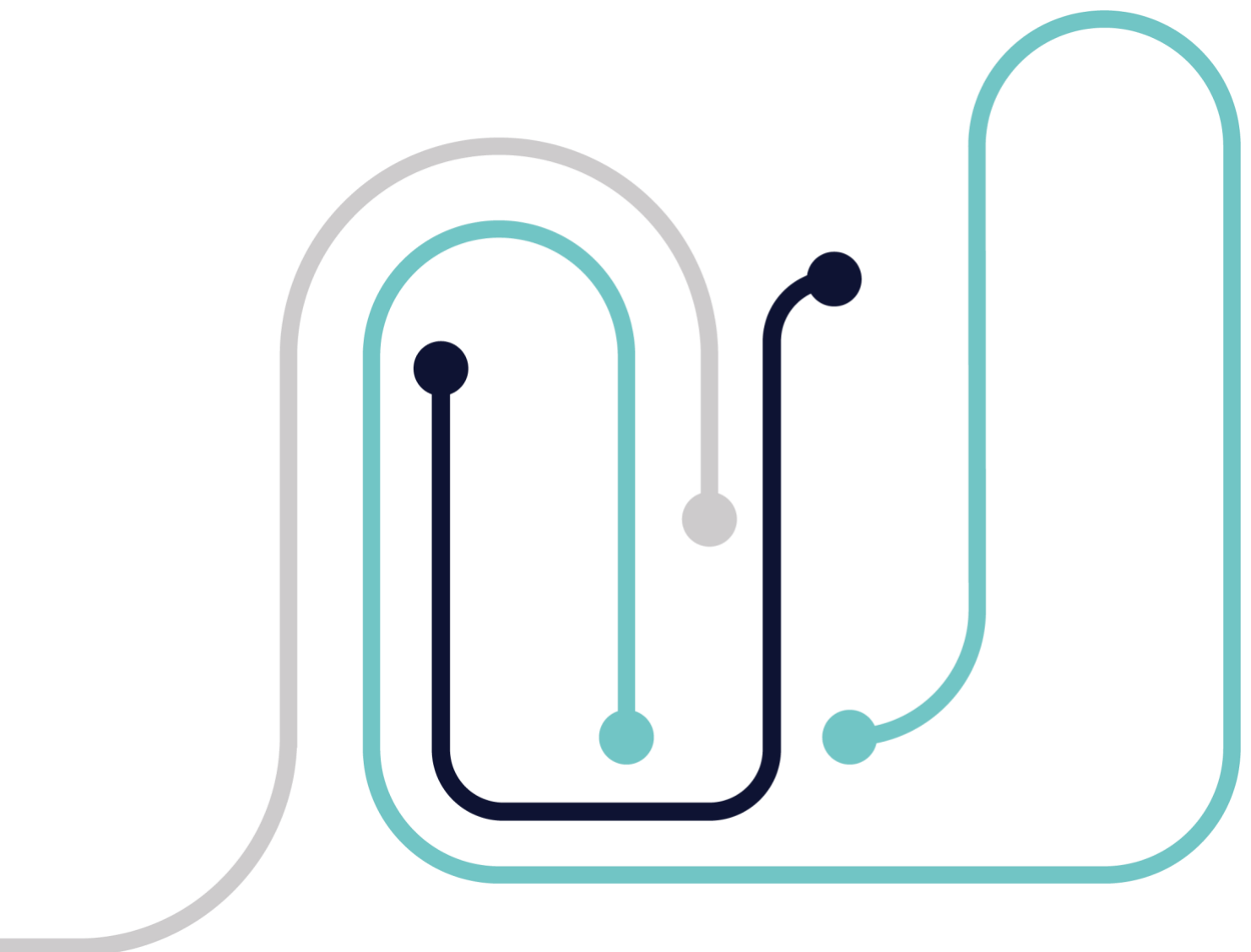
Software Hosting and Support Services Agreement

Between

ICS Consulting Ltd

and

Customer



HOSTING AND SUPPORT SERVICES AGREEMENT

PARTIES

Supplier **ICS CONSULTING LTD.** Incorporated and registered in England and Wales under company number 04092342 whose registered office is at 12 King Street, Leeds LS1 2HL, UK.

Customer ***Customer Name.*** Incorporated and registered in England and Wales under company number *Company Number* whose registered office is at *Address*.

BACKGROUND

The Supplier has developed a software application which it makes available to subscribers via the internet on a pay- per-use basis and the Supplier has agreed to make it available to the Customer subject to the terms and conditions of this Agreement.

AGREEMENT

This Agreement has been negotiated between the parties defined above and entered into on the date stated below and is made up of the following:

- (a) the Terms and Conditions; and
- (b) the Schedules.

If there is any conflict or ambiguity between the terms of these documents, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

DATE OF AGREEMENT

Date

SIGNATORIES

SIGNED for and on behalf of:

ICS CONSULTING LTD

Print Name

Position

Date _____

SIGNED for and on behalf of:

Customer

Print Name

Position

Date _____

HOSTING AND SUPPORT SERVICE AGREEMENT

TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

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

Additional Support Fees	The fees set out in Schedule 2 (<i>Charges</i>) which are payable by the Customer to the Supplier for any additional support requested and agreed on a case by case basis.
Agreement	This Asset Data Manager Hosting and Support Services Agreement which comprises these Terms and Conditions and the associated Schedules.
Authorised Users	Those employees, agents and independent contractors of the Customer who are authorised to use the Service as further described in clause 2.1; or
Business Day	A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Confidential Information	Shall include, without limitation, information that is expressly marked as confidential or not for general distribution, information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the other Party and the operations, processes, product information, know-how, designs or trade secrets of the other Party or any other information of commercial value which may become known to a Party from the other Party and which relates to the other Party.
Customer Data	The data inputted by the Customer, Authorised Users, or the Supplier on the Customer's or Authorised Users' behalf for the purpose of using the Service or facilitating the Customer's or Authorised Users' use of the Service.
Data Protection Legislation	All legislation and regulatory requirements in force from time to time relating to the use of Personal Data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).
Documentation	The user manual together with any additional documentation made available to the Customer by the Supplier which sets out a description of the Service and the user instructions for the Service.
Effective Date	The date that the Service is first made available by the Supplier to the Customer and its Authorised Users.
Initial Subscription Term	The initial term of this Agreement as set out in Schedule 1 (Overview).
Non-Inclusive Support Fees	The fees for services that are not included in the Subscription Fees.

Normal Business Hours	8.00 am to 6.00 pm local UK time, each Business Day.
Out of Hours Support Fees	The fees payable for any support requested by the Customer and provided by the Supplier outside of Normal Business Hours, as set out in Schedule 2 (<i>Charges</i>).
Parties	The parties to this Agreement, being the Supplier and the Customer identified in the Parties and references to a “ Party ” shall be construed accordingly.
Personal Data	Has the meaning given to it in the Data Protection Legislation.
Renewal Period	The period described in clause 12.3 and defined in Schedule 1 (<i>Overview</i>).
Schedules	The schedules attached to these Terms and Conditions and reference to a “ Schedule ” shall be construed accordingly.
Service	The software subscription service provided by the Supplier to the Customer via the website(s) set out in Schedule 1 (<i>Overview</i>) or any other website notified to the Customer by the Supplier from time to time together with all related Documentation. The Service is more particularly described in the Documentation and 2.1, Schedule 3 (<i>Hosting Service</i>), Schedule 4 (<i>Support Service</i>); and Schedule 5 (<i>Other Services</i>); as amended from time to time.
Software	The online software application and services described in 2.1.
Subscription Fees	The Initial Subscription Fees (one off payment) and Ongoing Subscription Fees (ongoing payments) payable by the Customer to the Supplier for the Service and User Subscriptions, as set out in Schedule 2 (<i>Charges</i>) or as amended pursuant to clause 8.6.
Subscription Term	The Initial Subscription Term together with any subsequent Renewal Periods.
Terms and Conditions	These terms and conditions which form part of the Agreement between the Supplier and the Customer for the provision of the Service.
Tier 1 Support	The Tier 1 support, as described in Schedule 4 (<i>Support Service</i>), to be provided by nominated Administrator Users of the Customer.
Tier 2 Support	The Tier 2 support, as described in Schedule 4 (<i>Support Service</i>), to be provided by the Party specified in Schedule 2 (<i>Charges</i>).
Tier 2 Support Fees	Where Tier 2 Support is not to be provided by the Supplier and included in the Subscription Fees (as specified in Schedule 1 (<i>Overview</i>)), the fees set out in Schedule 2 (<i>Charges</i>) which are payable by the Customer to the Supplier for any Tier 2 Support which the Supplier agrees to provide from time to time.
Tier 3 Support	The Tier 3 support, as described in Schedule 4 (<i>Support Service</i>), to be provided by the Supplier to the Customer.
User Subscriptions	The user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Service in accordance with this Agreement.
VAT	Value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.
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.

- 1.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule to this Agreement.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.8 A reference to writing or written includes e-mail.

2 USER SUBSCRIPTIONS

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with the terms of this Agreement, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, to permit the Authorised Users to use the Service during the Subscription Term solely for their internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - i. the maximum number of Authorised Users that it authorises to access and use the Service shall not exceed the number of User Subscriptions it has purchased from time to time;
 - ii. 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 Service;
 - iii. each Authorised User shall keep a secure password for his use of the Service, that such password shall be changed no less frequently than once every 12 weeks and that each Authorised User shall keep his password confidential;
 - iv. it shall permit the Supplier to audit the Service in order to establish the name of each Authorised User. Such audit may be conducted no more than once per quarter without prior notice, at the Supplier's expense, and in such a manner as not to interfere with the Customer's normal conduct of business;
 - v. if any of the audits referred to in clause 2.2iv 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
 - vi. if any of the audits referred to in clause 2.2iv 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 Schedule 2 (*Charges*) within 30 days of the date of the relevant audit.

- 2.3 The Customer shall not, and shall ensure that its Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Service that:
- i. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - ii. facilitates illegal activity;
 - iii. depicts sexually explicit images;
 - iv. promotes unlawful violence;
 - v. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - vi. is otherwise illegal or causes damage or injury to any person or property;
 - vii. and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not, and shall ensure that its Authorised Users shall not:
- i. 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 this Agreement:
 - a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human- perceivable form all or any part of the Software; or
 - c) transfer, loan, lease, assign, rent, or otherwise sublicense the Software; or
 - ii. access all or any part of the Service in order to build a product or service which competes with the Service; or
 - iii. use the Service and/or Documentation to provide a Service to third parties; or
 - iv. subject to clause 17, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service available to any third party except the Authorised Users as permitted under this Agreement; or
 - v. attempt to obtain, or assist third parties in obtaining, access to the Service, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer and its Authorised Users only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3 ADDITIONAL USER SUBSCRIPTIONS

- 3.1 The Customer may from time to time request in writing the purchase of additional User Subscriptions in excess of the number set out in Schedule 1 (*Overview*). Provided that:
- i. there are at least 90 days remaining of the Subscription Term; and
 - ii. the number of additional User Subscriptions requested is less than <Number>;
- the Supplier shall set up the additional User Subscriptions within 10 days of the Customer's written request.

- 3.2 Where the Customer requests significantly more additional User Subscriptions, the Customer shall be required to renew the Subscription Term for at least a further 12 months prior to the Supplier setting up any additional User Subscriptions.
- 3.3 Fees for any additional User Subscriptions shall be as set out in Schedule 2 (*Charges*) and shall be payable in accordance with clause 8.

4 SERVICE

- 4.1 The Supplier shall, during the Subscription Term, provide the Service to the Customer for use by the Authorised Users on and subject to the terms of this Agreement.
- 4.2 As part of the Service, the Supplier will provide:
- i. the hosting service as described in Schedule 3 (*Hosting Service*);
 - ii. Tier 3 Support as outlined in Schedule 4 (*Support Service*);
 - iii. The other services as described in Schedule 5 (*Other Services*); and
 - iv. only if stated in Schedule 1 (*Overview*), Tier 2 Support as described in Schedule 4 (*Support Service*); and all costs associated with this shall be included in the Subscription Fees.
- 4.3 If the Customer requests and the Supplier agrees to provide additional support services, Non-Inclusive Support Fees (where applicable) shall be chargeable separately at the rates set out in Schedule 2 (*Charges*). A minimum charge of 1 hour applies in respect of all Non-Inclusive Support Fees.
- 4.4 If the Customer requests changes to the Service, including but not limited to additional User Subscriptions, additional data storage or additional memory, additional fees shall be chargeable at the rates set out in Schedule 2 (*Charges*).
- 4.5 The Supplier may amend the terms of Schedule 3 (*Hosting Service*) and Schedule 4 (*Support Service*) from time to time provided that such amendments have been approved by the Customer (such approval not to be unreasonably withheld or delayed).

5 CUSTOMER DATA AND DATA PROTECTION

- 5.1 The Supplier acknowledges that the Customer shall own all right, title and interest in and to all of the Customer Data and the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in Schedule 3 (*Hosting Service*).
- 5.3 In the event of any loss or damage to Customer Data, the Supplier will use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in Schedule 3 (*Hosting Service*). The Supplier shall not be responsible to the Customer for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).
- 5.4 The Supplier shall not access or use the Customer Data for any purposes whatsoever, except as is strictly necessary for the performance of the Services.
- 5.5 The Parties agree that they will at all times comply with all applicable Data Protection Legislation in relation to any Personal Data that may be provided by one Party to the other in the performance of this Agreement and the provisions of Schedule 6 (*Data Protection and Data Processing*) shall apply in respect of any such Personal Data.

6 SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier warrants that during the Subscription Term the Service will:

- i. meet the availability criteria set out in paragraph 11 of Schedule 3 (*Hosting Service*);
- ii. perform in accordance with the performance levels set out in paragraph 12 of Schedule 3 (*Hosting Service*);
- iii. be performed with reasonable skill and care; and
- iv. be suitable for the purposes that have been made known by the Supplier to the Customer in writing.

This warranty shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to the Supplier's instructions.

6.2 If the Service does not conform with the foregoing warranty the Supplier will:

- i. at the Supplier's expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance and where it cannot do so it shall permit the Customer to terminate this Agreement by giving 30 days prior written notice and the Customer will be entitled to a refund of all fees paid by the Customer for the Service attributable to the remainder of the Subscription Term;

6.3 Notwithstanding the foregoing, the Supplier:

- i. does not warrant that the Customer's use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and
- ii. 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, and the Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall ensure that its Authorised Users use the Service in accordance with the terms and conditions of this Agreement.

7.2 The Customer shall remain liable to the Supplier for any breach of this Agreement whether caused by the Customer or an Authorised User.

7.3 The Customer shall:

- i. provide the Supplier with:
 - a) all necessary co-operation in relation to this Agreement; and
 - b) all necessary access to such information as may be required by the Supplier in order to provide the Service including but not limited to Customer Data and security access information;
- ii. comply with all applicable laws and regulations with respect to its activities under this Agreement;
- iii. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- iv. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement;
- v. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- vi. 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.

8 CHARGES AND PAYMENT

- 8.1 The Customer agrees to pay the Supplier:
- i. the Subscription Fees for the Initial Subscription Term within 30 days of the Supplier making the Service available to the Customer;
 - ii. the Subscription Fees for any Renewal Period in advance prior to the commencement of the Renewal Period;
 - iii. any Non-Inclusive Support Fees, which shall be invoiced by the Supplier monthly in arrears, within 30 days of receipt of invoice; and
 - iv. any fees for changes made to the Service, including but not limited to additional user subscription fees, additional data storage fees and additional memory fees, within 30 days of the change being made by the Supplier (the Supplier requires to be in receipt of a purchase order that is valid for at least 30 days prior to making any such changes to the Service).
- 8.2 Unless otherwise stated all fees payable under this Agreement are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of the Service.
- 8.3 If the Supplier does not receive payment of any of the fees set out in clause 8.1 on their specified due date then, without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's account and access to all or part of the Service and the Supplier shall be under no obligation to provide any or all of the Service while the invoices concerned remain unpaid.
- 8.4 Interest shall accrue on any overdue invoices under this Agreement at an annual rate equal to 4% over the then current base lending rate of National Westminster Bank at the date the relevant invoice was issued. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This clause shall not apply to invoices or requests for payment that are disputed by the Customer in good faith and in writing prior to the due date in accordance with clause 8.7.
- 8.5 All amounts and fees stated or referred to in this Agreement shall be payable in the currency stated in Schedule 2 (*Charges*) and are non-cancellable and non-refundable save that the Customer may cancel the Service in writing for any reason within 30 days of the Effective Date of this Agreement and receive a refund of the Subscription Fees for the Initial Subscription Term subject to the deduction of a cancellation charge by the Supplier equal to:
- a) *Agreed Percentage %* of the Subscription Fees for a multi-tenant infrastructure service; or
 - b) *Agreed Percentage %* of the Subscription Fees for a single-tenant database infrastructure service; to cover the Supplier's costs of setting up the Service.
- 8.6 The Supplier shall be entitled to make reasonable increases to any of the fees payable under this Agreement in line with the consumer price index for each Renewal Period by providing notice in writing to the Customer at least 90 days before the start of the Renewal Period and unless the Customer terminates the Agreement in accordance with clause 12.3 Schedule 2 (*Charges*) shall be deemed to have been amended accordingly.
- 8.7 If the Customer disputes any invoice raised under this Agreement, the Customer shall immediately (and in any event prior to the due date for payment of the invoice) notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 8.8 The Supplier may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Customer under this Agreement against any amounts payable by it to the

Customer.

- 8.9 All payments payable under this Agreement shall become due immediately on its termination. This clause 8.9 is without prejudice to any right to claim for interest under the law or under this Agreement.

9 PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges that the Supplier (or the licensor in respect of any third party software) is the owner or licensee of all intellectual property rights forming part of the Software and Documentation including, but not limited to, any new versions, modifications, updates or improvements made to the Software (and for the avoidance of doubt this shall include such new versions, modifications, updates, or improvements that have been made to the Software by the Supplier as a result of Customer feedback, discussions, ideas, requests, and functionality). The Customer shall not represent itself in any way as owning any intellectual property rights in the Software or Documentation. 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 this Agreement.
- 9.2 The Supplier shall defend the Customer against any claim that the Service infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, 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:
- i. the Supplier is given prompt notice of any such claim;
 - ii. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - iii. the Supplier is given sole authority to defend or settle the claim.
- 9.3 In the defence or settlement of any claim in accordance with clause 9.3, the Supplier may procure the right for the Customer to continue using the Service, replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 9.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged infringement is based on:
- i. the Customer's use of the Service in a manner contrary to the instructions given to the Customer by the Supplier; or
 - ii. the Customer's use of the Service after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 9.5 This Agreement shall not be construed to convey or transfer any ownership or proprietary interest in any intellectual property rights in the Software or associated Documentation or marketing material to the Customer or any other third party.
- 9.6 The Customer undertakes (and shall procure that its Authorised Users, shareholders, directors, employees, agents and representatives undertake) not to cause or permit anything which may damage or endanger the Supplier's intellectual property rights or the Supplier's title to them or assist or allow others to do so.
- 9.7 This clause 9 shall survive termination of this Agreement.

10 CONFIDENTIALITY

- 10.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 1.1 is or becomes publicly known other than through any act or omission of the receiving Party;

- 1.2 was in the other Party's lawful possession before the disclosure;
- 1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
- 1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or
- 1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each Party shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes (other than for the purpose of this Agreement) nor without the prior written consent of the other Party disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any Confidential Information belonging to the other Party.
- 10.3 Each Party shall take all reasonable steps to ensure that the other Party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 The Customer acknowledges that details of the Service, and the results of any performance tests of the Service, constitute the Supplier's Confidential Information.
- 10.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.6 This clause 10 shall survive termination of this Agreement, however arising.

11 LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - i. arising under or in connection with this Agreement;
 - ii. in respect of any use made by the Customer of the Service or any part of it; and
 - iii. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement:
 - i. the Customer assumes sole responsibility for results obtained from the use of the Service 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 by the Supplier to the Customer in connection with the Service, or any actions taken by the Supplier at the Customer's direction; and
 - ii. 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 this Agreement.
- 11.3 Nothing in this Agreement shall limit or exclude the Supplier's liability for:
 - i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - ii. fraud or fraudulent misrepresentation;
 - iii. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - iv. any other liability which cannot be limited or excluded by applicable law.
- 11.4 Subject to clause 11.2 and clause 11.3:
 - i. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of

business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

- ii. unless otherwise stated in Schedule 1 (*Overview*), 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 this Agreement shall be limited to one million pounds (£1,000,000).

12 TERM AND TERMINATION

12.1 This Agreement shall commence on the Effective Date.

12.2 Unless this Agreement is cancelled in writing within 30 days of the Effective Date in accordance with clause 8.5 or is otherwise terminated in accordance with clause 6.2i, this clause 12 or paragraph 2.12 of Schedule 4 (*Support Service*), it shall continue in full force and effect for the duration specified in clause 12.3.

12.3 Subject to clause 12.2, this Agreement shall continue for the Initial Subscription Term set out in Schedule 1 (*Overview*) and thereafter shall automatically renew for successive periods as specified in Schedule 1 (*Overview*) (each a Renewal Period), unless either Party notifies the other Party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period.

12.4 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement without liability to the other if:

- i. the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
- ii. an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or
- iii. an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- iv. a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or
- v. the other Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- vi. the other Party ceases, or threatens to cease, to trade; or
- vii. the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.5 On termination of this Agreement for any reason:

- i. the Customer shall pay to the Supplier all outstanding fees due to the Supplier under this Agreement;
- ii. the Supplier shall co-operate with the Customer to ensure the transfer of the Customer Data back to the Customer (or to a replacement supplier) within 30 days (unless an extension is requested by the Customer), with no disruption to the Customer's business, at an agreed and

reasonable cost provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) save that there shall be no charge for transfer of the Customer Data following a proven breach of this Agreement by the Supplier;

- iii. the Supplier shall in any event destroy or otherwise dispose of any Customer Data in its possession go days after the effective date of the termination of this Agreement;
- iv. all licences granted under this Agreement shall immediately terminate and the Customer and its Authorised Users shall cease to use the Service;
- v. 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;
- vi. the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

13 FORCE MAJEURE

- 13.1 The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14 WAIVER

- 14.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 14.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

15 SEVERANCE

- 15.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.2 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.

16 ENTIRE AGREEMENT

- 16.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in

writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

17 ASSIGNMENT AND SUBCONTRACTING

- 17.1 Neither Party shall without the prior written consent of the other Party, assign, transfer, charge, sub- contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.2 The Supplier may subcontract or delegate any or all of its obligations under this Agreement to any third party but shall remain liable to the Customer for all acts or omissions of any such third party subcontractors.

18 NO PARTNERSHIP OR AGENCY

- 18.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19 THIRD PARTY RIGHTS

- 19.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20 NOTICES

- 20.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier or by email, to each Party required to receive the notice at its address set out in Schedule 1 (*Overview*) or as otherwise specified by the relevant Party by notice in writing to the other Party.
- 20.2 Any notice shall be deemed to have been duly received:
- if delivered personally, when left at the address set out in Schedule 1 (*Overview*) or as otherwise specified by the relevant Party by notice in writing to the other Party;
 - if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - if sent by email, at the time of transmission.
- 20.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21 GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 21.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 - OVERVIEW

The Supplier reserves the right to amend this Schedule 1 from time to time as deemed reasonably necessary or appropriate due to changes agreed with the Customer.

Name of Software Application	Asset Risk and Investment Decisions
Modules Included	<Additional Modules>
Effective Date	<Date>
Initial Subscription Term	<Number> Year(s)
Renewal Period	<Number> Year(s)
Notice Period – minimum period prior to expiry of the Initial Subscription Term or a Renewal Period	<Number> Days
User Subscriptions included in initial and ongoing subscription fees	<User Numbers and Types>
Data Storage Limit included in the initial and ongoing subscription fees	<Data Limit> GB
Customer Support Representative(s)	<Customer Representative Contacts>

THIRD PARTY SUBCONTRACTORS

Third Party Subcontractors appointed by the Supplier who may process the Customer's Data in order to provide the Service - **<Agreed List of Third Party Access>**.

SCHEDULE 2 – CHARGES

Subscription Fees

Initial Mobilisation Fee	£ <Fee> – one off
Ongoing Subscription Fee	£ <Fee> / year
Additional User Subscription Fee	£ <Fee> / month

SCHEDULE 3 - HOSTING SERVICE

<Insert Hosting Service Details>

SCHEDULE 4 - SUPPORT SERVICE

1 SUPPORT TIER DEFINITIONS

- Tier 1 Support** This is the initial support level responsible for basic customer issues and will be provided by nominated Administrator Users of the Customer. The goal for this level of support is to handle 70% - 80% of the user problems before finding it necessary to escalate the issue to a higher level.
- Tier 2 Support** This is a more in-depth technical support level than Tier 1 and will be provided by the Customer or Supplier, as agreed by both Parties and specified in Schedule 1 (*Overview*). Technicians in this realm of knowledge are responsible for assisting Tier 1 personnel in solving basic technical problems and for investigating elevated issues by confirming the validity of the problem and seeking for known solutions related to more complex issues. If a problem is new and/or personnel from this group cannot determine a solution, they are responsible for raising this issue to the Tier 3 technical support group.
- Tier 3 Support** This is the highest level of support and is responsible for handling the most difficult or advanced problems (that Tier 1 and Tier 2 personnel were unable to resolve). This level of support can only be provided by the Supplier. Upon encountering new problems, Tier 3 personnel will first determine whether or not to solve the problem and may require the Customer's contact information so that the technician can have adequate time to troubleshoot the issue and find a solution. If it is determined that a problem can be solved, this group is responsible for designing and developing one or more courses of action, evaluating each of these courses in a test case environment, and implementing the best solution to the problem. Once the solution is verified, it is delivered to the Customer and made available for future troubleshooting and analysis.

2 SUPPORT SERVICE

- 2.1 The Supplier shall provide the Customer with:
- i. Tier 3 Support;
 - ii. Tier 2 Support only if specified to be provided by the Supplier in Schedule 1 (*Overview*); and
 - iii. any additional support services that may be agreed on a case by case basis between the Supplier and the Customer.
- 2.2 The Customer personnel named as Customer Support Representatives (CSRs) in Schedule 1 (*Overview*) shall be authorised to contact the Supplier for support services. The Supplier shall provide support services only to that specified set of CSRs. The Supplier shall provide a Specialist Support Engineer (SSE) who will be assigned to the Customer's account. The SSE shall handle support calls from the CSRs and shall maintain continuity of knowledge of the Customer account history.
- 2.3 The Supplier's support team shall accept web form-based incident submittal from CSRs 24 hours a day, seven days a week. The Supplier's support team shall accept calls for English language telephone support during Normal Business Hours within Business Days. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer. Response times for support services requested outside of Normal Business Hours on Business Days shall be at the Supplier's discretion.
- 2.4 The Supplier shall determine the priority of any defect, in accordance with the following criteria:
- Priority 1** The entire Service is "down" and inaccessible.

- Priority 2** Functionality of the Service is severely affected, including where major components of the Service are not operational, resulting in serious interruptions to normal operations.
- Priority 3** Certain non-essential features of the Service are impaired while most major components of the Service remain functional. This shall include any and all faults for which a workaround exists.
- Priority 4** Errors that are non-disabling or cosmetic and have little or no impact on the normal operation of the Service.

- 2.5 The Supplier's support team shall use reasonable endeavours to respond to all support requests from authorised CSRs within the time periods specified below, according to priority (Priority Periods):

Priority	Response Time	Target Resolution Time
Priority 1	Within 2 Business Hours	1 Normal Business Day. Continuous effort after initial response and with Customer co-operation.
Priority 2	Within 8 Business Hours	Within 2 Business Days after initial response.
Priority 3	Within 2 Business days	Within 5 Business Days after initial response.
Priority 4	Within 4 Business Days	Next release of Software.

- 2.6 The Supplier shall not be responsible for any reduction in the supply or performance of the Service where such reduction in supply or performance of the Service is as a result of overuse of the Service by the Customer's Authorised Users.
- 2.7 Priority 2 issues will be treated as a new Priority 1 issue if the target resolution time is not met.
- 2.8 Priority 3 issues will be treated as a new Priority 2 issue if the target resolution time is not met.
- 2.9 Where a Priority 4 fault is to be corrected in a forthcoming maintenance release, then for a reasonable period before the issue of such maintenance release the Supplier may defer assistance in respect of that Priority 4 fault and shall inform the Customer accordingly.
- 2.10 If, for any reason, the Supplier is not, in its reasonable opinion, able to rectify a fault it shall notify the Customer and where the fault is Priority 1 or Priority 2 the Customer shall be entitled to terminate this Agreement forthwith by giving notice in writing to the Supplier. If the Customer decides to terminate the Agreement according to this paragraph 2.12, the Customer will be entitled to a refund of all fees paid by the Customer for the Service attributable to the remainder of the Subscription Term.
- 2.11 The Supplier may, on prior notice to the Customer, make changes to the Service, provided such changes do not have a material adverse effect on the Customer's business operations.
- 2.12 The Customer shall provide front-line support to Authorised Users who are not the designated CSRs. However, the Customer's designated CSRs may contact the Supplier's support team in order to report problems from Authorised Users that the Customer's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis

3 EXCLUSIONS FROM THE SUPPORT SERVICE

- 3.1 The Supplier shall have no obligation to provide the support services where faults arise from:
- Misuse or incorrect use of the Software (other than any act or omission by the Supplier);
 - use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with the Software (as defined in paragraph 4 below), or any fault in any such equipment or software;

- iii. any breach of the Customer's obligations under this Agreement; or
 - iv. operator error.
- 3.2 The Supplier shall notify the Customer in writing if any fault arises from the circumstances set out in paragraph 3.1 above and once agreed in writing with the Customer any time spent thereafter by the Supplier investigating such faults will be chargeable at the applicable rate for Non-Inclusive Support Fees set out in Schedule 2 (*Charges*).

SCHEDULE 5 – OTHER SERVICES

- 3.3 To be defined

SCHEDULE 6 - DATA PROTECTION AND DATA PROCESSING

1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule 6 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
2. The Parties acknowledge that:
 - a. in respect of any Personal Data that is transferred by the Customer to the Supplier pursuant to this Agreement, for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor; and
 - b. in respect of any Personal Data that is transferred by the Supplier to the Customer pursuant to this Agreement, for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Customer is the Processor;
 (where "Controller" and "Processor" have the meanings as defined in the Data Protection Legislation).
3. The scope, nature and purpose of processing by the Processor, the duration of the processing and the types of Personal Data and categories of Data Subject (as defined in the Data Protection Legislation) is set out in paragraph 8 below.
4. Without prejudice to the generality of paragraph 1, the Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Processor for the duration and purposes of this Agreement.
5. Without prejudice to the generality of paragraph 1, the Processor shall, in relation to any Personal Data processed in connection with the performance by the Processor of its obligations under this Agreement:
 - a. process that Personal Data only on the written instructions of the Controller unless the Processor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Processor to process Personal Data ("Applicable EU Laws"). Where the Processor is relying on Applicable EU Laws as the basis for processing Personal Data, the Processor shall promptly notify the Controller of this before performing the processing required by the Applicable EU Laws unless those Applicable EU Laws prohibit the Processor from so notifying the Controller;
 - b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, 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);
 - c. ensure that all Processor personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - d. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i. the Controller or Processor has provided appropriate safeguards in relation to the transfer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by

- providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - e. assist the Controller, at the Controller'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;
 - f. notify the Controller without undue delay on becoming aware of a Personal Data breach;
 - g. at the written direction of the Controller, delete or return Personal Data and copies thereof to the Controller on termination of the Agreement unless required by Applicable EU Law to store the Personal Data; and
 - h. maintain complete and accurate records and information to demonstrate its compliance with this Schedule 6 and allow for audits by the Controller or the Controller's designated auditor.
6. The Processor may only authorise a third party (subcontractor) to process the Personal Data if:
- a. the Customer is provided with an opportunity to object to the appointment of each subcontractor within 5 Business Days after the Processor supplies the Customer with full details regarding such subcontractor;
 - b. the Processor enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Schedule 6, in particular, in relation to requiring appropriate technical and organisational data security measures; and
 - c. the Processor shall remain fully liable for all acts or omissions of any subcontractors appointed by it pursuant to this paragraph.

Approved subcontractors as at the Effective Date of this Agreement are set out in the Schedule 1 (*Overview*).

7. Either Party may, at any time on not less than 30 days' notice, revise this Schedule 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

8. Scope of Processing:

Scope	The Processor shall only process Personal Data for the purpose of performing its rights and obligations as defined in this Agreement.
Nature	The nature of processing shall include obtaining, recording and holding Personal Data supplied by the Controller pursuant to this Agreement and using it for the purpose of performing its rights and obligations under this Agreement only.
Purpose of Processing	To perform its rights and obligations defined in this Agreement.
Duration of Processing	For so long as that Personal Data is required by the Processor to perform its rights and obligations under this Agreement and in any event no longer than 90 days following termination of this Agreement.
Types of Personal Data	Names, IP addresses, work email addresses, work telephone numbers. Categories of Data Subject Employees, agents and contractors of the Controller.