

MASTER SERVICES AGREEMENT

BACKGROUND

- (A) The Supplier has developed and will provide the Services (each as defined below).
- (B) The Client (as defined below) wishes to use the Supplier's Services in its business operations.
- (C) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement (as defined below) which may be purchased via the Supplier directly or via a third party reseller authorised by the Supplier.

AGREED TERMS

1. INTERPRETATION

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

Acceptance Criteria: the acceptance criteria as specified in clause 8.2 or referred to in a Proposal or as otherwise agreed by the Parties expressly in writing after the date of the Proposal against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Proposal.

Acceptance Tests: the acceptance tests as specified or referred to in a Proposal to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

Agreement: the terms and conditions set out in this agreement.

Applicable Data Protection Legislation:

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

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

Assumptions: has the meaning given in clause 6.3.

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

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

Change Request: any request to alter the Services pursuant to this Agreement as set out in clause 12.

Client Data: any information that is provided by the Client to the Supplier or the Reseller (as the case may be) as part of the Client's use of the Services, including any information derived from such information.

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

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

Client-side Equipment: any equipment located or to be located on a Client site to be used by the Supplier as part of the Services.

Commencement Date: the date of the initial Proposal entered into by the Parties under this Agreement.

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

Contract: the agreement for the provision of Services in accordance with the terms and conditions set out in this Agreement, the Proposal and any variations and other documents which have been agreed between the Parties in writing from time to time.

Charges: the fees payable by the Client in respect of any Professional Services and any Out of Scope Services.

Client: the Client as identified in the Proposal.

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

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fee(s): the Solution Deployment Fee, the Solution Service Fee, any Charges and any other fees payable by the Client in relation to the Services, as described in the Proposal or as otherwise agreed between the Parties in writing.

Force Majeure Event: has the meaning given in clause 16.1.

Good Industry Practice: the standards of a skilled and experienced provider of services similar or identical to the applicable Services, having regard to factors such as the nature and size of the Parties, the type of service, Service Level Arrangements, the term, the pricing structure and any other relevant factors.

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

Initial Term: twelve (12) months from the Commencement Date or the Services Commencement Date (as the case may be) or as otherwise set out in the relevant Proposal. For the avoidance of doubt, each Proposal will have its own Term, which will extend the Initial Term of the Agreement if the term of the Proposal is longer than the Initial Term of the Agreement.

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

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

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

Maintenance: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Managed Services, as well as any other support or training services provided to the Client under the Contract, all as described in the Proposal, if applicable.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Managed Services: the support service described in the Proposal (including any support arrangements and Maintenance) to be performed by the Supplier in accordance with the Contract.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Normal Business Hours: 9.00 am to 5.30 pm local UK time on Business Days unless otherwise set out in a Proposal.

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

Party/ies: a party to this Agreement or parties.

Professional Services: the services, including any customisation, described in the Proposal to be performed by the Supplier in accordance with the Contract if applicable.

Proposal: the specification for the Software, the Services and any other services agreed between the Parties as set out in the document headed 'Proposal' and which incorporates the terms and conditions of this Agreement.

Relief Events: the following events:

- (a) the negligence, act, omission, or default of the Client;
- (b) any failure by the Client to comply with its obligations under the Contract;
- (c) any error or malfunction in the Business Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (d) any failure by the Client or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions or failure to provide accurate, correct and complete information, co-operation or instructions, to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under the Contract;
- (e) any failure caused by third party services;
- (f) any telecommunications or network connectivity issues, network defect, delay or failure or failure of the Client's hardware or other systems;
- (g) any of the causes or events set out in clause 10.4; or
- (h) a Force Majeure Event.

Reseller: a third party reseller authorised by the Supplier to sell the Services to the Client.

Service Level Arrangements: any service level arrangements set out in the Proposal.

Services: the Solution Deployment, Solution Service, any Professional Services including consulting, advisory, integration or technical services and any other services performed by the Supplier under a Proposal or otherwise agreed in writing between the Parties.

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

Software: 'Power Framework' and any other Supplier software set out in the Proposal and any Maintenance Release which is acquired by the Client during the term of the Contract.

Solution Deployment: the deployment services set out in the Proposal.

Solution Deployment Fee: the one off fee payable by the Client in accordance with the Proposal for the Solution Deployment.

Solution Service: the use of the Software for the maximum number of users set out in the Proposal together with the associated Managed Services.

Solution Service Fee: the annual fee payable by the Client in accordance with the Proposal for the Solution Service.

Supplier: Program Framework Limited incorporated and registered in England and Wales with company number 05461232 whose registered office is at Hoppingwood Farm, Robin Hood Way, London, SW20 0AB.

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

Term: the Initial Term and any Extended Term, as applicable.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.3 A reference to writing or written includes e-mail.
- 1.4 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.5 In the event of any conflict or inconsistency between the clauses of this Agreement and the Proposal (including any changes to the Proposal), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - (a) Proposal;
 - (b) the clauses in this Agreement.

2. PROVISION OF SERVICES

- 2.1 This Agreement sets out the terms and conditions under which the Supplier shall provide to the Client the Services.
- 2.2 The Supplier shall use commercially reasonable endeavours to provide the Managed Services in accordance with any Service Level Arrangements stated in the Proposal.
- 2.3 The Managed Services purchased by the Client under the Contract are solely for the Client's own internal use. The Client shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or authorised by the Client) and shall not provide the Managed Services to third parties without the prior written consent of the Supplier.
- 2.4 The Client must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack.
- 2.5 The Supplier will not provide the Managed Service, and bear no liability, in respect of defects or errors:
 - (a) resulting from any modifications or enhancements of any third party services not made by the Supplier;
 - (b) resulting from incorrect use of any third party services in scenarios other than those intended by third parties;
 - (c) for any reason external to any third party services including, but not limited to, failure of electrical supplies or natural disasters; and

- (d) resulting from the inter-relationship between any third party services and any other software not supported by Supplier.
- 2.6 The Supplier may suspend, revoke or limit use of the Services, wholly or partly (i) in case of late payments, (ii) if the Supplier in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, the Supplier will provide the Client notice of what actions the Client must take to reinstate the Managed Services and/or Software. If the Client fails to take such actions within a reasonable time, the Supplier may terminate the applicable Service.
- 2.7 The Supplier shall be under no obligation to provide the Services to the Client in the following circumstances:
 - (a) unauthorised use of the Software by the Client or use otherwise than in accordance with the Contract;
 - (b) providing the Services outside Normal Business Hours unless otherwise agreed between the Parties in writing or as set out in the relevant Proposal;
 - (c) providing any other services which are Out of Scope;
 - (d) training in use of any upgrades (unless specifically set out in the Proposal); and
 - (e) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.
- 2.8 If the Supplier breaches its obligations in this clause 2, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance in accordance with any Service Level Arrangements.
- 3. LICENCE OF SOFTWARE
- 3.1 In consideration of the Solution Service Fee paid by the Client, the Supplier grants to the Client a non-exclusive, revocable, worldwide, non-transferable licence to use of the Software for the duration set out in the applicable Proposal until terminated.
- 3.2 In relation to scope of use:
 - (a) for the purposes of clause 3.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Client's Data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client or other user authorised by the Supplier);
 - (b) the Client may not use the Software other than as specified in the Contract without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier; and
 - (c) except as expressly stated in this clause 3, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 3.3 The Client may not use any such information provided by the Supplier or obtained by the Client during any such reduction permitted under clause 3.2(c) to create any software whose expression is substantially

similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4 The Client shall not:

- (a) sub-licence, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under the Contract,

without the prior written consent of the Supplier.

3.5 The Client shall:

- (a) ensure that the number of persons using the Software does not exceed the maximum number agreed with the Supplier in writing;
- (b) keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
- (c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person; and
- (d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 6.9, from such date to the date of payment.

3.6 The Supplier reserves the right at any time to make any improvement, substitution or modification in the design, manufacture or configuration of the Software provided that any such improvement, substitution or modification shall not result in any material change in the functionality or performance of the Software.

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

3.8 The Client warrants that it shall not compete with the Software during the term of the Contract and for a period of six (6) years thereafter.

3.9 The Supplier will provide the Client with all Maintenance Releases generally made available to its customers. The Client shall install all Maintenance Releases as soon as reasonably practicable after receipt.

3.10 The Supplier may offer support and maintenance for the Software as a separate Managed Service.

4. RESPONSIBILITIES OF SUPPLIER

4.1 The Supplier shall:

- (a) provide the Services in accordance with the terms of this Agreement and the Proposal;
- (b) use its commercially reasonable endeavours to meet any performance dates set out in any Proposal but unless otherwise expressly agreed in writing in such Proposal, any performance dates shall be estimates only and time shall not be of the essence for the provision of any Services and/or Deliverables;
- (c) co-operate with the Client in all matters relating to the Services;
- (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
- (e) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care; and

- (f) notify the Client promptly if the Supplier is unable to comply with any of the terms of this Agreement or any Proposal.

4.2 The Supplier may in the provision of the Services make recommendations in relation to the Client's system including (but not limited to) the Client's security configuration, hardware, software and/or general IT system configuration. In the event that the Client does not wish to follow the Supplier's recommendations and, in the Supplier's reasonable opinion, such refusal will have an adverse effect on the Supplier's ability to provide the Services in accordance with this Agreement and the applicable Proposal, and agreement is not reached in respect of (i) any necessary action; (ii) the Services; and/or (iii) applicable Fees, then the Supplier reserves the right to cease provision of the affected Services in whole or in part and/or to terminate the Agreement and/or the applicable Proposal.

5. RESPONSIBILITIES OF THE CLIENT

5.1 The Client shall:

- (a) be a bona fide licensed user of, and comply with the terms of the applicable licences for, all third party services used in the provision of the Services;
- (b) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
- (c) not use the Services to receive, store or transmit material or data that is obscene, threatening, offensive, discriminatory, defamatory or in breach of confidence, infringes Intellectual Property Rights or other rights, gives rise to any cause of action against the Supplier in any jurisdiction or is otherwise unlawful, and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this sub-clause;
- (d) provide such access to the Client's systems, software and platforms as may reasonably be requested by the Supplier including appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (e) inform the Supplier in writing of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
- (f) provide all information, documentation and materials and make available all resources as reasonably requested by the Supplier in the execution of its obligations under the Contract;
- (g) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
- (h) use any third party services and/or Software correctly in accordance with its operating instructions; and
- (i) notify Supplier promptly of any problems with the Software.

5.2 The Client shall:

- (a) use the Services only for lawful purposes and in accordance with the Contract;
- (b) keep secure from third parties any passwords issued to the Client by the Supplier;
- (c) fully virus-check all data supplied to the Supplier or the Reseller (as applicable) pursuant to the Contract;
- (d) make the Client's Operating Environment and Client-side Equipment, required to provide the Services, accessible to the Supplier's support staff, enable logons or passwords required for such support staff (who will have their own logons);
- (e) ensure that any Client-side Equipment is in good working order and suitable for the purposes for which it is used;

- (f) provide notice of intention to change applicable Client-side Equipment or Client Operating Environment or data-feeds that will directly impact the Managed Services;
- (g) comply with all applicable laws and regulations with respect to its activities under the Contract; and
- (h) carry out all other Client responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in the Contract as reasonably necessary.

5.3 In the event that the Client elects to utilize any artificial intelligence content generation features embedded within the Software, the following provisions shall apply:

- (a) the Client acknowledges that the content generation feature is subject to the Microsoft Generative AI Services Code of Conduct. The Client agrees to comply with these terms and policies in their use of the feature;
- (b) the Client acknowledges that the Supplier does not guarantee the accuracy, reliability, or legality of any content generated by means of artificial intelligence. The Client assumes full responsibility for any content generated and stored within the Software, including ensuring that such content does not violate any laws, regulations, or third-party rights;
- (c) the Client agrees to indemnify, defend, and hold harmless the Supplier from and against any and all claims, liabilities, damages, losses, or expenses arising out of or in connection with the Client's use of the content generation feature, including any claims related to the content generated or stored within the Software.

5.4 In the event that the Client is in breach of its obligations under the Contract (including payment obligations) then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fifteen (15) Business Days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach, the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Proposal and/or Service Level Arrangements as a result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Contract.

5.5 For the avoidance of doubt, if the Supplier suspends the Services pursuant to clause 5.4, the Supplier reserves the right to charge all Fees as though the Services had continued as agreed for the period of suspension.

6. PRICE AND PAYMENT

6.1 The Client shall pay:

- (a) the Solution Deployment Fee for the Solution Deployment in advance unless otherwise set out in the Proposal;
- (b) the Solution Service Fee (and any applicable Third Party Services fees) for the Solution Services annually in advance of each year unless otherwise set out in the Proposal. Unless otherwise agreed in writing, the Solution Service Fees are non-refundable;
- (c) the Charges in accordance with the payment intervals stated in the Proposal; and
- (d) any expenses stated in the Proposal.

6.2 If no Charges are quoted, the Charges shall be calculated in accordance with the Supplier's daily fee rates set out in the Proposal as amended from time to time in accordance with this Agreement. For the avoidance of doubt, in the event the Client delays the go-live date (which falls outside of the Cancellation Charges) or has not conducted its Acceptance Testing in accordance with clause 8, the Supplier may charge the Client such delays in accordance with its day rate or a reasonable fee if no day rate has been specified.

- 6.3 Where a Fee has been quoted, this is a best estimate based on the information given to the Supplier and/or which is available at that time and may be based on a number of assumptions set out in the Proposal ("Assumptions"). If it materialises that in the Supplier's reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, the Supplier shall be entitled to charge (at the Supplier's current rate card) the Client for any Out of Scope Services or other additional Services provided to those detailed in the Proposal together with all related costs and expenses incurred by the Supplier.
- 6.4 Where the Services are provided on a time-and-materials basis:
- (a) the Supplier's standard hourly or daily rates are calculated on the basis of Normal Business Hours;
 - (b) the Supplier shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Proposal; and
 - (c) travelling time to and from any Client site to be charged on a pro rata basis at the standard daily fee rate. The Supplier shall use reasonable endeavours to minimise travel time.
- 6.5 The Client shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by the Supplier. For all Service Deployment Fees and Solution Service Fees, the Client shall pay each undisputed invoice in full and cleared funds (without deduction or set-off) in advance of providing the Services unless otherwise agreed in writing.
- 6.6 All payments by the Client hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Proposal and shall be paid to the Supplier's bank account or Reseller's bank account (where the Services are purchased via a Reseller) as advised to the Client in writing.
- 6.7 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Client, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 6.8 Should the Client be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Contract, the Fees payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Proposal.
- 6.9 Without prejudice to any other remedy that the Supplier may have, if payment of the Fees or any part thereof is overdue then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) Business Days of receipt of the corresponding invoice, the Supplier may, without prejudice to any other rights or remedies, charge the Client interest on the overdue amount at the rate of three percent (3%) per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 6.10 The Supplier shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Proposal, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 6.11 Subject to clause 6.12 below, the Supplier reserves the right, on giving the Client sixty (60) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Agreement. If the Client does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the Supplier does not receive written notice within fourteen (14) days, the Client is deemed to have agreed to the amendment to the Fees.
- 6.12 For the avoidance of doubt, the Supplier may increase any third party services fee in line with any increases imposed upon the Supplier by such third party.

7. WARRANTIES

7.1 Except for any warranties expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Client's use of the Services is at its own risk. The Supplier:

- (a) does not warrant that the Client's use of the Services will be uninterrupted or error free or available one hundred percent (100%) of the time;
- (b) does not make, and hereby disclaims to the fullest extent permitted by law, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice; and
- (c) makes no warranty or representation of any data backup with the Services. The Client is responsible for all database and/or system back-ups as required before any change is carried out.

8. ACCEPTANCE

8.1 The relevant Proposal shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

8.2 In relation to any Acceptance Testing:

- (a) The Client shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Proposal, from the Supplier's delivery of each Deliverable under the relevant Proposal (the "Acceptance Period") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If the Client determines that a Deliverable does not conform to the Acceptance Criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria.
- (b) The Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period if any of the Deliverables do not conform to the Acceptance Criteria. In the event that the Client:
 - (i) has undertaken the Acceptance Testing within the Acceptance Period and/or fails to reject any Deliverable within the relevant Acceptance Period; or
 - (ii) commences live running of the whole or part of such Deliverable other than in the course of undertaking Acceptance Testing,

for all purposes under this Agreement, such Deliverable shall be deemed accepted as if the Client had issued a written acceptance thereof.

- (c) For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in clause 8.2(d) below.
- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is directly attributable to any act or omission on the part of the Supplier, the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge.
- (e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. The Supplier agrees:

- (i) to reduce the applicable Fee to reflect any reduced functionality in the specific Deliverable, after taking into account all the relevant circumstances, is reasonable; or
- (ii) not to charge the Client, any amounts paid or payable by the Client which specifically relate to the non-conforming Deliverable which cannot be remedied.

9. CLIENT DATA

- 9.1 The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Client Data caused by any third party.
- 9.2 For the purpose of this Agreement, the words Data Controller, Data Processor, Personal Data, Data Subject and process/processing have the meanings given to them in the Applicable Data Protection Legislation.
- 9.3 The Parties acknowledge that for the purposes of the Applicable Data Protection Legislation, if the Supplier processes any Personal Data on the Client's behalf when performing its obligations under the Contract, the Client is the Data Controller and the Supplier is the Data Processor.
- 9.4 The Parties will comply with all its obligations under the Applicable Data Protection Legislation. Where the Supplier is to process Personal Data on the Client's behalf, the Parties will detail the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Client Personal Data and categories of Data Subject, and will ensure that a schedule is added to the relevant Proposal containing such detail as may be required to ensure compliance with the Applicable Data Protection Legislation. The Supplier shall not be deemed to have breached any of its obligations as Data Processor by virtue of following the Client's instructions and/or a breach of the Applicable Data Protection Legislation by the Client as Data Controller.
- 9.5 The Client will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of the relevant Proposal so that the Supplier may lawfully use, process and transfer the Client Personal Data in accordance with the relevant Proposal on the Client's behalf.
- 9.6 The Supplier shall, in relation to any Client Personal Data processed in connection with the performance by the Supplier of its obligations under a Proposal or this Agreement:
 - (a) process that Client Personal Data only on the written instructions of the Client which shall be to process that Client Personal Data for the purposes set out in the applicable Proposal, unless the Supplier is required by Applicable laws or Applicable Data Protection Legislation to process Client Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Client Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client on important grounds of public interest. The Supplier shall inform the Client if, in the opinion of the Supplier, the instructions of the Client infringe Applicable Data Protection Legislation;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Client Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Client Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential or are under an appropriate statutory or common law obligation of confidentiality; and

- (d) not transfer any Client Personal Data outside of the UK or European Economic Area unless all such transfers are effected in accordance with Applicable Data Protection Legislation;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Applicable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Client Personal Data breach;
- (g) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of a Proposal unless required by Applicable Law to store the Client Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and allow for audits by the Client or the Client's designated auditor no more than once per annum, such audits to be conducted on reasonable notice (but in any event on giving Supplier not less than seven (7) days' notice, unless the Client has reasonable grounds for giving shorter notice) and during Normal Business Hours.

9.7 The Client hereby consents to the Supplier appointing third party processors of the Client Personal Data on the condition that the Supplier confirms for each such third party processor that it has entered or (as the case may be) will enter into a written agreement with the third party processor incorporating terms which are as similar as possible to those set out in this clause 9.

9.8 To the extent that the Supplier cannot comply with a change to the Client's instructions when processing Client Personal Data without incurring material additional costs:

- (a) the Supplier shall: (i) immediately inform the Client, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received;
- (b) any changes in the Client's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Request.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Supplier and/or its licensors (as the case may be) shall retain exclusive ownership of all Intellectual Property Rights in the Software, the Services, any Deliverables, any materials or code created under the Services and any and all ideas, concepts, techniques and know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside or during the performance of the Services and/or the Contract (excluding Client Data), including all updates, modifications, derivatives or future developments thereof ("Supplier Intellectual Property Rights") and no such rights are granted to the Client other than those set out in this Agreement.

10.2 Subject to the payment of the Fees, the Supplier grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable licence to use the Supplier Intellectual Property Rights solely for the purpose of utilising the Software, Services and/or Deliverables.

10.3 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought in connection with the Deliverables, the Supplier may at its own expense ensure that the Client is still able to use the Deliverables by either:

- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or

- (b) procuring a licence or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 10.4 The Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
 - (a) any use by or on behalf of the Client of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
 - (b) any modification carried out on behalf of the Client to any item supplied by the Supplier under the Contract if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action; or
 - (c) the Supplier's use of the Client Intellectual Property Rights in the provision of the Services.
- 11. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES
- 11.1 The Client acknowledges and agrees that, except as expressly provided in the Contract, the Client assumes sole responsibility for:
 - (a) results obtained from the use of the Software and/or the Services, as applicable and the Deliverables by the Client, and for conclusions drawn from such use;
 - (b) procuring and maintaining the Business Systems, and all network connections and telecommunications links from the Business Systems to the Supplier's systems and data centres;
 - (c) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Client's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - (d) loss or damage arising from or relating to any Relief Event.
- 11.2 This clause 11 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:
 - (a) any breach of the Contract; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.3 Nothing in the Contract excludes or limits either Party's liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot lawfully be excluded or limited.
- 11.4 Subject to clause 11.3, the Service Level Arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 11.5 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to one hundred and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.
- 11.6 Except as expressly stated in clause 11.3:
 - (a) neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), which fall within any of the following categories:

- (i) loss of profits;
- (ii) loss of actual or anticipated savings;
- (iii) loss of sales or business opportunity;
- (iv) loss of goodwill or reputation;
- (v) loss of, damage to or corruption of data; or
- (vi) indirect or consequential loss;
- (b) neither Party shall have any liability for any losses or damages which would not have arisen but for the termination by a third party (otherwise than in consequence of the Supplier's breach) of an agreement between that third party and the Supplier in respect of the Supplier's use or marketing of such Third Party Services.

12. CHANGE REQUESTS

- 12.1 Either Party may request changes to any Proposal (in each case, a "Change Request"). Unless otherwise agreed between the Parties in writing, any Change Request shall be made in writing and sent to the Client's authorised representative or Supplier's authorised representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 12.2 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing. Any agreed changes shall continue to be subject to this Agreement.
- 12.3 The Supplier shall have the right to make changes to the Services which are necessary to comply with applicable laws, safety requirements and/or any third party terms that the Supplier is required to flow down to the Client.

13. CONFIDENTIALITY

- 13.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Proposal.
- 13.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in clause 13.1.
- 13.3 The obligations of confidentiality set out in this clause 13 shall not apply to any information or matter which:
 - (a) is in the public domain other than as a result of a breach of the Contract;
 - (b) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party;
 - (c) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or
 - (d) was independently developed by the receiving Party without use of or reference to the Confidential Information.
- 13.4 Notwithstanding clause 13.3, the Supplier may disclose to a proposed assignee any information in its possession that relates to this the Contract or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 13.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

14. TERM AND TERMINATION

- 14.1 The Contract shall commence on the Commencement Date and each Proposal shall commence on either the Commencement Date or the Services Commencement Date, as applicable, and shall continue in force unless and until terminated in accordance with the provisions of this Agreement or the applicable Proposal, as the case may be.
- 14.2 This Agreement shall, unless terminated earlier in accordance with this clause, automatically be extended for successive twelve (12) month periods ("Extended Term") at the end of the Initial Term and at the end of each Extended Term, unless a Party gives written notice to the other Party, not later than sixty (60) days before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 14.3 Without prejudice to any rights that the Parties have accrued under the Contract or any of their respective remedies, obligations or liabilities, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any material term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fifteen (15) Business Days after being notified to do so;
 - (b) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (c) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.4 If a Party becomes aware that any event has occurred, or circumstances exist, which may entitle the other Party to terminate the Contract under this clause 14, it shall immediately notify the other Party in writing.
- 14.5 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
 - (b) all licences granted under this Agreement shall automatically terminate;
 - (c) all amounts payable by the Client under the Contract shall become due immediately despite any other provision of the Contract;
 - (d) the Client shall immediately uninstall all copies of the Software then in its possession, custody or control and, upon request, certify to the Supplier that it has done so; and
 - (e) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 14.6 Save as provided in this clause 14 or elsewhere in the Contract, or by mutual consent and on agreed terms, or due to a Force Majeure Event, neither Party shall be entitled to terminate a Proposal.
- 14.7 Termination of any Proposal shall be without prejudice to any other rights which any party may have under any other Proposal.
- 14.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of any Proposal or this Agreement shall remain in full force and effect.

15. RELIEF EVENTS

Subject to clause 11.3, and notwithstanding any other provision of the Contract, the Supplier shall have no liability for failure to perform the Services or its other obligations under the Contract if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

16. GENERAL

- 16.1 Force majeure.

- (a) The Supplier shall have no liability to the Client under the Contract and the Client shall have no obligation to pay the Fees in respect of the affected Services if the Supplier is prevented from, or delayed in, performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control except to the extent that the Supplier could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of the Contract or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including, but not limited to, strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, epidemic or pandemic, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a "Force Majeure Event").
 - (b) If the period of delay or non-performance continues for ninety (90) days or more, the Party not affected may terminate the Contract by giving fourteen (14) days' written notice to the other Party.
- 16.2 Waiver. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy.
- 16.3 Entire agreement and amendment.
 - (a) The Contract constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
 - (b) No addition to, variation of or other amendment or purported amendment to this Agreement and a Proposal shall be binding on the Parties unless expressly stated as such, made in writing and signed by a duly authorised representative of both Parties.
- 16.4 Assignment. The Client shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) assign, transfer, charge or deal in any other manner with either the benefit or the burden of the Contract or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under the Contract.
- 16.5 Third Parties. The Contract is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit or be enforceable by anyone else.
- 16.6 Notices.
 - (a) Any notice or other communication required to be given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand, sent by email to the designated email address set out in the Proposal or sent by pre-paid first class post or other next Business Day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.
 - (b) Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.
- 16.7 Governing law and jurisdiction.
 - (a) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England.
 - (b) The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).