

Terms and conditions (Supplier Terms)

Digital: Software as a Service (SaaS) or Private Cloud

Meganexus is a wholly owned subsidiary of NEC Software Solutions UK Limited

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

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

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

The sections of these Supplier Terms are:

Deployment Method #1: SaaS

Deployment Method #2: Private Cloud

Part 1: Licence Terms

Part 2: Support & Maintenance Terms

Deployment Method #1: Software as a Service

Structure of these Supplier Terms

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

- Meganexus incorporating:
 - COMPLY
 - SDLE
 - GENAIE
 - WISE
 - FAB
 - CAPTR - Case Management
 - CAPTR - Learning Management
 - Bespoke Software Development
 - Secure File Storage

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

General Provisions

Introduction

"SaaS" means software as a service. Each Buyer that subscribes for the Supplier's SaaS is given a right of access to the Supplier's applicable proprietary application software ("**Software**"), via the internet or a private network, for the duration of the SaaS Term. Buyers are not granted a licence to the Software. The Software is hosted either in the Supplier's private cloud or a third party's public cloud. The Supplier's SaaS solutions:

- Always run on the latest version of the Software;
- Unless otherwise stated in the product-specific Annex, are multi-tenanted which means many buyers using the same executables and database;
- Run on a single version of the Software which used by all SaaS buyers; and
- Comprise the right to use the Software and the Documentation and the right to access Software support services, as described below. The Buyer does not have to host the Software or install it on its own premises/hardware.

Onboarding Services for SaaS

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

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

Subject to the paragraph below, the Supplier will use reasonable endeavours to accommodate rescheduling of Onboarding Services and Professional Services at the Buyer's request. However, if

the Buyer seeks to reschedule or postpone Professional Services or Onboarding Services within: (a) 14 to six Business Days of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 50% of the relevant charges; or (b) five Business Days or less of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 100% of the relevant Charges. All days paid for must be utilised within 12 months of the date of the Buyer's Purchase Order.

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

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

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

Access to and use of the SaaS

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

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

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

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

- Authorised User shall keep a secure password for his/her use of the SaaS and Documentation, that such password shall be kept confidential and shall be changed no less frequently than every 90 days; and
- It shall permit the Supplier to audit the SaaS. 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 Buyer's normal conduct of business. If any of the audits referred to in this paragraph reveal that any unauthorised access has occurred, then without prejudice to the Supplier's other rights, the Buyer shall promptly disable such accounts.

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

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

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

- Is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- Facilitates illegal activity;
- Depicts sexually explicit images;
- Promotes unlawful violence;
- Is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- Is otherwise illegal or causes damage or injury to any person or property;

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

The paragraph above shall not apply to the extent only that the SaaS is specifically designed for such purposes and is being used lawfully including for the prevention and/or detection of criminal activity.

The Buyer and its Authorised Users shall not:

- Attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS, except:
 - → As may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; and
 - → To the extent expressly permitted under this Agreement;
- Attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS and/or Documentation (as applicable) in any form or media or by any means; or
- Access all or any part of the Services and Documentation in order to build a product or service which competes with the SaaS and/or the Documentation; or
- Use the SaaS and/or Documentation to provide services to third parties (the Buyer's citizens shall not be deemed to be third parties for the purposes of this paragraph); or
- License, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS and/or Documentation available to any third party except the Authorised Users, or
- Attempt to obtain, or assist third parties in obtaining, access to the SaaS and/or Documentation, other than as provided under this paragraph.

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

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

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

are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's buyers at large.

Security, Disaster Recovery and Back-up Policy

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

Unless otherwise expressly stated in an Annex in relation to a particular SaaS product, the Supplier confirms that:

- The SaaS platform is designed and implemented in accordance with the 27001 baseline control set, the 14 Cloud Security Principles and National Cyber Security Centre (NCSC) guidance. The environment from which the SaaS shall be delivered conforms to the relevant sections of the Government Security Policy Framework and Personnel Security Controls and to all relevant Communications Electronics Security Group Memoranda, Manuals and Standards;
- It shall comply with the Supplier's Privacy and Security Policy relating to the
- privacy and security of the Buyer Data;
- Its information security management system is certified to ISO 27001
- Its quality management system is certified to ISO 9001:2015
- Its service management system operates in accordance with the ITIL framework;
- It conducts annual IT health checks including penetration testing with an independent CHECK consultant. Reports from such IT health checks will be shared with the Buyer; and
- The information assurance process as detailed within the paragraphs above will be periodically revised and updated to ensure alignment with good industry practice.

The Buyer recognises that the SaaS is a hosted, multi-tenanted solution unless stated otherwise in the product-specific Annex. The Buyer Data will be segregated from the data of other buyers using the SaaS and there will be no data sharing facility.

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

The Back-Up Policy is as follows:

- The Supplier takes multiple back-ups within the system as part of the SaaS;
- In the event of any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier; and
- The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Buyer Data maintenance and back-up).

Buyer Obligations

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

- Be responsible for the operation and use of the SaaS and any associated documentation and the results obtained from these;
- Supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement; and
- Provide the Supplier's personnel with full free and safe access to its site where required, to enable the Supplier to perform its obligations under this Agreement.

The Buyer shall in good faith:

- Provide the Supplier with (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary access to such information as may be required by the Supplier in order to provide the SaaS, including but not limited to Buyer Data and security access information;
- Comply with all applicable laws and regulations with respect to its activities under this Agreement;
- Carry out all other Buyer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary and reserves the right to charge the Buyer for any costs incurred by the Supplier as a consequence of such delay;
- Ensure that (where applicable) the Authorised Users use the SaaS and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- Obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the SaaS;
- Ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- Unless expressly stated otherwise in the Particulars, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's public or private cloud (as applicable), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.

SaaS Support Services

The Buyer's Support Team shall provide the following services:

- Infrastructure support up to the Supplier SaaS boundary
- Receive Calls from Authorised Users
- Apply the Buyer's service management processes
- Request Fulfilment (i.e. respond to Service Requests) comprising:
 - ➔ System administration
 - ➔ Application configuration creation of users
 - ➔ Deal with "how do I?" enquiries
 - ➔ Configure additional users
- Incident Management comprising:
 - ➔ Address data quality issues
 - ➔ Observe and accurately record symptoms of an Incident including any testing and subsequent results

- Triage Incidents to establish that the Supplier SaaS is the likely cause of an Incident
- Carry out work on-site to assist the Supplier Support Team in further diagnostics
- Simple investigation and Resolution using diagnostic tools / log files
- Facilitate Resolution by switching to a standby system (if applicable) or from backups or implement a temporary work-around and continue work to apply a permanent Resolution
- Notify the Supplier of any Incident which has been resolved and the steps taken to resolve
- Knowledge Management comprising:
 - Application of available knowledge
 - Generation and maintenance of knowledge articles

Should the Buyer's Support Team be unable to resolve an Incident or fulfil a Service Request, a Call shall be logged with the Supplier. During the SaaS Term the Supplier shall, as part of the SaaS and at no additional cost to the Buyer, provide the Buyer's Support Team access to the Service Desk which operates Monday – Friday from 9:00am to 5:30pm for recording details of Calls. The Buyer's Support Team can use the following methods to contact the Service Desk:

- Telephone (Priority Levels P1, P2, P3, P4 and Service Request);
- Supplier's Customer Portal (Priority Level P3, P4 and Service Request); and
- Email (Priority Level P3, P4 and Service Request).

When contacting the Service Desk to report a Call, the Buyer's Support Team shall provide the following information:

- Caller name (and further contact details if required);
- Name and contact details of the Authorised User experiencing the issue (if applicable);
- Priority;
- A description of the issue including the steps to replicate; and
- A description of the urgency and impact of the issue.

Once these details have been entered into the Supplier's IT service management tool, the Supplier will provide the Buyer's Support Team with a Call reference number, which shall be quoted by the Buyer's Support Team in all further communication with the Supplier in connection with the Call.

Once Calls have been logged, they are passed to a software support team for Resolution (the "**Supplier Support Team**") during Normal Support Hours.

At any stage during the lifecycle of a Call the Buyer's Support Team can enquire on progress status by contacting the Service Desk and quoting the relevant Call reference number.

The Supplier Support Team shall provide:

- Remote support services as detailed in these Supplier Terms;
- New Releases, which may be subject to additional charges;
- Software Patches to resolve incidents/problems; and
- Service Packs as they are made generally available which may be subject to an additional charge if they include new functionality.

The provision of the Support Services is subject to the Buyer providing such information as is reasonably necessary to enable the Supplier to diagnose any Incidents or Problem in the Supplier SaaS.

Service Levels

Calls logged with the Service Desk will be allocated to the Supplier Support Team for Resolution during Normal Support Hours. The Particulars shall specify whether 24x7 support for P1 and P2 Incidents shall apply

Incidents and Service Requests are processed on a Priority Level basis. The Supplier will verify the Priority Level assigned by the Buyer's Support Team on the Call, by reference to the applicable Annex, and the parties will agree a revised Priority Level if appropriate. The final decision on the Priority Level will remain with the Supplier.

In order to perform Incident investigation and Service Request fulfilment, the Supplier may require access to the Authorised User experiencing the issue. The Buyer shall promptly provide such access as and when reasonably requested.

As Calls are progressed, the Supplier will record details of all its contact with the Buyer's Support Team and/or Authorised User.

Once a Call has been resolved, the Supplier Support Team or Service Desk will contact the Buyer's Support Team and the Call will only be closed if both parties are in agreement. Closed Calls cannot be reopened except with the consent of both parties. Should the Supplier not receive confirmation of closure after seven calendar days of requesting the same from the Buyer's Support Team, then the Supplier will automatically close the Incident.

When a Problem is identified which requires a change to the SaaS solution, a Problem will be recorded and a reference number supplied to the Buyer's Support Team; this needs to be quoted in all correspondence with the Supplier relating to that Problem. The corresponding Incident is then closed if a workaround is provided.

Measurement of the Response time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Response time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Response time ends when the Supplier has contacted or attempted to contact, via any means, the Buyer's Support Team to acknowledge receipt of or further discuss a reported Call.

Measurement of the Resolution time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Resolution time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Resolution time ends when the Incident has been resolved and the workaround or permanent fix provided to the Buyer, or the Service Request has been fulfilled (as applicable).

The Supplier SLA clock is paused in certain circumstances including:

- While the Call is outside the scope or control of the Supplier; and
- Outside Normal Support Hours; and
- While the Supplier is awaiting information from the Buyer's Support Team or Authorised User.

In addition, should Supplier personnel be required to attend site, this will be charged for

on a time and materials basis in accordance with the rate card set out in the contract (or if none included in accordance with the Supplier's prevailing rates) plus expenses.

The Supplier will not be liable for any service failure:

- For which the Supplier is not responsible; or
- Which relates to an Additional Service; or
- Which arises as a result of Incidents arising due to factors beyond the Supplier's reasonable control.

The Supplier shall use commercially reasonable endeavours to make the SaaS available to be accessed and used by the Buyer 99.9% of the time, measured during Normal Support Hours, excluding the following periods:

- Planned maintenance (which shall be carried out at such times as are notified to the Buyer, by giving a reasonable period of advance notice); and
- Unscheduled emergency maintenance carried out where there is an identified and demonstrable immediate risk to the SaaS solution.

Service credits shall not apply in the event of breach of the Service Levels.

Service reporting is not provided as part of SaaS.

Additional Services

Additional Services shall be provided at the Supplier's sole discretion and may be subject to additional charges accruing on a time and materials basis based on the Supplier's then prevailing day rates, unless otherwise agreed. Such Additional Services include:

- The provision of health checks either monthly, quarterly or annually;
- The provision of service reporting
- Engagement with respect to a business continuity or disaster recovery testing;
- Attendance on Buyer's site to investigate and resolve an incident or problem;
- Investigation and Resolution of an Incident reported by the Buyer if such reported Incident is not reproducible by the Supplier in the SaaS; and
- Investigate and resolve any Priority 4 Incidents or Problems where costs are likely to be excessive or the commercial benefits to the Supplier's customers at large are likely to be negligible.

The Support Services shall not include the diagnosis or rectification of any Incident which is not attributable to a Problem in the SaaS or which results from any of the following, the diagnosis or rectification of which shall all be considered Additional Services:

- Improper use, operation or neglect of either the SaaS or the equipment and environment on which the Supplier Software is licensed for use; or
- Modification of the SaaS or its merger (in whole or in part) with any other software, without the Supplier's prior written consent; or
- Use of the SaaS on equipment other than the equipment supplied by the Supplier for use with the SaaS or on equipment which does not meet the minimum specification for hardware, operating system and/or Third Party Software published by the Supplier in accordance with the SaaS release information document; or
- Failure by the Buyer to implement recommendations in respect of or solutions to Incidents or Problems previously advised by the Supplier; or
- Any repair, adjustment, alteration or modification of the SaaS by any person other than the Supplier without the Supplier's prior written consent; or
- Use of the SaaS for a technical purpose for which it was not designed; or

- A consequence of infrastructure components or network factors which the Supplier is not responsible for supporting; or
- A failure caused by any other factors outside the reasonable control of the Supplier; or
- Any situation where a reasonably skilled and competent Authorised User would consider assistance from the Supplier to be unnecessary; or
- A consequence of any programming error, virus or disabling code set out in the Third Party Software; or
- Use of SaaS on anything other than Edge or Chrome browsers, unless otherwise stated in the release documentation.

Variations

If a third party supplier to the Supplier increases the fees charged, the Supplier reserves the right at any time to pass these increases onto the Buyer.

The Supplier may, upon six months' prior written notice to the Buyer, modify the SaaS or any part thereof provided that there is no material degradation of the service.

Termination and Consequences of Termination

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

Additional Terms

Regardless of any other provision in the Agreement:

Specification

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

Buyer Policies and consents

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

Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement, (whether in contract, tort (including negligence), under an indemnity, statute or otherwise), to the extent that any losses, damage or defects arise as a result of (but not limited to):
 - the late arrival or non-arrival of Buyer Data or other material from the Buyer;

- errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
 - any actions taken by the Supplier at the Buyer's direction;
 - failure to detect errors in any work performed by the Supplier which the Buyer has undertaken to check;
 - the act and/or omission of a third party (including a subcontractor and/or sub-processor but excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such act/omission; or
 - any other act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.
- the Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use.

Transfer of employees

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

Certifications and Accreditations

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

Offshore Resource

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

Sub-processors

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

COMMERCIAL IN CONFIDENCE

Supplier's Sub-processors will be updated via this link. www.necsws.com/subprocessors. Any changes to the list of the Supplier's Sub-processors will be updated via this link.

Annex: Meganexus

Where the Meganexus suite of products is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex and the General Provisions above, this Annex shall apply.

Use of a third party's public / private cloud

The Buyer acknowledges that the Meganexus suite of products is hosted in a third party environment provided by Microsoft Azure ("MS Azure") using a public cloud solution which, regardless of any other provision in this Agreement, shall be provided in accordance with MS Azure's standard terms & conditions as at the date of signature of the Agreement to the exclusion of all other terms, including in relation to service availability and support. For clarity, the only Service Levels that shall apply to the MS Azure hosting platform component of the Meganexus suite of products are those provided by MS Azure.

The Buyer consents to the use of MS Azure as a sub-processor of personal data for the purpose of providing MS Azure cloud services and acknowledges and agrees to the provision of those services on MS Azure standard terms.

Licence Grant

The SaaS license shall be provided on either a named user basis, or on a per establishment basis as detailed in the Particulars

Exclusion

The Supplier shall have no liability in respect of any defects caused by: relocation, movement, improper operation, neglect or misuse of the Software Modules or the Buyer's failure to maintain proper site or environmental conditions for Authorised Users.

Non-Solicitation

The Buyer will not during the continuance of this Agreement and 2 years after termination or expiry without the Supplier's prior written agreement directly or indirectly solicit or offer employment or engagement to any of the employees of the Supplier who at the time of such solicitation or offer or during a period of six months immediately preceding such action was directly involved with the provision of Services or Maintenance and Support Services pursuant to this Agreement.

SaaS Support Services

The Supplier agrees upon exact Support Levels during contract signing. However, standard support levels are typically:

- Urgent issues - Response time of 1 hour, Resolution time of 1 day.
- High-priority issues - Response time of 4 hours, Resolution time of 2 days.
- Normal priority issues - Response time of 2 days, Resolution within the next software upgrade cycle.
- Low-priority issues - Response time of 5 days, Resolution depending on the availability of the Supplier support team.

The Supplier's Service Desk operates from 9am - 5:30pm on Working Days.

The support costs are included in the license costs. Additional costs for on-site support are detailed in the pricing document, rate card. The Supplier will provide a technical account manager to oversee service delivery.

Availability and resilience

The Supplier commits to 99% availability our SLAs are as follows:

- Urgent Issue: renders core functionality inoperative. No workaround exists. Problem impacts service to Licensee's customers. Response/Resolution time- 1 hour/1 day.
- High Issue: renders part of the core functionality inoperative but does not stop the remaining Software Modules' functioning. The issue impacts service to the Licensee's customers. Response/Resolution time- 4 hours/ 2 days.
- Medium: An issue which has little impact on productivity, for which a workaround exists. Problem/Fault, User Education, Documentation, Query, Training, Product Enhancement Request Response/Resolution time- 2 days/Next Software Upgrade.
- Low issue: Cosmetic issues, Manual/instruction/training problems, Enhancement requests, Training requests. Problem/Fault: User Education, Documentation, Query, Training, Product Enhancement Request Response/Resolution time-5 days/At Supplier's discretion. Refund policies are available on a case-by-case basis.

Approach to resilience

Geographically resilient deployment with data being replicated between 2 geographically separate onshore sites and available for recovery in the event of an outage or if that data is required to be restored from a backup. We use the replicated data as our source for restore, with resilience of components in each data centre.

Glossary

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

"Additional Services"	means any support, maintenance and other services which are outside the scope of the Support Services and which Supplier has agreed to provide;
"Agreement"	means the Call-Off Contract;
"Authorised User(s)"	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier Software and the Documentation;
"Buyer's Support Team"	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier's support service;
"Call"	means notification of an Incident or Service Request by an Buyer's Support Team to the Service Desk in accordance with these Supplier Terms;
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex(es)).
"Group Company"	means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006;
"Incident"	means any event which is not part of the standard operation of the Supplier Software and which causes, or may cause an interruption to, or a reduction in, the quality of that software or service;

“Level 1”	Provides direct services to the Authorised Users, normally through a service desk. They record the call and capture the essential information to support basic triage and the correct routing of the call. They will resolve incidents at the first point of contact and engage with field support personnel and the Supplier as appropriate;
“Level 2”	Provides support on issues assigned to it by Level 1 support. Level 2 support consist of technicians who are well versed in business operations and the applications that support it. Resolvers dedicated to a specific client or group of clients possessing specialised knowledge, skills, and abilities to resolve most incidents.
“Level 3”	Higher level of technical expertise than provided at Level 2. The support provided by technical specialists with an in-depth understanding of the systems architecture, technologies, and service integration. Level 3 support is responsible for detailed problem investigation and the development and release of fixes and changes.
“Major Release”	means a new version of the Supplier Software containing major functional enhancements, normally designated by an increase in the first digit of the Version Number (e.g. V1.3 to V2.0). Major Releases will consolidate all previous versions of the Supplier Software;
“Minor Release”	means a new version of the Supplier Software containing significant functional or operational enhancements, normally designated by an increase in the second digit of the Version Number (e.g. V1.1 to V1.2). Minor Releases will consolidate all previous versions of the Supplier Software;
“New Release”	means any new Major Release or Minor Release provided by the Supplier;
“Normal Support Hours”	means Monday to Friday 09:00 – 17:00 (eight hours) UK Time excluding bank and public holidays in England and Wales;
“Particulars”	means the Order Form;

"Patch"	means software provided by the Supplier to resolve a specific reported Incident in the Supplier Software;
"Priority"	means the priority level of the Call reasonably specified by the Buyer's Support Team, and agreed by the Supplier, according to the criteria set out in the applicable Annex;
"Problem"	means the unknown underlying root cause of one or more Incidents;
"Processor" and "Personal Data"	take the meaning given in the UK GDPR
"Resolution"	means action which will resolve an Incident which may be a Workaround;
"Response"	means contact via any means made by the Supplier to the Buyer's Support Team or Authorised User in response to a Call reported via the Service Desk;
"Service Desk"	means the Supplier's service desk detailed in these Supplier Terms;
"Service Level"	means the service levels (as set out in these Supplier Terms) which apply in respect of the Support and Maintenance Services;
"Service Pack"	means a version of the Supplier Software which consolidates all previous Patches and service packs. Under some circumstances Service Packs may also include minor functional enhancements;
"Service Period"	a service period shall be a calendar month;
"Service Request"	means a Buyer's Support Team request for information or advice and guidance.;
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms;

"Supplier Software"	means the Supplier's proprietary software specified in the Agreement including any New Release, Service Pack and/or Patch provided pursuant to the Support Services;
"Support Charge"	means the fee specified in the Agreement which is payable by the Buyer for the provision of the Support Services;
"Support Services"	means the support and maintenance services which are provided by the Supplier as detailed in these Supplier Terms;
"Third Party Software"	means software which is proprietary to a party other than the Supplier and licensed to the Buyer by the Supplier;
"UK GDPR"	means Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer's Support Team
"Version Number"	means a unique identifier associated with each new version of the Supplier Software, conforming to the format A.B.C.D where: "A" is the Major Release number; "B" is the Minor Release number; "C" is the Service Pack number; and "D" is the Patch number;
"Workaround"	means a method of avoiding an Incident or Problem either by a temporary fix or by a technique that means the Buyer's Support Team

is not reliant on a particular aspect of the Supplier Software that is known to have an issue.

Deployment Method #2: Private Cloud

Part 1 of 2: Licence Terms

Structure of these Supplier Terms

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

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

General Provisions

Software Licence Grant

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

- the Buyer uses only one copy of the Software for live operations;
- the Buyer pays the Licence Charges in accordance with this Agreement;
- the Buyer does not delete, amend or otherwise alter any copyright or other ownership notices or legends displayed, contained in or attached to the Software and Documentation;
- the Buyer does not decompile or reverse engineer the Software, save where the necessary information has not been made available by the Supplier and save as expressly permitted by the EU Software Directive – Council Directive no. 2009/24/EC as enshrined into UK legislation by the European Union (Withdrawal) Act 2018 as amended from time to time;
- save as provided in these Supplier Terms, the Buyer may not assign, transfer, sub-licence, sell, trade or otherwise deal in, lease, encumber, market, rent, disclose, publish technical details of (including the results of benchmark or other tests), copy, modify, enhance, convert or translate the Software or Documentation;
- the Buyer does not store, distribute or transmit any viruses, or any material through the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- the paragraph above shall not apply to the extent only that the Software is specifically designed for such purposes and is being used lawfully including for the prevention, detection and/or prosecution of criminal activity;

- the Buyer does not exceed any of the restrictions set out within this Agreement (including as set out in the Particulars or in any applicable Annex) such as the number of Authorised Users, number of concurrent or named users, number of Council Tax Properties;
- subject to the APIs section and End User Rights section below, the Buyer does not permit any third party to Use the Software or Documentation;
- subject to the End User Rights section below, the Buyer does not Use the Software or Documentation on behalf of or for the benefit of or to provide services to any third party;
- the Buyer does not access all or any part of the Software in order to build a product or service which competes with the Software and/or the Services, or attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under these Supplier Terms;
- the Buyer shall use reasonable endeavours to prevent any unauthorised access to, or Use of, the Software and it shall notify the Supplier promptly of any such unauthorised access or Use;
- in the event the Buyer is subject to a material restructuring, including but not limited to a merger with any third party organisation, including another local authority or other public body, it shall be construed as a proposed change to the Agreement which is subject to the prior written agreement of the Supplier in order inter alia to make any consequential changes to the scope of the Software licence, which will not unreasonably be withheld.

Implementation and Testing

- The Supplier will deliver one copy of the Software which the Buyer will be responsible for installing and implementing (except to the extent that the Supplier has agreed otherwise in writing to provide Services to assist with the installation and implementation), together with one copy of the Documentation.
- Regardless of any other provision in the Agreement:-
 - where the Supplier has agreed to provide any Professional Services to assist with the installation and/or integration of the Software, the Software shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out, or test documentation or test criteria that the Buyer requires the Supplier to comply with, must be agreed in writing between the parties and may be chargeable;
 - where the Buyer has not requested any Professional Services to assist with the installation and/or integration of the Software
 - acceptance shall occur automatically if the Buyer has failed to advise the Supplier within 14 days of delivery of the Software by the Supplier of any material non-compliance with the Documentation;
 - where the Buyer has advised the Supplier of any material non-compliance within the 14 day period specified above, the Supplier shall either replace the Software or rectify the relevant non-compliance, using reasonable endeavours to meet any previously agreed delivery or lead times;
 - promptly following delivery and (if applicable) completion of testing of the Software (or Software module(s)) by the Supplier, the Buyer shall provide written confirmation of acceptance of the Software (or relevant Software module(s)); and

- the Buyer shall be deemed to accept the Software, and such acceptance shall be irrevocable, if the Software is used by the Buyer in a live environment and/or for any live operations.

Audit Rights

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

APIs

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

- the Buyer must hold sufficient, current licences of any the Supplier Software accessed via the APIs and must have a support agreement in place in respect of such the Supplier Software; and
- the Buyer will only Use the API to interface IT applications, solutions or components which are utilised by the Buyer with the Supplier Software to achieve an **"Interfaced Solution"**; and
- the Interfaced Solution will not be Used by any party other than the Buyer; and
- the Buyer will use all reasonable precautions to prevent viruses or other malicious software from being introduced onto or into the Supplier Software and/or the Supplier's IT facilities and systems; and
- if the Supplier provides a hosted or cloud service to the Buyer, the Supplier reserves the right to (i) use metering technology to monitor use of the Supplier platform (including but not limited to disk space, networks, servers and support); and (ii) levy additional reasonable charges upon the Buyer if and to the extent use by the Buyer of the APIs places additional burden on the Supplier platform causing the Buyer to exceed its contracted usage; and
- the Supplier shall not be liable for any unavailability, incidents or other failure of the Software to operate or perform in accordance with the Service Levels or any other aspect of the Agreement as a result of any act or omission of the Buyer or any third party over which the Supplier has no control; and
- the Buyer may grant a sub-licence to the API to a named API User subject to:
 - the Buyer obtaining the Supplier's prior written consent; and

- the Buyer entering into a written sub-licence agreement with the API User on the same licence terms as those which apply to the Buyer subject to express provisions which: (i) preclude the API User from any further right to sub-licence; and (ii) confer a right on the Supplier to enforce the sub-licence terms under the Contracts (Rights of Third Parties) Act 1999; and
- the Buyer hereby indemnifies the Supplier against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of any act or omission of the API User, irrespective of any other provisions in this Agreement.

End User Rights

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

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

Termination

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

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

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

Intellectual Property Rights

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

Software Warranty

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

Third Party Software

- If the Buyer is taking delivery of any Third Party Software the following additional terms shall apply regardless of any other provision in this Agreement:
 - ➔ Third Party Software is licensed pursuant to the relevant licence terms supplied to the Buyer, receipt of which is hereby acknowledged, and such terms shall apply as if incorporated in this Agreement. Where required, the Buyer shall enter into the applicable end user licence agreement with the relevant third party;
 - ➔ the only warranties provided in relation to Third Party Software are those provided by the relevant licensor, and the Supplier shall use reasonable endeavours to confer the benefit of any such warranties to the Buyer;
 - ➔ in the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Third Party Software to the Supplier for any reason, then the Supplier shall be entitled to suspend or terminate the provision of such Third Party Software to the Buyer under this Agreement;
 - ➔ except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement, to the extent that any claims, losses, damage or defects arise as a result of (but not limited to) the acts or omissions of any third party (excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such acts and/or omissions; and
 - ➔ the Supplier accepts no liability for infringement of third party Intellectual Property Rights in respect of the Use or possession by the Buyer of the Third Party Software.

Buyer Responsibilities

- Except where the Supplier has specifically agreed in writing to provide such services, the Buyer will:
 - ➔ promptly agree with the Supplier a specification for and make available hardware, operating system and communications/networking facilities to enable the Supplier to meet its obligations under this Agreement without delay;

- be responsible for the selection, installation, management, operation and use of the Software and any associated documentation and the results obtained from these; and
- be responsible for, take and validate, regular back-up copies of its data used in connection with the Software and keep the back-up copies and media safe.
- Where the Software includes the document production facility (NEC Document Services), the Buyer shall be granted access to NEC Document Services for the production of documents and will support the technical requirements as set out in the technical configuration documentation.

IPR Indemnity

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

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

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

- the Buyer's use of a modified version of the Supplier Software, where such modifications were not approved or undertaken by the Supplier; or
- the Buyer's use of a de-supported version of the Supplier Software without the consent of the Supplier; or
- the combination, or use, of the Supplier Software and any equipment or software not supplied or approved in writing by the Supplier; or
- the Buyer's use of the Supplier Software other than as authorised under this Agreement.

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

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

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

Additional Terms

Regardless of any other provision in the Agreement:

Specification

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

Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement (whether in contract, tort (including negligence), under an indemnity, statute or otherwise), to the extent that any losses, damage or defects arise as a result of (but not limited to):
 - errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
 - any act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.
- the Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use;
- the Buyer is solely responsible for (i) the use of robotic process automation and any automated tools that are not provided by the Supplier, which are used by the Buyer to interact with any Supplier Software; and (ii) for the consequential impact of any such use including any impact on the Supplier Software.
- all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Licence Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

Certifications and Accreditations

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

Sub-processors

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

Glossary

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

"Agreement"	means the Call-Off Contract.
"API"	means the Supplier's (or applicable third party licensor's) proprietary application programming interface which is licensed by the Supplier under the terms of this Agreement.
"API User"	means any third party acting in a technical capacity on the Buyer's or End User's behalf (as applicable) to use an API to create an Interfaced Solution.
"Authorised User"	means those employees and independent contractors of the Buyer who are authorised to Use the Software by the Buyer.
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex(es)).
"Documentation"	means the written and/or online descriptions of the Software's features, functions and methods of operation and the instructions provided for its Use.
"End User"	means any third party identified as such in the Agreement for whose benefit the Supplier and the Buyer enter into this Agreement.
"Group Company"	means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006;
"Intellectual Property Rights" or "IPR"	means any intellectual property rights including any patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright and related rights, rights in computer software, database rights, know-how, goodwill, trade or business names and other similar rights or obligations

	whether registrable or not, which subsist now or in the future in any country including but not limited to the UK.
"Interfaced Solution"	has the meaning set out in the APIs section above.
"Licence Charges"	means the applicable charges for the Software licence(s) granted under this Agreement, as specified in the Particulars.
"Licence Term"	means the applicable duration of the Software licence granted under this Agreement, as specified in the Particulars or other relevant part of this Agreement.
"Particulars"	means the Order Form.
"Partner Organisation"	means any third party nominated by the Buyer which is collaborating with the Buyer in the delivery of the Buyer's services.
"Property"	means a building or a plot of land owned, operated and/or managed by the Buyer, and for which the Buyer provides property or tenancy management services.
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms.
"Supplier Software"	means Software which is proprietary to the Supplier.
"Third Party Software"	means Software which is proprietary to a third party.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer.

Deployment Method #2: Private Cloud

Part 2 of 2: Support and Maintenance

Structure of these Supplier Terms

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

- Meganexus incorporating:
 - COMPLY
 - SDLE
 - GENAIE
 - WISE
 - FAB
 - CAPTR - Case Management
 - CAPTR - Learning Management
 - Bespoke Software Development
 - Secure File Storage

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

Introduction

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

“On-Premise” means the Supplier Software is installed on the Buyer premises or a cloud environment provisioned by the Buyer.

These Support and Maintenance terms apply where the Supplier Software is provided On-Premise, where the Supplier is also providing hosting/cloud services, alternative terms shall apply.

Buyer Obligations

The Buyer’s Support Team shall provide the following services as a Level 1 support provider:

All communications with the Supplier and its sub-contractors shall be in English

Infrastructure support

Application of operating system and antivirus updates

A managed DBA service e.g. DBA, excluding support for the database schema (tables, views and stored procedures only), which is the responsibility of the Supplier

Maintaining, storing and making accessible licence keys/media as required

Maintenance of the data stored within the database

Ensuring backups are taken and are available to be used.

Provision of a direct service to the Authorised Users normally through their service desk

Receive Calls from Authorised Users

Apply the Buyer's service management processes

Request Fulfilment (i.e. respond to Service Requests) comprising:

- System administration

- Application configuration including CV lists, creation of users

- Deal with "how do I?" enquiries

- Configure additional users

Incident Management comprising:

- Address data quality issues

- Observe and accurately record symptoms of an Incident including any testing and subsequent results

- Carry out appropriate tests and diagnostics on the system to establish potential causes

- Perform basic triage and ensure correcting routing of the Incident for resolution

- Carry out work on-site to assist the Supplier Support Team in further diagnostics

- Replicate and troubleshoot issues on a test system managed by the Buyer to ensure the issue is not environmental

- Stop and restart of the Supplier Software

- Provide suitable remote access to the Supplier. The Buyer will be responsible for any costs associated with implementing and maintaining the remote access solution

- Provision of administrative access to the database, Supplier Software and the infrastructure/environment on which it is installed to the Supplier

- Simple software investigation and resolution using diagnostic tools / log files

- Implement Resolution by switching to a standby system (if applicable) or from backups or implement a temporary work-around and continue work to apply a permanent Resolution

- Notify the Supplier of any Incident or Problem which has been resolved and the steps taken to resolve

Knowledge Management comprising:

- Application of available knowledge

- Generation and maintenance of knowledge articles

Release Management comprising:

- Implement software fixes, patches and releases using the installer software

- Configure software at point of implementation

Change management comprising:

- Agree applicable planned maintenance which requires downtime in writing as required

Support Services

Should the Buyer's Support Team be unable to resolve an Incident or fulfil a Service Request, a Call shall be logged with the Supplier. During the Support Term the Supplier shall, provide a Level 2 & 3 support service and provide the Buyer's Support Team access to record a Call with Supplier which operates 24x7x365. The Buyer's Support Team can use the following methods to contact the Supplier:

- Telephone (Priority Levels P1, P2, P3, P4 and Service Request);
- Supplier's Customer Portal (Priority Level P3, P4 and Service Request); and
- Email (Priority Level P3, P4 and Service Request).

When contacting the Supplier to report a Call, the Buyer's Support Team shall provide the following information as a minimum:

- Caller name (and further contact details if required);
- Name and contact details of the Authorised User experiencing the issue (if applicable);
- Suggested Call Priority;
- A description of the issue including the steps to replicate; and
- A description of the urgency and impact of the issue.

Once these details have been entered into the Supplier's IT service management tool, the Supplier will provide the Buyer's Support Team with a Call reference number, which shall be quoted by the Buyer's Support Team in all further communication with the Supplier in connection with the Call.

Once Calls have been logged, they are passed to a software support team for resolution (the "**Supplier Support Team**") during Normal Support Hours.

At any stage during the lifecycle of a Call the Buyer's Support Team can enquire on progress status by contacting the Supplier and quoting the relevant Call reference number.

Scope of Support Services for the Supplier Software

The Supplier Support Team shall provide the following services in respect of the Supplier Software:

remote support services as detailed in these Supplier Terms;

Provision of Supplier Support Teams who are well versed in business operations and the applications that support it. The Supplier Support Team will have specialised knowledge, skills and abilities in relation to the Supplier Software. This will include, where necessary, access to technical specialists who have an in-depth understanding of the architecture, technologies and service integration of the Supplier Software.

New Releases, which may be subject to an additional charge;

Software Patches to resolve Incidents/Problems;

Service Packs as they are made generally available, which may be subject to an additional charge if they include new functionality.

The Buyer is responsible for implementing any New Releases, Service Packs and Patches supplied by Supplier as follows unless otherwise advised by the Supplier:

Patches – within 24 hours of being made available;
Service Pack – within 60 days of being made available;
Minor Release - within 3 months of being made available;
Major Release – within 6 months of being made available.

The provision of the Support Services is subject to the Buyer:

Fulfilling the Buyer obligations as defined in these Supplier Terms

providing such information as is reasonably necessary to enable the Supplier to diagnose any Incidents in the Supplier Software;

using the current or immediately preceding Version Number of the Supplier Software (n-1); and

operating on a compatible version of the relevant operating system software and recommended infrastructure.

Service Levels

Calls logged with the Supplier will be allocated to the appropriate Supplier Support Team for Resolution during Normal Support Hours. The Particulars shall specify whether 24x7 support for P1 and P2 Incidents shall apply.

Incidents and Service Requests are processed on a Priority Level basis. The Supplier will verify the Priority Level assigned by the Buyer's Support Team on the Call, by reference to the applicable Annex, and the parties will agree a revised Priority Level if appropriate. The final decision on the Priority Level will remain with the Supplier.

In order to perform Incident investigation and Service Request fulfilment, the Supplier may require access to the Authorised User experiencing the issue, and/or the infrastructure on which the Supplier Software runs. The Buyer shall promptly provide the Supplier with remote access as and when reasonably required. If remote access is unavailable the Service Levels in the applicable Annex shall not apply. The Supplier shall use reasonable endeavours only to provide the Support & Maintenance services.

As Calls are progressed, the Supplier will record details of all its contact with the Buyer's Support Team and/or Authorised User.

Once a Call has been resolved, the Supplier will contact the Buyer's Support Team and the Call will only be closed if both parties are in agreement. Closed Calls cannot be reopened except with the consent of both parties. Should the Supplier not receive confirmation of closure after seven calendar days of requesting the same from the Buyer's Support Team, then the Supplier will automatically close the Incident.

When a Problem is identified which requires a software change, a Problem will be recorded and a reference number supplied to the Buyer's Support Team; this needs to be quoted in all correspondence with the Supplier relating to that Problem. The corresponding Incident is then closed if a Workaround is provided.

Measurement of the Response time begins at the earliest point in time during Normal Support Hours at which the Call is logged with or by the Supplier, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Response time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Response time

ends when the Supplier has contacted or attempted to contact, via any means, the Buyer's Support Team to acknowledge receipt of or further discuss a reported Call.

Measurement of the Resolution time begins at the earliest point in time during Normal Support Hours at which the Call is logged with or by the Supplier, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Resolution time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Resolution time ends when the Incident has been resolved and the workaround or permanent fix provided to the Buyer, or the Service Request has been fulfilled (as applicable).

The Supplier SLA clock is paused in the following circumstances, including:

- while the Call is outside the scope or control of Supplier
- outside Normal Support Hours
- while the Supplier is awaiting information from the Buyer's Support Team or Authorised User
- awaiting remote access.

If the Buyer fails to provide such access, or the access is unavailable, incident resolution activities would need to be undertaken without remote access and therefore such incidents shall be exempt from the response, resolution and permanent fix targets until such time as the Authorised User or remote access becomes available. In addition, should Supplier personnel be required to attend site, this will be charged for on a time and materials basis in accordance with the rate card set out in the contract (or if none included in accordance with the Supplier's prevailing rates) plus expenses.

The Supplier will not be liable for any service failure:

for which the Supplier is not responsible; or

which relates to an Additional Service; or

which arises as a result of Incidents arising due to factors beyond the Supplier's reasonable control.

The Supplier shall use commercially reasonable endeavours to make the Supplier Software available to be accessed and used by the Buyer, excluding the following periods:

planned maintenance (which shall be carried out at such times as are notified to the Buyer, by giving a reasonable period of advance notice); and

unscheduled emergency maintenance carried out where there is an identified and demonstrable immediate risk to the solution.

Service credits shall not apply.

Service reporting is not provided.

Additional Services

Additional Services shall be provided at the Supplier's sole discretion and may be subject to additional charges accruing on a time and materials basis based on the Supplier's then prevailing day rates, unless otherwise agreed. Such Additional Services include:

The support of any environment other than a single production environment

The provision of health checks either monthly, quarterly or annually

The provision of service reporting

Engagement with respect to a business continuity or disaster recovery testing

Attendance on Buyer's site to investigate and resolve an incident or problem

Deployment of releases

Assistance or advice in relation to Buyer supplied hardware or software

Investigation and resolution of an Incident reported by the Buyer if such reported Incident is not reproducible by the Supplier in the Supplier Software

Where the Buyer elects that a Priority 4 Incident or Problem is investigated and resolved, where the Supplier has previously deemed that such investigation and resolution is excluded on the basis that the costs are likely to be excessive or the commercial benefits to the Buyer are likely to be negligible.

The Supplier may from time to time develop New Releases of the Supplier Software which will be made available to the Buyer. The Supplier reserves the right to charge for such New Releases.

Exclusions

The Support Services shall not include the diagnosis or rectification of any Incident which is not attributable to a Problem in the Supplier Software or which results from any of the following, the diagnosis or rectification of which shall all be considered Additional Services:

improper use, operation or neglect of either the Supplier Software or the equipment and environment on which the Supplier Software is licensed for use; or

modification of the Supplier Software or its merger (in whole or in part) with any other software, without the Supplier's prior written consent; or

use of the Supplier Software on equipment other than the equipment supplied by the Supplier for use with the Supplier Software or on equipment which does not meet the minimum specification for hardware, operating system and/or Third Party Software published by the Supplier in accordance with the Supplier Software release information document; or

failure by the Buyer to implement recommendations and Workarounds in respect of or solutions to Incidents or Problems previously advised by the Supplier; or

any repair, adjustment, alteration or modification of the Supplier Software by any person other than the Supplier without the Supplier's prior written consent; or

use of the Supplier Software for a technical purpose for which it was not designed; or

a consequence of infrastructure components or network factors which the Supplier is not responsible for supporting; or

a failure caused by any other factors outside the reasonable control of the Supplier; or

any situation where a reasonably skilled and competent Authorised User would consider assistance from the Supplier to be unnecessary; or

a consequence of any programming error, virus or disabling code set out in the Third Party Software.

Investigation and resolution of any Priority 4 Incidents or Problems where costs are likely to be excessive or the commercial benefits to the Buyer are likely to be negligible.

Variations

If a third party supplier increases the fees charged, the Supplier reserves the right at any time to pass these increases onto the Buyer.

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

The Supplier may, upon six months prior written notice to the Buyer, modify the Support Services or any part thereof provided that there is no material degradation of the service.

Termination and consequences of Termination

In the event the Supplier elects to withdraw Support and Maintenance Services for a particular item of Software, it may do so without liability provided it has given the Buyer not less than six months' prior written notice.

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

Third Party Deliverables

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

Configuration Management (Patches and Version Changes) For On-Premise Software

All New Releases, Service Packs and Patches are sequential and cumulative and should be applied in the order issued unless advised otherwise by the Supplier. Patches provide emergency fixes and are generally only supplied in response to high priority Incidents raised by the Buyer. New Releases, Service Packs and Patches must be installed by the Buyer when so advised by the Supplier.

Any given release of the Supplier Software will only be supported when running on hardware, operating systems and Third Party Software platforms which meet the specification stated in the Supplier Software release information document.

The release documentation for each New Release shall specify the particular requirements for the New Release. Where necessary this will include information about the minimum specification for hardware, operating systems and other software and any other changes which need to be made to the environment to support the New Release.

Additional Terms

Regardless of any other provision in the Agreement:

Specification

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

Buyer Policies and consents

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

Exclusions

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

Transfer of employees

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

- any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Intellectual Property Rights

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

Certifications and Accreditations

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

Third Party Deliverables

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

Offshore Resource

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

Sub-processors

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

Annex: Meganexus

Where the Meganexus suite of products is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex and the General Provisions above, this Annex shall apply.

Use of a third party's public / private cloud

The Buyer acknowledges that the Meganexus suite of products is hosted in a third party environment provided by Microsoft Azure ("MS Azure") using a public cloud solution which, regardless of any other provision in this Agreement, shall be provided in accordance with MS Azure standard terms & conditions as at the date of signature of the Agreement to the exclusion of all other terms, including in relation to service availability and support. For clarity, the only Service Levels that shall apply to the MS Azure hosting platform component of the Meganexus suite of products are those provided by MS Azure.

The Buyer consents to the use of MS Azure as a sub-processor of personal data for the purpose of providing MS Azure cloud services and acknowledges and agrees to the provision of those services on MS Azure standard terms.

Exclusion

The Supplier shall have no liability in respect of any defects caused by: relocation, movement, improper operation, neglect or misuse of the Software Modules or the Buyer's failure to maintain proper site or environmental conditions for the Authorised Users.

Non-Solicitation

The Buyer will not during the continuance of this Agreement and 2 years after termination or expiry without the Supplier's prior written agreement directly or indirectly solicit or offer employment or engagement to any of the employees of the Supplier who at the time of such solicitation or offer or during a period of six months immediately preceding such action was directly involved with the provision of Services or Maintenance and Support Services pursuant to this Agreement.

Professional Services

The Supplier will provide consulting services as described below as agreed between the Supplier and the Buyer. Such services will be charged according to the published Rate Card.

SaaS Support Services

The Supplier agrees upon exact Support Levels during contract signing. However, standard support levels are typically:

- Urgent issues - Response time of 1 hour, Resolution time of 1 day.
- High-priority issues - Response time of 4 hours, Resolution time of 2 days.

- Normal priority issues - Response time of 2 days, Resolution within the next software upgrade cycle.
- Low-priority issues - Response time of 5 days, Resolution depending on the availability of the Supplier support team.

The support costs are included in the license costs. Additional costs for on-site support are detailed in the pricing document, rate card. The Supplier will provide a technical account manager to oversee service delivery.

Availability and resilience

The Supplier commits to 99% availability our SLAs are as follows:

- Urgent Issue: renders core functionality inoperative. No workaround exists. Problem impacts service to Licensee's customers. Response/Resolution time- 1 hour/1 day.
- High Issue: renders part of the core functionality inoperative but does not stop the remaining Software Modules' functioning. The issue impacts service to the Licensee's customers. Response/Resolution time- 4 hours/ 2 days.
- Medium: An issue which has little impact on productivity, for which a workaround exists. Problem/Fault, User Education, Documentation, Query, Training, Product Enhancement Request Response/Resolution time- 2 days/Next Software Upgrade.
- Low issue: Cosmetic issues, Manual/instruction/training problems, Enhancement requests, Training requests. Problem/Fault: User Education, Documentation, Query, Training, Product Enhancement Request Response/Resolution time-5 days/At Supplier's discretion. Refund policies are available on a case-by-case basis.

The Supplier's Service Desk operates from 9am - 5:30pm on Working Days.

Approach to resilience

Geographically resilient deployment with data being replicated between 2 geographically separate onshore sites and available for recovery in the event of an outage or if that data is required to be restored from a backup. We use the replicated data as our source for restore, with resilience of components in each data centre.

Glossary

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

"Additional Services"	means any support, maintenance and other services which are outside the scope of the Support Services and which Supplier has agreed to provide;
"Agreement"	means the Call-Off Contract;
"Authorised User(s)"	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier Software and the Documentation;
"Buyer's Support Team"	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier's support service;
"Call"	means notification of an Incident or Service Request by an Buyer's Support Team to the Service Desk in accordance with these Supplier Terms;
"Deliverable(s)"	means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex(es)).
"Group Company"	means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006;
"Incident"	means any event which is not part of the standard operation of the Supplier Software and which causes, or may cause an interruption to, or a reduction in, the quality of that software or service;
"Level 1"	Provides direct services to the Authorised Users, normally through a service desk. They record the

call and capture the essential information to support basic triage and the correct routing of the call. They will resolve incidents at the first point of contact and engage with field support personnel and the Supplier as appropriate;

“Level 2”

Provides support on issues assigned to it by Level 1 support. Level 2 support consist of technicians who are well versed in business operations and the applications that support it. Resolvers dedicated to a specific client or group of clients possessing specialised knowledge, skills, and abilities to resolve most incidents.

“Level 3”

Higher level of technical expertise than provided at Level 2. The support provided by technical specialists with an in-depth understanding of the systems architecture, technologies, and service integration. Level 3 support is responsible for detailed problem investigation and the development and release of fixes and changes.

“Major Release”

means a new version of the Supplier Software containing major functional enhancements, normally designated by an increase in the first digit of the Version Number (e.g. V1.3 to V2.0). Major Releases will consolidate all previous versions of the Supplier Software;

“Minor Release”

means a new version of the Supplier Software containing significant functional or operational enhancements, normally designated by an increase in the second digit of the Version Number (e.g. V1.1 to V1.2). Minor Releases will consolidate all previous versions of the Supplier Software;

“New Release”

means any new Major Release or Minor Release provided by the Supplier;

“Normal Support Hours”

means Monday to Friday 09:00 – 17:00 (eight hours) UK Time excluding bank and public holidays in England and Wales;

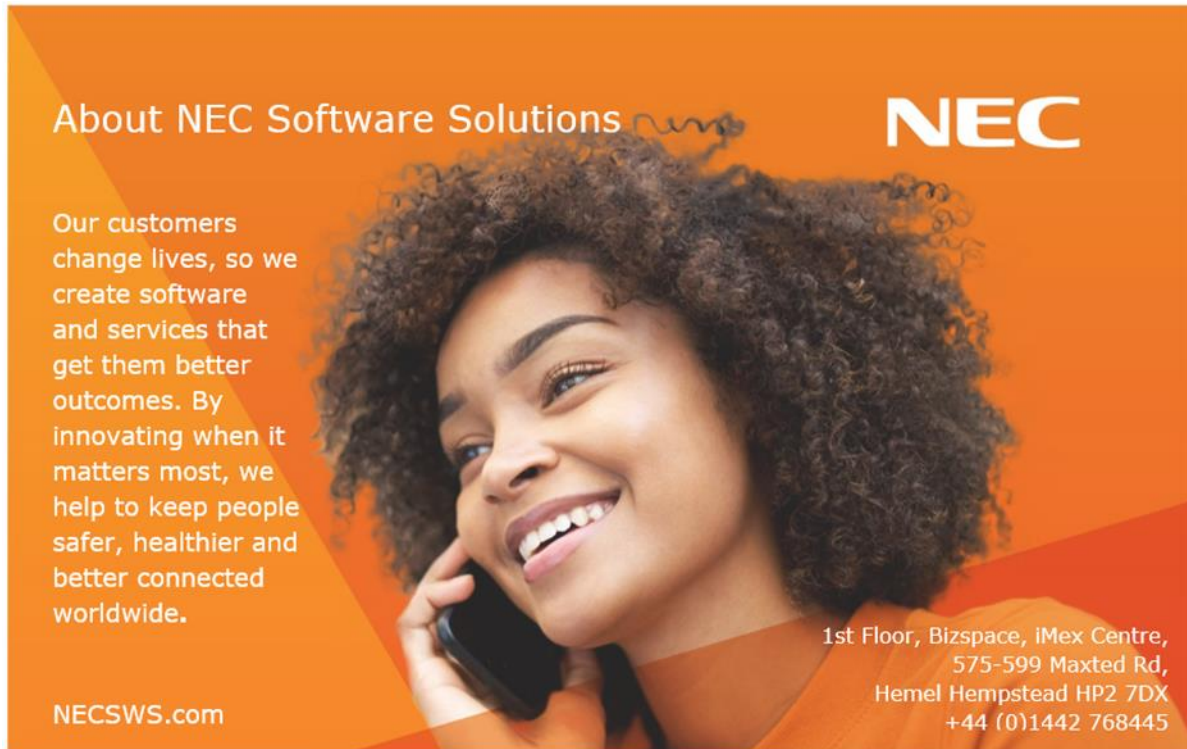
“Particulars”

means the Order Form;

"Patch"	means software provided by the Supplier to resolve a specific reported Incident in the Supplier Software;
"Priority"	means the priority level of the Call reasonably specified by the Buyer's Support Team, and agreed by the Supplier, according to the criteria set out in the applicable Annex;
"Problem"	means the unknown underlying root cause of one or more Incidents;
"Processor" and "Personal Data"	take the meaning given in the UK GDPR
"Resolution"	means action which will resolve an Incident which may be a Workaround;
"Response"	means contact via any means made by the Supplier to the Buyer's Support Team or Authorised User in response to a Call reported via the Service Desk;
"Service Desk"	means the Supplier's service desk detailed in these Supplier Terms;
"Service Level"	means the service levels (as set out in these Supplier Terms) which apply in respect of the Support and Maintenance Services;
"Service Pack"	means a version of the Supplier Software which consolidates all previous Patches and service packs. Under some circumstances Service Packs may also include minor functional enhancements;
"Service Period"	a service period shall be a calendar month;
"Service Request"	means a Buyer's Support Team request for information or advice and guidance.;
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms;

"Supplier Software"	means the Supplier's proprietary software specified in the Agreement including any New Release, Service Pack and/or Patch provided pursuant to the Support Services;
"Support Charge"	means the fee specified in the Agreement which is payable by the Buyer for the provision of the Support Services;
"Support Services"	means the support and maintenance services which are provided by the Supplier as detailed in these Supplier Terms;
"Third Party Software"	means software which is proprietary to a party other than the Supplier and licensed to the Buyer by the Supplier;
"UK GDPR"	means Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer's Support Team
"Version Number"	means a unique identifier associated with each new version of the Supplier Software, conforming to the format A.B.C.D where: "A" is the Major Release number; "B" is the Minor Release number; "C" is the Service Pack number; and "D" is the Patch number;
"Workaround"	means a method of avoiding an Incident or Problem either by a temporary fix or by a technique that means the Buyer's Support Team

is not reliant on a particular aspect of the Supplier Software that is known to have an issue.



About NEC Software Solutions 

Our customers change lives, so we create software and services that get them better outcomes. By innovating when it matters most, we help to keep people safer, healthier and better connected worldwide.

NECSWS.com

1st Floor, Bizspace, IMex Centre,
575-599 Maxted Rd,
Hemel Hempstead HP2 7DX
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