

Terms and conditions (Supplier Terms)

Government & Housing – SaaS or Private Cloud

This NEC G-Cloud Service is available through two different deployment methods:

1. Software as a Service (SaaS); or
2. Private Cloud (an on-premise, or separately procured, private cloud).

The G-Cloud Order Form will stipulate which deployment method has been selected by the Buyer. These Supplier Terms contain two mutually exclusive sections covering the two deployment methods, accordingly, the Supplier Terms relating to the non-selected deployment method should be disregarded and shall not form part of the Call-Off Contract.

The sections of these Supplier Terms are:

- Deployment Method #1: SaaS
- Deployment Method #2: Private Cloud
 - Part 1: Licence Terms
 - Part 2: Support & Maintenance Terms

Deployment Method #1: Software as a Service

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of Government & Housing SaaS.

At the end of these Supplier Terms there are also a number of Annexes, which set out additional product/service specific provisions (which also override the General Provisions if there is any conflict). Only the Annexes which relate to the products/services purchased by the Buyer (as set out in the Particulars) shall apply. There are Annexes for:

- NEC Document Management

At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Onboarding Services

The Supplier shall deliver the Onboarding Services specified in the Particulars.

Unless expressly stated otherwise in the Particulars, the parties recognise that any Onboarding Services and Professional Service days set out in this Agreement are an estimate based on the parties' current understanding of their requirements and obligations.

Subject to the paragraph below, the Supplier will use reasonable endeavours to accommodate rescheduling of Onboarding Services and Professional Services at the Buyer's request. However, if the Buyer seeks to reschedule or postpone Professional Services or Onboarding Services within: (a) ten to six Working Days of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 50% of the relevant Charges; or (b) five Working Days or less of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 100% of the relevant Charges. All days paid for must be utilised within 12 months of the date of the Buyer's Purchase Order.

If the Buyer seeks to postpone Onboarding Services or Professional Service days at any time where the Supplier has booked a flight or incurred other reasonable expenses which are non-refundable, the Buyer will still be liable to pay the cost of such flight or other expenses.

Unless expressly stated otherwise in the Particulars, all SaaS shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out must be agreed in writing between the parties and may be chargeable. The Buyer shall be deemed to accept the SaaS, and such acceptance shall be irrevocable, if the SaaS is used by the Buyer in a live environment and/or for any live operations.

The Buyer shall be deemed to accept the deliverables set out in any Acceptance Certificate issued by the Supplier and such acceptance shall be irrevocable if the Buyer does not provide any written notification to the contrary and has failed to sign the Acceptance Certificate within the time period set out within such Acceptance Certificate.

Access to and use of the SaaS

Buyer Data

The Buyer acknowledges that the Supplier and/or their respective licensors own Intellectual Property Rights in the Software that is provided as SaaS, and in any specifications, data, databases, documentation, and other materials provided to the Buyer as part of the Services. Except as expressly stated in these Supplier Terms, the Supplier does not grant the Buyer any rights to, or in, the Intellectual Property Rights in respect of the SaaS or any other above materials.

All Intellectual Property Rights in the Buyer Data and any other materials provided to the Supplier by the Buyer for the Supplier to provide the Services will remain vested in the Buyer. The Buyer grants the Supplier a perpetual, royalty free, non-exclusive licence to use (and copy) the Buyer Data to perform this Agreement and to comply with any requests made to the Supplier under statute.

Subject to the Buyer complying with the restrictions set out in these Supplier Terms and the other terms and conditions in this Agreement, the Supplier shall grant to the Buyer a non-exclusive, non-transferable right to permit the Authorised Users to use the SaaS and the Documentation during the SaaS Term solely for the Buyer's internal business purposes. The Supplier shall grant the Buyer's Administrator access to the SaaS in the technologically appropriate manner either by provision of a licence key, by granting access to a downloadable app, or by means of issuing a user name and password for the SaaS portal which can be accessed through such URL as may be notified by the Supplier from time to time ("SaaS Portal").

The Buyer's Administrator shall then be permitted to access the SaaS through the SaaS Portal and it shall be the Buyer's Administrator's responsibility to configure the set-up of the SaaS, within the parameters set out within the Documentation, to reflect the Buyer's own policies and practices on application assessment and decision making.

The Buyer's Administrator, in accordance with the Documentation, shall be permitted to set up further users authorised to access the SaaS on behalf of the Buyer up to the numerical limit specified in the Particulars (if applicable). It is the Buyer's Administrator's responsibility to set the controls on and levels of access for each further user authorised. For the avoidance of doubt, the Buyer's Administrator and the further users set up by the Buyer's Administrator under this paragraph shall be the "Authorised Users" for the purposes of this Agreement.

If there is an End User named in the Particulars, the Supplier grants the Buyer the right to access and use the SaaS for the benefit of such End User.

In relation to the Authorised Users, the Buyer undertakes that:

- each Authorised User shall keep a secure password for his/her use of the SaaS and Documentation, that such password shall be kept confidential and shall be changed no less frequently than every 90 days;
- it shall maintain a written, up to date list of the current Authorised Users and provide such list to the Supplier within five Working Days of the Supplier's written request at any time or times;
- it shall permit the Supplier to audit the SaaS. Such audit may be conducted no more than once annually, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Buyer's normal conduct of business. If any of the audits referred to in this paragraph establishes that any unauthorised access has occurred or that passwords have been provided to individuals who are not Authorised Users, then without prejudice to the Supplier's other rights, the Supplier reserves the right to (i) charge the Buyer for the costs of performing the audit(s), and/or (ii) recover the charges which would have been due to the Supplier had the Supplier licensed such additional Use; and/or (iii)

disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional concurrent or named users have been paid).

In relation to the Buyer's Administrator, the Buyer undertakes that:

- the Buyer's Administrator will review and act upon any update information or reasonable instructions of the Supplier, including disseminating such applicable update information and instructions to other Authorised Users; and
- the Buyer's Administrator shall monitor the Authorised Users and ensure that they act in accordance with the terms of this Agreement.

The Buyer and its Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the SaaS that:

- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - facilitates illegal activity;
 - depicts sexually explicit images;
 - promotes unlawful violence;
 - is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Buyer, to disable the Buyer's access to any material that breaches the provisions of this paragraph.

The Buyer and its Authorised Users shall not:

- attempt to bypass, exploit, defeat, or disable limitations or restrictions placed on the SaaS; or
- seek to find security vulnerabilities to exploit the SaaS or attempt to bypass any security mechanism or filtering capabilities; or
- conduct any denial of service (DoS) attack on the SaaS or make any attempt to disrupt, disable, or overload the SaaS; or
- transmit code, files, scripts, agents, or programs intended to do harm, including viruses or malware, or use automated means, such as bots, to gain access to or use the SaaS; or
- attempt to gain unauthorised access to the SaaS; or
- attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS, except:
 - ➔ as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; and
 - ➔ to the extent expressly permitted under this Agreement;
- attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS and/or Documentation (as applicable) in any form or media or by any means; or
- access all or any part of the Services and Documentation in order to build a product or service which competes with the SaaS and/or the Documentation; or

- use the SaaS and/or Documentation to provide services to third parties (the Buyer's citizens shall not be deemed to be third parties for the purposes of this paragraph); or
- license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS and/or Documentation available to any third party except the Authorised Users, or
- attempt to obtain, or assist third parties in obtaining, access to the SaaS and/or Documentation, other than as provided under this paragraph.

The Buyer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the SaaS and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

The Buyer shall access the SaaS by network communications as agreed between the parties.

The Supplier will use reasonable commercial endeavours to accommodate the introduction of legislative changes. The Supplier expressly reserves the right to charge for the provision of any such legislative updates where: (a) the development of the update is in the reasonable opinion of the Supplier technically complex; and (b) the costs of developing the update are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's buyers at large.

Security, Disaster Recovery and Back-up Policy

The Buyer shall own all right, title and interest in and to all of the Buyer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data.

The Supplier confirms that:

- the SaaS is provided via infrastructure and services using public and/or private cloud ("**NEC Cloud**") for the sole use by or on behalf of the public sector;
 - the SaaS is hosted in a third party environment provided by NTT United Kingdom Limited ("NTT") or Oracle Corporation UK Limited ("OCI") using a cloud solution. Where provided by OCI, regardless of any other provision in this Agreement, the hosting shall be provided in accordance with OCI's standard terms & conditions as at the date of signature of the Agreement to the exclusion of all other terms, including in relation to service availability and support. For clarity, the only Service Levels that shall apply to the hosting platform SaaS are those provided by OCI.
 - The Buyer consents to the use of NTT / OCI as a sub-processor of personal data for the purpose of providing cloud services;
- the SaaS platform is designed and implemented in accordance with the 27001 baseline control set and the Cloud Security Principles from the National Cyber Security Centre (NCSC) guidance. The environment from which the SaaS shall be delivered conforms to the relevant sections of the Government Security Policy Framework and Personnel Security Controls and to all relevant Communications Electronics Security Group Memoranda, Manuals and Standards;
- it is certified to Cyber Essentials and Cyber Essentials Plus, Environmental Management ISO14001:2015, and Information Security Management ISO27001:2013;
- it shall comply with the Supplier's Privacy and Security Policy relating to the privacy and security of the Buyer Data;

- its information security management system is certified to ISO 27001 and ISO 27002;
- its quality management system is certified to ISO 9001:2015;
- its service management system operates in accordance with ISO 20000-1:2018;
- Recovery Point Objective ("**RPO**") and Recovery Time Objective ("**RTO**") shall be 24 hours; and
- the information assurance process as detailed within the paragraphs above will be periodically revised and updated to ensure alignment with good industry practice.

The Buyer recognises that the SaaS is a hosted, multi-tenanted solution. The Buyer Data will be segregated from the data of other Supplier buyers using the SaaS.

The Supplier confirms that it uses more than one data centre with separate infrastructure and resilience for provision of the SaaS to ensure relocation of the SaaS provision in the event of non-availability of one data centre.

The Supplier confirms that its disaster recovery and business continuity policies, processes and procedures are based on standard BS25999 and ISO 22301:2019.

The Back-Up Policy is as follows:

- the Supplier takes multiple back-ups within the system as part of the SaaS, in particular, back-ups are taken daily from the live system utilising an automated process scheduled to run overnight, taking into account any batch routines and system availability requirements;
- back-ups are stored at a different location to the live service;
- in the event of any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier.

Buyer Obligations

Except where the Supplier has specifically agreed to provide such services the Buyer will:

- be responsible for the operation and use of the SaaS and any associated documentation; and
- supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement.

The Buyer shall in good faith:

- provide the Supplier with (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary access to such information as may be required by the Supplier in order to provide the SaaS, including but not limited to Buyer Data;
- comply with all applicable laws and regulations with respect to its activities under this Agreement;
- carry out all other Buyer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary and reserves the right to charge the Buyer for any costs incurred by the Supplier as a consequence of such delay;

- ensure that (where applicable) the Authorised Users use the SaaS and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the SaaS;
- ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.

SaaS Availability and Support

The Supplier shall use commercially reasonable endeavours to make the SaaS available 08:00 to 20:00 on Working Days, except for:

- planned maintenance carried out during the maintenance window of (i) 18:00 to 08:00 on a Working Day; and (ii) at any time on a non-Working Day, for which the Supplier shall give the Buyer at least 24 hours' notice in advance; and
- unscheduled emergency maintenance carried out, where possible unless there is an identified and demonstrable immediate risk to the SaaS infrastructure, during the maintenance window of (i) 18:00 to 08:00 on a Working Day; and (ii) at any time on a non-Working Day, for which the Supplier shall use reasonable endeavours to give the Buyer at least six hours' notice in advance.

The SaaS supports mainstream browsers for example IE (Edge), Chrome, Firefox and Safari unless otherwise stated in the release documentation.

During the SaaS Term the Supplier shall, as part of the SaaS and at no additional cost to the Buyer, provide the Buyer with the Supplier's standard Buyer support services through its service desk ("**Service Desk**").

The Service Desk can be contacted by the Buyer's Authorised Users via the Supplier's customer portal which can be accessed through the URL www.customersupport.necsws.com ("**Customer Portal**"), 24 hours a day, seven days a week.

When logging a request for support ("**Support Request**"), the Authorised User must provide the following information to the Service Desk (whether through the Customer Portal or over the telephone):

- Authorised User Name;
- Authorised User Location;
- Authorised User's contact details – telephone and email;
- Details of the nature of the fault or description of the issue;
- Details of who is being affected, i.e. single user, a group of users or the whole organisation, and the impact that the fault or issue is having including any urgency surrounding the support call;
- Prioritisation shall be determined by the Supplier in accordance with the table below; and

- The Supplier shall determine whether the Incident is either a hosting Incident or a Software Incident.

Prioritisation of Incidents		
Priority	Description of Hosting Incidents	Description of Software Incidents
1	• Service non-functional with high impact on Authorised User operations. • Complete loss of a critical business function at a critical time in the business cycle. • Security breach.	The LIVE system or Supplier Software affected is unusable and has stopped operations – either the total system or a critical task / major functionality. No Workaround is available to the Buyer.
2	• Partial loss of a business function at a critical time in the business cycle with medium impact on Authorised User operations. • Complete loss of a business function at a non-critical time. • Performance degradation affecting 25% or more of Authorised Users.	Use of the LIVE system or Supplier Software affected is degraded and/or disrupted but not catastrophic. Major business disruption which severely impairs key functional aspects of the application but does not prevent operationally critical processing.
3	• Minor problems with very low impact on Authorised User operations where processing can continue. • Performance degradation affecting less than 25% of Authorised Users.	The LIVE system or Supplier Software affected is usable but suffers from intermittent problems without significant material user impact or can be circumvented; and/or The NON-PRODUCTION (e.g. Test /Training) system is unusable and has stopped operations.
4	• Service Requests.	Minor impact on non-critical aspects of the LIVE system or Supplier Software or a cosmetic change. Buyer's use of the LIVE system or Supplier Software is not materially impaired; and/or Use of the NON-PRODUCTION (e.g. Test /Training) system is degraded and/or disrupted.

The Supplier will commence working towards a resolution of the Incident once accepted and shall use reasonable endeavours to resolve Incidents in accordance with the following Response and Resolution Table:

Response and Resolution Table				
Priority	Target Response time: Hosting Incidents	Target Response time: Software Incidents	Target Resolution time: Hosting Incidents	Target Resolution time: Software Incidents
1	15 Working Minutes	2 Working Hours	4 Working Hours	8 Working Hours
2	30 Working Minutes	4 Working Hours	8 Working Hours	5 Working Days

When a complex Incident requires extensive investigation, the Supplier may request relief and mutually agree with the Buyer an extended Target Resolution time for the specific Incident.

Where, in the reasonable opinion of the Supplier, the Resolution of an Incident is not possible due to the ability to Resolve such Incident being outside the Supplier's control, the Supplier shall formally notify the Buyer accordingly and the parties shall agree appropriate remedial action, such agreement not to be unreasonably withheld.

Where multiple Incidents are related to the same occurrence of an issue within the same 24 hour period they will be linked to the original Incident and shall only count as one Incident for the purposes of service measurement.

Subject to the paragraph immediately below, the Service Desk will contact the Authorised User detailed in the Support Request during Working Hours and conduct an initial analysis in order to try and resolve operational issues and minor technical issues directly with the Authorised User within the call. Where it is not possible to resolve the Support Request within the call, the Authorised User will be notified and the Support Request will be escalated to the relevant technical team.

The Supplier shall have no obligation to:

- correct any Error reported by the Buyer if such reported Error is not reproducible by the Supplier in the SaaS;
- correct any Priority 3 or 4 reported Errors and reserves the right to abandon attempts to provide a Software fix where the costs are likely to be excessive or the commercial benefits to the Supplier's customers at large are likely to be negligible; or
- correct any Error if such Error arises from misuse or abuse of the SaaS.

Termination and Consequences of Termination

In the event the Supplier elects to withdraw a particular type of SaaS, it may do so without liability provided it has given the Buyer not less than six months' prior written notice.

In the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Deliverable(s) to the Supplier for any reason, then regardless of any other provision in this Agreement, the Supplier shall be entitled to terminate or suspend the provision of such Deliverable(s) to the Buyer under this Agreement.

Upon expiry or termination or notice of termination of the SaaS, the Supplier shall remove all Buyer access to the SaaS.

Additional Terms

Regardless of any other provision in the Agreement:

Specification

- if this Agreement contains the Buyer's service description, requirements and/or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then these Supplier Terms will take precedence.

Buyer Policies and consents

- the Supplier's individual staff involved in providing the Services shall not be required to sign any Buyer provided IT remote access, usage or email policy documents.
- Nor shall the Supplier be required to enter into any separate or additional agreements or arrangements with the Buyer (or any third party that is not a subcontractor or sub-processor of the Supplier) in order to provide the Deliverables, including codes of connection or data processing agreements.

Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement, (whether in contract, tort (including negligence), under an indemnity, statute or otherwise) to the extent that any losses, damage or defects arise as a result of (but not limited to):
 - the late arrival or non-arrival of Buyer Data or other material from the Buyer;
 - errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
 - any actions taken by the Supplier at the Buyer's direction;
 - failure to detect errors in any work performed by the Supplier which the Buyer has undertaken to check;
 - the act and/or omission of a third party (including a subcontractor and/or sub-processor but excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such act/omission; or
 - any other act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.
- the Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use.

Transfer of employees

- the Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of

Employment) Regulations 2006 (SI 2006/246) (“**TUPE**”) of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier (or any third party supplier/ subcontractor to the Supplier). Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:

- a claim by any person who transfers or alleges that they have transferred to the Supplier (or any third party supplier/ subcontractor to the Supplier) as a result of entering into this Agreement; and/or
- any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Intellectual Property Rights

- the provisions in this Intellectual Property section shall not apply to any software provided by the Supplier.
- the Buyer acknowledges that the Supplier and/or their respective licensors own Intellectual Property Rights in any specifications, data, databases, documentation, and other materials provided to the Buyer as part of the Services. Except as expressly stated in this Schedule, the Supplier does not grant the Buyer any rights to, or in, the Intellectual Property Rights in respect of the above materials.
- the Supplier grants the Buyer a non-transferable, non-exclusive right during the term of this Agreement to use the materials supplied by the Supplier under the Services for its own internal business purposes. Where the Agreement expressly states that Buyer is procuring the Deliverables on behalf of or for the benefit of a specified third party end customer, the licence granted in this paragraph applies to that end customer and allows them to use the materials for that end customer’s own internal business purposes.
- all Intellectual Property Rights in the Buyer Data and any other materials provided to the Supplier by the Buyer for the Supplier to provide the Services will remain vested in the Buyer. The Buyer grants the Supplier a perpetual, royalty free, non-exclusive licence to use (and copy) the Buyer Data to perform this Agreement and to comply with any requests made to the Supplier under statute.

Certifications and Accreditations

The Supplier’s certifications and accreditations are as set out at [Certificates and Registrations - NEC Software Solutions](#), as updated by the Supplier from time to time.

Third Party Deliverables

- in the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Deliverable(s) to the Supplier for any reason, then the Supplier shall be entitled to suspend or terminate the provision of such Deliverable(s) to the Buyer under this Agreement.

Offshore Resource

- in some circumstances we may use resources provided by one or more of our Group Companies, including those of our Group Company NEC Software Solutions India PVT Limited. This may involve sharing your data (including Personal Data) with them, processing, or transferring your data outside the UK. Whenever we use the resources of our Group Companies, and/or process or transfer your data out of the UK, the terms of our Agreement with you, including applicable legislation, as well as our internal policies, procedures and processes shall apply.

At all times we retain responsibility for ensuring compliance by our Group Companies with our obligations. By entering into this Agreement you consent to the use of our Group Companies' resources (including NEC Software Solutions India PVT Limited) to provide the Deliverables, and/or to process your data (including Personal Data).

Sub-processors

- in addition to the specific authorisation above, the Buyer also grants to the Supplier general authorisation to engage Sub-processor(s) as third-party Processors of Personal Data under this Agreement. A list of the Supplier's Sub-processors that the Supplier directly engages for the specific Deliverables as a Sub-processor from time to time is available at **[www.necsws.com\subprocessors](http://www.necsws.com/subprocessors)**. Any changes to the list of the Supplier's Sub-processors will be updated via this link.

Annex: NEC Document Management

Where NEC Document Management is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex and the General Provisions, this Annex shall apply.

Public Cloud

The Buyer acknowledges that if it has elected for NEC Document Management to be hosted by a third party in a public cloud solution, regardless of any other provision in this Agreement, such hosting services shall be provided in accordance with the applicable third party's standard terms & conditions to the exclusion of all other terms, including in relation to service availability and support.

Glossary

In addition to the terms defined elsewhere in these Supplier Terms (or other parts of the Agreement), the following terms shall have the following meaning:

"Acceptance Certificate"	means a document issued by the Supplier following completion of a Deliverable.
"Agreement"	means the Call-Off Contract.
"Authorised Users"	means those employees, agents and independent contractors of the Buyer who are authorised by the Buyer to use the SaaS and the Documentation, as further described in these Supplier Terms.
"Back-Up Policy"	means the specific arrangements for the back-up of Buyer Data as set out in these Supplier Terms, as may be amended from time to time by the Supplier in its sole discretion upon reasonable prior written notice.
"Buyer's Administrator"	means the person duly appointed by the Buyer to act as its administrator and the Supplier's lead contact for the purposes of the SaaS, as notified by the Buyer to the Supplier.
"Buyer Data"	means the data inputted by the Buyer, or Authorised Users for the purpose of using the SaaS or facilitating the Buyer's use of the SaaS.
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer, as itemised in the Particulars and described in these Supplier Terms (including any Annex(es)).

"Documentation"	means the written and/or online descriptions of the SaaS features, functions and methods of operation and the instructions provided for its use.
"End User"	means the entity identified as such in the Particulars.
"Error"	means an error in the Supplier Software which, subject to the provisions of these Supplier Terms, the Supplier shall Resolve.
"Group Company"	means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006.
"Hosting"	means the Supplier's IT infrastructure service.
"Incident"	means an event which causes an interruption to or a reduction in the quality of the SaaS.
"Particulars"	means the Order Form.
"Personal Data" and "Processor"	take the meaning given in the UK GDPR.
"Privacy and Security Policy"	means the Supplier's policy relating to the privacy and security of the Buyer Data, as may be amended from time to time by the Supplier in its sole discretion, which is available on request.
"Resolution"	means action which will resolve an Incident which may be a Workaround. "Resolve" shall be construed accordingly.
"Response"	means the Supplier has (i) logged an Authorised User's call regarding an Incident and provided the Authorised User with a unique Incident number, and (ii) allocated the Incident to the appropriate Supplier personnel for investigation. "Respond" shall be construed accordingly.
"SaaS"	means the Software as a Service to be delivered as set out in the Particulars.
"SaaS Portal"	has the meaning set out in these Supplier Terms.
"SaaS Term"	means the period commencing on the date when the Supplier grants access to the SaaS Portal allowing the Buyer access and live use of the SaaS and ending on the date of expiry or termination of this Agreement.
"Software"	means the end user application provided as a Service.

"UK GDPR"	means Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.
"Virus"	means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
"Workaround"	means a method of avoiding an Incident or Error either by a temporary fix or by a technique that means the Buyer is not reliant on a particular aspect of the Software that is known to have an Error.
"Working Day"	means any day which is not a Saturday, Sunday or bank or public holiday in the UK. All references to hours within a Working Day are to UK hours.
"Working Hours"	means 09:00 to 17:30 UK time, each Working Day.
"Working Minutes"	means minutes within a Working Hour.

Deployment Method #2: Private Cloud

Part 1 of 2: Licence Terms

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of software licences.

At the end of these Supplier Terms there is an Annex, which sets out additional product/service specific provisions (which also override the General Provisions if there is any conflict). Only the Annex which relates to the products/services purchased by the Buyer (as set out in the Particulars) shall apply.

There is an Annex for: -

- (i) ASSURE Land and Property RESTful APIs.

At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Software Licence Grant

Subject always to the Third Party Software section and the Termination section below, the termination provisions elsewhere in this Agreement, with effect from delivery of the Software, the Supplier grants to the Buyer a personal non-exclusive non-transferable revocable licence to Use the machine readable portion of the Software (and where appropriate the Documentation) for the applicable Licence Term, for the Buyer's own internal data processing purposes and to copy the same solely for back-up purposes to the extent permitted by law, and to possess and refer to the Documentation, provided always that the Buyer adheres to the following licence terms:

- the Buyer uses only one copy of the Software for live operations;
- the Buyer pays the Licence Charges in accordance with this Agreement;
- the Buyer does not delete, amend or otherwise alter any copyright or other ownership notices or legends displayed, contained in or attached to the Software and Documentation;
- the Buyer does not decompile or reverse engineer the Software, save where the necessary information has not been made available by the Supplier and save as expressly permitted by the EU Software Directive – Council Directive no. 2009/24/EC as enshrined into UK legislation by the European Union (Withdrawal) Act 2018 as amended from time to time;
- save as provided in these Supplier Terms, the Buyer may not assign, transfer, sub-licence, sell, trade or otherwise deal in, lease, encumber, market, rent, disclose, publish technical details of (including the results of benchmark or other

tests), copy, modify, enhance, convert or translate the Software or Documentation;

- the Buyer does not store, distribute or transmit any viruses, or any material through the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- the paragraph above shall not apply to the extent only that the Software is specifically designed for such purposes and is being used lawfully including for the prevention, detection and/or prosecution of criminal activity;
- the Buyer does not exceed any of the restrictions set out within this Agreement (including as set out in the Particulars or in any applicable Annex) such as the number of Authorised Users, number of concurrent or named users, number of Council Tax Properties;
- subject to the APIs section and End User Rights section below, the Buyer does not permit any third party to Use the Software or Documentation;
- subject to the End User Rights section below, the Buyer does not Use the Software or Documentation on behalf of or for the benefit of or to provide services to any third party;
- the Buyer does not access all or any part of the Software in order to build a product or service which competes with the Software and/or the Services, or attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under these Supplier Terms;
- the Buyer shall use reasonable endeavours to prevent any unauthorised access to, or Use of, the Software and it shall notify the Supplier promptly of any such unauthorised access or Use;
- in the event the Buyer is subject to a material restructuring, including but not limited to a merger with any third party organisation, including another local authority or other public body, it shall be construed as a proposed change to the Agreement which is subject to the prior written agreement of the Supplier in order inter alia to make any consequential changes to the scope of the Software licence, which will not unreasonably be withheld.

Implementation and Testing

- The Supplier will deliver one copy of the Software which the Buyer will be responsible for installing and implementing (except to the extent that the Supplier has agreed otherwise in writing to provide Services to assist with the installation and implementation), together with one copy of the Documentation.
- Regardless of any other provision in the Agreement:-
 - where the Supplier has agreed to provide any Professional Services to assist with the installation and/or integration of the Software, the Software shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out, or test documentation or test criteria that the Buyer requires the Supplier to comply with, must be agreed in writing between the parties and may be chargeable;

- where the Buyer has not requested any Professional Services to assist with the installation and/or integration of the Software
 - acceptance shall occur automatically if the Buyer has failed to advise the Supplier within 14 days of delivery of the Software by the Supplier of any material non-compliance with the Documentation;
 - where the Buyer has advised the Supplier of any material non-compliance within the 14 day period specified above, the Supplier shall either replace the Software or rectify the relevant non-compliance, using reasonable endeavours to meet any previously agreed delivery or lead times;
- promptly following delivery and (if applicable) completion of testing of the Software (or Software module(s)) by the Supplier, the Buyer shall provide written confirmation of acceptance of the Software (or relevant Software module(s)); and
- the Buyer shall be deemed to accept the Software, and such acceptance shall be irrevocable, if the Software is used by the Buyer in a live environment and/or for any live operations.

Audit Rights

- At the Supplier's written request, which shall not be more frequently than annually, the Buyer will furnish the Supplier with a signed statement verifying that the Software and Documentation are being used pursuant to and in accordance with the provisions of this Agreement and any restrictions set out in this Agreement. The Buyer agrees to grant the Supplier access, upon reasonable prior notice, to the Buyer's site in order to audit the Use of the Software and Documentation. If such audit establishes that the Buyer has unauthorised copies of the Software or Documentation or is making unauthorised use of the same, the Supplier reserves the right to charge the Buyer for the costs of performing the audit, in addition to recovering the charges which would have been due to the Supplier had the Supplier licensed such copies for Use.
- Should an audit conducted pursuant to the paragraph above reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to the Supplier's other rights, the Buyer shall promptly disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional concurrent or named users have been paid).

APIs

Where the Supplier Software includes an API, the following licence terms shall apply in addition to those set out in the paragraphs above:

- the Buyer must hold sufficient, current licences of any the Supplier Software accessed via the APIs and must have a support agreement in place in respect of such the Supplier Software; and
- the Buyer will only Use the API to interface IT applications, solutions or components which are utilised by the Buyer with the Supplier Software to achieve an "**Interfaced Solution**"; and
- the Interfaced Solution will not be Used by any party other than the Buyer; and

- the Buyer will use all reasonable precautions to prevent viruses or other malicious software from being introduced onto or into the Supplier Software and/or the Supplier's IT facilities and systems; and
- if the Supplier provides a hosted or cloud service to the Buyer, the Supplier reserves the right to (i) use metering technology to monitor use of the Supplier platform (including but not limited to disk space, networks, servers and support); and (ii) levy additional reasonable charges upon the Buyer if and to the extent use by the Buyer of the APIs places additional burden on the Supplier platform causing the Buyer to exceed its contracted usage; and
- the Supplier shall not be liable for any unavailability, incidents or other failure of the Software to operate or perform in accordance with the Service Levels or any other aspect of the Agreement as a result of any act or omission of the Buyer or any third party over which the Supplier has no control; and
- the Buyer may grant a sub-licence to the API to a named API User subject to:
 - ➔ the Buyer obtaining the Supplier's prior written consent; and
 - ➔ the Buyer entering into a written sub-licence agreement with the API User on the same licence terms as those which apply to the Buyer subject to express provisions which: (i) preclude the API User from any further right to sub-licence; and (ii) confer a right on the Supplier to enforce the sub-licence terms under the Contracts (Rights of Third Parties) Act 1999; and
 - ➔ the Buyer hereby indemnifies the Supplier against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of any act or omission of the API User, irrespective of any other provisions in this Agreement.

End User Rights

If there is an End User named in the Particulars or other relevant part of this Agreement, the Supplier grants the Buyer:

- the right to Use the Software for the benefit of such End User; and
- the right to grant a sub-licence to the End User for the Buyer's own internal data processing purpose only and otherwise on the same licence terms as those which apply to the Buyer but with no further right to sub-licence, other than as set out in the APIs section above.

Termination

If the Software has been licensed on a perpetual basis, this is subject to the Buyer continuing to pay the applicable charges for Support and Maintenance Services. If Support and Maintenance Services expire or are terminated, the perpetual licence shall be terminated and continued Use of the Software by the Buyer shall be subject to the payment of an additional licence fee.

The following licences shall be terminated on the date of termination of this Agreement:

- Fixed term licences, if the Agreement is terminated for any reason; and
- Perpetual licences, if the Agreement is terminated for the Buyer's material breach.

- If the licence granted under this Agreement is terminated, the Buyer will immediately cease using the Software and Documentation in its possession or control and return to the Supplier or destroy (as requested by the Supplier) the originals and all copies of the Software and Documentation in its possession or control. Upon request by the Supplier, the Buyer's duly authorised officer will certify in writing that it has complied with this paragraph.
- Where the Supplier, in accordance with the terms of this Agreement, terminates the licences granted above, the corresponding Support and Maintenance Services and any other related Professional Services shall also terminate.

Intellectual Property Rights

- Regardless of any other provision in the Agreement, all Intellectual Property Rights in and to (i) the Software (including any enhancement and/modification thereto) and (ii) the Documentation, provided by the Supplier to the Buyer during the course of performing its obligations under this Agreement, shall remain vested in the Supplier or the Supplier's licensors (as applicable).

Software Warranty

- The Supplier warrants that:
 - ➔ the Supplier Software will operate in material compliance with the relevant parts of the Documentation for a period of six months from delivery;
 - ➔ the media on which the Supplier Software and the Documentation are delivered to the Buyer will be free from defects in materials and workmanship under normal use for a period of 30 days from delivery.
- If the Buyer notifies the Supplier within any time periods specified in the paragraph above that the Supplier Software or the media on which the Supplier Software and the Documentation are delivered does not conform with the provisions of that paragraph, then the Supplier will repair or replace, at its discretion, the non-conforming portion of the Software or, where applicable, the media free of charge.
- The Supplier does not warrant that the Software is free from minor errors or defects; that it operates without interruption or is designed to meet the Buyer's specific requirements.

Third Party Software

- If the Buyer is taking delivery of any Third Party Software the following additional terms shall apply regardless of any other provision in this Agreement:
 - ➔ Third Party Software is licensed pursuant to the relevant licence terms supplied to the Buyer, receipt of which is hereby acknowledged and such terms shall apply as if incorporated in this Agreement. Where required, the Buyer shall enter into the applicable end user licence agreement with the relevant third party;
 - ➔ the only warranties provided in relation to Third Party Software are those provided by the relevant licensor, and the Supplier shall use reasonable endeavours to confer the benefit of any such warranties to the Buyer;
 - ➔ in the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Third Party Software to the Supplier for any

reason, then the Supplier shall be entitled to suspend or terminate the provision of such Third Party Software to the Buyer under this Agreement;

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement, to the extent that any claims, losses, damage or defects arise as a result of (but not limited to) the acts or omissions of any third party (excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such acts and/or omissions; and
- the Supplier accepts no liability for infringement of third party Intellectual Property Rights in respect of the Use or possession by the Buyer of the Third Party Software.

Buyer Responsibilities

- Except where the Supplier has specifically agreed in writing to provide such services, the Buyer will:
 - promptly agree with the Supplier a specification for and make available hardware, operating system and communications/networking facilities to enable the Supplier to meet its obligations under this Agreement without delay;
 - be responsible for the selection, installation, management, operation and use of the Software and any associated documentation and the results obtained from these; and
 - be responsible for, take and validate, regular back-up copies of its data used in connection with the Software and keep the back-up copies and media safe.
- Where the Software includes the document production facility (NEC Document Services), the Buyer shall be granted access to NEC Document Services for the production of documents and will support the technical requirements as set out in the technical configuration documentation.

IPR Indemnity

The Supplier shall defend the Buyer against any claim and indemnify the Buyer against any award of damages or costs or any settlement negotiated by the Supplier arising from or incurred by reason of any infringement of any third party Intellectual Property Rights by the Buyer's operation, possession or Use of the Supplier Software in accordance with the terms of the Agreement (including these Supplier Terms), within the UK and/or European Union, provided that the Buyer:

- notifies the Supplier promptly in writing of any alleged infringement and makes no admissions in respect thereof; and
- gives the Supplier information, assistance and sole control of the defence and all related settlement negotiations. Reasonable out-of-pocket expenses incurred by the Buyer in providing such assistance will be reimbursed by the Supplier.

The indemnity set out in the paragraph above shall not apply where the infringement or alleged infringement arises from, or is incurred by reason of:

- the Buyer's use of a modified version of the Supplier Software, where such modifications were not approved or undertaken by the Supplier; or
- the Buyer's use of a de-supported version of the Supplier Software without the consent of the Supplier; or

- ➔ the combination, or use, of the Supplier Software and any equipment or software not supplied or approved in writing by the Supplier; or
- ➔ the Buyer's use of the Supplier Software other than as authorised under this Agreement.

In the event that the Supplier Software is held, or is believed by the Supplier, to infringe the Intellectual Property Rights of another, the Supplier shall have the option, at its expense to:

- ➔ modify the Supplier Software (without materially detracting from its functionality) so as to avoid the infringement; or
- ➔ obtain for the Buyer a licence to continue to use the Supplier Software; or
- ➔ replace the Supplier Software with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality; or
- ➔ terminate the licence for the infringing the Supplier Software (or part thereof) and refund the Software Licence Charges paid for such the Supplier Software, pro-rated over the Licence Term or, if no term is specified or the term is perpetual, over a five year period from delivery.

This IPR Indemnity section states the Supplier's entire liability and the Buyer's sole remedy with regard to infringement of any Intellectual Property Rights by the Use or possession of the Supplier Software.

Additional Terms

Regardless of any other provision in the Agreement:

Specification

- if this Agreement contains the Buyer's service description, requirements and/or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then these Supplier Terms will take precedence.

Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement (whether in contract, tort (including negligence), under an indemnity, statute or otherwise), to the extent that any losses, damage or defects arise as a result of (but not limited to):
 - errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
 - any act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.
- the Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use;
- the Buyer is solely responsible for (i) the use of robotic process automation and any automated tools that are not provided by the Supplier, which are used by the Buyer to interact with any Supplier Software; and (ii) for the consequential impact of any such use including any impact on the Supplier Software.

- all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Licence Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

Certifications and Accreditations

- The Supplier's certifications and accreditations are as set out at [Certificates and Registrations - NEC Software Solutions](#), as updated by the Supplier from time to time.

Sub-processors

- the Buyer grants to the Supplier general authorisation to engage Sub-processor(s) as third-party Processors of Personal Data under this Agreement. A list of the Supplier's Sub-processors that the Supplier directly engages for the specific Deliverables as a Sub-processor from time to time is available at **[www.necsws.com\subprocessors](http://www.necsws.com/subprocessors)**. Any changes to the list of the Supplier's Sub-processors will be updated via this link.

Annex: ASSURE Land and Property

RESTful APIs

Where ASSURE RESTful APIs ("RESTful APIs") are purchased, the provisions set out in this Annex shall also apply. If there is any conflict between the provisions set out in this Annex and the General Provisions, this Annex shall apply.

- the Supplier does not guarantee the backwards compatibility of the RESTful APIs, i.e. if a Supplier change to the RESTful APIs causes the interface with the Interfaced Solution to stop working, the Supplier is not liable for fixing such integration.

Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

"Agreement"	means the Call-Off Contract.
"API"	means the Supplier's (or applicable third party licensor's) proprietary application programming interface which is licensed by the Supplier under the terms of this Agreement.
"API User"	means any third party acting in a technical capacity on the Buyer's or End User's behalf (as

	applicable) to use an API to create an Interfaced Solution.
"Authorised User"	means those employees and independent contractors of the Buyer who are authorised to Use the Software by the Buyer.
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex(es)).
"Documentation"	means the written and/or online descriptions of the Software's features, functions and methods of operation and the instructions provided for its Use.
"End User"	means any third party identified as such in the Agreement for whose benefit the Supplier and the Buyer enter into this Agreement.
"Group Company"	means the Supplier, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company. A "holding company" and "subsidiary" shall have the meaning as set out in section 1159 of the Companies Act 2006.
"Intellectual Property Rights" or "IPR"	means any intellectual property rights including any patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright and related rights, rights in computer software, database rights, know-how, goodwill, trade or business names and other similar rights or obligations whether registrable or not, which subsist now or in the future in any country including but not limited to the UK.
"Interfaced Solution"	has the meaning set out in the APIs section above.
"Licence Charges"	means the applicable charges for the Software licence(s) granted under this Agreement, as specified in the Particulars.
"Licence Term"	means the applicable duration of the Software licence granted under this Agreement, as specified in the Particulars or other relevant part of this Agreement.
"Particulars"	means the Order Form.

"Partner Organisation"	means any third party nominated by the Buyer which is collaborating with the Buyer in the delivery of the Buyer's services.
"Property"	means a building or a plot of land owned, operated and/or managed by the Buyer, and for which the Buyer provides property or tenancy management services.
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms.
"Supplier Software"	means Software which is proprietary to the Supplier.
"Third Party Software"	means Software which is proprietary to a third party.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer.

Deployment Method #2: Private Cloud

Part 2 of 2: Support and Maintenance

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of Government and Housing Software Support & Maintenance.

At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Introduction

The provision of Support and Maintenance Services is conditional upon the Buyer holding a valid licence to use the relevant Supplier Software.

Support & Maintenance Services

The Supplier shall use reasonable commercial endeavours to provide the following Support and Maintenance Services for the Supplier Software on the Designated System:

- Allocation of the Priority to the Incident on receipt of a call from the Buyer within the target Response time detailed below. Calls may be logged:
 - 24x7 by the Buyer online via the Customer Portal; or
 - in exceptional circumstances (such as a Priority 1 Incident), via the telephone helpline during Working Hours and (subject to payment by the Buyer of an additional reasonable charge) outside of Working Hours.
- Prioritisation shall be determined by the Supplier in accordance with the Prioritisation of Incidents table below:

Prioritisation of Incidents Table	
Priority	Reasoning
1	The LIVE system or Supplier Software affected is unusable and has stopped operations – either the total system or a critical task / major functionality. No Workaround is available to the Buyer.
2	Use of the LIVE system or Supplier Software affected is degraded and/or disrupted but not catastrophic. Major business disruption which severely impairs key functional aspects of the application but does not prevent operationally critical processing.
3	The LIVE system or Supplier Software affected is usable but suffers from intermittent problems without significant material user impact or can be circumvented; and/or

	The NON-PRODUCTION (e.g. Test /Training) system is unusable and has stopped operations.
4	Minor impact on non-critical aspects of the LIVE system or Supplier Software or a cosmetic change. Buyer's use of the LIVE system or Supplier Software is not materially impaired; and/or Use of the NON-PRODUCTION (e.g. Test /Training) system is degraded and/or disrupted.

- Resolution of any Incidents reported by the Buyer in accordance with the Response and Resolution table below:

Response and Resolution Table		
Priority	Target Response to Buyer	Target Resolution to Buyer
1	2 Working Hours	8 Working Hours
2	4 Working Hours	5 Working Days
3	8 Working Hours	Future Release
4	2 Working Days	Future Release

- When a complex Incident requires extensive investigation, the Supplier may request relief and mutually agree with the Buyer an extended target Resolution time for the specific Incident.
- Provide the Buyer with access to Updates and to the extent necessary, supporting documentation for the Supplier Software via the Customer Portal as and when these become available as follows:
 - ➔ New Releases from time to time at the Supplier's discretion and which may be subject to an additional charge; and
 - ➔ Patches to fix Priority 1 and Priority 2 Incidents.
- Advice and assistance on the use of the Supplier Software (excluding training and consultancy), to the extent necessary in the context of the Supplier's solution during Working Hours and (subject to payment by the Buyer of an additional reasonable charge) outside of Working Hours.
- Provision to the Buyer and its relevant contractors of information regarding the Supplier's development roadmap for the Supplier Software.

Updates

All Updates supplied to the Buyer under this Agreement shall be subject to the terms, conditions and any restrictions on the use of such Software which are contained in the agreement between the parties under which the Supplier granted the licence to use such Software.

If the Buyer does not comply with the paragraph above, the Supplier reserves the right to (a) discontinue the provision of Support and Maintenance Services or (b) provide Support and Maintenance Services on a chargeable, time and materials basis at the Supplier's then prevailing standard rates.

Variations

Should the Buyer require (a) bespoke modification of the Software or (b) bespoke Software, then the Supplier may provide the necessary professional services on a chargeable, time and materials basis at the Supplier's then prevailing standard rates. The Supplier reserves the right to increase the annual Support Charges by a commensurate amount to reflect the implementation of any such bespoke modification or bespoke software.

The Supplier will use all reasonable commercial endeavours to accommodate the introduction of substantive legislative changes. The Supplier expressly reserves the right to charge for the provision of any such substantive legislation updates where: (a) the development of the update is in the reasonable opinion of the Supplier technically complex; and (b) the costs of developing the update are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's customers at large.

If a third party supplier to the Supplier - whether of Database Software, Third Party Software or otherwise - increases the support fees charged to the Supplier, the Supplier reserves the right at any time to pass these increases onto the Buyer.

In the event the Supplier elects to withdraw Support and Maintenance Services for a particular item of Software, it may do so without liability provided it has given the Buyer not less than six months' prior written notice (or where Support and Maintenance is being withdrawn in relation to Third Party Software, the Buyer may withdraw such Support and Maintenance Services by giving such notice as is provided by the relevant Third Party).

Support and Maintenance Services for the Software should be continuous. In the event of any break in the provision of Support and Maintenance of any module of the Software for any reason, if the Buyer subsequently elects to reinstate the same, the Supplier shall be entitled to levy charges for: (a) such amount as would have been payable for Support and Maintenance Services during the period of lapse; and (b) a recommencement fee.

Exclusions

The Supplier shall have no obligation to provide Support and Maintenance Services or provide Updates if any Software has been modified by a party other than the Supplier, without the prior written authorisation of the Supplier.

The Supplier shall be under no obligation to Resolve any Error reported by the Buyer if such reported Error is not reproducible by the Supplier in the standard version of the Software. The Supplier reserves the right to retrospectively charge the Buyer for any time spent investigating an Incident where the Error is found not to be attributable to the Supplier.

The Supplier shall be under no obligation to Resolve any Error if such Error arises from:

- Misuse or abuse of the Software; or
- Malfunctions of the Designated System; or
- Buyer changes to the Designated System which haven't been notified to and agreed with the Supplier; or
- The Software running on hardware or operating systems other than the Designated System or running with versions of the operating system software or database programs other than those specified in the Software's release notes.

The Supplier shall be under no obligation to Resolve any Priority 3 or Priority 4 reported Incidents and reserves the right to abandon attempts to provide a Resolution where the costs are likely to be excessive or the commercial benefits to the Supplier's customers at large are likely to be non-material.

The Support Charges cover the support of one LIVE database and one TEST database. In the event the Buyer requires Support and Maintenance Services in respect of another database, such as a training database, the Supplier reserves the right to increase the annual Support Charges by a commensurate amount.

Third Party Software

Regardless of any other provision in these Supplier Terms or elsewhere in this Agreement:

- (i) Support and Maintenance Services for Third Party Software (whether included within the Supplier Software and/or required for the Supplier Software, or otherwise) may be provided directly by the relevant Third Party Software proprietor, and in any event shall be provided on its standard support terms. Such support terms shall apply as if they were incorporated herein and in the event of any conflict between such support terms, and the terms set out in these Supplier Terms (or any other part of this Agreement), the Third Party support terms shall take precedence;
- (ii) in the event that a third party suspends or terminates (or gives notice to terminate) the provision of any Deliverable(s) to the Supplier for any reason, the Supplier shall be entitled to suspend or terminate the provision of such Deliverable(s) to the Buyer under this Agreement.

Buyer Obligations

The Support and Maintenance Services shall be provided subject to the Buyer:

- providing such information as is reasonably necessary to enable the Supplier to diagnose any Incidents in the Supplier; and
- holding a valid licence to use the relevant Software; and
- using the current or immediately preceding Major Release of the Software operable on a compatible version of the relevant operating system software and Database Software;
- complying with its obligations in the Supplier Software Documentation.

Additionally, if the Software is on-premise (i.e. hosted by the Buyer or its third party provider), the Support and Maintenance Services shall be provided subject to the Buyer:

- providing the Supplier with access to its server(s) via an IPSec VPN (or other network communication method agreed by both parties) over the internet and complying with the current version of the Supplier Remote Support Connection Document; and
- paying all labour, travel and subsistence costs incurred by the Supplier in travelling to the Buyer's premises due to non-availability of the approved method

of remote access or to investigate errors which are not reproducible by the Supplier in the standard version of the Software; and

- unless the Buyer has remote database services in respect of the Software, the Buyer shall ensure the operating system software is administered in line with the Supplier's minimum requirements.

Additional Terms

Regardless of any other provision in the Agreement:

Specification

- if this Agreement contains the Buyer's service description, requirements or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then these Supplier Terms will take precedence.

Buyer Policies and consents

- the Supplier's individual staff involved in providing the Services shall not be required to sign any Buyer provided IT remote access, usage or email policy documents.
- the Supplier shall not be required to enter into any separate or additional agreements or arrangements with the Buyer (or any third party that is not a subcontractor or sub-processor of the Supplier) in order to provide the Deliverables, including codes of connection, network/system access or data processing/sharing agreements.

Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement (whether in contract, tort (including negligence), under an indemnity, statute or otherwise), to the extent that any losses, damage or defects arise as a result of (but not limited to):
 - the late arrival or non-arrival of Buyer Data or other material from the Buyer;
 - errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
 - any actions taken by the Supplier at the Buyer's direction;
 - failure to detect errors in any work performed by the Supplier which the Buyer has undertaken to check;
 - the act and/or omission of a third party (including a subcontractor and/or sub-processor but excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such act/omission; or
 - any other act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.

- the Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use.

Transfer of employees

- the Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**TUPE**") of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier (or any third party supplier/subcontractor to the Supplier). Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:
 - a claim by any person who transfers or alleges that they have transferred to the Supplier (or any third party supplier/subcontractor to the Supplier) as a result of entering into this Agreement; and/or
 - any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Intellectual Property Rights

- the provisions in this Intellectual Property section shall not apply to any software provided by the Supplier.
- the Buyer acknowledges that the Supplier and/or their respective licensors own Intellectual Property Rights in any specifications, data, databases, documentation, and other materials provided to the Buyer as part of the Services. Except as expressly stated in this Schedule, the Supplier does not grant the Buyer any rights to, or in, the Intellectual Property Rights in respect of the above materials.
- the Supplier grants the Buyer a non-transferable, non-exclusive right during the term of this Agreement to use the materials supplied by the Supplier under the Services for its own internal business purposes. Where the Agreement expressly states that Buyer is procuring the Deliverables on behalf of or for the benefit of a specified third party end customer, the licence granted in this paragraph applies to that end customer and allows them to use the materials for that end customer's own internal business purposes.
- all Intellectual Property Rights in the Buyer Data and any other materials provided to the Supplier by the Buyer for the Supplier to provide the Services will remain vested in the Buyer. The Buyer grants the Supplier a perpetual, royalty free, non-exclusive licence to use (and copy) the Buyer Data to perform this Agreement and to comply with any requests made to the Supplier under statute.

Certifications and Accreditations

- the Supplier's certifications and accreditations are as set out at [Certificates and Registrations - NEC Software Solutions](#), as updated by the Supplier from time to time.

Third Party Deliverables

- in the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Deliverable(s) to the Supplier for any reason, then the Supplier shall be entitled to suspend or terminate the provision of such Deliverable(s) to the Buyer under this Agreement.

Offshore Resource

- in some circumstances we may use resources provided by one or more of our Group Companies, including those of our Group Company NEC Software Solutions India PVT Limited. This may involve sharing your data (including Personal Data) with them, processing, or transferring your data outside the UK. Whenever we use the resources of our Group Companies, and/or process or transfer your data out of the UK, the terms of our Agreement with you, including applicable legislation, as well as our internal policies, procedures and processes shall apply. At all times we retain responsibility for ensuring compliance by our Group Companies with our obligations. By entering into this Agreement you consent to the use of our Group Companies' resources (including NEC Software Solutions India PVT Limited) to provide the Deliverables, and/or to process your data (including Personal Data).

Sub-processors

- in addition to the specific authorisation above, the Buyer also grants to the Supplier general authorisation to engage Sub-processor(s) as third-party Processors of Personal Data under this Agreement. A list of the Supplier's Sub-processors that the Supplier directly engages for the specific Deliverables as a Sub-processor from time to time is available at **[www.necsws.com\subprocessors](http://www.necsws.com/subprocessors)**. Any changes to the list of the Supplier's Sub-processors will be updated via this link.

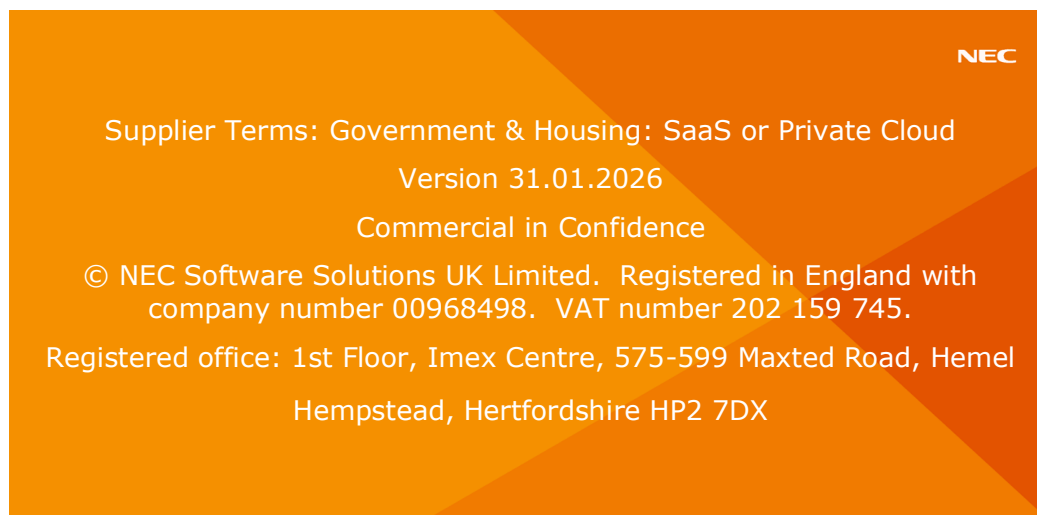
Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

"Agreement"	means the Call-Off Contract;
"Customer Portal"	means the Supplier's online customer portal with URL www.customersupport.necsws.com via which the Buyer can track progress of Incidents and obtain Updates plus associated documentation;
"Database Software"	means the third party licensor's database programs which are licensed by the Supplier to the Buyer;
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex).
"Designated System"	means the IT system notified to the Supplier in writing upon which the Software is installed, which shall comply with any technical requirements specified by the Supplier from time to time;
"Error"	means an error in the Supplier Software which, subject to the provisions of these Supplier Terms, the Supplier shall Resolve;
"Group Company"	means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006;
"Incident"	means any event which is not part of the standard operation of the Software and which causes, or may cause an interruption to, or a reduction in, the quality of that Software;
"Major Release"	means a new version of the Supplier Software containing major functional enhancements, normally designated by a plus 1 increase in the first or second digit of the Version Number (e.g. V1.3 to V2.0, e.g. V2.3 to V2.4, e.g. V24.1 to V24.2). Major Releases will consolidate all previous versions of the Software;
"Minor Release"	means a new version of the Supplier Software containing functional or operational enhancements, normally designated by a plus 1 increase in the third or fourth digit of the Version Number (e.g. V1.1.1 to V1.2, e.g. V1.1.1.1 to V1.1.1.2). Minor Releases will consolidate all previous versions of the Supplier Software;
"New Release"	means any new Major Release or Minor Release provided by the Supplier;
"Particulars"	means the Order Form;

"Patch"	means software provided by the Supplier to Resolve one or more Errors in the Software;
"Personal Data" and "Processor"	take the meaning given in the UK GDPR;
"Priority"	means the priority level of an Incident, as determined in accordance with the table above;
"Resolution"	means action which will resolve an Incident which may be a Workaround. "Resolve" shall be construed accordingly;
"Response"	means the Supplier has (i) logged a user's call regarding an Incident and provided the user with a unique Incident number, and (ii) allocated the Incident to the appropriate the Supplier personnel for investigation. "Respond" shall be construed accordingly;
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) in respect of which the services described in these Supplier Terms are to be provided;
"Supplier Software"	means the Supplier's proprietary application software which is licensed by the Supplier to the Buyer;
"Support and Maintenance Services"	means the services described in these Support Terms;
"Support Charges"	means the charges for Support and Maintenance Services, as specified in the Agreement;
"Third Party Software"	means software which is proprietary to a party other than the Supplier and licensed to the Buyer by the Supplier;
"UK GDPR"	means Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
"Updates"	means Major Release, Minor Release, service pack or Patch for use with designated versions of the operating system software which are generally made available by the Supplier to Buyers who are receiving Support and Maintenance Services from the Supplier but excludes technology upgrades and future products which the Supplier licenses separately;
"Version Number"	means a unique identifier associated with each new version of the Supplier Software, conforming to the format A.B.C.D;
"Workaround"	means a method of avoiding an Incident or Error either by a temporary fix or by a technique that means the Buyer is not reliant on a particular aspect of the Supplier Software that is known to have an Error;
"Working Days"	means Monday to Friday inclusive, excluding bank holidays and public holidays in England; and

“Working Hours” means the hours of 09:00 to 17:30 inclusive in local UK time on Working Days.



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