

[CUSTOMER]

AND

(1) ITS Computing Limited

SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT



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This Agreement is made on the day of 202X

Between:

- (1) **[CUSTOMER]**, a company registered in England and Wales (company no. **[NUMBER]**) and having its registered office at **[ADDRESS]** (the “**Customer**”); and
- (2) **ITS Computing Limited**, a company registered in England and Wales (company no. NI036763) and having its registered office at 205 Airport Road West, Belfast, United Kingdom, BT3 9ED (the “**Supplier**”) each individually a “**Party**” and together the “**Parties**”.

INTRODUCTION

- A. The Customer wishes to procure a licence to the Software (as defined below) from the Supplier and appoint the Supplier to provide, or procure the provision of, associated Professional Services for such Software pursuant to the terms and conditions of this Agreement.
- B. This Agreement provides a legal framework that will govern the provision of such Software and Services from the Supplier to the Customer with effect from the Effective Date.

NOW THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words and phrases used in this Agreement shall have the following meanings:

Acceptance Certificate mean the acceptance certificate in the form set out in **Schedule 6**;

Acceptance Criteria has the meaning as set out in **Schedule 6**;

Acceptance Date means the date on which the Services pass (or are deemed to pass) the acceptance tests in accordance with **Schedule 6**;

Action Plan means a plan prepared by the Supplier in accordance with **Clause 9.4** to remedy a Service Level Default;

Additional Services means any further services not set out in this Agreement as agreed between the Parties which in each case will be detailed in the relevant Statement of Work;

Additional Services Fees means the fees and charges payable by the Customer Group to the Supplier in consideration of the provision of the Additional Services as agreed between the Parties which in each case will be detailed in the relevant Statement of Work;

Affiliate means the company and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the Parties;

Agreement means the main body of this document together with its Schedules;

Applicable Law means any applicable law, legislation, bye law, regulation, order, regulatory policy (including any requirement, guidance or notice of any Regulator), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time and which apply to the provision of the Services;

Appointed Auditors means the Customer's internal auditors (which shall include, without limitation, the Customer's internal audit, compliance, security, regulatory risk and operational risk functions), the Customer's external auditors or any other person appointed from time to time by a Regulator for the purposes of conducting an audit;

Approved Sub-processor has the meaning provided by **Schedule 16** (Approved Sub-processors and Approved International Transfers);

Breach of Security means a breach of security caused by the Supplier or its Approved Sub-processors leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data;

Change means any removal, amendment or variation to the scope this Agreement or any variation or amendment to the terms of a relevant SOW dealt with pursuant to **Clause 10** and **Schedule 9**; **Change**

Control Note has the meaning given to it in **Schedule 9**;

Customer means:

- a) in this Agreement, the Customer; and
- b) in a Statement of Work, the member of the Customer Group that executes that Statement of Work;

Customer Data means any information or data (including Personal Data), whether or not Confidential Information or personal data (as such term is defined in Data Protection Laws) which is provided or made available to the Supplier under, or in connection with, this Agreement;

Customer Group means the Customer and all of its Related Companies from time to time and a member of the Customer Group shall be construed accordingly;

Confidential Information means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of a Party, together with all information derived by a Party from any such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;

Data Protection Authority means the Information Commissioner's Office and any other relevant member state data protection regulator (including any successor or replacement);

Data Protection Laws means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation whilst still applicable in the UK; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003

(SI 2003/2426) as amended, and any UK national implementing laws, regulations and secondary legislation and any successor legislation;

Data Protection Losses means all:

- (a) costs, claims, demands, actions, expenses, losses and damages; and
- (b) to the extent permitted by Applicable Law:
 - I. administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Data Protection Authority;
 - II. compensation which is ordered by a court, tribunal or a Data Protection Authority to be paid to a Data Subject; and
 - III. the reasonable costs of compliance with investigations by a Data Protection Authority;

Deliverables means any documents, reports, records, plans or outputs wholly and exclusively created, developed or supplied to the Customer by the Supplier or its Sub-contractors pursuant to and as expressly stated in this Agreement but excluding any Deliverable related to the Software or Documentation;

Documentation means any user manual or on-line help system provided to the Customer from time to time for use in connection with the Software;

Effective Date means [DATE], being the date when this Agreement shall become effective;

Force Majeure Event means any event which is beyond the control of the Parties and falls within any of the following categories: riot, war (whether declared or not), the act or omission of government (whether local, national or European), explosion, escape of hazardous substances, fire, earthquake, storm, flood or other natural catastrophe, deliberate sabotage of, or malicious damage to, equipment or data;

General Data Protection Regulation ("GDPR") means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 (and any successor legislation);

Go Live Date means the earlier of (i) the agreed date on which the Software and relevant Services shall commence in a live environment (ii) the processing of Customer's business using any or all of the Software and/or Services in a live environment;

Governance Framework means the roles and responsibilities set out in **Schedule 11** used to govern this Agreement;

Hosting Services means the Hosting Services as set out in **Schedule 5**;

Hosting Services Fees means the portion of the Services Fees charged in consideration of the Hosting Services as detailed in **Schedule 8**;

Information Security Schedule means the Supplier's information security schedule as set out in **Schedule 17**.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

ITS India means Ragrab Computing India Private Limited;

Licence Fee means the fee which is payable by the Customer to the Supplier in consideration of the grant of a licence subject to the Licence Terms;

Licence Terms means the licence of the Software and Documentation granted by the Supplier to the Customer pursuant to the terms as set out in **Schedule 1**;

Personnel means, in respect of either Party, any and all employees, officers, directors, contractors, agents or temporary or relief staff employed or engaged by that Party or any of its Sub-contractors from time to time in connection with the provision of the Services (or parts thereof);

Professional Services means the Professional Services as set out in **Schedule 3**;

Professional Services Fees means the portion of the Services Fees charged in consideration of the Professional Services as detailed in **Schedule 8**;

Regulator or Regulatory Authority means any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement;

Related Company means, in respect of a Party, its parent undertakings, its subsidiary undertakings and the subsidiary undertakings of any of its parent undertakings from time to time (with “**parent undertaking**” and “**subsidiary undertaking**” each having the meanings set out in section 1162 Companies Act 2006) but for the avoidance of doubt, in the case of the Supplier, up to and including of Equiniti Group plc only;

Services Fees means the fees and charges payable by the Customer to the Supplier in consideration of the provision of the Services as set out in **Schedule 8**;

Services mean the Professional Services, Support Services and, where applicable, the Hosting Services, together with any agreed Additional Services;

Service Levels means each specific service level to be achieved by the Supplier in the performance of the Services (or any of them) including any performance metrics to be applied, which are set out in **Schedule 7 (Service Level Agreement)**;

Service Level Default means a failure to meet a Service Level due to an act, omission or default of the Supplier or a third party under its control;

Software means the software program(s) as set out in **Schedule 2** which are licenced to the Customer pursuant to the Licence Terms;

Statement of Work or **SoW** means an individual statement of work setting out in each case the terms and conditions for the provision of Additional Services by the relevant member of the Supplier Group to the relevant member of the Customer Group, the content of which will be agreed by the Parties from time to time and entered into pursuant to **Clause 11** of this Agreement. A pro forma Statement of Work is set out at **Schedule 10**;

Sub-contractor means a third party appointed by the Supplier to assist in the performance of the Services (in whole or in part) in accordance with **Clause 26.4** of this Agreement and as set out in **Schedule 14**;

Support Services means the Support Services as set out in **Schedule 4**;

Support Services Fees means the portion of the Services Fees charged in consideration of the Support Services as detailed in **Schedule 8**;

Supplier means:

- a) in this Agreement, the Supplier; and
- b) in a Statement of Work, the member of the Supplier Group that executes that Statement of Work;

Supplier Group means the Supplier and all of its Related Companies from time to time and a member of the Supplier Group shall be construed accordingly;

Supplier's Screening Guidelines means the Supplier's internal pre-engagement screening guidelines (as may be amended from time to time);

Term means the period during which this Agreement is effective;

Termination Charges means those charges payable by the Customer on termination of a Statement of Work pursuant to **Clause 21.2**, which charges are to be calculated in accordance with the relevant Statement of Work;

VAT means value added tax, in accordance with the provisions of Council Directive of 28 November 2006, 2006/112/EC;

Warranty Period means the period of twenty (20) Working Days from the Acceptance Date;

Working Day means a day not being a Saturday or Sunday or a public holiday when Banks are open for the conduct of normal business in England and Wales; and

Year means the period of twelve (12) months starting on the Effective Date and each consecutive period of twelve (12) months thereafter during the Term.

1.2 Interpretation

- 1.2.1 The headings in this Agreement are inserted for convenience only and shall not affect its construction or interpretation. References to Clauses and Schedules are, unless otherwise stated, references to the clauses of and schedules to this Agreement and references to Paragraphs shall be to paragraphs of the schedules or annexes to the schedules (as the case may be).

- 1.2.2 Words importing the singular include the plural and vice versa.
- 1.2.3 Words importing a gender shall include all genders.
- 1.2.4 References to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.5 References to any statute, statutory provision or statutory instrument include references to such statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.
- 1.2.6 A reference to this Agreement includes the schedules and appendices and other documents attached to it or incorporated by reference into it (all as amended, added to or replaced from time to time).
- 1.2.7 In the case of conflict or ambiguity, unless otherwise specified, the order of precedence for this Agreement and the documents attached to or referred to in this Agreement shall be as follows:
- (a) any additional items set out in a SOW;
 - (b) the Schedules;
 - (c) this Agreement; and
 - (d) any other documents which form part of this Agreement.
- 1.2.8 Where a general obligation is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

2. TERM

- 2.1 The appointment of the Supplier shall commence on the Effective Date and shall continue in full force and effect until terminated in accordance with the provisions of Clause 21. The Supplier agrees to licence the Software with effect from the Effective Date; and provide the Services with effect from the dates set out in Clause 4 for the benefit of the Customer.

3. LICENCE

- 3.1 In consideration of payment of the Licence Fee, the Supplier has granted to the Customer a licence to the Software on terms as more particularly described in the Licence Terms set out in **Schedule 1**.

4. SERVICES

Provision of the Services

- 4.1 In consideration of payment of the relevant Services Fees, the Supplier hereby agrees to:
- 4.1.1 deliver one copy of the Software to the Customer on the Effective Date;

- 4.1.2 perform the Professional Services with effect from the Effective Date or such later date as agreed with the Customer in either the Schedules to this Agreement or in a SOW;
 - 4.1.3 provide the Support Services with effect from the Go Live Date; any Additional Services as agreed in accordance with Clause 11; and where expressly agreed between the Parties, provide the Hosting Services with effect from the date agreed in Schedule 5, in each case in accordance with the terms and conditions contained in this Agreement.
- 4.2 The Supplier will perform, or procure the performance of, the Services at all times in accordance with the terms of and conditions of this Agreement and any relevant Statement of Work as agreed.
- 4.3 In performing the Services, the Supplier undertakes to:
- 4.3.1 provide the Services in accordance with Applicable Law;
 - 4.3.2 meet any applicable Service Levels set out in this Agreement;
 - 4.3.3 perform all tasks, functions, activities, obligations, duties and responsibilities of the Supplier that are expressly set out in this Agreement;
 - 4.3.4 use reasonable skill and care in the provision of the Services;
 - 4.3.5 provide the Services in a professional, competent and workmanlike manner; and
 - 4.3.6 ensure that all Supplier Personnel reasonably co-operate with the Customer and its Personnel
- If there is any conflict or inconsistency between any of the undertakings set out above, the provisions of the earlier mentioned undertaking will prevail to the extent of that conflict or inconsistency.
- 4.4 The Supplier will maintain at all times during the Term accurate records of, and reports summarising, the performance of any Services (and parts thereof), together with details of Service Levels actually achieved or as otherwise agreed with the Customer.
- 4.5 Without prejudice to the Customer's other remedies under this Agreement, the Parties must escalate and resolve any and all Service Level Defaults in accordance with the Governance Framework.
- 4.6 The Supplier shall not without the Customer's approval:
- 4.6.1 hold itself out, or permit any person to hold it out, as being authorised to bind the Customer as agent in any way; or
 - 4.6.2 do any act which might reasonably create the impression that it is so authorised.
- 4.7 So far as is reasonably required in order to enable the Supplier to provide the Services, the Supplier shall in addition to any other obligations set out in this Agreement, on reasonable notice and to the extent that the Supplier is legally able to do so execute all documents and do all acts and things reasonably required of the Supplier to ensure that this Agreement enters into effect.

5. GENERAL OBLIGATIONS

Co-operation with Third Party Suppliers

5.1 Subject to obtaining satisfactory undertakings in respect of confidentiality, the Supplier will on request co-operate with, and will procure that any Supplier Personnel shall co-operate with, any third party supplier appointed by the Customer from time to time to:

5.1.1 enable the Supplier to meet its obligations under this Agreement; and

5.1.2 facilitate effective integration between the Supplier and the third party supplier to the extent required in connection with the correct and proper performance of the Services (or parts thereof).

5.2 The Supplier shall promptly notify the Customer in writing in the event that it believes that it is materially hindered in the performance of its obligations under this Agreement as a result of the failure of the Customer, a member of the Customer Group or any third party supplier to co-operate with the Supplier. In such event, the Customer shall:

5.2.1 alleviate any reported difficulties experienced by the Supplier; and

5.2.2 prevent any delays or resulting extra costs being incurred by the Supplier as a result of the failure by the third party supplier to co-operate with the Supplier.

6. GENERAL ASSISTANCE

6.1 So far as reasonably required in order to enable the Supplier to provide the Services, the Customer shall, in addition to any other obligations set out in this Agreement or agreed Statement of Work, on reasonable notice and to the extent that the Customer is legally and practicably able so to do:

6.1.1 make available to the Supplier for consultation (at reasonable times and on reasonable notice) Customer Personnel who are reasonably familiar with the Customer's organisation, operations and business practices in so far as relevant to the provision of the Services;

6.1.2 make available to the Supplier free of charge all information facilities and services reasonably required by the Supplier to enable the Supplier to perform the Services;

6.1.3 carry out any testing (including but not limited to) business verification tests, acceptance tests and user acceptance tests in a professional, competent and timely manner;

6.1.4 review and sign off any plans, documents or requirements in a professional, competent and timely manner;

6.1.5 provide all reasonably necessary assistance and perform all obligations stated to be Customer obligations or dependencies in this Agreement or agreed Statement of Work to enable the Supplier to provide the Services; and

6.1.6 execute all documents and do all acts and things reasonably required of the Customer to ensure that this Agreement enters into effect.

6.2 To the extent that the Supplier incurs any additional costs, expenses or liabilities (whether under the terms of this Agreement or otherwise) as a result of any failure referenced in this Clause 6, the Customer shall on request reimburse such additional costs at the then standard rate of charges of the Supplier.

6.3 Notwithstanding any such additional costs, following any failure by the Customer of the obligations referenced in this Clause 6 or any other obligations set out in this Agreement or agreed Statement of Work, the Supplier shall not be in breach of any terms of this Agreement which it might otherwise be in breach of and any dates for performance shall be extended by a reasonable period of time taking into account the extent of the delay and the Supplier's other commitments.

7. SUPPLIER PERSONNEL

7.1 The Supplier hereby undertakes to the Customer that all Personnel used or deployed by it in the provision of the Services shall:

7.1.1 be pre-screened for security purposes prior to engagement in accordance with the Supplier's Screening Guidelines as may be updated from time to time; and

7.1.2 be suitably qualified, skilled and experienced to perform the tasks they are being asked to undertake.

7.2 The Customer shall be entitled to review and audit the Supplier on an ad hoc basis from time to time during the Term to ensure that it is observing and complying with its obligations and requirements under the Screening Guidelines provided that such audits are limited to no more than one per Year (excluding audits requested by a Regulator or emergency audits for breach). The Supplier shall on request provide the Customer with access to all documents and materials relating to the screening of Supplier Personnel in order to facilitate any such review or audit by the Customer.

7.3 Where a review or audit categorically proves that the Supplier has failed to observe or comply with any of its obligations or requirements under the Supplier Screening Guidelines, the Supplier shall take reasonable steps in order to address and resolve any such failures.

8. PAYMENT AND CHARGES

8.1 The Customer shall pay the Supplier the Licence Fee and Services Fees without deduction or set off of any kind.

8.2 All amounts payable under this Agreement shall be payable within 30 calendar days from the date of Supplier's relevant invoice and shall be inclusive of any duties, charges, imposts, levies and taxes incurred by Supplier Personnel but are exclusive of VAT which shall be paid by Customer at the rate and in the manner for the time being prescribed by law on receipt of a valid tax invoice.

8.3 The Services Fees unless expressly stated are exclusive of reasonable travel, accommodation and subsistence expenses which may be incurred by the Supplier whilst performing the Services. The Customer shall reimburse the Supplier in respect of reasonable travel, accommodation and subsistence expenses incurred in the performance of the Services subject to and in accordance with the Supplier's then current expenses policy.

- 8.4 The Supplier is entitled to charge Customer interest on overdue amounts at the rate of two (2%) per cent over the base rate of Bank of England from time to time from the due date until payment is made (calculated on an annual basis but accruing daily), whether before or after judgment, provided that the Supplier shall have first given the Customer prior written notice (not to be served prior to the expiry of the relevant period allowed for payment under the Agreement) of its intention to charge interest and such sum remains outstanding.
- 8.5 Unless otherwise stated elsewhere in this Agreement to the contrary, the Services Fees and any Additional Service Fees shall be subject to an Average Weekly Earnings Index (“**AWE**”) review, annually from the Effective Date unless stipulated otherwise, and such review shall be based on the most recent published rate by the Office for National Statistics. The Supplier shall then be entitled to adjust the Charges accordingly.
- 8.6 The Supplier may vary the Service Fees no more than once per annum to reflect the change in its costs of providing the Services.
- 8.7 Where changes to Applicable Law impact the Services, the Customer will be responsible for paying any costs in relation to the Supplier implementing such changes.
- 8.8 The Customer expressly reserves the right to dispute the payment of any Services Fees which relate to Services which have not been provided, or which have been provided otherwise than in accordance with this Agreement. If the Customer reasonably disputes, in good faith, the validity of any Services Fees:
- 8.8.1 the Customer must promptly and, in any event, within five (5) Working Days of receipt of the relevant invoice, notify the Supplier of the details and nature of the dispute;
- 8.8.2 the Customer must pay the undisputed amount as per the original invoice;
- 8.8.3 the Parties must continue to perform their obligations under this Agreement or any Statement of Work; and
- 8.8.4 either Party may invoke the dispute resolution procedure set out in Clause 28 to resolve the disputed element of the Service Fees.

9. GOVERNANCE

- 9.1 Each Party shall discharge their respective roles and responsibilities as more particularly described in the Governance Framework.
- 9.2 Each Party shall be entitled to change the identity of the Personnel assigned to the roles in the Governance Framework at any time by giving the other Party no less than ten (10) Working Days’ written notice in accordance with Clause 27.
- 9.3 The Supplier and the Customer will review the Services as per the Governance Framework. The purpose of which is to enable the Supplier and the Customer to discuss the performance of the Services under this Agreement and/or any active Statements of Work.
- 9.4 If such review categorically proves that there is a Service Level Default under this Agreement or a Statement of Work (as the case may be), the Supplier must identify the source of the failure

and develop and implement an Action Plan to remedy the problem leading to the failure and prevent the failure from occurring again. An Action Plan must specify as a minimum:

- 9.4.1 the cause of the failure or deficiency in the quality of the Services;
- 9.4.2 where remedy of the failure or deficiency in the quality of the Services is possible, the actions that will be implemented by the Supplier to effect that remedy;
- 9.4.3 the actions that will be implemented by the Supplier to prevent the same or a substantially similar failure or deficiency in the quality of the Services from occurring in the future; and
- 9.4.4 a timeline for the implementation of the Action Plan.

9.5 Where the Supplier is required to develop and implement an Action Plan under this Agreement, it must develop and give to the Customer a draft Action Plan within ten (10) Working Days. Within ten (10) Working Days after receiving the draft Action Plan, the Customer must either notify the Supplier that it approves the draft Action Plan or provide comments (such comments shall be clear, concise and contain sufficient detail to enable the Supplier to identify the particular issue) on the draft Action Plan, in which case the Supplier must:

- 9.5.1 meet (either in person or via teleconference) with the Customer within five (5) Working Days to discuss the Customer's comments; and
- 9.5.2 within five (5) Working Days after the meeting, prepare a revised Action Plan addressing the Customer's comments and submit it to the Customer for approval.

This Clause 9.5 will apply to any resubmitted draft Action Plan. In the event that the draft Action Plan is not approved by the Customer following such resubmission, the Parties agree that Clause 28 shall apply. For the avoidance of doubt, the Supplier may only implement an Action Plan if it is in a form approved by the Customer.

10. CHANGE CONTROL

10.1 If at any time an alteration to all or any part of the Software, Professional Services, Support Services and, where applicable, the Hosting Services is required then the Parties shall follow the procedure for Change as set out in **Schedule 9**:

10.2 If any alterations are subsequently made to the Software, Professional Services, Support Services and, where applicable, the Hosting Services then the provisions of this Agreement shall then apply to the Software, Professional Services, Support Services and, where applicable, the Hosting Services as modified.

11. ADDITIONAL SERVICES

11.1 If the Customer or a member of the Customer Group wishes to request Additional Services from the Supplier or a member of the Supplier Group at any time during the Term, it must do so by way of an individual Statement of Work. A pro forma Statement of Work is set out at **Schedule 10**. The specific terms and conditions relating to the provision of Additional Services will be agreed by the relevant parties in good faith on a case-by-case basis and documented in a Statement of Work to be agreed separately between the parties and signed by an authorised

representative of each Party. A Statement of Work must be completed and executed by the parties in all cases prior to the commencement of any Additional Services by the Supplier or the Supplier Group. The Statement of Work must in each case detail the following as a minimum requirement:

11.1.1 The member of the Supplier Group which is providing the Services and the member of the Customer Group which is receiving the benefit of the Services;

11.1.2 a precise specification of the scope of Additional Services together with any required Deliverables (if any);

11.1.3 the Service Levels (if any) for the Additional Services; and

11.1.4 the Additional Services Fees payable for the Additional Services.

11.2 This Agreement is structured so that individual Statements of Work may be entered into from time to time and it is agreed by the Parties that each such Statement of Work shall be governed by, and shall be subject to, the terms and conditions of this Agreement which shall be incorporated into the relevant Statement of Work. Each Statement of Work shall be deemed to adopt each Schedule to this Agreement in full as a schedule to that Statement of Work unless otherwise expressly stipulated in that Statement of Work. Once the content of a Statement of Work has been agreed and completed and the relevant member(s) of the Customer Group and the Supplier Group have executed that Statement of Work, it will be legally-binding on the relevant parties.

11.3 Each Statement of Work shall, unless otherwise agreed by the parties, constitute a separate contract for Additional Services under this Agreement and any defined terms and expressions used in the Statement of Work shall, unless expressly stated otherwise, have the same meanings as set out in this Agreement.

11.4 A Statement of Work will come into force on the effective date set out in that Statement of Work and will continue until terminated in accordance with its terms. If no effective date is specified in the Statement of Work, then the effective date will be the date on which the completed Statement of Work is executed for, and on behalf of, the relevant member(s) of the Supplier Group and the Customer Group.

11.5 The Supplier hereby undertakes to the Customer that wherever any Services (or parts thereof) are required to be performed by a member of the Supplier Group under, or in connection with, this Agreement and/or an individual Statement of Work, the Supplier shall, or shall procure that such member of the Supplier Group shall, duly and punctually perform those Services (or parts thereof) in accordance with the terms of this Agreement and/or the relevant Statement of Work.

11.6 Nothing in this Agreement shall prevent the Supplier from:

11.6.1 providing services similar to the Services to other persons, firms or companies; or

11.6.2 carrying on business similar to or in competition with the business of the Customer; on such terms as the Supplier may at its absolute discretion arrange.

12. CONFIDENTIALITY

- 12.1 Each Party agrees to take all necessary and reasonable measures to ensure that it and its Personnel keep secret and treat as confidential all Confidential Information of the other Party (whether obtained before, on or after the date of the Agreement) and will not use nor disclose the same save:
- 12.1.1 for the purposes of the proper performance of this Agreement or the Parties obligations under a Statement of Work;
 - 12.1.2 to a Related Company; or
 - 12.1.3 its professional advisers and/or auditors; or
 - 12.1.4 with the prior written consent of the other Party.
- 12.2 The following information shall not be 'Confidential Information' for the purposes of this Clause:
- 12.2.1 information which is on the date of this Agreement or thereafter becomes generally available to the public other than as a result of an unauthorised disclosure; or
 - 12.2.2 information which was or becomes available to a Party, its Personnel, Group, agents or professional advisers on a non-confidential basis prior to its disclosure to any of them provided the source was not known to be bound by a confidentiality agreement; or
 - 12.2.3 information which is required to be disclosed by Party, its Personnel, Group, agents or professional advisers under any law or regulation or pursuant to an order or requirement of a court or Regulatory Authority having competent jurisdiction and in respect of which the Supplier and its employees must comply.
- 12.3 Where one Party discloses Confidential Information to a Related Company or any of its or their Personnel, agents or professional advisers, the Party will ensure that any such Related Company or any of its or their Personnel, agents or professional advisers comply with such obligations.
- 12.4 Where either Party is required to disclose the Confidential Information of the other Party under Clause 12.2.3 then the Party so required (or as applicable, any of its Related Companies) will, prior to any disclosure where practicable and where legally permitted to do so, notify and consult with the other Party and, at the other Party's request and cost, assist that other Party in opposing any such disclosure. In any event, the Party required to disclose the other's Confidential Information will use all reasonable endeavours to disclose as little Confidential Information as it is required to disclose and require the recipient to keep the Confidential Information strictly confidential.
- 12.5 For the avoidance of doubt, nothing in this Clause 12 shall permit either Party to use or disclose information which is the confidential information of a third party whether before or after the expiry of the term of this Agreement.
- 12.6 The obligation of confidentiality as set out in this Clause 12 is to be read and applied in conjunction with and not to the exclusion of any confidentiality or non-disclosure agreements as may be entered into by the Parties. In the event of a conflict between the terms of this Agreement and

any separate confidentiality or non-disclosure agreement, the terms of this Agreement shall prevail.

13. INTELLECTUAL PROPERTY

13.1 The ownership of all Intellectual Property Rights in the Software and Documentation (including any enhancement, modification, upgrade, new version or Deliverables relating thereto) wherever in the world are and shall remain the exclusive property of the Supplier or its licensors.

13.2 Subject to Clause 13.1, the ownership of all Intellectual Property Rights in any Deliverable shall vest in the Customer.

13.3 The Supplier will indemnify the Customer, in accordance with Clause 18.2.5, in respect of any claim or action that the normal operation, possession or use of the Deliverables by the Customer infringes the Intellectual Property Rights of said third party (each an “**Intellectual Property Infringement**”) provided that the Customer:

13.3.1 provides written notice to the Supplier of any Intellectual Property Infringement within a reasonable period time upon becoming aware of the same;

13.3.2 permits the Supplier to conduct the defence of any claim or action in respect of an Intellectual Property Infringement makes no admission or settlement of any such Intellectual Property Infringement; and

13.3.3 provides the Supplier with such reasonable assistance as reasonably required (at the Supplier’s expense) in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court processes and the provision of relevant documents.

13.4 The Supplier shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from a breach by the Customer of its obligations (other than non-payment) under this Agreement or to the extent that any such Intellectual Property Infringement is caused or contributed to by:

13.4.1 the use of the Software in conjunction with programs or data not supplied by the Supplier; or

13.4.2 any copy, alteration, adaption or modification or other change to the Software unless the same has been pre-authorised in writing by the Supplier; or

13.4.3 any breach of the Licence Terms.

13.5 In the event that the use of any part of the Software is, or in the reasonable opinion of the Supplier is likely to become, an Intellectual Property Infringement, the Supplier shall have the right at its option to replace the Software or any infringing part thereof with a comparable non-infringing software product.

14. DATA AND DATA PROTECTION

14.1 For the purposes of this provision and wherever appearing in this Agreement, the terms “**Personal Data**”, “**Data Subject**”, “**Data Protection Impact Assessment**”, “**Controller**” and “**Processor**” shall have the meanings given to them in Data Protection Laws and similarly the words “**Processing**”, “**Process**” and “**Processed**” will be construed accordingly.

14.2 Save as set out in Clauses 14.4, 14.10 and 14.11, or as otherwise agreed in writing between the Parties, the Parties acknowledge and agree that the Customer shall act as the Controller and the Supplier shall act as the Customer's Processor in connection with the Processing by the Supplier of the Customer Data under the Agreement.

14.3 **Schedule 15** sets out the subject matter, duration, nature and purpose of Processing, types of Personal Data and categories of Data Subject to be Processed under the Agreement on behalf of the Customer as Controller. The Parties may update **Schedule 15** from time to time by agreement in writing.

14.4 The Parties acknowledge and agree that the Supplier shall act as a Controller where the Customer Data is being Processed by the Supplier for the purposes of:

14.4.1 services contracted directly with the Data Subjects; and/or

14.4.2 the Supplier complying with its own regulatory obligations, including without limitation, as set out in Clauses 14.10 and 14.11

and that in relation to such purposes: (i) the Supplier shall be entitled to Process the Customer Data; (ii) the obligations and restrictions set out in Clause 14.5 shall not apply; and (iii) the Supplier may transfer Customer Data outside the European Economic Area.

14.5 Subject to Clauses 14.4, 14.10 and 14.11, the Supplier shall:

14.5.1 only process Personal Data for and on behalf of the Customer, in accordance with the Customer's written instructions, for the sole purpose of performing the Services. Any instruction issued by the Customer that, whilst not constituting a variation of the Agreement nevertheless has the effect of varying the Supplier's existing data processing procedures or operating model, shall be treated and processed as a Change;

14.5.2 not transfer any Customer Data outside of the European Economic Area unless the prior consent of the Customer has been obtained and the Customer or the Supplier has provided appropriate safeguards in relation to the transfer. In relation to this Clause 14.5.2, the Customer:

- (a) shall not unreasonably withhold or delay its consent to such a transfer or its agreement to, or assistance in relation to, appropriate safeguards (including, for example, by entering into appropriate data protection model clauses);
- (b) agrees that this Agreement constitutes consent for the Supplier to transfer Customer Data to its Affiliates in the UK and ITS India; and to any particular Approved Sub-processor; and

- (c) shall, and shall procure that any relevant third party shall, use all reasonable endeavours to provide all necessary notifications to data subjects and, where applicable, obtain all consents as may be necessary to ensure that such transfers of Customer Data are compliant with Data Protection Laws.
- 14.5.3 ensure that persons authorised to process the Customer Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 14.5.4 maintain the technical and organisational security measures in accordance with the Information Security Schedule. The Customer acknowledges and agrees that such technical and organisational security measures are appropriate to protect the Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing, including where the processing involves the transmission of data over a network;
- 14.5.5 not disclose or allow access to Customer Data to a third party (including to a subprocessor) except to an Approved Sub-processor or otherwise as permitted under the Agreement;
- 14.5.6 subject to Clause 14.7, assist the Customer (when reasonably requested to do so and provided that the request is made promptly and includes all information reasonably necessary to action the request):
 - (a) to comply with any request or notice from a Data Subject exercising their rights under the Data Protection Laws in relation to the Customer Data or any communication from the Data Protection Authority in relation to the Processing of the Customer Data by the Supplier under this Agreement; and
 - (b) in ensuring compliance with its obligations under the Data Protection Laws with respect to security, notifying a Data Protection Authority or a Data Subject of a Breach of Security and where the Customer decides to carry out a Data Protection Impact Assessment (including any resulting consultation with the Data Protection Authority),

in each case insofar as this is possible and taking into account the nature of the Processing and the information available to the Supplier.
- 14.5.7 at the Customer's option or direction on termination or expiry of the Agreement, arrange within a reasonable time period for the return and/or deletion of all Customer Data or for its encryption or anonymisation so as to render the Data Subject's identification impossible, or for the Customer Data otherwise to be put beyond use. Notwithstanding the foregoing, for the avoidance of doubt the Supplier may retain Customer Data where (i) 14.4 applies and/or where (ii) this is necessary for the purpose of defending itself or its Affiliates in relation to any claim or legal proceedings; and/or where (iii) it is required by Applicable Law to keep copies of the Customer Data;
- 14.5.8 inform the Customer immediately if it considers in its opinion that any of the Customer's instructions infringe Data Protection Laws. Nothing in any instructions issued by or on

behalf of the Customer under this Agreement shall require the Supplier to infringe any Data Protection Laws, and the Supplier shall not be in breach of its instructions or its obligations under this Agreement by failing to observe any such instructions; and

14.5.9 where a Breach of Security occurs of which the Supplier becomes aware, in relation to Customer Data under or in connection with this Agreement, notify the Customer without undue delay after becoming aware.

14.6 Subject to Clauses 14.6.4 and 14.7, the Supplier shall make available to the Customer all information relevant to this Agreement which is necessary to demonstrate its compliance with the obligations laid out within Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer, provided that:

14.6.1 the first audit or inspection in any 12 month period shall be at no cost to the Customer. For any additional audit or inspection in the same 12 month period, the Supplier shall be entitled to charge the Customer a reasonable fee in accordance with Clause 14.7 below;

14.6.2 the Parties agree that the Supplier may, in its absolute discretion, decide to meet its audit obligations to the Customer by providing the Customer with a report of its compliance with its data protection obligations based on the American Institute of Certified Public Accountants under the Service Organization Controls (SOC) framework 2 type II standard;

14.6.3 nothing in this Agreement shall prohibit the Customer from seeking an additional audit or inspection where in its reasonable opinion the said report does not address all of the data protection compliance matters that the Customer wishes to audit, subject to payment by the Customer of the Supplier's charges in accordance with Clause 14.7; and

14.6.4 any audit or inspection must be conducted during normal business hours on a Business Day and on the provision of reasonable advance notice to the Supplier. The Customer shall use its reasonable endeavours to ensure that the conduct of such audit does not unreasonably disrupt the business of the Supplier. The Customer undertakes to keep all information obtained strictly confidential and where an agent or representative of the Customer is authorised to conduct an audit on behalf of the Customer it shall undertake in advance to the Supplier to keep all information obtained strictly confidential and not to use or disclose any such information except for the purpose of reporting the results of its audit to the Customer.

14.7 The Supplier shall be entitled to charge a reasonable fee (calculated on a time and materials basis at the rates agreed by the Parties from time to time or in accordance with any rate cards), or as otherwise agreed by the Parties for:

14.7.1 the assistance set out in Clause 14.5.6; and/or

14.7.2 work undertaken in relation to any additional audit under Clauses 14.6.1 and 14.6.3.

14.8 The Customer represents, warrants and undertakes:

- 14.8.1 that the Customer's instructions to the Supplier in connection with or arising out of the Processing of the Customer Data on the Customer's behalf are and will at all times be lawful and shall not contravene any Data Protection Laws;
- 14.8.2 that the Processing of Customer Data by or on behalf of the Customer (up to and including the making available of the Customer Data to the Supplier) has been and will continue at all times to be carried out in accordance with the relevant provisions of the Data Protection Laws (and, where applicable, has been notified to the relevant authorities of the member state where the Customer is established) and does not contravene any Data Protection Laws;
- 14.8.3 that the Processing by the Supplier, in accordance with and as contemplated by this Agreement will not contravene any Data Protection Laws;
- 14.8.4 without limiting the generality of the foregoing, (save where the Supplier is the Controller), that the Customer has and will continue at all times to have in place all fair processing notices and (where applicable) consent mechanisms for Data Subjects sufficient to ensure that all Processing of Customer Data by the Supplier, in accordance with this Clause 14, that is contemplated by this Agreement, will be lawful and shall not contravene any Data Protection Laws; and
- 14.8.5 that the Customer will incorporate the processing carried out by the Supplier as set out in **Schedule 15** into the Customer's fair processing notices (including without limitation those referred to in Clause 14.8.4).
- 14.9 The Customer shall, at the Supplier's written request, provide the Supplier with reasonable evidence that it has in place all necessary fair processing notices (including the Supplier's Processing as set out in **Schedule 15**) and consents required for the processing of Customer Data.
- 14.10 Notwithstanding any other provision of this Agreement, the Supplier shall be entitled to respond to regulators which regulate the Supplier and take any other actions as necessary to deal with any orders, demands, correspondence, requests for information or other similar matters relating to the performance by the Supplier of its regulatory obligations under or in connection with this Clause 14. The Parties acknowledge and agree that the Supplier shall act as a Controller where the Customer Data is being Processed for this purpose and that the Supplier may transfer Customer Data outside the European Economic Area for this purpose.
- 14.11 Where the Supplier is subject to a requirement of English law or European Union law or the law of one of the other countries of the European Union which may conflict with or be inconsistent with its obligations under this Clause 14, compliance with such a requirement will not be in breach of its obligations in this Clause 14. The Supplier shall, to the extent legally permissible, inform the Customer if the Supplier is subject to such a requirement or is made subject to one.
- 14.12 The Supplier acting as Processor shall, subject to the limitation of liability in Clause 18.5, indemnify and keep indemnified the Customer in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, the Customer arising from or in connection with any non-compliance by the Supplier with the Data Protection Laws.
- 14.13 The Customer acting as Controller, shall, subject to the limitation of liability in Clause 18.5, indemnify and keep indemnified the Supplier in respect of all Data Protection Losses suffered

or incurred by, awarded against or agreed to be paid by, the Supplier and any Approved Subprocessor arising from or in connection with any non-compliance by the Customer with the Data Protection Laws.

15. ANTI-BRIBERY

15.1 The Supplier shall:

15.1.1 comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

15.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

15.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;

15.1.4 notify the Customer if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);

15.1.5 ensure that all Personnel associated with the Supplier comply with this Clause 15;

15.1.6 Breach of Clause 15 shall be deemed a material breach of this Agreement;

15.1.7 For the purpose of Clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively.

16. MODERN SLAVERY

16.1 The Supplier shall:

16.1.1 comply with all applicable provisions of the Modern Slavery Act 2015 ("**MSA 2015**");

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under MSA 2015 if such activity, practice or conduct had been carried out in the UK; and

16.1.3 comply with its own ethics and modern slavery policies as the Supplier may update from time to time.

17. REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

17.1 The Supplier represents and warrants to the Customer that, as of the date of this Agreement:

17.1.1 the Supplier is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;

- 17.1.2 the Supplier has full power and authority to execute, deliver and perform its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party and has taken all necessary action in this regard;
- 17.1.3 the execution of this Agreement does not violate or conflict with any law applicable to the Supplier, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- 17.1.4 the obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with their respective terms;
- 17.1.5 the Supplier is entering into this Agreement as principal and not as agent of any person or entity; and
- 17.1.6 all governmental and other consents that are required to have been obtained by the Supplier prior to executing this Agreement are in full force and effect and all conditions of any such consents have been complied with.
- 17.2 The Supplier further undertakes to the Customer that:
 - 17.2.1 It will scan the Software for known software viruses prior to delivery of the Software to Customer;
 - 17.2.2 the Services shall be provided to the same level of professional skill and care expected of an experienced UK provider of services the same as the Services in the relevant industry;
 - 17.2.3 any Deliverables supplied comply with their specification as set out in this Agreement or any relevant Statement of Work and are free of material defects; and
 - 17.2.4 the Personnel are fully qualified and competent to carry out the Services to be provided under this Agreement or an individual Statement of Work.
- 17.3 If the Supplier receives written notice from Customer of any breach of Clause 17.2 within the Warranty Period then the Supplier shall at its own expense and within a reasonable time after receiving such notice use its reasonable endeavours to remedy the defect or error in question.
- 17.4 The Supplier shall have no liability or obligations under the said warranties other than to remedy breaches by the provision of materials and services within a reasonable time and without charge to the Customer.
- 17.5 Both Parties agree to comply with the obligations as set out in **Schedule 13**.

18. INDEMNITY AND LIABILITY

- 18.1 Nothing in this Agreement shall limit or exclude, or purport to limit or exclude, the liability of either Party for death or personal injury caused by such Party's negligence or any liability for fraudulent misrepresentation. Furthermore, the Supplier does not exclude any liability it may have to Customer under section 12 of the Sales of Goods Act 1979.

18.2 Subject to Clauses 18.1, 18.3 and 18.4, the Supplier agrees to indemnify the Customer without any monetary limit from and against all actions, losses, damages, claims, liabilities, proceedings, penalties, demands, expenses and reasonably and necessarily incurred costs all of which are actually awarded and paid by the Customer to a third party and which the Customer actually suffers or incurs as a direct consequence of the Supplier or its Personnel due to any of the following:

18.2.1 Any personal injury to, or the death of, any person whatsoever owing to the acts, omissions or defaults of the Supplier or its Personnel; or

18.2.2 Any wilful, fraudulent or criminal misconduct on the part of the Supplier or its Personnel;

18.2.3 a breach of Clause 12 (Confidentiality);

18.2.4 a breach of Clause 15 (Anti-Bribery); or

18.2.5 an Intellectual Property Infringement.

18.3 Without prejudice to Clause 18.1, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement howsoever caused.

18.4 Without prejudice to Clause 18.1 above, and except where to do so would contravene any Applicable Law, neither the Supplier nor the Customer shall be liable to the other for any of the following losses (whether those losses arise directly or indirectly or are immediate or consequential and whether the same arise in contract, tort (including negligence) or otherwise) howsoever caused and which fall within any of the following categories:

18.4.1 loss of profit;

18.4.2 loss of goodwill;

18.4.3 loss of business;

18.4.4 loss of business opportunity;

18.4.5 loss of anticipated saving; or

18.4.6 loss or corruption of data or information.

18.5 Subject to Clauses 18.1 - 18.4 above and save as where expressly stated to the contrary, the entire liability of either Party to the other under, or in connection with, this Agreement (whether arising in contract, negligence, tort, statute, restitution or howsoever) shall at all times be limited in aggregate to 100% of the total monies paid or payable by the Customer to the Supplier per Year, pursuant to the terms of this Agreement (including any monies paid or payable under individual Statements of Work).

19. INSURANCE

19.1 The Supplier shall effect and maintain throughout the Term adequate insurance to cover the risks arising under this Agreement and in respect of which a reasonable and prudent business

operator in the Supplier's area of business would maintain coverage, including without limitation:

19.1.1 Enhanced Crime, Damage and Civil Liability insurance with a minimum limit of five million pounds (£5,000,000) for any single direct loss and in the aggregate;

19.1.2 Public Liability insurance with an indemnity limit of not less than five million pounds (£5,000,000) per occurrence and per annum; and

19.1.3 Employers Liability insurance with an indemnity limit of not less than five million pounds (£5,000,000) per occurrence and per annum.

19.2 The Supplier shall upon request supply to the Customer evidence to demonstrate to the reasonable satisfaction of the Customer, that it has the insurance specified in this Clause 19 in place by way of a confirmation letter from its insurance brokers.

20. CUSTOMER RIGHT OF AUDIT

20.1 The Supplier will assist the Customer or any member of the Customer in meeting its audit, legal and regulatory requirements by providing, at a frequency of not more than once per annum and upon twenty (20) Working Days' notice (except in the case of a justifiable suspicion of fraud where no such frequency or notice shall apply), reasonable access to the Customer and/or its Appointed Auditors, to Supplier's premises, records, Personnel and activities relating wholly and exclusively to the performance of the Services in accordance with this Agreement, so that appropriate audits, reviews and inspections (each an "**Audit**") may be conducted. Without limiting the generality of the foregoing, an Audit may be conducted in respect of the following:

20.1.1 the Services Fees payable under this Agreement;

20.1.2 that the Services are being provided, and the Supplier's other obligations are being performed, in accordance with this Agreement and any applicable Statement of Work;

20.1.3 subject to the provisions of Clause 14.6, the security and integrity of personal data including any associated records and documentation and (in particular) the Supplier's compliance with Clause 14;

20.1.4 the Supplier's adherence to the Screening Guidelines as set out in Clause 7; and

20.1.5 the Supplier's adherence to the Information Security requirements as set out in **Schedule 17**.

20.2 The Customer shall arrange access with the Supplier at such times and in such a manner with a view to preventing such Audits from interfering with the Supplier's performance of its obligations under this Agreement and other operational commitments to its clients.

20.3 The Supplier shall maintain its records in such a manner as to facilitate an Audit but will only be required to provide access to the Supplier information wholly and exclusively used in the performance of the Services and will not be required to provide access to:

20.3.1 other Supplier customer data; or

20.3.2 the Supplier's proprietary data which is not related to the provision of the Services.

20.4 Without prejudice to Clause 20.1, the Supplier will further allow reasonable levels of access to its premises to any Regulator or relevant government or regulatory body for the purposes of carrying out audits or investigations. The Supplier will provide such access in accordance with the timescales required by any Regulator, or other government or regulatory body.

Consequences of Review

20.5 If, following analysis of the findings of any Audit, the Customer can demonstrate that the Supplier has not complied with its obligations under this Agreement and action is required by the Supplier to remedy, the Customer will send a copy of the review to the Supplier in accordance with Clause 27. If the Supplier does not agree with the review, then the provisions of Clause 28 shall apply. If the Supplier is in agreement with the findings, the Supplier shall prepare an Action Plan as set out in Clause 9. The Customer shall be entitled to conduct a further Audit following the completion of such Action Plan.

21. TERMINATION AND EFFECTS OF TERMINATION

21.1 This Agreement may be terminated immediately by either Party upon written notice to the other:

21.1.1 If there is a material breach of this Agreement that is, in the reasonable opinion of the affected Party, irremediable or if the breach is remediable, the other Party fails to remedy that breach within twenty (20) Working Days after been notified in writing to do so;

21.1.2 If a Party stops, or threatens to stop, payment of its debts or ceases or threatens to cease to carry on or changes its business or a substantial part of its business (except in the course of a solvent amalgamation or reconstruction approved by the other Party) or shall, for the purposes of any law applicable to it, be deemed to be unable or shall admit its inability to pay its debts (including the payment of any amount in respect of taxes) as they fall due, or shall become insolvent;

21.1.3 If any person petitions for court protection or winding-up of a Party, or if any meeting is called to consider a resolution to wind-up a Party or any such resolution is passed or any other corporate action or other steps are taken or legal proceedings are started

for the winding-up, dissolution, examination or reorganisation or for the appointment of a receiver, examiner, trustee in bankruptcy, administrator, administrative receiver or similar officer of a Party or of any or all of its revenues and assets;

21.1.4 If an order for the winding-up of a Party is made or any liquidator, provisional liquidator, receiver, examiner, trustee in bankruptcy, administrator, administrative receiver, voluntary administrator, manager or similar officer is appointed to or over any or all business, revenues or assets of a Party; and

21.1.5 in accordance with Clause 25.2.

21.2 In addition to Clause 21.1, the Supplier may also suspend or terminate this Agreement in whole or in part with immediate effect by notice in writing if the Customer is in default of its payment obligations. The Client shall be in default of its payment obligations if it fails to pay any sum due and then does not pay within a further 10 days of being notified of such failure by the Supplier.

21.3 The Customer may, subject to payment of Termination Charges, terminate a Statement of Work in whole or part at any time by giving the Supplier the prior written notice of such termination as prescribed in the relevant Statement of Work.

21.4 Termination of this Agreement will not automatically terminate all Statements of Work unless the Parties agree otherwise in writing. Termination of an individual Statement of Work shall not terminate any other Statement of Work or this Agreement, unless the other Statement of Work or this Agreement is terminated at the same time.

21.5 Termination or expiry of this Agreement or a Statement of Work shall not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

21.6 Termination of this Agreement shall be without prejudice to the accrued rights of the Parties hereunder.

22. EXIT ASSISTANCE

22.1 Upon termination of this Agreement in accordance with its terms, the Supplier will:

22.1.1 forthwith deliver to the Customer all documents, records and material, Deliverables and Intellectual Property belonging to the Customer;

22.1.2 return or destroy (as directed by the Customer) any Customer Data in its possession or control. If required by the Customer, the Supplier shall provide written confirmation that any such Customer Data held has been destroyed and that no copies have been retained, except for any copies legitimately required to be retained for audit purposes, which copies shall remain subject to the confidentiality obligations as set out at Clause 12, or which are within back-up files kept by the Supplier as part of its normal security procedures (and dealt with thereafter in accordance with those procedures); and

22.1.3 subject to agreement between the Parties of the additional costs incurred by the Supplier which shall be charged at the then standard rate of charges of the Supplier, will co-operate with the Customer and any third party supplier to ensure the continuity of the Services required by the Customer.

23. ESCROW

23.1 Following a written request from the Customer, the Supplier shall place each version of the source code of the Software in escrow with the National Computing Centre and the Parties shall, at the Customer's sole cost, enter into the Source Code Deposit Agreement. In the event that Customer upgrades to a new version of the Software then the Customer shall be placed as a beneficiary of the Source Code Deposit Agreement deposited at the National Computing Centre for the relevant version of the Software.

24. NON-SOLICITATION

24.1 The Customer shall not, during the Term of this Agreement or for a period of twelve (12) months after expiry or termination howsoever caused, solicit the Supplier's Personnel who have been employed or engaged in the performance of this Agreement.

24.2 For the purposes of this Clause 24, solicit means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor. In the event that the Customer is in breach of Clause 24 above, the Customer shall pay to the Supplier by way of liquidated damages an amount equal to one hundred (100) per cent of the gross annual remuneration (as at the time of the breach) of the person who is to be employed or engaged.

24.3 This provision shall be without prejudice the Supplier's ability to seek injunctive relief.

24.4 The Parties hereby acknowledge and agree that the percentage specified in Clause 24.2 above is a reasonable estimation of the loss which would be incurred by the Supplier in connection with the loss of the person so employed or engaged.

25. FORCE MAJEURE

25.1 Neither Party shall be liable for any failure or delay in its performance owing to a Force Majeure Event.

25.2 In the event that either Party claims that it is unable to perform its obligations owing to a Force Majeure Event it shall promptly notify the other Party. The Parties shall upon the request of the other meet to determine what steps if any may be taken to alleviate the Force Majeure Event. Following receipt of the notice of the Force Majeure Event, the obligations under this Agreement shall be suspended. In the case that the Force Majeure Event continues for a period in excess of twenty (20) Working Days, the Customer shall be entitled to terminate this Agreement.

26. ASSIGNMENT AND SUB-CONTRACTING

26.1 Except as otherwise expressly provided in this Agreement, neither Party shall be permitted to assign, sub-contract or otherwise transfer the benefit of this Agreement, whether in whole or in part, or its obligations under this Agreement without the other Party's written consent (such consent not to be unreasonably withheld or delayed).

26.2 Either Party may assign, transfer, sub-contract or novate its rights and obligations under this Agreement to another member of its respective Group.

26.3 Any attempt by either Party to assign, novate, sub-contract or otherwise transfer its rights or obligations hereunder in violation of this Clause 26 will be null and void, and will constitute a material breach of this Agreement.

26.4 The Supplier may sub-contract all or part of the Services (including the Additional Services) provided under this Agreement to a member of the Supplier Group without the consent of the Customer. In the event of such sub-contracting, the Supplier shall:

26.4.1 ensure that the Sub-contractor complies in all respects with its obligations under the terms of its engagement so as to ensure that the obligations of the Supplier under this Agreement are met at all times, including the supply to the Customer's reasonable satisfaction of evidence of its monitoring of Sub-contractors compliance with relevant obligations under this Agreement;

26.4.2 procure for the Customer a right of audit of the activities and records of the Subcontractor in so far as they relate to the performance of the Services consistent with the provisions of Clause 20;

26.4.3 supply the Customer with a supply chain map depicting all Sub-contractors, from where Services will be provided.

26.5 The Supplier acknowledges and agrees that it will not be relieved of any of its obligations under this Agreement or any Statement of Work by sub-contracting the performance of any part of the Services to a Sub-contractor. The Supplier will at all times remain responsible and liable to the Customer for any non-performance of its obligations under this Agreement or a Statement of Work as a result of the acts, errors or omissions of any Sub-contractor.

26.6 Additionally, the Customer shall have no liability whatsoever for the payment and/or late payment of liabilities incurred and sums which become due and owing to any Sub-contractor by the Supplier. The Supplier shall ensure that any Sub-contractor(s) engaged for the purposes of this Agreement or any Statement of Work acknowledges to the Supplier that any obligations in respect of payment and/or late payment of liabilities incurred and all sums, which become due and owing, shall be discharged by the Supplier.

27. NOTICES & COMMUNICATIONS

27.1 Notices and communications shall be in writing and shall be sent to the other Party marked for the attention of the person at the address set out below.

27.2 Notices may be delivered by hand or sent by registered post or email (provided that all notices in relation to breach, suspension or termination and/or any document concerning legal proceedings or proposed legal proceedings or claims will be delivered by registered post in accordance with the provisions of this Clause 27).

27.3 Notices sent by registered post shall be deemed to have been delivered 72 hours after posting.

27.4 Notices sent by email shall be deemed to have been delivered on the Working Day it was transmitted, if transmitted before 5pm on the day it was transmitted (provided the sender does not receive a notification of email delivery failure or an automatic notification message advising that the recipient is not available, in which case the sender will re deliver the notice by another means as permitted by this Clause 27 and such notice will be deemed to be delivered in accordance with this Clause 27).

27.5 If notice by email is not sent on a Working Day or is sent after 5pm on a Working Day, it will be deemed to be received at 9am on the next Working Day (providing the sender does not receive a notification of email delivery failure or an automatic notification message advising that the recipient is not available, in which case the sender will re deliver the notice by another means as permitted by this Clause 27 and such notice will be deemed to be delivered in accordance with this Clause 27).

NOTICE DETAILS:**For the Customer:**

Name:

Address:

E-mail:

For the Supplier:

Name:

Address:

Email:

28. DISPUTE RESOLUTION

28.1 If at any time during the Term a question, dispute or difference of opinion shall arise between the Parties as to any matter or thing of whatever nature arising under, or in connection with, this Agreement (each a “**Dispute**”), then either Party may give to the other notice in writing as to such Dispute (a “**Dispute Notice**”) and upon receipt of such notice the representatives of the Parties set out at Level 1 below and if not resolved within the time specified below or as extended by agreement between the Parties, shall then be escalated and discussed between the representatives of the Parties specified at Level 2 and if not resolved within the time specified below or as extended by agreement between the Parties, shall then be escalated and discussed between the representatives of the Parties specified at Level 3 until the dispute is resolved or the time period specified below or as extended by agreement between the Parties expires.

Level	Customer representative	Supplier representative	Time for resolution
1	[Project/Account Manager]	[Project/Account Manager]	10 Working Days
2	[Senior Manager]	[Senior Manager]	10 Working Days
3	[Managing Director]	[Managing Director]	10 Working Days

28.2 If the dispute is not resolved in accordance with Clause 28.1, then the Parties shall attempt to settle the dispute by mediation in with the Centre for Dispute Resolution (“**CEDR**”) Model Mediation Procedure (“**the Model Procedure**”). To initiate a mediation, a Party via its Managing Director must give notice in writing (“**ADR Notice**”) to the other Party requesting mediation in accordance with this provision. A copy of the request will be sent to CEDR. If there is any disagreement between the Parties on the conduct of the mediation (including nomination of the mediator) within ten (10) Working Days of the date of the ADR Notice, CEDR will, at the request of any Party, decide the point on behalf of the Parties having consulted with them. The mediation will start not later than twenty (20) Working Days after the date of the ADR Notice. Save for the fact that the Parties submitted to the dispute resolution procedure set out above, nothing arising from such dispute resolution process will be admissible in any litigation. The

costs of the dispute resolution will be shared equally by the Parties except that each Party will bear its own legal costs.

29. RELATIONSHIP BETWEEN THE PARTIES

29.1 Save as expressly provided herein, neither Party shall represent itself as being an agent, partner, employee or representative of the other Party nor (save as aforesaid) hold itself out as such or as having any power or authority to incur any obligations of any nature express or implied on behalf of the other Party.

29.2 Save as expressly provided herein, this Agreement does not create a relationship of employment, trust, agency or partnership between the Parties.

30. PUBLICITY

30.1 Within one month of the date of this Agreement, the Customer agrees to cooperate with the Supplier's PR agency to announce the award of the project as set out in this Agreement in a press release to the relevant media. In addition, the Customer also agrees to participate in the production of a case study at the appropriate time. The Supplier agrees that nothing shall be announced or issued without approval by the Customer.

31. COSTS

31.1 Except as otherwise expressly provided for in this Agreement each Party shall bear its own costs in relation to the negotiation, preparation and the bringing into full force and effect the terms and provisions of this Agreement.

32. MISCELLANEOUS

32.1 Variations

32.1.1 No amendment, variation or waiver shall be effective unless made in writing, duly executed and authorised by both Parties.

32.2 Benefit of Agreement

32.2.1 Save as expressly provided for in this Agreement, a person who is not a Party to this Agreement has no right under the Agreements (Rights of Third Parties) Act 1999. The Parties may vary, terminate, suspend or rescind this Agreement (or any part of it) without the consent of any third party beneficiary to any term of this Agreement.

32.2.2 Notwithstanding Clause 32.2.1, this Agreement is intended to confer a benefit on Related Companies in the Customer Group and Supplier Group to the extent that such a Related Company is a recipient or provider of the Services under a fully executed Statement of Work.

32.3 Effect of Invalidity/Severance

32.3.1 If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, the Parties shall negotiate in good faith to amend such term or provision or part in order to remove the element of illegality or unenforceability but, if the Parties are unable to agree the necessary

amendments, such term or provision or part shall to the necessary extent be deemed not to form part of this Agreement. The enforceability of the remainder of this Agreement shall not be affected by any alteration or exclusion of a term or provision or part pursuant to the provisions of this Clause 32.3.1.

32.4 Waiver and Cumulative Nature of Remedies

32.4.1 Failure by either Party to exercise or enforce any rights available to that Party or the giving of any forbearance, delay or indulgence shall not be construed as a waiver of that Party's rights under this Agreement or as creating an estoppel in connection with this Agreement and shall not affect the validity of this Agreement or any part of it or the right of that Party to enforce any provision of this Agreement.

32.4.2 Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or existing at law or in equity by statute or otherwise.

32.5 Survival

32.5.1 The following provisions will survive expiry or termination of this Agreement for whatever reason: Clause 12 (Confidentiality), Clause 13 (Intellectual Property), Clause 14 (Data and Data Protection), Clause 18 (Indemnity and Liability), Clause 21 (Termination and Effects of Termination), Clause 28 (Dispute Resolution) and Clause 32.7 (Governing Law).

32.6 Entire Agreement

32.6.1 This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in accordance with its subject matter.

32.6.2 Each Party acknowledges that in entering into this Agreement it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement or the documents referred to in it.

32.7 Electronic Signatures

32.7.1 The Supplier may make this Agreement (including amendments to, and extensions of, this Agreement) available in electronic form for electronic execution. The Customer hereby consents to this process and authorises the Supplier to share information related to the Customer and any authorised signatory information with a third party service provider for the purpose of contract execution and management.

32.8 Counterparts

32.8.1 This Agreement may be entered into by the Parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

32.9 **Governing Law**

32.9.1 This Agreement 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 the laws of England and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England.



AS WITNESS the hands of the duly authorised representatives of the Parties the day and year first herein written.

For and on behalf of

[CUSTOMER]

_____ **Authorised Representative**
Dated

For and on behalf of

ITS Computing Limited

_____ **Authorised Representative**
Dated

SCHEDULE 1 – LICENCE TERMS

SCHEDULE 2 – SOFTWARE

SCHEDULE 3 – PROFESSIONAL SERVICES

SCHEDULE 4 – SUPPORT SERVICES

SCHEDULE 5 – HOSTING SERVICES

SCHEDULE 6 – ACCEPTANCE

1. Notwithstanding anything else in this Schedule, the Acceptance Date for the Software is deemed to be the date of delivery in accordance with Clause 4.1.1. Such acceptance of the Software upon delivery does not include any Professional Services, which shall be subject to any agreed acceptance testing as set out in the remainder of this Schedule.
2. The Customer shall submit to the Supplier a detailed test plan and all test scripts (which shall include without limitation test data and the results expected from the processing of such test data) ("**Test Plan**") suitable to test the Professional Services against the Acceptance Criteria in all material respects.
3. At the request of the Customer, the Supplier will review the Test Plan in a reasonable amount of detail and provide appropriate feedback to the Customer.
4. Prior to commencement of the acceptance tests, the Supplier will configure the Software parameters in accordance with the Professional Services and provide such reasonable training as is required to a set number of users (as determined by the Supplier) to enable the Customer to commence acceptance testing.
5. The Customer shall commence the acceptance tests using the Test Plan and shall have a maximum of ten (10) Working Days to complete such tests.
6. Subject always to **Paragraphs 8 and 9** below, if due to the acts, omissions or defaults directly attributable to the Supplier (or a third party acting under the Supplier's control) the Professional Services fail the initial acceptance tests, the Customer shall provide a detailed analysis of such failures to the Supplier within two (2) Working Days and the Supplier shall, at its cost, correct all such errors properly and fully disclosed to enable the Customer to repeat the acceptance testing.
7. Subject always to **Paragraphs 8 and 9**, if due to the acts, omissions or defaults directly attributable to the Supplier (or a third party acting under the Supplier's control) the Professional Services fail to pass any repeated acceptance tests, then the Parties shall agree whether:
 - 7.1 to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the same terms. If the Professional Services, due to the acts, omissions or defaults directly attributable to the Supplier (or a third party acting under the Supplier's control), fail such further acceptance tests then the Parties may agree a further repeat test under this **Paragraph 7** or to proceed under **Paragraph 8**; or
 - 7.2 to accept the Professional Services subject to such change of Acceptance Criteria after taking into account all reasonable and relevant circumstances.
8. The Professional Services shall pass the acceptance tests when it satisfies the Acceptance Criteria in all material respects against the expected results set out in the Test Plan. Both Parties shall then sign the Acceptance Certificate.

9. If at any time the Customer commences processing business in a live environment or using the Professional Services in any way other than in a manner which is strictly for the purpose of completing the acceptance tests then the Professional Services shall be deemed to have

passed the acceptance tests from such date and therefore the Customer has accepted those particular Professional Services. All payments which become due on acceptance shall then be payable immediately.

ACCEPTANCE CERTIFICATE

Dated: _____

We refer to the Software and Professional Services Agreement between the Parties dated _____ 2017 ("**the Agreement**"):

We have today either:

1. accepted a new release of the Software; or
2. the Professional Services have been completed and passed the acceptance tests.

For and on behalf of

[CUSTOMER NAME]

_____ **Authorised Representative**
Dated

For and on behalf of

[ITS Computing Limited NAME]

_____ **Authorised Representative**
Dated

SCHEDULE 7 – SERVICE LEVEL AGREEMENT

SCHEDULE 8 – FEES AND INVOICING

As per Call Off Contract

SCHEDULE 9 – CHANGE CONTROL PROCEDURE

1. Either Party may at any time during the Term of this Agreement propose a Change by notifying such proposal in writing to the other Party using the Change Control Note attached to this Schedule or using such other document as the Parties may from time to time agree.
2. No Change shall be implemented unless the Parties have agreed (such agreement not to be unreasonably withheld or delayed) the following in writing (as evidenced either in the Change Control Note or such other document as the Parties may from time to time agree):
 - 2.1 the details of the Change;
 - 2.2 any impact on the obligations of the Parties under this Agreement or the provision of the Services arising from such a Change;
 - 2.3 any impact on the Charges; and
 - 2.4 to the extent not already covered, the details of the likely impact (if any) of the Change on any other matters identified by the Parties to be of relevance to the provision of the Services.
3. The Supplier shall review all Change in accordance with its own internal change control methodology and in the event that the Parties agree any Change as evidenced either by a Change Control Note signed by both Parties or the signature by both Parties of such other documentation as agreed (such agreement not to be unreasonably withheld or delayed), this Agreement or the relevant SOW shall be deemed to have been varied from the earlier of the date on which the Change was agreed or the date on the Change Control Note.
4. Until such time as a Change has been agreed by the Parties (such agreement not to be unreasonably withheld or delayed), the Parties shall continue to conform to this Agreement as if no request for a Change had been made.

CHANGE CONTROL NOTE

CHANGE CONTROL NOTE		CCN No.	
		Date	
Title			
Originator		Date	
Reason for Change			

Details of the Change (Please attach all relevant documentation)		
Impact Analysis (Please attach all relevant documentation)		
Impact on Charges (Please attach all relevant documentation)		
Timetable for Implementation (Please attach all relevant documentation)	Deliverable	Date
Signed by: Name: Title:	Signed by: Name: Title:	

SCHEDULE 10 – STATEMENT OF WORK

This Statement of Work is numbered [enter sequential no] made between [Customer] (the “Customer”) and [Supplier] (the “Supplier”) dated [insert date] and is entered into under the agreement dated [insert date] and made between the Customer and the Supplier and all amendments and variations made thereto (“Agreement”)

1.	INCORPORATION OF TERMS	The terms of the Agreement are incorporated into this SOW subject to any amendments made pursuant to [16] below. This SOW constitutes a separate legal agreement between the Customer and the Supplier.
2.	DEFINITIONS	<i>All capitalised terms used in this SOW shall have the same meaning as those given in the Agreement [and the following terms shall have the following meanings:] [Include any other definitions required]</i>
3.	EFFECTIVE DATE	
4.	DURATION	
5.	ADDITIONAL SERVICES	
6.	SERVICE LEVELS	
7.	SERVICE CREDITS	
8.	GOVERNANCE	<i>[This should be a cross reference out to schedule to the Agreement]</i>
9.	DELIVERABLES	
10.	ACCEPTANCE TESTS	<i>[This should be a cross reference out to schedule to the Agreement]</i>
11.	CHARGES	

12.	EXPENSES	
13.	INVOICING	
14.	REPORTING	
15.	NOTICES	
16.	AGREEMENT AMENDMENTS	<i>[Include here any amendments that you are making to the Agreement to avoid conflicts and to make it clear what if any amendments are being proposed. This box may not always be applicable and shouldn't be used unless there is a specific amendment that is required to the Agreement for the particular Additional Service being ordered]</i>
Signed by: Name: Title:		Signed by: Name: Title:

SCHEDULE 11 – GOVERNANCE FRAMEWORK

For the purposes of this Schedule, the following definitions shall apply:

Representative has the meaning given to it in **Paragraph 1.1**; and

Project Plan means any applicable and relevant project plan as set in the relevant SOW.

The Parties shall undertake governance meetings as required to ensure the efficient performance of their respective obligations under this Agreement including but not limited to the meetings set out below, as appropriate.

1.1 Representatives

- 1.1.1 Each Party shall appoint a representative who has the requisite knowledge and insight of the day to day provision of the Services (that Party's, "**Representative**").

1.2 Service Review Meeting

- 1.2.1 In addition to each Party's Representative other representatives of the Parties may attend as shall be agreed from time to time.
- 1.2.2 The Parties shall hold a Service Review Meeting regularly but at least once every [month].
- 1.2.3 The matters discussed at a Service Review Meeting shall include:
 - (a) progress of the Services and any Project Plans;
 - (b) outstanding problems, delays or disputes and plans for their resolution;
 - (c) any future Customer requirements; and
 - (d) future Project Plans.

1.3 Joint Management Meeting

- 1.3.1 The Parties shall each select members of their respective businesses of the appropriate level of influence and seniority who shall attend a Joint Management Meeting.
- 1.3.2 The Parties shall hold a Joint Management Meeting at least once every [three months].
- 1.3.3 The matters discussed at a Joint Management Meeting shall include:
 - (a) [#];
 - (b) [#]; and (c) [#].

1.4 Reports

1.4.1 The Supplier shall provide the Customer with such reports as may be reasonably agreed in the initial Service Review Meeting from time to time in a format to be agreed between the Customer and the Supplier.

SCHEDULE 12 – EXIT MANAGEMENT

For the purposes of this Schedule, the following definitions shall apply:

Exit Plan has the meaning given to it in **Paragraph 1.d**; **Exit**

Services has the meaning given to it in **Paragraph 1.c**; and

Exit Services Period has the meaning given to it in **Paragraph 1.b**.

1. TERM

- b. The Supplier will provide the Exit Services (as defined below) as set out in this Schedule for a period of up to twenty (20) Working Days following termination of this Agreement or termination or expiry of any SOW (as applicable) in relation to the orderly transition of the affected Services (the “**Exit Services Period**”), as agreed upon by the Parties.

2. EXIT SERVICES

- c. The Supplier shall, upon the Customer’s request, in addition to continuing to provide the Services which were provided by the Supplier prior to termination, provide new services requested by the Customer in order to facilitate the transfer or transition of the affected Services, including providing to the Customer reasonable information requested in connection with the affected Services (the “**Exit Services**”).
- d. To the extent requested by the Customer, the Supplier shall reasonably assist the Customer in developing a plan which shall specify the tasks to be performed by the Parties in connection with the Exit Services and the schedule for the performance of such tasks (“**Exit Plan**”).
- e. Following the Exit Services Period, the Supplier shall:
 - i. answer questions from the Customer regarding the Services on as “as needed” basis, subject to workload and resource availability; and
 - ii. deliver to the Customer any remaining Customer Data still in the Supplier's possession.
- f. Upon request from the Customer, the Supplier shall, to the extent permitted by third party contracts continue to licence upon arm’s length commercial terms to the Customer Software then being used by the Supplier in providing the Services in accordance with this Agreement, except for proprietary Supplier software that is not commercially available for license and any Software previously purchased by the Customer from the Supplier on a perpetual basis.
- g. The Supplier shall not degrade the quality or level of its performance of the Services during the Exit Services Period.

3. CHARGES

- h. The Exit Services shall be charged at the rates set out in the applicable SOW and if no rates are set out there the Supplier's current time and materials rates.

SCHEDULE 13 – EMPLOYMENT

For the purposes of this Schedule, the following definitions shall apply:

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any regulations which replace or supersede such regulations; and

1. The Parties acknowledge and agree that, due to the nature and organisation of the Services, and the provision of services similar to the Services immediately before the Effective Date of this Agreement, the commencement of provision of Services under this Agreement will not constitute a transfer of employment by virtue of the Employment Regulations.
2. The Customer agrees to arrange the Customer's Personnel, and, if applicable, procure that any of the Customer's sub-contractors arrange their Personnel, in relation to the anticipated provision of the Services in such a way that no individual at any time (i) forms part of an organised grouping of employees which has as its principal purpose the provision of (all or part of) the proposed Services or (ii) is wholly or mainly assigned to the provision of (all or part of) the proposed Services and consequently that no contract of employment of any individual will transfer from the Customer (or any of the Customer's sub-contractors) to the Supplier by virtue of the Employment Regulations, upon the commencement of the provision of the Services by the Supplier, or otherwise.
3. Notwithstanding the above, upon the Effective Date of the Agreement if the employment of any individual is transferred from the Customer or the Customer's Related Companies (or any of the Customer's sub-contractors or suppliers of the same) to the Supplier or the Supplier's Group by virtue of the Employment Regulations or any person asserts that their employment has so transferred, then the Supplier or such of the Supplier's Group may terminate the employment of any such person (in so far as it has not already terminated) within twenty (20) Working Days of becoming aware of such transfer or alleged transfer. If the Supplier or any member of the Supplier's Group terminates any person's employment in such circumstances, the Customer shall, upon demand by the Supplier, indemnify the Supplier and each member of the Supplier's Group against all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which the Supplier and/or such of the Supplier's Group may suffer or incur and which arise in connection with, or relate to the employment of such a person and/or the termination of their employment.
4. During the Term the Supplier agrees to arrange the Supplier's Personnel, and, if applicable, procure that any of the Supplier's sub-contractors arrange the Supplier's Staff, in relation to the provision of the Services in such a way that no individual at any time (i) forms part of an organised grouping of employees which has as its principal purpose the provision of (all or part of) the Services or (ii) is wholly or mainly assigned to the provision of (all or part of) the Services and consequently that no contract of employment of any individual will transfer from the Supplier (or any of the Supplier's sub-contractors) to the Customer by virtue of the Employment Regulations, on the cessation of the provision of the Services by the Supplier, or otherwise.
5. Notwithstanding the above, upon termination or expiry of this Agreement if the employment of any individual is transferred from the Supplier (or any of the Supplier's sub-contractors) to the Customer by virtue of the Employment Regulations or any person asserts that his employment has so transferred, then the Customer may terminate the employment of any such person (in so far as it has not already terminated) within twenty (20) Working Days of

becoming aware of such transfer or alleged transfer. If the Customer terminates any person's employment in such circumstances, the Supplier will, on demand by the Customer, indemnify the Customer against all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which the Customer may suffer or incur and which arise in connection with, or relate to the employment of such a person and/or the termination of their employment.

SCHEDULE 14 – SUB-CONTRACTORS

Sub-Contractors (and Approved Sub-Processors) are set out below:

Company Name	Co. Number	Sub-Contractor	Approved Sub-Processor
Equiniti India Private Limited	AABCI3514M		

SCHEDULE 15 – DATA PROTECTION PARTICULARS

[TO BE COMPLETED BY THE SUPPLIER AS PROCESSOR AND IS PRODUCT AND SERVICE SPECIFIC]

The subject matter and duration of the Processing	Data relating to [TBC] For the duration of the Agreement.
The nature and purpose of the Processing	
The type of Personal Data being Processed	
The categories of Data Subjects	
Supplier DPO	DPO@its-computing.co.uk

SCHEDULE 16 – APPROVED SUB-PROCESSORS

A. APPROVED SUB-PROCESSORS

- i. A sub-processor is an “**Approved Sub-Processor**” where:
 - a. the sub-processor is agreed in writing between the Parties but does not include the Supplier Group;
 - b. the Customer has agreed to the appointment of such sub-processor elsewhere under or in accordance with this Agreement (for example pursuant to an approval to appoint a Sub-contractor); and/or
 - c. the sub-processor is appointed by the Supplier in accordance with sub-paragraph iv below.
- ii. The Supplier undertakes to ensure that the sub-processing contract will be on terms that are substantially the same as the terms set out in Clause 14.5.
- iii. The Customer agrees that this Agreement constitutes written consent to disclosure of the Customer Data to such sub-processors.
- iv. The Supplier may appoint a new sub-processor as an Approved Sub-processor, replace an existing Approved Sub-processor or alter the scope or location of the sub-processing carried out by an Approved Sub-processor (a “**sub-processing change**”) provided that:
 - a. The Supplier has given the Customer written notice of the relevant sub-processing change;
 - b. having undertaken due diligence on the sub-processor with all due skill and care, including a risk assessment of the information governance related practices and processes of the sub-contractor where the outcome of the due diligence is a determination that the sub processor and the arrangements made for the subprocessing would objectively be adequate and sufficient to ensure compliance with the applicable requirements of Data Protection Laws (“**adequate**”), and notice of the outcome has been provided to the Customer;
 - c. the Supplier undertakes to ensure that the sub-processing contract will be on terms that are substantially the same as the terms set out in Clauses 14.5 and 14.6; and
 - d. the Customer has not provided evidence disproving the findings of the due diligence and the Supplier’s assessment of adequacy) to the use of the sub-processor within [14] days.

SCHEDULE 17 – INFORMATION SECURITY SCHEDULE

1. DEFINITIONS

“Portable Media and Devices” includes, but is not limited to, USB sticks, SD cards, portable drives, CDs and DVDs.

“Staff” means any employees, officers, directors, contractors, agents or temporary personnel (which for the avoidance of doubt shall include Approved Sub-Processors, employed or engaged by the Supplier and who have access to the Supplier premises and Systems.

“Systems” means the Supplier computer networks and software applications used to perform Services.

2. GENERAL

2.1. Subject to any specific information security obligations elsewhere under or in accordance with this Agreement (which shall continue to apply in full force and effect), the Information Security Schedule shall apply to the Services.

2.2. The Supplier shall ensure that an effective information security management system (as per ISO 27001 as amended) is implemented and is aligned to the requirements of ISO 27001 (or any subsequent international information security standard that replaces ISO 27001).

3. HUMAN RESOURCES

3.1. The Supplier shall:

3.1.1. have processes in place to undertake appropriate screening of Staff;

3.1.2. ensure that all Staff have either a signed employment contract or contract for services (as the case may be) which shall include appropriate confidentiality and applicable security obligations; and

3.1.3. ensure that Staff undertake appropriate awareness training relevant to their work upon commencement of work and regularly thereafter.

4. ACCESS CONTROL

4.1. The Supplier shall ensure that:

4.1.1. the appropriate logical and physical access procedures and controls are in place to restrict access to Systems and premises to those only with a legitimate business need; and

4.1.2. access to Systems and premises is on the basis of the lowest level of privilege required to fulfil the role.

5. DISPOSAL / DESTRUCTION

5.1. The Supplier shall ensure that:

5.1.1. any Confidential Information reproduced in a hard-copy format shall be physically destroyed when it is no longer needed. This may include shredding or disposal by an appropriate waste paper destruction service; and

5.1.2. Portable Media and Devices are destroyed and disposed of in a manner which ensures that any stored information is rendered unrecoverable.

6. CRYPTOGRAPHY

6.1. The Supplier shall:

6.1.1. ensure that any electronic Confidential Information transfers over public / non-secure network are undertaken securely using appropriate encryption methods;

6.1.2. have appropriate technical controls to prevent the unauthorised transfer of Customer Data to Portable Media and Devices; and

6.1.3. ensure that Confidential Information is not stored on Portable Media and Devices unless appropriately encrypted.

7. PHYSICAL AND ENVIRONMENTAL SECURITY

7.1. The Supplier shall ensure that appropriate physical and environmental procedures and controls are in place to safeguard premises and physical equipment.

8. OPERATIONS SECURITY

8.1. The Supplier shall:

8.1.1. at its sole discretion, implement readily available software to detect, report and remove or quarantine malicious software /code in systems in accordance with standard industry practice in relation to the Services provided;

8.1.2. ensure there is a process to back-up copies of Customer Data and that the procedure is tested regularly and is in accordance with the Supplier's own internal retention policies. Back-ups shall be secured through physical protection and the use of encryption; and

8.1.3. ensure that timely information about technical vulnerabilities of Systems used shall be obtained, any exposure to such vulnerabilities evaluated, and effective measures taken to address the associated risk.

9. SYSTEM ACQUISITION, DEVELOPMENT AND MAINTENANCE

9.1. Within the software development lifecycle, production data will not be used in testing. In the event that testing requires the use of production data, then the express permission of the Controller will first be obtained.

10. SUPPLIER RELATIONSHIPS

10.1. The Supplier may engage sub-contractors to provide some or all of the Services, the Supplier shall perform appropriate due diligence and impose contractual obligations on the subcontractor that are consistent to those contained in this Schedule.

11. INCIDENT MANAGEMENT

11.1. The Supplier shall:

11.1.1. put in place the necessary processes and procedures that will allow the Supplier to make all reasonable endeavours to detect any unauthorised physical access or logical access or other breaches of the Information Security Schedule.

11.1.2. establish and document a 'Security Incident' response procedure, which shall encompass the identification, classification and escalation of security incident reports and the process of confirmations of resolution.

11.1.3. use reasonable endeavours to notify the Customer as soon as reasonably possible of any unauthorised access or other breach of security involving Customer data.

12. ASSURANCE AND RIGHT TO AUDIT

12.1. On an annual basis, the Supplier shall provide responses to a Customer information security questionnaire for the purposes of measuring compliance with the Information Security Schedule. The Customer shall provide the questionnaire with at least 4 weeks' notice of the due date for submission or return.

12.2. Subject always to the terms of the Agreement (which shall take precedent over this Paragraph 12) following reasonable notice and the mutual agreement of timing, the Customer's information security team or their nominated auditors may conduct a review of the security controls and procedures in place at the Supplier. Any such reviews will be on an annual basis.