

MASTER SERVICES AGREEMENT

BACKGROUND

- (A) The Supplier has developed and will provide the Services (as defined below).
- (B) The Client wishes to use the Supplier's Services in its business operations.
- (C) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

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

Acceptable Use Policy: means any acceptable use policy set out in the Statement of Work or as otherwise notified by the Supplier to the Client and as amended from time to time. In the absence of an acceptable use policy in such a document, the Shaping Cloud Acceptable Use Policy as at https://www.shapingcloud.com/s/Acceptable_Use_Policy_V2.pdf shall be assumed.

Acceptance Criteria: means the acceptance criteria as specified in Clause 10.2, referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables or Services (as the case may be) meet the Statement of Work, are satisfactory and ready to be invoiced.

Acceptance Tests: means the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties in writing, to be undertaken to determine whether the Deliverables or Services (as the case may be) meet the Acceptance Criteria.

Agreement: means the terms and conditions in this agreement along with the Statement of Work(s) (including the Schedules) and any other documents agreed between the Parties.

Applicable Data Protection Laws: means:

- a) To the extent the UK data protection law applies: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Applicable Laws: means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable party.

Assumptions: has the meaning given in Clause 8.5.

Authorised Representative: means the person nominated by each Party in accordance with this Agreement.

Authorised User: means any individual who is entitled to use of the Third Party Services, Subscription Services and/or Services under the Agreement.

Background Materials: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

Business Systems: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Client or any of its agents or contractors.

Cap: is the total monthly volume of Products which the Client is permitted to use.

Change Request: means any request to alter the Services pursuant to this Agreement as set out in Clause 16.

Client: the client identified in the Statement of Work.

Client Data: any information that is provided by the Client to the Supplier as part of the Client's use of the Services, including any information derived from such information.

Client Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Client.

Client Site: means the locations where the Services are provided as identified in the Statement of Work.

Client's Operating Environment: the Client's computing environment (consisting of hardware and software) that is to be used by the Client in connection with its use of the Services and which interfaces with the Supplier's System in order for the Client to receive the Services, but excluding the Client-side Equipment.

Client-side Equipment: any equipment located or to be located on a Client Site but controlled or to be controlled exclusively by the Supplier as part of the Services.

Commencement Date: means the date of this Agreement or the date of the signed Statement of Work, whichever is earlier, unless otherwise specified in the relevant Statement of Work.

Commissioner: the Information Commissioner (see section 114, Data Protection Act 2018).

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "**Representatives**") to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Consumption: refers to the subscription licences that are billed based on actual usage.

Consumption Subscriptions: refers to the licences that are billed based on actual usage in the preceding month.

Customer Agreement: the Microsoft customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into this agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

Deliverable: means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Deposit: means the deposit amount (if any) set out in the Statement of Work.

Document: means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Dispute Resolution Procedure: the procedure described in Clause 30.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law.

Fees: the fees payable to the Supplier as described in the Statement of Work as may be varied from time to time pursuant to the terms of this Agreement.

Force Majeure: has the meaning given in Clause 21.1.

Go-live Date: the date specified in the Statement of Work or as otherwise agreed between the Parties in writing.

Good Industry Practice: the standards that fall within the upper quartile of a skilled and experienced provider of business-critical professional or managed services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

Hardware: all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Services to the Client.

Initial Term: means the period commencing on the Commencement Date and ending on the date three (3) years thereafter unless otherwise specified in the Statement of Work. For the avoidance of doubt, each Statement of Work will have their own Term, which will extend the Initial Term of the Agreement if the term of the Statement of Work is longer than the Initial Term of the Agreement.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including software, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world now or in the future, in each case for their full term, together with any future rights and renewals or extensions.

IPR Claim: means a claim arising from the infringement of IPR belonging to third parties.

Issues List: means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

Licence Agreement: means all licence agreements that may have to be entered into by the Supplier and/or the Client in respect of Third Party Services used as set out in the relevant Statement of Work.

Local System Components means equipment supplied by the Client such as routers, switches, PCs, thin client devices, smart phones, wireless controllers and access points.

Managed Services: the hosting and support service described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Minimum Users: means the minimum number of Authorised Users stated in the Statement of Work if applicable.

NCE Subscription Services: the services and use related to the NCE subscription licences described in the Statement of Work (as applicable) to be performed by the Supplier in accordance with this Agreement.

NCE Subscription Terms: means the terms and conditions relating to the provision of the NCE Subscription Services.

Normal Business Hours: 9.00 am to 5.00 pm local UK time on Business Days, not including UK Bank Holidays, unless otherwise stated in the applicable Statement of Work.

Out of Scope: means those out of scope services specified as such in the Statement of Work together with any other services which are not detailed in the Statement of Work.

Products: means the Microsoft or other Third Party Services, tools, software, hardware, or professional support or consulting services provided under the terms of the Customer Agreement, applicable Licence Agreement or as otherwise agreed between the Parties.

Professional Services: the service described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Purpose: the purposes for which the Client Personal Data is processed, as set out in the applicable Statement of Work.

Rates: the Supplier's standard hourly or daily fee rates as set out in the applicable Statement of Work.

Relief Events: the following events:

- (a) any failure by the Client to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (c) any failure by the Client or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement;
- (d) any telecommunications network defect, delay or failure or failure of the Client's hardware or other systems; or
- (e) any of the causes or events set out in Clause 12.9.

Retail Prices Index: means the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

Scheduled Downtime: means the total amount of time during which the Client is not able to access the Services due to planned maintenance. The Supplier may schedule system downtime, with prior agreement of the Client. Scheduled Downtime periods do not count against the service level calculation detailed in such Statement of Work.

Service Level Arrangements: the service level arrangements set out in the Statement of Work or as otherwise agreed in writing between the Parties.

Services: means the provision of the Managed Services (including Subscription Services) and/or the Professional Services including consulting, advisory, integration or technical services performed by the Supplier under a Statement of Work or otherwise agreed in writing between the Parties.

Services Commencement Date: means the date set out in the applicable Statement of Work or as otherwise agreed between the Parties for the commencement of the Services.

Software: the proprietary software which is owned by or to the Supplier and licenced to the Client during the term of this Agreement.

Statement of Work: the order form, quote, project initiation document, service proposal and any other services specification for the Services as set out under separate cover and agreed between the Parties.

Subscription Services: means a right to use the Product(s) for a defined term.

Subsequent Term: means twelve (12) months commencing on the last day of the Initial Term or previous Subsequent Term unless otherwise stated in the applicable Statement of Work.

Supplier: SHAPING CLOUD LTD (registration number 7321331) whose registered office is at Jactin House, 24 Hood Street, Manchester, M64WX.

Supplier Equipment: means any equipment made available to the Client by the Supplier to enable the Client to access the Services, including thin client computer terminals and laptops.

Supplier's System: the system to be used by the Supplier in performing the Services, including the Hardware, any Third Party Services, the Client-side Equipment and communications links between the Hardware and the Client-side Equipment and the Client's Operating Environment.

Term: means the Initial Term and any Subsequent Term, as applicable.

Third Party Supplier: any third party that supplies Third Party Services to the Supplier and/or the Client (as the case may be) during the provision of the Services.

Third Party Services: any services, goods, code or software programs written or provided by a Third Party Supplier which are used by the Client during the provision of the Services.

UK GDPR: the EU GDPR as it applies in the UK.

Unscheduled Downtime: means any time when any or all of the applications and Services provided by the Supplier to the Client shall be unavailable to the Client due to unexpected system failures other than Scheduled Downtime or the downtime is attributable to events not under the control of the Supplier.

User Subscriptions: means the user subscriptions purchased by the Client pursuant to a Statement of Work which entitle Authorised Users to access and use the Subscription Services and/or Third Party Services (as the case may be) in accordance with this Agreement.

Variations: any agreed variations to this Agreement made through a variation agreement.

- 1.2 Clause, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.12 In the event of any conflict or inconsistency between the Clauses, the Statement of Work, the Licence Agreement and Customer Agreement (including any changes to each of the Clauses, the Statement of Work, the Licence Agreement and Customer Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Variations;
 - (b) the Statement of Work;
 - (c) the Licence Agreements and Customer Agreement to the extent applicable to the Services;
 - (d) the Clauses.

2. PROVISION OF SERVICES

- 2.1 The Agreement sets out the terms and conditions under which the Supplier shall provide to the Client the Services.
- 2.2 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Client in connection with the purchase of the relevant Services; and (ii) prevail over any of the Client's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.3 No addition to, variation of or other amendment or purported amendment to any Statement of Work or this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by or acknowledged by an Authorised Representative of both Parties.

- 2.4 Any quotation or proposal given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. For Professional Services and Managed Services, it is only valid for a period of thirty (30) days from its date of issue unless otherwise agreed by the Supplier in writing and shall only become binding upon the signing of a Statement of Work.

3. SERVICES

- 3.1 The Supplier will provide the Managed or Professional Services in accordance with the Statement of Work and the terms of this Agreement with all due care, skill and ability during the Term unless earlier terminated for any reason.
- 3.2 The Client shall remain responsible for the use of the Services under its control.
- 3.3 The Client must take reasonable measures to ensure it does not (and the Client personnel do not) jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Client to alleviate the situation as quickly as possible but shall have no liability or responsibility for any liability incurred by the Client as a result of such attack. The Parties shall discuss and agree appropriate action (including suspending the Services).
- 3.4 The Client shall not provide the Services to third parties without the prior written consent of the Supplier.
- 3.5 The Client acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Services. Examples of such conditions include:
- (a) failure of Client Hardware, software or operating system;
 - (b) partial or full failure of Third Party Services;
 - (c) network connectivity issues between Local System Components and the Supplier's platform; and/or
 - (d) network connectivity issues between Local System Components and its third party's servers.
- 3.6 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
 - (b) modify or replace any Hardware or software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on the Supplier's obligations or performance under this Agreement and its provision of the Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Client and the Parties shall follow the Change Request.
- 3.7 If the Supplier breaches its obligations in Clause 3.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.

4. RESPONSIBILITIES OF SUPPLIER

4.1 The Supplier shall:

- (a) provide the Services in accordance with the terms of this Agreement and the Statement of Work;
- (b) use its commercially reasonable endeavours to complete any Deliverables within any timescales set out under any Statement of Work but any such dates shall be estimates only;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with this Agreement and any Statement of Work;
- (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
- (e) take such steps as may be required to fulfil its obligations under this Agreement and any Statement of Work;
- (f) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
- (g) notify the Client promptly if the Supplier is unable to comply with any of the terms of this Agreement, any Licence Agreement, the Customer Agreement or any Statement of Work; and
- (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Client Sites and which have been communicated to it a week prior to the Services commencing, where the Supplier is required to be on such Client Sites for the provision of the Services.

4.2 The Supplier shall co-operate with the Client in all matters relating to the Services and shall appoint an Authorised Representative ("**Supplier Representative**"), as the contact throughout the Services.

4.3 Unless otherwise set out in a Statement of Work, the Client confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Client. Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all its obligations under this Agreement, whether such obligations are performed by the Supplier itself or any sub-contractor engaged by the Supplier and under the supervision of the Supplier.

4.4 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Client will have a direct contract in place with Microsoft through the Client Agreement).

4.5 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under Clause 4.1, the Supplier shall:

- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
- (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;

- (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
- (d) undertake account reviews at such intervals as are agreed between the Parties, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
- (e) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
- (f) provide the Client with reasonable co-operation in relation to this Agreement.

4.6 The Supplier shall be under no obligation to provide the Services to the Client in the following circumstances (unless specified under the Statement of Work):

- (a) unauthorised use of the Services by the Client or use otherwise than in accordance with this Agreement;
- (b) providing the Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
- (c) providing any other services not covered herein or in a related Statement of Work; and
- (d) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.

4.7 The Supplier is not liable for defects in, or delays related to the Products.

5. RESPONSIBILITIES OF CLIENT

- 5.1 To the extent that the Supplier requires access to the Client Site to perform the Services, the Client shall provide such access during Normal Business Hours and to provide a suitable work environment to enable the Supplier to perform such Services subject to the Supplier complying with such internal policies and procedures of the Client (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.
- 5.2 The Client shall co-operate with the Supplier in all matters relating to the Services and shall appoint a minimum of two (2) Authorised Representatives ("**Client Representatives**"), who shall have authority to commit the Client on all matters relating to the relevant Service.
- 5.3 The Client agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement shall form part of the Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by the Supplier to the Client under the Agreement, such agreements shall not apply.
- 5.4 The Client shall:
 - (a) adhere to any Acceptable Use Policy;
 - (b) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
 - (c) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;

- (d) adhere to the dates scheduled for provision of Services by the Supplier to the Client as stated in the applicable Statement of Work or otherwise agreed between the Parties in writing. In the event the Client wishes to reschedule or cancel the dates for the provision of Services, liquidated damages ("**Liquidated Damages**") will become payable from the Client to the Supplier on the following basis:
 - (i) if dates are changed or cancelled at the Client's request more than fourteen (14) days before the scheduled start date no Liquidated Damages are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Liquidated Damages equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date Liquidated Damages equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable;
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
- (f) allow the Supplier or its designated subcontractors, elevated / admin access to the Client's relevant infrastructure including servers and networking systems for the duration of the Agreement;
- (g) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Dynamics 365 or Microsoft 365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and Digital Partner of Record (DPOR) and/or Partner Admin Link (PAL) and/or Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date;
- (h) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("**POE**") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in this Agreement;
- (i) take good care of the Supplier's Equipment to prevent damage or loss to such equipment arising from misuse by Client personnel in accordance with any applicable Supplier policy or instructions of the Supplier from time to time;
- (j) maintain adequate policies of insurance which provide cover for the Supplier's Equipment when located at the Client Site against the normal risks which the Client could reasonably be expected to insure against in respect of its own equipment;
- (k) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (l) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
- (m) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;

- (n) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details; and
 - (o) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier's performance of its obligations under a Statement of Work for the Supplier to access or use any equipment, software or data of the Client (or which is in the possession of the Client) then it shall where it is able to do so grant to Supplier and any of its subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services.
- 5.5 The Client shall (unless otherwise specified in the Statement of Work or as otherwise set out in this Agreement):
- (a) use the Services only for lawful purposes and in accordance with this Agreement;
 - (b) keep secure from third parties any passwords issued to the Client by the Supplier;
 - (c) permit the Supplier to install the current version of software required to provide Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
 - (d) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Client-side Equipment or Client's Operating Environment or data-feeds that will directly impact any Managed Services provided. If such notice has not been received on time, the Supplier will have to make additional effort to return the Client's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate;
 - (e) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
 - (f) carry out all other Client responsibilities set out in this Agreement and the Statement of Work in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.
- 5.6 The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this Clause.

- 5.7 Where applicable, the Client shall no later than the 5th each month report its use of the Subscription Services to the Supplier for the preceding month. By providing the Supplier the report, the Client certifies that it is accurate and complete. The Supplier shall verify the reports submitted by the Client. The Client acknowledges, however, that the Supplier has no effective means to continuously control the Client's use of the Subscription Services and that the Supplier's verification and reporting will normally be based exclusively on Client's reports to the Supplier. The Client understands that Client's correct reporting of its use of its Subscription Services is of imperative importance. If the Client does not provide the Supplier a report on the date specified above, the Client shall instead allow the Supplier to report the same use of the Subscription Services as during the previous month. Should the Client fail both to provide the monthly report and to instruct the Supplier accordingly, then the Supplier shall report the use of the Subscription Services, acting reasonably, believes is an accurate use of the Subscription Services or as reported back to the Supplier by Microsoft or other applicable Third Party Supplier, and the Client shall be bound to pay licence fees to the Supplier accordingly. The foregoing does not relieve the Client from reimbursing the Supplier fully for any claims from its third parties including Microsoft if the Client's use of the Subscription Services proves to be greater than the use of the Subscription Services reported to the Supplier.
- 5.8 In the event that the Client is in breach of its obligations under the Agreement (excluding payment obligations) then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or Service Level Arrangements as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 5.9 In the event that the Client is in breach of its payment obligations under the Agreement then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or Service Level Arrangements as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.

6. PROJECT ORGANISATION

- 6.1 If requested in writing by the Client or specified in the Statement of Work, the Client Representatives and the Supplier Representative shall have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 16 and to discuss the Service Level Arrangements.
- 6.2 Before each meeting, the Client Representatives shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in

accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

7. USER SUBSCRIPTIONS

- 7.1 The Supplier grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to use the Third Party Services and/or Subscription Services (as applicable) during the Term solely for the Client's internal business operations.
- 7.2 By placing an order with the Supplier, the Client represents and warrants that the Client has accepted the Customer Agreement.
- 7.3 Once an order for Subscription Services has been accepted by the Supplier:
- (a) Subscription Services shall continue for the duration of the Agreement or the applicable Statement of Work (as the case may be) unless and until terminated in compliance with the Agreement; and/or
 - (b) unless otherwise specified in the Statement of Work, adjustments may only be made to increase the Minimum Users and not decrease below any current Minimum User provisioned.
- 7.4 In relation to the Authorised Users, the Client undertakes that:
- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Third Party Services and/or Subscription Services;
 - (b) each Authorised User shall keep a secure password or other biometric authentication for their use of the Third Party Services and/or Subscription Services (as the case may be) and that each Authorised User shall keep their password confidential;
 - (c) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request from time to time;
 - (d) it shall permit the Supplier to audit the Client's use of the Third Party Services and Subscription Services for each Authorised User. Such audit may be conducted no more than once per quarter, 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 Client's normal conduct of business;
 - (e) if any of the audits referred to in Clause 7.4(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
 - (f) if any of the audits referred to in Clause 7.4(d) reveal that the Client has underpaid Fees to the Supplier and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment within ten (10) Business Days

of the date of the relevant audit or upon request by the Supplier, promptly disable access to such individuals.

- 7.5 The Client may, from time to time during any Term request for more Authorised Users at any point in excess of the User Subscriptions, by giving the Supplier written notice subject to the following:
- (a) The Supplier shall evaluate the Client's request for additional User Subscriptions and grant or refuse the request (in its sole discretion).
 - (b) If the Supplier approves the Client's request to purchase additional User Subscriptions, the Client shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such additional User Subscriptions at the relevant price at the time of the request and, if such additional User Subscriptions are purchased by the Client part way through the Term, such fees shall be pro-rated for the remainder of the Term.
- 7.6 Unless otherwise set out in the Statement of Work, the Supplier may adjust the Minimum Users, or any other Volume Driver defined with the relevant Managed Services Statement of Work, on the anniversary of the Commencement Date of each year to reflect any adjustments made to the User Subscriptions in accordance with this Clause 7 over the previous twelve (12) months or as otherwise agreed between the Parties.
- 7.7 Termination of the licences under the Subscription Services will not affect any other Services provided under the applicable Statement of Work or this Agreement.
- 7.8 Where the Services include the supply of NCE Subscription Services, the NCE Subscription Terms shall apply in addition to this Agreement.

8. PRICE AND PAYMENT

- 8.1 The Client shall pay the Deposit (if applicable) and Fees for the Services (including any Third Party Services fees) as more fully set out in the relevant Statement of Work. Where these are based on the number of User Subscriptions and/or Consumption, such Fees shall be variable upon the terms set out in the Statement of Work.
- 8.2 In the event the Client delays the Go-live Date (which falls outside of the Liquidated Damages) or has not conducted its Acceptance Testing in accordance with Clause 10, the Supplier may charge the Client for such delays in accordance with its Rates.
- 8.3 If no Fee is quoted, the Fee shall be calculated in accordance with the Supplier's then current Rates as amended from time to time in accordance with this Agreement.
- 8.4 Clause 8.6 shall apply if the Services are to be provided on a time-and-materials basis. Clause 8.8 shall apply if the Services are to be provided on a Consumption basis. The remainder of this Clause 8 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 8.5 Where a Fee has been quoted, this is a best estimate based on the information given to the Supplier by the Client and/or which is available at that time and may be based on a number of assumptions set out in the Statement of Work ("**Assumptions**"). If it materialises that in the Supplier's reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, the Supplier shall be entitled to charge (at the Supplier's current Rates) the Client for any Out of Scope

Services or other additional Services provided to those detailed in the Statement of Work together with all related costs and expenses incurred by the Supplier.

8.6 Where the Services are provided on a time-and-materials basis:

- (a) the Supplier's standard hourly or daily rates are calculated on the basis of Normal Business Hours;
- (b) the Supplier shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Statement of Work; and
- (c) the Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.

8.7 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work. Save where other payment terms are set out in the Statement of Work, all Fees will be payable by direct debit. The Client shall provide the Supplier with valid up-to-date and complete payment information and direct debit authority.

8.8 Subscription Services:

- (a) Fixed Term Subscriptions
 - (i) Products sold under fixed term subscriptions are sold for a term as specified in the Statement of Work. The Statement of Work shall specify if such subscriptions are to be billed on a monthly or annual basis.
 - (ii) Any subsequent adjustments to annual subscriptions (e.g adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.
 - (iii) Any subsequent adjustments to monthly subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
- (b) For all Consumption Subscriptions, the Client agrees and acknowledges that:
 - (i) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Statement of Work, Licence Agreement or Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - (ii) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for a User Subscription sold on a consumption basis may change during the subscription period;
 - (iii) where applicable, it shall pay all such usage and is responsible for monitoring its consumption needs;
 - (iv) the Client further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "**Barrier**"), which prevents the Client from utilisation of a Product in excess of the Cap;
 - (v) for the avoidance of doubt, if, in spite of Clause 8.8(b)(iv), the Client utilises a Product in excess of the Cap, the Client shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release

the Client from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Client from utilisation in excess of the Cap.

- 8.9 The Fees exclude (unless otherwise agreed and set out in the Statement of Work), the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or its subcontractors in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Client for the Services ("**Expenses**"). The Supplier shall obtain the Client's prior written approval before incurring any such expense, material or service exceeding a total cost of fifteen hundred pounds (£1,500) in the aggregate per day and shall be payable by the Client in accordance with Clause 8.10.
- 8.10 The Client shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by the Supplier or unless otherwise set out in the Statement of Work.
- 8.11 All payments by the Client hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to the Supplier's bank account as advised by the Supplier to the Client in writing.
- 8.12 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Client, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 8.13 Should the Client be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Statement of Work.
- 8.14 Without prejudice to any other remedy that the Supplier may have, if payment of the Fees or any part thereof is overdue then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice the Supplier may, without prejudice to any other rights or remedies, charge the Client interest on the overdue amount at the rate of four percent (4%) per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 8.15 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice.
- 8.16 The Supplier shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Statement of Work, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 8.17 Subject to Clause 8.19 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period.
- 8.18 For the avoidance of doubt, the Supplier may increase any fees related to Third Party Services in line with any increases imposed upon the Supplier by such Third Party Suppliers upon

reasonable notice and/or in line with the terms of the Licence Agreement and/or Customer Agreement.

- 8.19 Notwithstanding and subject to Clauses 8.17 and 8.18, the Supplier reserves the right, on giving the Client thirty (30) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Client does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.

9. WARRANTIES AND SERVICE LEVELS

- 9.1 The Client warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Client;
- (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement;
- (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under the Agreement; and
- (d) the Supplier's use in the provision of the Services or otherwise in connection with this Agreement of any third-party materials, including any Hardware or software supplied by the Client to the Supplier for use in the provision of the Services or otherwise in connection with this Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

- 9.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Client's use and receipt of the Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under the Agreement; and
- (d) the Client's use of any Supplier materials and/or third-party materials, including any materials supplied by the Supplier to the Client, shall not cause the Client to infringe the rights, including any Intellectual Property Rights, of any third party.

- 9.3 Except for any warranties and service levels expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

- 9.4 In the event that a defect, fault or impairment in the provision of the Service(s) causes a service interruption and the Supplier becomes aware of this either through the Client giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment as more fully set out in the Statement of Work and to the extent it reasonably can.
- 9.5 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Client or Authorised User, (ii) the Client's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Client; or (iv) any third party action in response to an act or omission of the Client or any person given access to the Service by the Client (including third party hosted software vendors) then the Supplier may recover from the Client all reasonable costs to be incurred by it or on its' behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.
- 9.6 Unless otherwise agreed or set out in the Statement of Work (as forming part of the Service), if the Client accesses the Services through the public internet or through a private circuit provisioned by a bandwidth provider of the Client's choice, the Client assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.
- 9.7 If the Client moves from one Client Site to another site or makes changes to any Client Site or opens a new location to be added to the Client Sites, the Client must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Client of any work to bring the IT Infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. The Supplier will provide a quotation if it is to provide additional resources or services in the case of any change at the Client Sites or new Client Sites for including as part of the Fees.
- 9.8 The Supplier will request approval from the Client's Representatives before making any significant changes to the Services. The Supplier will arrange any Scheduled Downtime in advance with the Clients Representatives. The Supplier is not responsible for Unscheduled Downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 9.9 The Supplier reserves the right to take any action that it perceives necessary to protect the Client's systems even though this may impact on the Client's business activities. The Supplier will make reasonable endeavours to inform the Client by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 9.10 The Service Level Arrangement are specific to directly provided Services of the Supplier and do not relate to Third Party Services (of which such Third Party Services will be governed by their own relevant service levels).

- 9.11 The Supplier shall not in any circumstances be liable under its obligations in this Clause 9 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 9.12 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services will be uninterrupted or error-free.
- 9.13 The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by the Supplier or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Supplier.

10. ACCEPTANCE OF THE PROFESSIONAL SERVICES

- 10.1 The relevant Statement of Work shall specify the Deliverables or Services (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 10.2 In relation to any Acceptance Testing:
- (a) the Client shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from the Supplier's delivery of each Deliverable or Service under the relevant Statement of Work (the "**Acceptance Period**") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "**Acceptance Criteria**"). If the Client determines that a Deliverable or Service does not conform to the Acceptance Criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria;
 - (b) the Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable or Service which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in Clause 10.2(a)) if any of the Deliverables or Services do not conform to the Acceptance Criteria. In the event that the Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under this Clause, such Deliverable or Service shall be deemed accepted as if the Client had issued a written acceptance thereof. Once the Deliverable has been accepted by the Client and payment has been settled in accordance with Clause 7, the Deliverable shall become the property of the Client. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables or Services but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 10.2(d) below;
 - (c) if:
 - (i) the Client does not provide any written comments in the initial period described in Clause 10.2(a) above;
 - (ii) commences live running of the whole or part of such deliverable other than in the course of undertaking Acceptance Testing; or
 - (iii) if the Deliverable or Services are found to conform with the Statement of Work;

then in each case the Service or Deliverable shall be deemed accepted from the date of the notification by the Supplier pursuant to Clause 10.2(a).

- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Request or attributable to the Client's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to (i) at its discretion, provide a substitution that offers equivalent functionality which shall not have a materially detrimental impact on the relevant Deliverable or Service, or (ii) terminate work on that specific Deliverable.
- (f) If the Supplier terminates work on any Deliverable in accordance with Clause 10.2(e), the Supplier agrees not to charge Client, any amounts paid or payable by Client to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied. If the Supplier is unable to correct the non-conformity within thirty (30) Business Days, either Party may terminate the applicable Statement of Work without further liability to the other.

11. DATA PROTECTION

- 11.1 The Supplier shall promptly notify the Client in writing of any loss or damage to the Client Data. In the event of any loss or damage to Client Data, the Supplier shall use commercially reasonable endeavours to restore the lost or damaged Client Data from the latest backup of such Client Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Client Data caused by any third party.
- 11.2 For the purposes of this Clause 11, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Laws.
- 11.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 11.3 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 11.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in the applicable Statement of Work, as a processor on behalf of the Client.
- 11.5 Without prejudice to the generality of Clause 11.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of this Agreement.
- 11.6 In relation to the Client Personal Data, the data processing schedule in Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and

the types of personal data and categories of data subject. In the event that the details in Schedule 1 are not accurate, any changes will be identified in the applicable Statement of Work.

11.7 Without prejudice to the generality of Clause 11.3 the Supplier shall, in relation to Client Personal Data:

- (a) process that Client Personal Data only on the documented instructions of the Client, unless the Supplier is required by Applicable Laws to otherwise process that Client Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Client Processor Data, the Supplier shall notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client on important grounds of public interest. The Supplier shall inform the Client if, in the opinion of the Supplier, the instructions of the Client infringe Applicable Data Protection Laws;
- (b) implement appropriate the technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the Agreement unless the Supplier is required by Applicable Law to continue to process that Client Personal Data. For the purposes of this Clause 11.7(f) Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this Clause 11.7 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

11.8 The Client hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Client Personal Data, provided that the Supplier:

- (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this Clause 11;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the sub processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Client shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection;
 - (b) transfer Client Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 11.9 The Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 11, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 15.5.
- 11.10 To the extent that the Supplier cannot comply with a change to the Client's instructions when processing Client Personal Data without incurring material additional costs:
- (a) the Supplier shall: (i) immediately inform the Client, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and
 - (b) any changes in the Client's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Request (as set out in Clause 16).

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to Clause 12.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created exclusively under the Services ("**Bespoke IPR**") for the Client shall vest automatically in the Client. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for its use.

- 12.2 Notwithstanding Clause 12.1 above, the Supplier and its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Client's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Supplier Intellectual Property**"). The Supplier grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier Intellectual Property associated with the provision of the Services.
- 12.3 The Client may not, at any time including after termination of this Agreement, share any Supplier Intellectual Property with any third party without the Supplier's prior written consent. The Supplier may treat the Client's breach of this Clause 12.3 as a breach of the Agreement.
- 12.4 The Client acknowledges and agrees that a breach of this Clause 12 may cause irreparable injury to the Supplier for which there may be no adequate remedy at law, and the Supplier shall be entitled to seek interim or other equitable relief necessary, including an injunction and specific performance, in the event of any breach or threatened breach or intended breach of this Clause 12 by the Client.
- 12.5 The Client shall pay and indemnify the Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Supplier, arising by reason of claims that (1) Supplier's possession of or use of the Client's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Client or any of its customers, modify, alter, replace combine with any other data, code, documents or other software, which alters the Supplier's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 12.6 The Supplier shall pay and indemnify the Client, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Client, arising by reason of claims that (1) the Client's possession of or use of the Supplier's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Supplier, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Client's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 12.7 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 12, the Indemnified Party shall:
- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 12.5 or Clause 12.6 (as applicable);
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
 - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 12.8 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Client is still able to use the Deliverables by either:
 - (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or
 - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 12.9 Except to the extent that the Supplier should reasonably have known or advised the Client the foregoing provisions of Clause 12.8, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
 - (a) any use by or on behalf of the Client of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
 - (b) any modification carried out on behalf of the Client to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.

13. LICENCE OF SOFTWARE

- 13.1 In consideration of the Fee paid by the Client to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Client a non-exclusive, revocable, worldwide, non-transferable licence for the duration of the applicable Statement of Work until terminated to use of the Software.
- 13.2 In relation to scope of use:
 - (a) for the purposes of Clause 13.1, use of the Software:
 - (i) shall be restricted to use of the Software in object code form for the purpose of processing the Client's data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client); and

- (ii) means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.
 - (b) the Client may not use the Software other than as specified in Clause 13.1 and Clause 13.2(a) without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier.
- 13.3 Except as expressly stated in this Clause 13, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, de-compilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 13.4 The Client may not use any such information provided by the Supplier or obtained by the Client during any such reduction permitted under Clause 13.3 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 13.5 The Client shall not:
- (a) sub-licence, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by the Supplier;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance; and
 - (c) deal in any other manner with any or all of its rights and obligations under this Agreement,
- without the prior written consent of the Supplier.
- 13.6 The Client shall:
- (a) ensure that the Software is installed on designated equipment only;
 - (b) keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - (c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
 - (d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

- 13.7 The Client shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Client is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.

14. THIRD PARTY SERVICES

- 14.1 The Supplier shall procure any Third Party Services required by the Client for the provision of the Services and as more fully set out in the Statement of Work. Except as expressly set out in the relevant Licence Agreement, the Supplier expressly excludes any warranty to the Client that the Third Party Services supplied or licensed under the Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms for such Third Party Services (the **"Licence Fees"**).
- 14.2 It is a condition of this Agreement that the Client shall enter into such direct Licence Agreements issued by the Third Party Supplier where the Client must directly contract with that Third Party Supplier as so prescribed by the relevant software owners of each Third Party Services identified within this Agreement and/or in the applicable Statement of Work. In the event the Client does not accept the terms of such Licence Agreements (whether directly contracted with the Supplier or the relevant Third Party Supplier), the Supplier reserves the right to suspend the provision of the Services until such time as the Client enters into such Licence Agreement.
- 14.3 The Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged breach of such Licence Agreements.
- 14.4 The Client shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under 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 Services (as applicable) in any form or media or by any means; or
 - (b) attempt to adapt, make error corrections, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
 - (c) access all or any part of the Services in order to build a product or service which competes with all or any part of the Services (including the Software) during the term of this Agreement and for a period of six (6) years thereafter; or
 - (d) use the Services to provide services to third parties; or

- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 14.4.
- 14.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 14.6 The rights provided under this Clause 12.114 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client unless otherwise agreed in a Statement of Work.
- 14.7 The Client acknowledges that it is responsible for ensuring that the Client's Hardware, and operating software for such Hardware is compatible with the Services including any Third Party Services and the Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the Statement of Work.
- 14.8 The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of the Agreement.
- 14.9 Termination of the licences will not affect any other Services provided under this Agreement.
- 14.10 The Supplier shall not be liable whatsoever to the Client following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by any Third Party Supplier.

15. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES

- 15.1 The Client acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Statement of Work, the Client assumes sole responsibility for:
 - (a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Client's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - (b) loss or damage arising from or relating to any Relief Event.
- 15.2 This Clause 15 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:
 - (a) any breach of this Agreement; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

- 15.3 Nothing in this Agreement excludes or limits either Party's liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liability which cannot lawfully be excluded or limited.
- 15.4 Subject to Clause 15.3 above, the Service Level Arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Services, or their non-performance and non-availability.
- 15.5 Any breach of the Party's responsibilities under Clause 11 shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the cap set out in Clause 15.6.
- 15.6 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.
- 15.7 Except as expressly and specifically provided in this Agreement neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity;
 - (e) loss of goodwill and reputation; and/or
 - (f) loss or corruption of data.
- 15.8 Except as expressly and specifically provided in this Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 15.9 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without

limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

15.10 The Supplier shall maintain in force the following minimum insurance policies:

- (a) Public Liability Insurance Policy - limit £5 million per claim;
- (b) Professional Indemnity Insurance Policy - limit £2 million per claim;
- (c) Employers Liability Policy – limit £10 million per claim;
- (d) Cyber Insurance- limit £2 million in the aggregate.

16. CHANGE REQUESTS

- 16.1 Either Party may request changes to any Services (in each case, a **"Change Request"**). Any Change Request shall be made in writing and sent to the Client Representatives or Supplier Representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 16.2 Where the Parties propose a Change Request the Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Fees as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Client shall notify the Supplier whether it accepts or reasonably rejects the Change Request within five (5) Business Days of its receipt of the written estimate.
- 16.3 Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Statement of Work without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into Agreement and Statement of Work and the Supplier shall commence performance of the Change Request accordingly.
- 16.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 16.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Client at Supplier's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Client.

17. CONFIDENTIALITY

- 17.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Statement of Work.
- 17.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its Representatives, in each case under the same conditions of confidentiality as set out in Clause 17.1.
- 17.3 The obligations of confidentiality set out in this Clause 17 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement;

(ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

18. TERM AND TERMINATION

- 18.1 This Agreement shall commence on the Commencement Date and each Statement of Work shall commence on the Services Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties in writing or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Statement of Work shall continue to automatically renew for a Subsequent Term, unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Initial Term or the relevant Subsequent Term, to terminate this Agreement.
- 18.2 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the Client breaches its obligations in Clauses 5.8 and 5.9;
 - (b) the other Party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
 - (c) the other Party breaches any of the terms of Clause 11, Clause 17 or Clause 22; or
 - (d) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 18.3 The Supplier may terminate the Subscription Services immediately on giving written notice to the Client if the Client (i) repeatedly fails to timely report use of the Subscription Services to the Supplier in accordance with Clause 5.7 or (ii) repeatedly or obviously reports (or instructs the Supplier to report) incorrect use of the Subscription Services to the Supplier.
- 18.4 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 18.5 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
 - (b) the Client shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Term (as applicable); (2) any Licence Fees as set out under Clause 14.1; and (3) any termination fees that the Supplier incurs from any of its Third Party Suppliers as a consequence of such early termination. The Supplier shall use reasonable endeavours to mitigate any loss but the Client acknowledges and agrees that any Third Party Supplier fees may not be mitigated by the Supplier and the Client shall not hold the Supplier responsible if it incurs full termination fees; and

- (c) all licences granted under the Agreement will terminate immediately except for fully-paid, fixed term and perpetual licences;
 - (d) for metered Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and
 - (e) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 18.6 Save as provided in Clause 18 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure event, neither Party shall be entitled to terminate a Statement of Work. Termination of a Statement of Work shall not by default, terminate other Statement of Works nor this Agreement.
- 18.7 Termination of any Statement of Work shall be without prejudice to any other rights which any party may have under any other Statement of Work.
- 18.8 If for any reason a contract between a Third Party Supplier and the Supplier relating to the Supplier's right to use, install or support Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Statement of Work (as the case may be) shall automatically terminate, save that where the Agreement or Statement of Work relates to other Services other than that Third Party Service, termination of the Agreement or Statement of Work shall operate only in so far as it relates to such Third Party Services.
- 18.9 Upon termination of this Agreement or a specific Statement of Work for any reason the Supplier will provide to the Client and / or to any new supplier selected by the Client (the "**Successor Service Provider**") such assistance as reasonably requested by the Client in order to effect the orderly transition of the applicable Services, in whole or in part, to the Client or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during any period of notice of termination (the "**Termination Assistance Period**"). Any services required by the Client for the transition of Services during the Termination Assistance Period shall be provided by the Supplier at its then current time and materials fee rate for such period of time and upon such terms as shall be mutually agreed.
- 18.10 Upon termination of the Agreement or a specific Statement of Work (as applicable), the Supplier shall only retain the Client Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Client Data after the three (3) months period has ended.
- 18.11 The provisions of Clauses 7, 9, 11, 12, 12.1, 15, 17, 18, 19, 20 and 22 shall survive termination of any Statement of Work or this Agreement.

19. STAFF TRANSFER AND NON-SOLICITATION

- 19.1 It is not intended that any staff be transferred from the Supplier to the Client or from the Client to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 19.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause

'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.

- 19.3 In the event that either Party is in breach of Clause 19.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either Party's ability to seek injunctive relief.
- 19.4 The Parties hereby acknowledge and agree that the formula specified in Clause 19.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

20. RELIEF EVENTS

Subject to Clause 15.3, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

21. FORCE MAJEURE

- 21.1 The Supplier shall have no liability to the Client under this Agreement and the Client shall have no obligation to pay the Fees if the Supplier is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control except to the extent that the Supplier could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a "**Force Majeure Event**"), provided that:

- (a) the Client is notified of such an event and its expected duration; and
- (b) the Supplier uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

22. ANTI-BRIBERY AND MODERN SLAVERY

- 22.1 The Supplier shall:
- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");
 - (b) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

- 22.2 The Supplier shall procure that any person associated with the Supplier, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on the Supplier in this Clause 22 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.
- 22.3 For the purpose of this Clause 22, 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. For the purposes of this Clause 22 a person associated with the Supplier includes any subcontractor of the Supplier.
- 22.4 In performing its obligations under this Agreement, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

23. **WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

24. **SEVERANCE**

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

25. **ENTIRE AGREEMENT AND AMENDMENT**

- 25.1 This Agreement and its references to further documentation, the Licence Agreements, the Statement of Works and the Customer Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 25.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

25.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

25.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

26. ASSIGNMENT

The Client shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

27. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

28. THIRD-PARTY RIGHTS

This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

29. NOTICES

29.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

29.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

29.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

30. DISPUTE RESOLUTION

30.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

30.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative**"); and
 - (b) notify the other Party in writing of the name and contact information of such Designated Representative.
- 30.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.
- 30.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

31. GOVERNING LAW AND JURISDICTION

- 31.1 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 exclusively governed by and construed in accordance with the law of England and Wales.
- 31.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

DATA PROTECTION SCHEDULE

Data subjects:	Client personnel Client clients Client third parties Business contacts in general
Types of personal data:	Name Job title Email address Phone number Business/home address Date of birth Place of birth Any other personal data provided by Client to the Supplier
Special categories of personal data:	
Purpose of processing:	In the case of data subjects other than staff: for the purpose of providing IT services and support to Client's business. In the case of staff: for the purpose of providing IT services and support for Client's employment and HR matters.
Nature of processing:	As set out in the body of the Agreement.
Approved Sub-Processors:	
Approved international transfers:	
Additional instructions:	