

COMMERCIAL IN CONFIDENCE

APTEM MASTER SERVICES AGREEMENT

between

Aptem Ltd

and

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THIS MASTER SERVICES AGREEMENT is made on

between

Aptem Ltd, a private company incorporated in England (Company number 06824227) and having its registered office at Eagle Point, 167 City Road, Old Street, London, EC1V 1AW ("**AL**");

and

("Customer").

(each a "**Party**", together, the "**Parties**")

BACKGROUND

AL has agreed to provide the Services (as defined below and in the Schedules to this Agreement and in Service Order Forms entered into between the Parties during the period of this Agreement) to the Customer on the terms and conditions set out in this Agreement.

The terms of this Agreement are:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

"Account Setup Fee" means the setup charge referred to in a Service Order Form;

"Administrators" means the Administrators as defined in each applicable Service Order Form;

"Affiliate" means a person that directly or indirectly, controls, is controlled by or is under common control with either the Customer or AL (as appropriate); where "control" means the possession of the power to direct the management through the ownership of voting securities, by contract or otherwise; or (b) the ownership of at least fifty percent of the outstanding voting securities or other ownership interests;

"Agreement" means this Master Services Agreement together with the Schedules and Service Order Forms and other documents incorporated by reference in them, as may be amended from time to time;

"Anti-Corruption Laws" means (a) the Bribery Act 2010; and (b) any anti-bribery or anti-corruption related provisions in criminal and anti-competition laws and/or anti-bribery or anti-corruption laws of the jurisdiction in which AL provides the Services, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;

"Business Day" means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England;

"Clause" means a clause of this Agreement;

"Customer Personal Data" means any Personal Data in respect of which the Customer is the Data Controller and which the Customer provides to AL for the purpose of providing the Services;

"Customer Property" means all items of property (including equipment) issued to AL by or on behalf of the Customer for the purpose of carrying out the Services;

"Commencement Date" means the date of this Agreement as set out above or [];

"Confidential Information" means information, whether or not designated as 'confidential', which by its nature is confidential in the sense that it is not known to the public. Confidential Information includes (without limitation) any information concerning the technology, technical processes, business processes, procedures, personal data, business affairs, financial affairs and finance of the Customer, its customers, employees and suppliers which is not so known. Confidential Information may take the form of:

- (a) documents, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and data storage or memory in, and items of, computer hardware; or
- (b) oral descriptions, demonstrations or observations.

Confidential Information includes (without limitation) information which is in transit to/from, supplied to, stored by, processed or marked for destruction by a Party;

"Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data;

"Data Controller" has the meaning given to the expression *controller* in Data Protection Law;

"Data Processor" has the meaning given to the expression *processor* in Data Protection Law;

"Data Protection Law" means the EU General Data Protection Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (**UK GDPR**) together with all applicable decisions, binding guidance and codes of practice including the Data Protection Act 2018, and any amendments or replacements to any of the aforementioned;

"Data Subject" has the meaning given to it in Data Protection Law;

"DfE" means the Department for Education (or any successor body);

"DfE Rules" means the DfE's funding rules as updated from time to time;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of this Agreement or the consequences of non-existence or invalidity of this Agreement) whether contractual or non-contractual;

"Employers" means Employers as defined in each applicable Service Order Form;

"Fees" means the fees which are set out in, or which are capable of being calculated in accordance with the terms of, this Agreement and any applicable Service Order Forms;

"Force Majeure Event" means any cause affecting the performance by a Party of its obligations under this Agreement (excluding payment obligations) arising from acts, events or omissions beyond its reasonable control, including acts of God, riots, war, acts of terrorism, pandemic, storm or earthquake;

"Good Industry Practice" means that the Services will be provided in an efficient, reliable, professional and safe manner with the standard of skill, care and knowledge which would reasonably and ordinarily be expected from an experienced provider of services which are the same as the Services provided under this Agreement;

"Individual Contractors" means individuals who are directly contracted to AL, for the provision, development, maintenance, and operation of the Software;

"Intellectual Property Rights" means any of these rights, namely:

- (a) patents, trade marks, goodwill (including rights to bring an action in passing off), rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software and databases, database rights and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them); and
- (b) rights in inventions, know-how, trade secrets and other confidential information; and
- (c) any other intellectual property rights which may exist at any time in any part of the world;

"IS Standards" means appropriate information security protection measures to safeguard Confidential Information and Personal Data;

"New Supplier" means a third party supplier appointed by the Customer to supply services equivalent or similar to the Services in succession to AL on expiry or termination of this Agreement;

"Personal Data" has the meaning given to it in Data Protection Law;

"Processing" has the meaning given to it in Data Protection Law, and "Process" and other cognate expressions will be construed accordingly;

"Schedule" means any schedule to this Agreement;

"Services" means provision of access to the Software and the provision of associated implementation services and support, as described in applicable Service Order Forms and such other services as may be agreed by the Parties in writing from time to time;

"Service Levels" means the timescales, levels and standards set out in Schedule 1;

"Service Order Form" means a service order form signed by the Parties referencing this Master Services Agreement and setting out details of, inter alia, specific Services being provided to, the Fees and billing arrangements;

"Software" means the software applications and underlying platform and infrastructure, as defined in the applicable Service Order Form(s), to which access is granted under licence to the Customer by AL;

"Special Category Personal Data" means Personal Data within the categories described in Article 9 of EU General Data Protection Regulation (EU) 2016/679;

"Staff" means those persons employed or engaged by AL from time to time to provide the Services. The definition of "Staff" will also include the staff of (persons employed or engaged by) any subcontractor appointed by AL under this Agreement who are providing elements of the Services from time to time;

"Sub-Processors" has the meaning ascribed to it in clause **Error! Reference source not found.**;

"Synthetic Users" means automated systems, bots, artificial intelligence (AI) agents, or other non-human entities designed to interact with the Software without direct human intervention;

"User" means a User as defined in each applicable Service Order Form;

"2006 Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any regulations which replace or amend these.

- 1.2 Unless the context requires a different interpretation, the following rules shall be used to interpret this Agreement:

- a) any reference to a provision of a statute includes references to: (a) that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after this Agreement; (b) any re-enactment of that provision (with or without change); and (c) any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that provision or any provision falling within (a) or (b) above;
- b) words used in the singular tense should be interpreted to include the plural tense and vice versa. Words which refer to one gender should be interpreted to include other genders;
- c) any use of the word "including" will not be limited by the words that follow;
- d) the headings in this Agreement do not affect its interpretation; and
- e) in the event of any inconsistency between this Agreement and the [Fair and Acceptable Use Policy](#), the terms of the [Fair and Acceptable Use Policy](#) will prevail.

2. THE SERVICES

- 2.1 During the term of this Agreement, AL will provide the Services in accordance with this Agreement.
- 2.2 AL undertakes to the Customer that the Services will be provided in accordance with (a) Good Industry Practice; and (b) all laws, regulatory requirements and regulations from time to time applicable to the performance of the Services.
- 2.3 AL shall ensure that the Services shall be provided with reasonable skill and care and shall use reasonable commercial endeavours to achieve the Service Levels.
- 2.4 The obligations in Clauses 2.1 to 2.3 shall not apply to the extent of any non-conformance which is caused by any act or omission of the Customer, including the receipt or use of the Services contrary to AL's recommendations.
- 2.5 The Customer explicitly acknowledges and accepts that whilst AL from time to time announces plans for future enhancements to the Software the Customer's decision to enter into this Agreement is based on the Software and the Services as detailed in the Schedules and Service Order Forms.
- 2.6 AL will promptly advise the Customer on becoming aware that it is unable to perform the Services in accordance with this Agreement.

3. FEES AND PAYMENT

- 3.1 In consideration of the performance of the Services by AL, the Customer shall pay to AL the Fees in accordance with this Clause 3.
- 3.2 The Fees are stated exclusive of applicable value added tax which shall additionally be paid provided that a valid value added tax invoice has been provided to the Customer.
- 3.3 As soon as practical following execution of a Service Order Form AL is to issue an invoice for any applicable Account Setup Fee. Where an Account Setup Fee applies, provision of applicable Services shall only commence upon payment of this invoice.
- 3.4 Each month AL will issue an invoice for Fees that apply to that month (in advance or in arrears at its discretion or as set out in the Service Order Form) as well as any Fees for Services provided in previous months that have not already been invoiced.

- 3.5 The failure to issue an invoice for Fees that are due shall not prevent AL subsequently issuing an invoice for these Fees.
- 3.6 Payment of any sums due under this Agreement shall be made within thirty (30) days of the date of AL's invoice raised in accordance with this Agreement, to the bank account nominated by AL. If any payment to AL is overdue, AL will be entitled to charge interest at the statutory rate under the Late Payment of Commercial Debts (Interest) Act 1998. If payment is overdue by more than ten (10) days and the invoice has not been formally disputed by the Customer in good faith, AL may on notice to the Customer, and without prejudice to any other right or remedy, suspend the provision of the Services including access to the Software until payment has been received by AL. For the avoidance of doubt, Fees shall continue to apply during any period of suspension.
- 3.7 Where the Customer requires a Purchase Order to be included on the invoice, this shall be provided to AL before the first working day of the month in which the invoice is to be raised. Where the Customer fails to so provide the Purchase Order and subsequently rejects and requests the reissuance of an invoice, for the purposes of Clause 3.6, the date in question shall be the date on which the initial invoice was raised.
- 3.8 On 1st January each calendar year the amount of the Fees shall automatically be increased by a percentage equal to the percentage increase in the Office for National Statistics (ONS) Consumer Prices Index (CPI) in the 12 month period since 1st January in the previous calendar year plus 2%, provided that such annual increase shall not apply until at least six (6) months after execution of the applicable Service Order Form. Where any other increase in Fees is imposed by AL (such increase not to be imposed without a minimum of three (3) months written notice) which is not accepted by the Customer, the Customer may provide three (3) months notice of Termination, such notice to be sent in writing within thirty (30) days of the price rise notification issued by AL. The above is subject to any express provision to the contrary in the Service Order Form.
- 3.9 Failure by the Customer to comply with the provisions of this Clause 3 will be a material breach of this Agreement.

4. WARRANTIES AND UNDERTAKINGS

AL warrants and undertakes to the Customer that AL has full power and authority to enter into this Agreement and to perform its obligations hereunder.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 AL will not obtain rights in any Customer Property. Upon request by the Customer and in any event upon termination of this Agreement, AL will at its expense and as directed by the Customer promptly return to the Customer or destroy any Customer Property provided to AL or its subcontractors.
- 5.2 AL owns all Intellectual Property Rights in the Software and the Services. Unless specifically agreed in writing all Intellectual Property Rights in any materials created by AL will be the property of AL from creation. AL grants the Customer and its Subcontractors a non-exclusive, non-transferable, right to access the Software for the duration of this Agreement for the purpose of receiving the Services in order to facilitate the delivery of learning programmes to their Users or as otherwise described in the applicable Service Order Form ("**Permitted Purpose**"). This licence is limited to use within the United Kingdom unless otherwise agreed in writing by AL.
- 5.3 The Customer shall not sub-license or otherwise make the Software available to third parties other than Users and shall not modify, reverse engineer, decompile, disassemble, or otherwise attempt to derive the Software's source code, save to the extent required to create an interoperable interface where AL has refused to provide relevant source code. A breach of this clause shall be deemed a material breach of this Agreement not capable of remedy.

The Customer shall comply in all respects with the [Fair & Acceptable Use Policy](#), which is designed to ensure that all customers of AL have equitable access to the Software and that the Software's performance is optimised for all users. This includes restrictions on data throughput, query frequency, and other usage metrics that could impact system performance if exceeded. Non-compliance with such policy shall be deemed a material breach of this Agreement not capable of remedy.

- 5.4 At the request and expense of AL, the Customer will execute promptly all such documents and do promptly all such things as AL may deem necessary or desirable to perfect AL's title to the Intellectual Property Rights referred to in Clause 5.2.
- 5.5 AL will indemnify the Customer against all costs, expenses and liabilities incurred or suffered by the Customer as a result of the Customer's use of the Software in accordance with this Agreement being found by a court to infringe the Intellectual Property Rights of anyone else, conditional upon the Customer's compliance with the remaining provisions of this Clause 5.
- 5.6 The Customer will promptly tell AL in writing if it becomes aware of any allegation of Intellectual Property Rights infringement to which Clause 5.5 applies, and will not make any admission without first obtaining AL's written consent.
- 5.7 If requested to do so by AL, and subject to Clauses 5.8 and 5.10, the Customer will allow AL at AL's own cost to conduct and/or settle all negotiations and litigation resulting from any claim to which Clause 5.5 applies. Where, however, the Customer is being indemnified by AL in terms of this Clause 5, the Customer will be entitled (if it wishes) to elect to participate in the negotiations and/or litigation at the Customer's own cost. If the Customer makes such an election AL will liaise, consult and co-operate with the Customer, and keep it fully informed at all stages of the negotiations and/or litigation.
- 5.8 AL will only be permitted to conduct and/or settle the negotiations or litigation where it takes over the conduct of them within a reasonable time after becoming aware of the claim in question.
- 5.9 If AL requests, the Customer will give reasonable assistance with any negotiations or litigation as referred to in Clause 5.7 at AL's reasonable cost.
- 5.10 Notwithstanding Clauses 5.7 to 5.9 above, the Customer may elect to retain control over any claim made against it in respect of an alleged infringement. In the event that the Customer makes such an election, its remedy against AL will be in damages rather than on an indemnity basis and it shall use all reasonable endeavours to mitigate its loss.

6. CONFIDENTIALITY

- 6.1 Except to the extent set out in this Clause 6, each Party will treat as confidential all Confidential Information obtained from the other under this Agreement, will protect such Confidential Information and will not, without the prior written consent of the other Party, disclose or use such Confidential Information except for the purposes of this Agreement.
- 6.2 Clause 6.1 does not prohibit disclosure of Confidential Information to (a) the receiving Party's own employees, agents and permitted subcontractors who need to know it; or (b) the receiving Party's auditors, professional advisors, HM Revenue & Customs and any other person having a statutory or regulatory right to request and receive that information.
- 6.3 Both AL and the Customer expressly agree that each Party can refer to this commercial relationship on its website and in marketing materials and can use their respective names and logos as part of such promotion. AL will support the Customer with materials that AL has available that communicate the benefits of the Software as part of Customer's solutions and for the duration of this Agreement the Customer can use these materials when promoting its services and tendering for new business.
- 6.4 Each receiving Party will ensure that any person mentioned in Clause 6.2 is made aware, prior to any disclosure of Confidential Information, that it is confidential and that such person and the

receiving Party owe a duty to the owner of it to keep it confidential. The receiving Party shall use reasonable endeavours to where possible procure that such person complies with the duty of confidentiality imposed by this Agreement as if they were a party to it.

- 6.5 Clause 6.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence (a) was lawfully in its possession prior to disclosure to it by the other Party; (b) is already available to the public or which becomes so at a future date (otherwise than as a result of breach of this Clause 6); (c) is received from a third party who is not under an obligation of confidentiality in relation to the information; or (d) is developed independently without access to, or use or knowledge of, the Confidential Information.
- 6.6 Other than as expressly permitted under this Agreement, on termination of this Agreement for whatever reason, each Party shall forthwith cease to use any Confidential Information of the other Party and shall return on demand, or at the request of the other, destroy or permanently erase all copies of that Confidential Information in its possession or control, save that either Party will be permitted to retain one copy of such part of the Confidential Information for the purposes of and for so long as required by any law or by judicial or administrative process or its legitimate internal compliance issues.
- 6.7 The obligations in this Clause 6 will remain in full force and effect following the termination of this Agreement.
- 6.8 All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other Party.

7. **SUPERUSERS**

- 7.1 The Software is a large and complex technology platform and both Parties acknowledge that successful usage requires expertise and familiarity. The Customer agrees that it will appoint and retain a minimum of two personnel to be extensively trained in the usage of the Software ("**Superusers**") whose responsibilities include, but are not limited to:
 - a) acting as the central point of contact for all first line support Software questions from Users;
 - b) triaging and passing second line support queries to the Aptem Support Team;
 - c) acting as subject matter experts on the Software and associated Customer business processes;
 - d) reviewing Software information releases provided by AL and communicating the impact for the Customer across the Customer's business as required;
 - e) implementing system configuration changes to take advantage of new Software functionality;
 - f) training existing and new Customer Users on how to properly use the Software.
- 7.2 In the event of Superusers leaving their role it is the responsibility of the Customer to forthwith replace personnel, ensuring that there are sufficient Superusers in post at the Customer.
- 7.3 In the event that there are insufficient Superusers in post at the Customer (howsoever caused), the Customer will identify an appropriate individual(s) to be trained for this role and AL will assist the Customer to define a suitable training plan.
- 7.4 The Customer specifically acknowledges that post implementation training support from AL for new, existing or replacement Superusers is a chargeable service.

- 7.5 Where the Customer refuses to authorise additional training necessary to satisfy the above requirements, AL reserves the right to suspend the provision of the Software, implementation services and Software support until such time as the Customer has sufficient Superusers in post.

8. DATA PROTECTION

- 8.1 AL acts as a Data Processor in respect of the Personal Data it Processes on behalf of the Customer as further described in Schedule 2.
- 8.2 In relation to its processing of Customer Personal Data as a Data Processor under this Agreement, AL will act only on the Customer's written instructions (which include the provisions of this Agreement in so far as they relate to such processing) and only for the purpose of delivering and improving the Services and not for any other purpose, unless AL is required by Data Protection Law to do otherwise or as expressly set out in this Clause 8. Where AL is so required, AL shall notify the Customer promptly upon such requirement coming to AL's notice unless Data Protection Law prohibits AL from doing so. For the avoidance of doubt, where AL reasonably considers that an instruction from the Customer presents a risk of breach of the sixth data protection principle, for example, by exposing personal data to unauthorised access or accidental loss, destruction or damage, it is required not to follow such instruction.
- 8.3 The Customer is a Data Controller in respect of Customer Personal Data and shall comply with its obligations as a Data Controller under Data Protection Law. The subject matter, duration, nature and purpose of the processing, and categories of Customer Personal Data and Data Subjects are set out in Schedule 2.
- 8.4 AL shall comply with its obligations as a Data Processor of Customer Personal Data under Data Protection Law.
- 8.5 Taking into account the current state of technological development, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity to the rights and freedoms of natural persons, AL shall implement appropriate technical and organisational measures in relation to Customer Personal Data which it processes to ensure a level of security appropriate to the risk, including inter alia as appropriate:
- a) the encryption of Customer Personal Data;
 - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
 - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 8.6 In assessing the appropriate level of security referred to in Clause 8.5, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed.
- 8.7 AL shall take steps to ensure that any person acting under the authority of AL who has access to Customer Personal Data does not process them except on instructions from the Customer, unless he or she is required to do so by Data Protection Law.
- 8.8 With respect to Clauses 8.2 and 8.7, and for the avoidance of doubt, the Customer hereby irrevocably instructs AL to process Customer Personal Data in order to provide all or any element of the Software or the Services.

- 8.9 AL may process Customer Personal Data in order to improve the Software or the Services including improvement research and effectiveness tracking and for such purpose AL may communicate directly with Users and may monitor the Customer's and Users' use of the Software. AL may also communicate with Users and monitor use of the Software for compliance, performance, security, feedback, adoption, and stability purposes, using internal tools or authorised Sub-Processors. Monitoring may relate to user behaviour, user interaction and performance metrics and is integral to enhancing the Software and maintaining service quality. The Customer shall cooperate by providing necessary access and information and shall ensure that all Users who are employed by or contracted to it are made aware of the above in a transparent manner and otherwise in accordance with Data Protection Law.
- 8.10 AL shall ensure that all of its personnel (including permanent, temporary and agency workers) and all Sub-Processors who have access to and/or Process Customer Personal Data are committed to confidentiality with respect to Customer Personal Data.
- 8.11 AL may use data sufficiently anonymised so that it can no longer be regarded as Personal Data for service improvement research and to track the effectiveness of its services.

AL will not transfer any Customer Personal Data outside of the UK and EEA except with the prior written consent of the Customer, except as necessary for access or other processing by Sub-Processors so located.

- 8.12 The Customer hereby authorises AL to engage other Data Processors to process Customer Personal Data ("**Sub-Processors**"), including, specifically, those on the agreed [List of Data Sub-Processors](#) and, generally, all Individual Contractors or persons otherwise notified by AL to the Customer from time to time. Where AL wishes to add or replace any Sub-Processor, it shall update its webpage listing its Sub-Processors to which the Customer may subscribe in order to receive notifications of updates automatically or otherwise notice the Customer and, in each case, the Customer may object within thirty (30) days of receiving the notification. In absence of such objection, the change shall be considered approved. If the Customer objects, AL will take one of the following actions:
- a) Not or no longer use the additional Sub-Processor;
 - b) Cease to use the Sub-Processor with regards to the Customer's personal data; or
 - c) Cease to provide the specific service requiring processing of personal data to the Customer without unreasonably burdening the Customer.

If AL is unable to provide one of the remedial steps above within a reasonable period of time, which shall not exceed ninety (90) days, the Customer may terminate the applicable Service Order Form(s) with respect only to those services which cannot be provided by AL without the use of the objected-to new Sub-Processor by providing written notice to AL. AL will refund the Customer any pre-paid fees covering the remainder of the term of such Service Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on the Customer.

- 8.13 Where AL engages a Sub-Processor for carrying out specific Processing activities on Customer Personal Data, materially the same data protection obligations as set out in this Agreement shall be imposed on that Sub-Processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law.
- 8.14 AL shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to AL. The obligations pursuant to Articles 32 to 36 of the GDPR are security of processing, notification of a Data Breach to the Supervisory Authority, communication of a Data Breach to the Data Subject and, in certain circumstances, carrying out data protection impact assessments and engaging in prior consultation with the supervisory authority. Save to the

extent that such assistance is necessitated by a breach of this Agreement by AL, AL shall be entitled to charge for such assistance at its standard or otherwise agreed rates.

- 8.15 AL shall maintain accurate records and information to demonstrate its compliance with this Clause 8 and make this information available to the Customer upon request and allow for and contribute to audits by the Customer or the Customer's designated auditor (such audits to be on reasonable notice and conducted in such manner as to minimise any disruption of business).
- 8.16 AL shall promptly inform the Customer if, in its opinion, an instruction infringes Data Protection Law or other applicable data protection provisions.
- 8.17 Subject to payment of reasonable incurred costs AL shall promptly comply with any instructions provided by the Customer in respect of Customer Personal Data, including any request from the Customer to provide the Customer with any Customer Personal Data.
- 8.18 Upon becoming aware of a Data Breach AL will notify the Customer within 36 hours unless it is likely to result in a risk to the rights and freedoms of Data Subjects (and within 48 hours if such risk is unlikely) and provide a detailed description in writing, including the cause of the Data Breach, remedial action taken and the potential consequences of the Data Breach.
- 8.19 Upon termination of this Agreement and of any surviving obligations or rights which require AL to continue to process Personal Data, such as Termination Assistance, AL shall (unless required by Data Protection Law to store the Personal Data) either:
 - a) in line with AL's backup policy (the "**AL Backup Policy**"), promptly destroy or erase all copies of Customer Personal Data in its possession; or
 - b) at the Customer's request received no later than ten (10) Business Days after termination of this Agreement, and at the Customer's expense (based on the time spent by AL at its standard rates in securely locating, separating and transmitting such Customer Personal Data), promptly return one complete copy of all Customer Personal Data in its possession to the Customer and destroy or erase all remaining copies in its possession;

provided, in either case, where prompt destruction or erasure is not practical, particularly but without limitation with regard to copies made for backup purposes and not for active use, the Personal Data concerned may be retained until AL's next deletion or destruction cycle for such data.

- 8.20 Save as expressly provided for in this Agreement, AL shall not disclose Customer Personal Data to any Data Subject or to any other person without the prior written consent of the Customer.
- 8.21 In the event that AL has reasonable cause to suspect unauthorised access to the Software or activities that could lead to a Data Breach or a database attack AL is expressly permitted to take immediate remedial actions including but not limited to suspending User, Administrator or Employer access to the Software and taking the Customer's database offline.
- 8.22 Either the Customer or AL may at any time propose to revise this Clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

9. FUTURE DEVELOPMENTS

- 9.1 AL commits to the ongoing development and evolution of the Software in such manner as it may elect, which includes periodic updates, enhancements, and the deprecation of functionality as necessary to align with its business objectives, technological advancements, and user needs.

- 9.2 AL may, at its sole discretion, make a public roadmap of the development of the Software available on its website. This public roadmap is intended for general information purposes only and does not constitute a commitment or representation as to future development. AL reserves the right to share more detailed roadmaps with the Customer on a case-by-case basis, provided that such roadmaps are AL's Confidential Information and subject to Clause 6. All product ideas, collateral, specifications and related information shared by and with AL are Intellectual Property Rights of AL.
- 9.3 AL may, from time to time, offer the Customer access to beta features, pre-release products, or other experimental features (each a "**Beta Product**"). AL excludes all terms, conditions, warranties and representations with respect to any Beta Product. All data, information, content, or other materials provided or displayed to the Customer in connection with any Beta Product, or any knowledge that the Customer may discern from or relating to Beta Products, is the Confidential Information of AL.

10. **DISPUTES**

If a Dispute arises under this Agreement it shall first be referred to AL's Head of Implementation and the Customer's Project Manager. If it is not resolved by them within a maximum of ten (10) Business Days, the Dispute shall be referred for resolution to a senior member of the AL team and the Customer's Executive Sponsor (or in her / his absence a senior executive appointed by the Customer) to attempt to resolve the Dispute. Should the Dispute remain unresolved within twenty (20) Business Days after such reference, Clause 21 shall apply.

11. **PERSONNEL**

- 11.1 AL undertakes that it will only use technically competent and properly trained and qualified Staff in the provision and performance of the Services.
- 11.2 AL will ensure that any subcontractor appointed by AL complies with this Clause 11, and for these purposes all references to AL should therefore be read as if they were references to the subcontractor concerned.
- 11.3 AL agrees to arrange Staff, and, if applicable, procure that any subcontractor of AL arranges Staff, in relation to the provision of the Services in such a way that no individual is at any time wholly or mainly assigned to the provision of the Services and consequently that no contract of employment of any individual will transfer from AL (or any subcontractor of AL) to the Customer, or to any New Supplier by virtue of the 2006 Regulations, on the cessation or partial cessation of the provision of the Services by AL, or otherwise.

12. **BUSINESS CONTINUITY**

AL will ensure that at all times it has in place and is able to implement a business continuity and disaster recovery plan which will ensure the continued performance and operational resilience of the Services.

13. **INFORMATION SECURITY**

- 13.1 AL will identify and protect at all times the confidentiality, integrity and availability of Customer Confidential Information and Personal Data it obtains under this Agreement.
- 13.2 AL will operate at all times in accordance with the IS Standards including maintaining ISO 27001 and Cyber Essentials Plus accreditations.
- 13.3 AL will demonstrate its compliance with the IS Standards to the Customer upon reasonable notice at any time, provided that the Customer will not require AL to demonstrate its compliance more than once in every 12-month period unless there has been a Data Breach affecting AL.
- 13.4 In the event that AL receives any request from or is required by law, by any governmental or other regulatory authority (including, without limitation, any relevant securities exchange(s)) or

by a court or other authority of competent jurisdiction to disclose Confidential Information or Personal Data of the Customer, AL shall, to the extent it is legally permitted to do so, give the Customer as much notice of such requested or required disclosure as is possible and provide the Customer, at the Customer's cost, with such assistance as the Customer may request to attempt to facilitate, prevent or limit such disclosure.

14. FORCE MAJEURE

- 14.1 Neither the Customer nor AL will be liable for any failure to perform or delay in performing their obligations under this Agreement (other than payment of Fees) where such failure or delay is directly caused by a Force Majeure Event, provided that in the case of AL, it shall have no right to relief in terms of this Clause where it has failed to provide the back-up and recovery facilities and services in accordance with the plan referred to in Clause 12 and such failure or delay would not have occurred had it not so failed.
- 14.2 If either Party is affected by a Force Majeure Event such as to prevent or delay it in performing its obligations under this Agreement it shall promptly notify the other.

15. LIABILITY

- 15.1 Neither the Customer nor AL will be liable to each other in connection with this Agreement, whether for breach of contract, in tort or for any other cause of action (including negligence), for any: loss of profit, loss of business, loss of bargain, loss of anticipated savings, wasted expenditure or loss of goodwill (in each case whether direct or indirect) or for any indirect or consequential loss.
- 15.2 Neither the Customer's nor AL's liability to the other in connection with this Agreement shall exceed:
- a) £150,000 Sterling in respect of loss or damage to tangible property per claim or series of related claims; and
 - b) in other cases, £50,000 Sterling per claim or series of related claims.
- 15.3 The limits and exclusions of liability set out in Clauses 15.1 and 15.2 do not apply to:
- a) any liability of the Customer to pay the Fees;
 - b) any liability for fraud;
 - c) any liability for death or personal injury of or to a Party caused by a Party's negligence or that of its employees or agents;
 - d) any other loss which by law cannot be excluded or limited.
- 15.4 The Service Credits set out in Schedule 1 shall comprise the Customer's exclusive remedy with respect to any failure to achieve the Service Levels.

16. INSURANCE

AL shall maintain at its own cost sufficient insurance policies with a reputable insurance company to cover potential liabilities under Clause 15.2 which AL may have to the Customer under this Agreement. If requested by the Customer at any time to do so, AL will provide the Customer with a certificate from its insurers or insurance brokers confirming that the insurance is in force, with cover of no less than the limits of liability set out in Clause 15.2, and that the current premiums have been paid.

17. TERM AND TERMINATION

- 17.1 This Agreement will come into effect on the Commencement Date and, subject to the remaining provisions of this Clause 17, will continue for a minimum period of thirty six (36) months from the Commencement Date (the “**Initial Term**”) and thereafter for successive periods of twelve (12) months (each, a “**Renewal Term**”) provided that either Party may terminate this Agreement on at least six (6) months’ notice such notice not to expire before the end of the Initial Term or, once a Renewal Term has commenced, the end of the then current Renewal Term.
- 17.2 Termination of this Agreement terminates all Service Order Forms.
- 17.3 Unless otherwise specified in the Service Order Form, the Services provided pursuant to a Service Order Form can be cancelled by either Party, for any reason or no reason, giving the other Party written notice six (6) months in advance such notice not to be given within thirty (30) months of execution of the applicable Service Order Form, provided that the Customer may not serve such notice of cancellation if any Fees are overdue and provided further that where notice of cancellation is given by the Customer, termination shall not take effect until the later of: (a) the expiry of the six (6) month period; and (b) payment of all Fees due.
- 17.4 This Agreement may be terminated immediately by either Party upon written notice to the other Party, if the other Party:
- a) ceases trading, admits that it is, becomes or is declared unable to pay its debts as they fall due within the meaning given by Section 123 of the Insolvency Act 1986, becomes or is declared insolvent, has a liquidator, receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a scheme of solvent amalgamation or reconstruction where the resulting entity is at least as credit worthy as the other Party and assumes all the obligations of the other Party under this Agreement) or if a court having proper authority makes an order to that effect; or
 - b) enters into administration, is the subject of an administration order or proposes to or enters into any voluntary arrangement or scheme of arrangement with its creditors; or
 - c) is the subject of any enforcement of security, or execution, distraint, sequestration or similar action over any of its assets by any creditor; or
 - d) is the subject of the taking of any step by itself towards any of the events or procedures in Clauses 17.4a) to 17.4c); or
 - e) is the subject of any similar event or steps in any jurisdiction outside England which is analogous with any of the events or procedures in Clauses 17.4a) to 17.4d); or
 - f) materially breaches this Agreement, except that where such breach is capable of being remedied, this Agreement may only be terminated where the Party in breach has failed to remedy the breach within fifteen (15) days of receipt of written notice of the breach.
- 17.5 The Customer may at its discretion serve written notice and terminate this Agreement within 30 days of the Commencement Date and in the event of such termination no Fees will be due to AL other than for training delivered and associated travel, subsistence and VAT. Any termination or expiry of this Agreement (however it occurs) will not affect any rights or liabilities of either Party that may have accrued before termination or expiry of any provisions of this Agreement that are expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 17.6 Termination of this Agreement shall terminate the Customer’s right and licence to access and use the Software and on such termination the Customer shall immediately cease all such access

and use of the Software and instruct all Users to do likewise and AL may disable or prevent the Customer and Users from accessing the Software.

18. TERMINATION ASSISTANCE

Following notice of termination of this Agreement or Services pursuant to a Service Order Form being given or received by AL, AL will, at the Customer's option, provided that no Fees are outstanding:

- a) enable the Customer to export a complete copy of the Customer Personal Data held on the Software (or its underlying systems) (**Relevant Data**); or
- b) undertake the export of the Relevant Data for the Customer and provide it to the Customer in BACPAC file format, subject to the Customer paying AL reasonable costs.

The Customer will pay for all reasonable costs incurred by AL in providing the above.

19. GENERAL

- 19.1 Nothing in this Agreement is intended to confer any right or benefit on any third party or any right to enforce a provision contained in this Agreement and the Contracts (Rights of Third Parties) Act 1999 is hereby expressly excluded.
- 19.2 Neither Party shall assign any right or transfer any obligation under this Agreement without the prior consent in writing of the other Party (such consent not to be unreasonably withheld or delayed), provided that neither Party shall require consent for any assignment or transfer to an Affiliate.
- 19.3 This Agreement does not create a partnership or joint venture between the Parties to it and except as expressly provided in this Agreement neither Party will enter into or have authority to enter into any engagement or make any representations or warranties on the other Party's behalf, nor will they seek to otherwise bind or oblige the other Party in any way. Neither this Agreement nor the provision of the Services is intended to create or imply any employment relationship between the Customer and the Staff during the term of this Agreement.
- 19.4 This Agreement (including the Schedules, Service Order Forms and the [Fair and Acceptable Use Policy](#)) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes any previous agreement between the Parties relating to the subject matter thereof. Each of the Parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. Nothing in this Clause 19 shall operate to exclude any liability for fraud.
- 19.5 AL and the Customer will each nominate a person with appropriate authority to act as its representative under this Agreement. In the absence of notifications to the contrary this will be the AL Head of Implementation and the Customer Executive Sponsor. Subject to the note at the end of Schedule 1, no variation of this Agreement shall be valid unless it is in writing and signed by authorised representatives of each Party.
- 19.6 Any notice to be given pursuant to the terms of this Agreement shall be given in writing to the Party due to receive such notice at (in the case of a company) its registered office from time to time or (in the case of an individual) at their address set out in this Agreement or such other address as may have been notified to the other Party in accordance with this Clause 19. Notice shall be delivered personally or sent by first class prepaid recorded delivery or registered post (airmail if overseas), and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) forty-eight (48) hours after posting (six (6) days if sent by airmail).

- 19.7 Should a notice be delivered on a day other than a Business Day, the notice shall be deemed to be given on the next Business Day following the day of actual delivery.
- 19.8 If any Clause (or part of a Clause) of this Agreement should be found not to be valid, lawful or enforceable by a court having proper authority or if the law changes so that it becomes invalid, unlawful or unenforceable the Clause (or part affected) will be treated as having been deleted from the remaining terms of this Agreement which will continue to be valid. In addition, the Parties will use reasonable efforts to replace the deleted Clause (or part) with a valid replacement provision which is as close as possible to the one that has been deleted.
- 19.9 If either Party delays or fails to exercise its rights under this Agreement it does not prevent that Party from exercising those rights at any time afterwards. In addition, if a Party waives its right on one occasion this does not mean that the Party has lost (or waived) these rights on a later occasion.

20. ANTI-CORRUPTION

- 20.1 AL undertakes to the Customer that it will comply with, and that the Services will be performed in accordance with, the Anti-Corruption Laws and that it shall not do, nor omit to do, any act that will lead to the Customer being in breach of any of the Anti-Corruption Laws.
- 20.2 AL shall have in place and comply with its own anti-bribery and corruption policy ("**AL Anti-Bribery and Corruption Policy**") to ensure that AL complies with the Anti-Corruption Laws. If requested, AL shall provide to the Customer a copy of the AL Anti-Bribery and Corruption Policy for the Customer's review.
- 20.3 AL shall review the AL Anti-Bribery and Corruption Policy on a regular basis and shall promptly implement and notify the Customer of any amendments to the AL Anti-Bribery and Corruption Policy which it considers necessary for continued compliance with the Anti-Corruption Laws.
- 20.4 AL shall immediately notify the Customer in writing of any suspected or known breach of the AL Anti-Bribery and Corruption Policy or any of the Anti-Corruption Laws.
- 20.5 Regardless of any other provision in this Agreement, the Customer shall not be obliged to do, nor obliged to omit to do, any act which would, in its reasonable opinion, put it in breach of any Anti-Corruption Laws.

21. LAW AND JURISDICTION

- 21.1 This Agreement and any non-contractual obligation arising out of or in connection with this Agreement and any Dispute shall be governed by English law.
- 21.2 With respect to any Dispute which is not resolved under Clause 10, including any question regarding the existence, validity or termination of this Agreement, the Parties shall first seek settlement of that Dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this Clause. If the Dispute is not settled by mediation within sixty (60) days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration in London before a single arbitrator under the LCIA Rules, which are deemed to be incorporated by reference into this Clause. The above shall not prevent either party applying to the English courts for emergency relief.

IN WITNESS whereof the Parties hereto have caused this Agreement to be duly executed.

SIGNED by its duly authorised representative
for and on behalf of Aptem Limited

SIGNED by its duly authorised representative
for and on behalf of the Customer

Name: Rien Sach
Job Title: Chief Executive Officer
Date:

Name:
Job Title:
Date:

SCHEDULE 1

Service Levels and Support

1. Service Levels and Support

1.1 Support Description

AL endeavours to provide an excellent service to all customers. AL's primary objective is, in all circumstances, to keep the Customer's business running smoothly as it relates to the use of the Software. This Schedule defines how queries, how-to questions, problems, and other issues relating to Users interacting with the Software ("**Support Queries**") should be handled.

AL operates a 'train the trainer' model whereby nominated persons at the Customer assume the role of Superuser to assist the Users registered by the Customer in mitigating and/or resolving Support Queries ("**Superuser Support**"), as outlined in Clause **Error! Reference source not found.**

The AL Support Team is available to help with Support Queries that are not possible to mitigate through Superuser Support and the Superuser may raise any such Support Queries with AL ("**Aptem Support**"). Superusers can raise Support Queries with the AL Support Team through either, completion of the online support form on the Aptem Help Centre, or by emailing support@aptem.co.uk.

All Support Queries raised with the AL Support Team are logged on the AL case management system and processed and escalated (as applicable) by Aptem Support. Where such Support Queries report unexpected behaviour in the operation of the Software, in order to undertake further investigation Aptem Support must be able to replicate reported problems and will ask for further information from the Superuser where required. Only Support Queries that are unable to be resolved by Superuser Support should be raised with Aptem Support.

1.2 Service Levels Description

All queries raised by a Superuser to AL for Aptem Support are assessed for their impact on the use of the Software and also the risk/likelihood/pervasiveness of the problem being experienced as it relates to the Software across all customers resulting in a severity classification ("**Severity**").

AL will endeavour to respond to the Superuser within a defined period of time based on the Severity of the Support Queries from the point of raising ("**Initial Response Time**").

AL operates a mitigation-first approach to handling Customer Support Queries in Aptem Support. This means that the primary action is to work to offer a solution to overcome the problem (whether by a full solution, an alternative approach or advice on how to avoid the problem) so that the problem has a reduced impact ("**Mitigation**").

Support Queries raised with Aptem Support that have a provided solution, Mitigation or where reasonable additional information has not been provided that has been requested from the Customer for further investigations to be undertaken, will be considered closed ("**Resolved**").

AL offers Service Levels in accordance with Initial Response Time and Mitigation on Support Queries raised with the AL Support Team to endeavour to minimise disruption to Customer business operations. AL Service Levels apply to all customers in their use of the Software. As such AL monitors and upholds a percentage mitigation Service Level strategy where Mitigation of queries is prioritised by Severity. Whilst AL will typically exceed these percentage mitigation Service Levels these are put in place to ensure that Aptem Support can be provided to the highest Severity Support Queries and to account for Support Queries that require a non-standard or complex Mitigation with such situations very rare. The Service Levels AL endeavours to provide in supplying Aptem Support to the Customer are illustrated [here](#).

Any Support Queries or requests by the Customer or any User which do not meet the definition of Aptem Support are out of scope of the Services and shall:

- be excluded from the Service Levels;
- in the event of persistent inappropriate Support Queries be subject to an additional charge by AL in accordance with its rate card for the time spent in dealing with the Support Queries; and
- to the extent that it results in distraction and/or delay in AL dealing with in-scope Services provided to the Customer, relieve AL from Service Levels to the extent AL is so affected.

1.3 Application Availability and Response Time

AL shall endeavour to meet the following Service Levels in relation to availability and response time:

1.3.1 Availability of Web Site

1.3.1.1 AL shall endeavour to make the Software available a minimum of 99.7% of the time on average during a calendar quarter ("**Minimum Availability**").

1.3.1.2 For the purposes of calculating the average availability during any calendar quarter, any periods of unavailability caused by Scheduled Maintenance, which is defined as being planned maintenance or upgrades, shall be excluded from the calculation.

1.3.2 Response Time

1.3.2.1 The mean response time for server response to all User requests to the Software shall not exceed more than 5 seconds from point of connection to the data centre from the Internet during any one-hour period based on a reasonable and even pattern of usage.

1.3.2.2 Response Time shall be measured from the time at which the request enters the hosting environment network to when the response leaves the hosting environment network. AL is not responsible for the performance of any public internet, external networks or hosting environments not supplied by AL and thus is not responsible for the ultimate response time experienced by the User.

1.3.3 Service Credits

1.3.3.1 In the event that AL does not achieve Minimum Availability in a calendar quarter a Service Credit shall be available on request in respect of the Fees paid in that quarter ("**Fees Total**").

1.3.3.2 Where Minimum Availability is not achieved, the actual availability shall be deducted from the Minimum Availability as a percentage; the difference shall be multiplied by the Fees Total. The resulting sum is the amount of the Service Credit. By way of example and for illustration only, if the actual availability over a quarter is 87.6% and the Fees Total is £10,000 then the Service Credit is: $((99.7-87.6)/100)*10000 = £1,210$, subject to the following provisions:

- (A) Service Credits shall not exceed thirty per cent (30%) of the Fees that would otherwise have been due with respect to any quarter.
- (B) A Service Credit shall only be payable if requested by the Customer, the request to be sent via email to servicecredits@aptem.co.uk within 30 days of the end of the relevant quarter. Where so requested, the Service Credit shall be applied to fees payable in the following quarter.

1.3.4 Security

The Parties expressly recognise that it is impossible to maintain flawless security, but AL shall take reasonable steps to prevent security breaches in its servers' interactions with the User and security breaches in its servers' interaction with resources or Users outside of any firewall that may be built into its servers.

Note

This Schedule is subject to regular evaluation and potential revision to more accurately reflect the evolving functionalities of the Software and the requirements of AL customers. Substantial amendments to this Schedule will be communicated to all customers by AL.

SCHEDULE 2

Description of the Processing of Customer Personal Data

1. **Subject Matter**

Provision to the Customer's staff and individuals the Customer works with of vocational training and/or employability services and programme management functionality.

2. **Nature**

All Processing of Personal Data is automated. The Software stores information input by individuals which typically includes biographical and contact information, CVs, job applications, career goals, details of current and prior learning, goals and activities. All activities on the Software are logged and can be reported on. The only exception to the above is Processing in the form of access that may occur during the course of software development, support and maintenance.

3. **Purpose**

Personal Data input by the individual is processed to facilitate learning and/or employability.

4. **Categories of Personal Data**

To have an account an individual must input a name and email address. According to the type of programme the person is undertaking either the individual or the Customer may enter further information, such as biographical and contact information, CVs, job applications, career goals, details of current and prior learning, goals and activities.

5. **Special Category Personal Data**

Special Category Personal Data may occasionally be entered as part of general user profiling or for safeguarding support.

6. **Categories of Data Subjects**

Data Subjects are the Customer's staff and individuals being supported by the Customer on various programmes such as for employability or vocational training.

7. **Recipients of Customer Personal Data**

Outside of court orders or similar UK government regulatory requirement, the only third parties able to access Customer Personal Data are the Customer, those authorised by the Customer and contractors performing software development, support and maintenance services for AL.

8. **Data Transfers**

All Data is stored in the UK or EEA, and there are no data transfers to other countries, except that Data may be accessed by Sub-Processors, some of whom are located outside the UK and EEA and who have entered into International Data Transfer Agreements (**IDTAs**) or other appropriate legal mechanisms with AL to provide adequate safeguards in relation to any processing they may undertake.

9. **Retention**

Upon termination of this Agreement and of any surviving obligations or rights which require AL to continue to process Personal Data, such as Termination Assistance, AL shall (unless required by Data Protection Law to store the Personal Data) either:

- a) promptly destroy or erase all copies of the Customer Personal Data in its possession; or
- b) at the Customer's request received no later than ten (10) Business Days after termination of this Agreement, and at the Customer's expense, based on the time spent by AL at its standard rates in securely locating, separating and transmitting such Customer Personal Data, promptly return one complete copy of all Customer Personal Data in its possession to the Customer and destroy or erase all remaining copies in its possession,

provided, in either case, where prompt destruction or erasure is not practical, particularly but without limitation with regard to copies made for backup purposes and not for active use, the Personal Data concerned may be retained until AL's next deletion or destruction cycle for such data.

10. AL Privacy Enquiries

All queries to the Data Protection Officer, Aptem Ltd, Eagle Point, 167 City Road, Old Street, London, EC1V 1AW – email: dpo@aptem.co.uk.

Note

This Schedule is subject to regular evaluation and potential revision to more accurately reflect the evolving functionalities of the Software and the requirements of AL customers and any changes in Data Protection Law and practices. Substantial amendments to this Schedule will be communicated to all customers by AL.